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# Whistleblowing Mechanism: A Positive Step towards Enhancing Corporate Governance

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## ABSTRACT

*Over the years, India has witnessed several corporate scams appalling the global economy. This is when the concept of whistleblowing started gaining momentum in the corporate sector. It is a mechanism important for implementing better corporate governance. Even though the whistleblowing policy in India is at a very nascent stage it's importance cannot be much emphasised after witnessing the huge corporate scandals. Analysing the importance of this mechanism, the researcher has attempted to explore the concept of whistleblowing in India. This paper reviews the origin, definition and types of whistleblowing. It further analyses the laws supplementing whistleblowers in India and on an International level. The paper then takes a trajectory turn by recalling the episodes of whistleblowing in India, which has helped the researcher to lay down the framework for the need for protection of such whistleblowers in India. Further the article emphasises the importance of this mechanism in Corporate Governance. The paper ends with some policy suggestions which shall contribute in strengthening this mechanism in India.*

## I. INTRODUCTION

*"I am not bound to win, but I am bound to be true. I am not bound to succeed, but I am bound to live by the light that I have. I must stand with anybody that stands right, and stand with him while he is right, and part with him when he goes wrong." – Abraham Lincoln*

In the corporate sector ethics and values play a very important role. Corporate governance is all about the ethical code of conduct that the business operates upon. Transparency and information disclosure are the ideals of a corporation. In an era marked by corruption, the believers in the sanctity of the system are often mocked upon. However we still have a few people who believe in the morals and ethical codes of the corporation and often disclose the wrongful activities within their organizations. The act of doing so is called as 'Whistle blowing'. The whistleblowing revolution is gaining momentum in the area of corporate governance. It has received wide acceptance in the corporate space. It acts an effective

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support mechanism of good governance and helps to manifest a more open culture within the organization. It helps to promote good governance and is an important organizational strategy.

When cores of rupees are lost each year to occupational fraud, the need for organizations to invest in well- functioning mechanisms has never been clearer. They are a valuable component of an organizations anti- fraud regime. Over the time whistleblowing concept has gained much importance within the organization at management level. The persons blowing the whistle are termed as ‘whistleblowers’. Once known as ‘traitors’ and ‘snitches’ are now considered the ‘heroes of the organization’ and demand protection. This concept was recognized internationally much longer compared to India. Globally the law is recognizing the efforts and selfless sacrifices of the whistleblowers. These can be called as the pillars of the corporate world. They blow up the cover of the wrongful activities which in turn costs them their job and sometimes even their lives. To encourage their worthy sacrifices legislation has been introduced to protect and reward these heroic individuals.

#### **(A) Research Objectives**

1. To understand the concept of Whistleblowing.
2. To compare this mechanism across U.S. & U.K.
3. To analyse the existing framework w.r.t. protection of whistleblowers.
4. To understand the issues & drawbacks of Whistleblowing mechanism in India.
5. To understand the importance of Whistle Blowing mechanism for good corporate governance in India.

#### **(B) Research Methodology**

The researcher has done a qualitative study based on secondary sources available. For the sia article the researcher has relied upon various books, articles, legislations, research articles, online resources, policies, committee reports, etc.

## **II. WHISTLEBLOWING: SETTING THE BASE**

### **(A) Origin**

The term ‘Whistleblowing’ is becoming commonplace. Its origin goes back to 50 years or so. Often traced to the schoolyards or sports referees who alerted the crowd of illegal sports play by blowing a whistle.<sup>2</sup> U.S. civic activist Ralph Nader is believed to have coined the phrase

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<sup>2</sup> Jubb, Peter B. “Whistleblowing: A Restrictive Definition and Interpretation.” *Journal of Business Ethics*, vol. 21, no.

‘whistleblower’. Back in the 19<sup>th</sup> century he used this phrase. However he used this term positively so as to avoid the negative connotations. The term combines "whistle" a device used to alert or call attention to, and "blower," referencing the person issuing the alert by the blowing of the whistle.

### **(B) What is Whistleblowing?**

Whistleblowing is neither a new term nor a new concept. It has become a very commonly encountered concept in recent times and is becoming politically and socially acceptable. This concept has been developed from the concept of organisational behaviour. It is a discretionary act.<sup>3</sup> In general terms whistleblowing occurs when an employee informs the public about inappropriate activities going on inside the organization **Kohen (2003)**.<sup>4</sup> It is an act which involves the revelation of misconduct occurring in the organisation. In the corporate world whistleblowing it refers to an act of uncovering unethical behaviors made by the employee or anyone in the same field.<sup>5</sup> The **ILO** defines it in as the “reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employers” Hence whistleblowing is the disclosure of internal wrongdoing to an external agency and can have important functions for the regulation of moral and legal conduct. It is an effective internal management dispute mechanism. There were various theories that were propounded to understand the concept of whistleblowing. One of them is **The Complicit Theory** opined by Micheal Davis. He justified whistleblowing to be morally ethical as the employees who blow the whistle do not desire to be a part of the unethical practices practiced within the organisation and hence they resort to this mechanism. According to him “*it is the moral wrong and not the harm caused that is important and the information to reveal would have been got as a part of the work done by the employee in the organisation.*”<sup>6</sup>

There are various definitions for the term ‘whistleblowing’. **Hirschman (1970)** defined whistleblowing as an act of dissent.<sup>7</sup> More recently, **Near and Miceli (1985)** defined the act of whistleblowing as the “disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or

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1, 1999, pp. 77–94. *JSTOR*, [www.jstor.org/stable/25074156](http://www.jstor.org/stable/25074156).

<sup>3</sup> Niamh Brennan, “Whistle Blowing”, Blackwell Encyclopaedia of Sociology, (2012).

<sup>4</sup> Shikha Patheja, “System of Whistle Blowing in India”, International Journal of Scientific Research, Vol. 4, Issue 7, (2015). Pp. 361-362.

<sup>5</sup> Bano A., Banjal S., “Whistleblowing in India- introspection”, International Journal of Engineering Technology, Management and Applied Science, Volume 3 Special Issue, ISSN 2349-4476, March 2015. Pp 243-252.

<sup>6</sup> W. Micheal Hoffman and Robert E. McNulty, A Business Ethics Theory of Whistleblowing: Responding to the \$1Trillion Question, Centre For Business Ethics, Bentley University.

<sup>7</sup> Hirschman, A.O., 1970. Exit, Voice and Loyalty: Responses to Decline in Firms, Organisations and States. Cambridge: Harvard University Press

organizations that may be able to effect action”. To make this mechanism more effect these scholars suggested to focus upon terminating the wrong doing. They propose that there are five primary factors that influence whistleblowing effectiveness: characteristics of the whistleblower, characteristics of the report recipient, characteristics of the wrongdoer, characteristics of the wrongdoing, and characteristics of the organization. This broad definition of whistleblowing was widely accepted by a large number of scholars as it unpacks the psychological perspective behind the act of whistleblowing. On the contrary, a restrictive definition was given by Peter B. Jubb. He defines whistleblowing as “A deliberate non-obligatory act of disclosure, which gets onto public record and is made by a person who has privileged access to data or information of an organisation, about non-trivial illegality or other wrongdoing whether actual, suspected or anticipated which implicates and is under the control of that organisation, to an external entity having potential to rectify the wrongdoing (P.B. Jubb 1999).<sup>8</sup> This definition is on same lines with Hirschman’s definition.

Whistleblowing is a critical instrument for a group, organization or society to promote and uphold its moral standards. It is an important tool for preventing and detecting organizational wrongdoings (Brown, Mazurski, & Olsen 2008).<sup>9</sup> This concept involves risk and high degree of ethical conduct. It is the notification of the organizational information by the employee to the authorities (Cross & Tiller, 1998).<sup>10</sup> It was argued that whistle-blowing behavior does not occur often compared to other behaviors. At the same time, it is difficult to observe because most of them are conducted through confidential hot-lines or anonymous letters (Miceli et al (2009). The whole premise behind the research of whistle blowing is ‘wrongdoings’. This term includes persistent acts of minor inclivity to multibillion-pound corruption.<sup>11</sup>

### (C) Who is a Whistleblower?

#### *“Whistleblowers: The canaries in the coal mine”*

With a lot of differing definitions of the term ‘whistleblower’ most scholars have come to a consensus that a common understanding of this term has not been reached yet. This is due to

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<sup>8</sup> Jubb. P.B., ‘Whistleblowing: A Restrictive Definition and Interpretation’, Journal of Business Ethics, 1999, pp 77-97.

<sup>9</sup> Brown, A. J., Mazurski E., Olsen, J., (2008). The incidence and significance of whistleblowing. In Brrown, A. J.(Ed), Whistleblowing is the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations (pp 25-25). Canberra, Australia: ANU Press.

<sup>10</sup> Cross, F. B., & Tiller, E. H. (1998). Judicial partisanship and obedience to legal doctrine: Whistleblowing on the federal courts of appeals. Yale Law Journal, 107(7), 2155-2176.

<sup>11</sup> NCBI, “Understanding the knowledge gaps in whistleblowing and speaking up in health care: narrative reviews of the research literature and formal inquiries, a legal analysis and stakeholder interviews”, 2018. Available at: <https://www.ncbi.nlm.nih.gov/books/NBK519615/>

the lack of unanimous legal definition. One of the possible assumptions that one can draw out is that the intent of legislation was to give the widest possible amplitude to this term; hence it is left undefined. However in general parlance it can be denoted as person who voices out his opinion against perceived wrongdoing within an organisation to the public or to the higher authorities. It is presumed that the whistleblower has some ‘insider’ information of the wrongdoing. They are crusaders against corruption. He is a person who reports/ makes disclosure about the illegal and unethical activities like fraud, corruption, abuse of power, fraud, mismanagement, waste, etc. which are happening in the organisation.<sup>12</sup> In many cases it is observed that a whistleblower is either an employee of the company/organization or government personnel.

Although in the absence of a formal definition, there are some definitions which are recognised the most in the academic sphere. **Nader (1971)** defined a whistleblower as “A man or a woman who, believing that public interest overrides the organisational interest which he/she serves, blows the whistle that the organisation is involved in some corrupt, illegal, harmful or fraudulent activity.<sup>13</sup> **Miceli, Near and Dozier (1991)** describe whistleblowers as committed members of the organization who feel compelled to report wrongdoing by their own sense of moral behavior. The whistle blowers are shouldered with the responsibility of making disclosures in good faith.<sup>14</sup> (**Chamorro-Courtland and Cohen, 2017**) described a whistleblower as a person who reports wrongdoings, either internally or externally when a business engages in illegal and unethical activities that harm stakeholder, other businesses, the government or environment.<sup>15</sup> The Council of Europe Recommendation on the protection of whistle-blowers defines him as “any person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship, whether it be in public or private sector” (**Council of Europe, 2014**). However in India the **Whistle Blowers Protection Act of 2014** defines a whistleblower as any individual making public interest disclosures.<sup>16</sup>

Hence it can be deduced that a whistleblowers are committed members of the organisation who expose the falsehood and wrongdoings of the company even after knowing the potential

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<sup>12</sup> Sharma, Ajay, Law relating to whistleblowing in India a critical study, Department of Law, Panjab University, 2019.

<sup>13</sup> Nader, R., Petkas, P. J., Blackwell, K. eds., 1972. Whistle Blowing: The Report of the Conference on Professional Responsibility. Grossman: New York.

<sup>14</sup> Miceli, M. P., Near, J. P., & Dozier, J. B. (1991). Blowing the whistle on data fudging: A controlled field experiment. *Journal of Applied Social Psychology*, 21(4), 271-295.

<sup>15</sup> Chamorro-Courtland, C.; Cohen, M. 2017. “Whistle-blowing laws in the financial markets: Lessons for emerging markets”, in *Arizona Journal of International and Comparative Law*, Vol. 34, No. 2, pp. 187–226.

<sup>16</sup> Section 4, Whistle Blowers Protection Act, 2014.

negative outcome and risks in doing such an act. Given this scenario an obvious question that comes along is ‘What motivates people to engage into whistleblowing activities?’. Researchers trying to address this problem have only provided a limited scope of psychological structure (Waytz, Dugan, & Young, 2013).<sup>17</sup> A structural model is yet awaited.

#### **(D) Characteristics of a Whistleblower**

While characterising a whistleblower there have been contrasting opinions one might come across. Some people tend to believe that whistleblowers are disgruntling employees with psychological problems. They blow the whistle to harm the organisational structure. They are also excluded from the social groups as they are considered tattletales their intentions are regarded as suspicious and vindictive.<sup>18</sup> At times whistleblowers are motivated with the monetary incentives that they might make in exchange of making the disclosures. In some cases whistleblowers are hackers.<sup>19</sup>

Gradually as time passed by and as the world witnessed many financial scandals the position and image of whistleblowers changed in the minds and hearts of people. They are now regarded as folk heroes who majorly contribute into reforming the corporate culture. It is now believed that whistleblowers are loyal employees of the organisation. They are people with high ethics and professional morals and cannot shun themselves while wrong activities occur in their surroundings. Generally it is seen that a whistleblowers are people with highly educated profile with high performance and not always an agreeable personality. There are many factors that influence a person whether to blow the whistle or not. Their decisions are mostly based on the trade-offs between fairness and loyalty.<sup>20</sup> They tend to create awareness about the unforeseen situation that might occur in the future due to the wrongdoings in the business. Often a whistleblower is confused with an ‘Informer’; however the pertinent distinction between the two is the liability of the person disclosing the information.<sup>21</sup>

#### **(E) Types of Whistle Blowing**

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<sup>17</sup> Waytz, A., Dugan J., L. (2013). The whistleblower’s dilemma and the fairness–loyalty tradeoff *Journal of Experimental Social Psychology*, 49(6), 1027-1033.

<sup>18</sup> Gerald Vinten, *Whistleblowing: Subversion or Corporate Citizenship?* 4-5 (1994).

<sup>19</sup> Some whistleblowers can be hackers, who have illegally obtained the information for their personal gains. One might come across such instances when the information is related to issues of National security.

<sup>20</sup> James Dugan, Adam Waytz, Liane Young, “The psychology of whistleblowing”, (2015). Available at: [https://moralitylab.bc.edu/wp-content/uploads/2011/10/DuganWaytzYoung\\_2015.pdf](https://moralitylab.bc.edu/wp-content/uploads/2011/10/DuganWaytzYoung_2015.pdf)

<sup>21</sup> The Institute of Company Secretaries India, “Whistle Blowing: Balancing on a tight rope”, Knowledge Paper Series 5, 2017.

<b>Sr. No.</b>	<b>Type</b>	<b>Meaning</b>
1.	Internal Whistleblowing	When the employee or employees within its organisation reports the wrongdoings or unethical behaviour to their superiors. This is usually done due to disloyalty, insubordination, etc.
2.	External Whistleblowing	In external whistleblowing the unethical activities are reported to a person or entity outside the organisation. This may be done through media, watchdog agencies, lawyers etc.
3.	Alumni Whistleblowing	Whistleblowing done by a former employee of the organisation, who is no more a part of it is called Alumni Whistleblowing
4.	Open Whistleblowing	A type of whistleblowing under which the identity of the whistleblower is revealed.
5.	Personal Whistleblowing	Where the organisational wrongdoings are to harm one person only, revelation of such wrongdoings is called personal whistleblowing.
6.	Impersonal Whistleblowing	When wrongdoings are to harm others it is called impersonal whistleblowing.
7.	Government Whistleblowing	When the illegal or unethical activities occurring in the Government organisations or by government officials is revealed it is said to be government whistleblowing.
8.	Corporate whistleblowing	Making disclosures about the wrongdoings occurring within a business corporation it is called as 'corporate whistleblowing'.

### III. LAWS SUPPLEMENTING THE WHISTLEBLOWING MECHANISM IN INDIA

In India laws protecting the whistleblowers have been set out in various pieces of regulations. In comparison to the laws of other countries India has fairly weak whistleblower protection laws. These laws are spread in number of rules, schemes and acts including The Whistle Blowing Protection Act, 2014; The Companies Act, 2013 read with The Companies (Meetings of Board and its Powers) Rules, 2014; The SEBI Listing Agreement, etc. Following is the analysis of each of these laws:-

**(A) The Whistle Blowing Protection Act, 2014.**

In 1999, Mr. N. Vittal the Chief Vigilance Commissioner (CVC) requested the Law Commission to draft a bill encouraging to disclose corrupt practices and protect honest persons making such disclosures.<sup>22</sup> Subsequently in 2001, Law Commission came up with the 'Public Interest Disclosure and Protection of Persons Making the Disclosure Bill 2010' which was then introduced in the Lok Sabha. In 2011, the Second Administrative Reforms Commission in its 4<sup>th</sup> report on 'Ethics in Governance' also iterated on the need to formulate legislation for the protection of whistleblowers.<sup>23</sup> During this period of 2001- 2011 a lot of fateful incidents took place.<sup>24</sup> This is when the Supreme Court strongly pitched for the mechanism to protect whistleblowers. Subsequently in 2014 the Parliament approved the Public Disclosures Bill and it was then called as 'THE WHISTLE BLOWERS PROTECTION ACT 2014', Act No. 17 of 2014. It was then substituted by the amendment act of 2015.

The intent of this act was to establish an effective mechanism to receive complaints and to safeguard the whistleblowers. It was a belated move but a welcomed one to shield the rights of the honest people who put themselves at risk for exposing the truth. This Act aims to encourage individuals to report suspected malpractices, fraud and corruption supported by disclosures. This Act seeks to protect whistleblowers that make disclosures in the interest of public. It aims to safeguard these honest officials from undue harassment and victimisation. It punishes any person making false complaints. However this act fails to address the key issue of how protection would be accorded to open whistleblowers. This act is only applicable to public servants. The Act has tied the hands of CVC by limiting their power to make recommendations.

The Whistle Blowers Protection Act, 2011 has been promulgated with such objectives as to facilitate the act of disclosure and to protect the person who makes such disclosure. For the sake of convenience, the objective of the Whistle Blowers Protection Act is being extracted hereunder:--

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<sup>22</sup> Law Commission 179<sup>th</sup> Report, "THE PUBLIC INTEREST DISCLOSURE AND PROTECTION OF INFORMERS", D.O.No6(3) (72) /2001-LC (LS), (2001). Available at: <https://lawcommissionofindia.nic.in/reports/179rpt1.pdf>

<sup>23</sup> Department of Administrative Reforms and Public Grievances, Ministry of Personnel, Public Grievances and Pensions, Government of India, 'Administrative Reforms commission's 4th Report titled 'Ethics in Governance', (2011). Available at: <https://darpg.gov.in/sites/default/files/decision4.pdf>

<sup>24</sup> In November 2003, Satyendra Dubey was murdered after he exposed the corruption in the projects of National Highways Authority of India (NHAI). Subsequently, Manjunath Shanmugam (also called as 'machan') sales officer at Indian Oil Corporation, was shot dead when he blew up the corruption and oil adulteration racket at the petrol pump in Uttar Pradesh. In October 2013, there were heavy allegations against CEO of Infosys Sahil Parekh for indulging into unethical acts. These episodes the need for strict protection of whistleblowers in India.

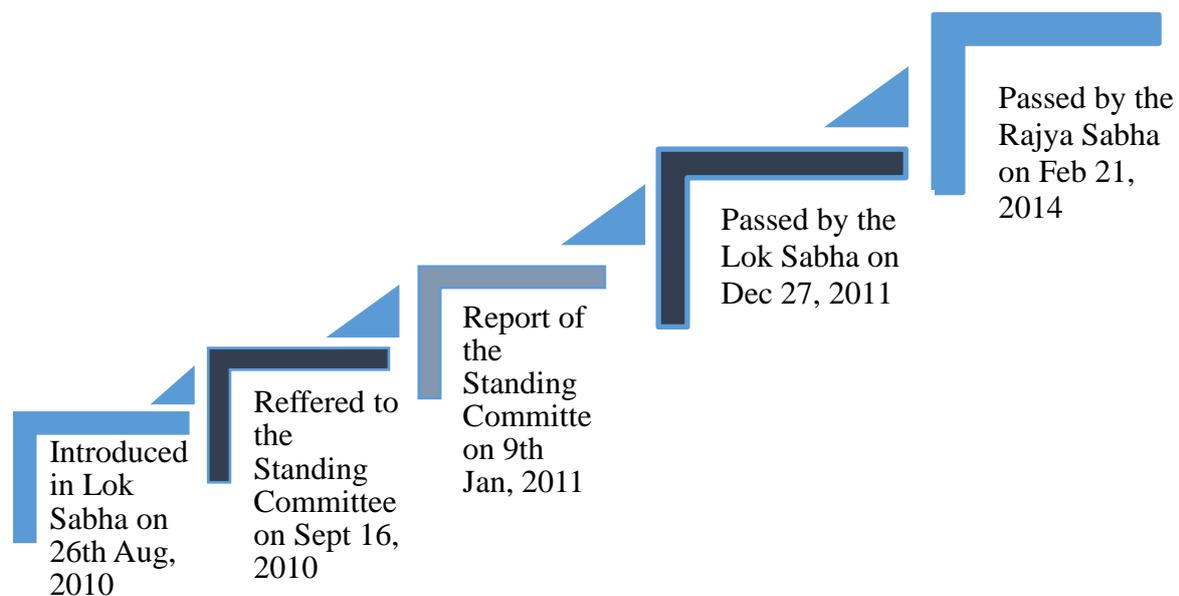


Fig. 1. Source: Authors own compilation

## (B) The Companies Act, 2013

### Section 177(9)

Section 177(9) of the Companies Act 2013, read with the Companies (Meetings of Board and its Powers) Rules, 2014 mandates all listed public companies and such class or classes of companies, as may be prescribed, to establish a ‘vigil mechanism’ for the directors and the employees of the company to report any genuine concerns in a prescribed format.<sup>25</sup> Further Clause 10, clarifies that this vigil mechanism shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases.<sup>26</sup> The companies have to disclose the report of such mechanism on its official website.

Section 177 is a very important section as it lays down the essential provisions for the audit committee of the company who are seen as the financial backbone of the company. Prior to the Amendment of 2017, this section was applicable only to “every listed company”. However this clause was changed by adding the words “every public listed company”. The vigil mechanism proves to be very beneficial for companies. It enables the company to set up a process, which encourages and promotes ethical corporate behaviour. It gives the whistleblowers a platform to bring into light illicit, illegal and practices adopted inside the

<sup>25</sup> Section 177(9), Companies Act, 2013.

<sup>26</sup> Section 177(10), Companies Act, 2013.

company.<sup>27</sup> The company rewards such employees for their honesty and for bringing forth some valuable disclosures of the unscrupulous acts adopted within the organisations. However confidentiality should be maintained at the maximum level under this mechanism. The magnificent results of the Western countries led India incorporate this system in the Companies Act of 2013.

It is assumed that since the ‘vigil mechanism’ is made a part of the audit committee, the mechanism shall deal with the financial aspects, disclosures, valuation of assets, independence of auditors, financial controls implemented by a company, or even issues related to breach of the code of conduct of a company, sexual harassment complaints, etc., though such issues have not been categorically mentioned in the new Act.<sup>28</sup>

Further the Companies (Meetings of Board and its Powers) Rules, 2014 provides that in case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the director or the employee including reprimand.

### **Section 208**

Section 208 of the Companies Act, 2013 gives the Registrar or Inspector the power to inspect records and thereby submit a report in writing to the Central Government. Additionally they are required to furnish documents and reports (if any), recommendations on further investigation process, etc.

### **Section 210**

Section 210 of the Companies act deals with the Investigation into Affairs of the Company. It gives a list of procedure that has to be followed during the investigation when called for by the Central Government.

#### **(C) Clause 49: of SEBI Equity Listing Agreement**

The SEBI has made it mandatory for every listed company to have its own whistleblower policy. It also the duty of the company to make the employees aware of this policy so as to enable them to report instances of leak of unpublished and price sensitive information. This mechanism gives the employees an avenue to bring forward any irregularity (unethical behaviour, actual or suspected fraud) prevailing in the company. It also safeguards victimization of employees and directors. It also gives direct access to the Chairman of the

<sup>27</sup> Manoj Kumar Garg vs Union of India, 2020.

<sup>28</sup> Karavdi A., “Investigation & whistleblowing provisions under Companies Act, 2013- An overview”, 2013. Available at: <https://www.lakshmisri.com/insights/articles/investigation-whistle-blowing-provisions-under-companies-act-2013-an-overview/#>

Audit Committee in exceptional cases. From December 2019, the SEBI has also effectuated a 'reward mechanism'. This will incentivize those informants who report violation of insider trading laws to SEBI.

#### **(D) Companies (Auditor's Report) Order 2020 ['CARO 2020']**

CARO 2020 is an order issued by the Ministry of Corporate Affairs on 25<sup>th</sup> February, 2020. It is enforced with an underlining objective of strengthening the corporate governance framework under the Companies Act, 2013. The order makes it mandatory for every listed company to disclose all whistleblower complaints to the auditors and the same will be mentioned in the auditor's report. As many times companies refrain from disclosing all the complaints and termed them as '*benami complaints*' leaving the shareholders uninformed. This is going to have a major impact on the shareholders. As the saying goes '*Caveat Emptor*' meaning '*buyer be aware*'; this disclosure will help the shareholder and business partners to gain insights into the quality of internal controls or unreported fraudulent activities of the companies.<sup>29</sup> This framework has tightened the whistleblowing disclosure mechanism.

### **IV. LAWS SUPPLEMENTING WHISTLEBLOWERS INTERNATIONALLY:**

#### **(A) U.S.A.**

Currently the whistleblowing regimes in US provide express protection to the whistleblowers in its country. United States of America was one of the first countries to pass legislation on whistleblowing. It was called the United States False Claims Act in 1863. This act was administered to fight against fraudulent activities by suppliers to the federal government during the civil war. It was then revised in 1986. However in US there are different acts enacted at different level to protect the employees from the illegal activities of the organisation. Some of these acts are the IRS Whistleblower Informant Award, The Occupational Safety and Health Act, State Whistleblower Law, Sarbanes Oxley Act, Whistle Blower Protection Act, etc. Hence one can say that the United States offers a comprehensive protection to whistleblowers.

#### **- The Sarbanes Oxley Act, (SOX) 2002**

Protection of whistleblowers in the corporate and finance sectors began with the Corporate and Criminal Accountability Act, 2002 (Sarbanes-Oxely). This Act was spurred by the major corporate and accounting scandals, such as Eron and WorldCom; and acted as a new auditor

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<sup>29</sup> Siddharth Keskar, 'India's Whistle Blower Mechanism: Growing Louder by the Day', 2020.

watchdog. It was spearheaded by Senator Paul Sarbanes and Congressmean Michael Oxley, and hence was names after them as ‘Sarbanes- Oxely’. The Sarbanes Oxley Act is one of the most promising federal statute that protects whistleblowers. This act was enforced by the SEC on 30<sup>th</sup> July 2002. This act brings into its ambit more than 40 million employees of publicly traded corporations in US.<sup>30</sup> It created strict new rules for accountants, auditors and corporate officers imposing stringent norms for recordkeeping, as highlighted in S.302, 401 of the Act.<sup>31</sup> Further S.404 was another important section which mandated the mangers to maintain adequate internal control structure and procedures for financial reporting. However this section was seen as the most burdensome element of the Act.<sup>32</sup> This act was amended to a large extent was the introduction of the Dodd- Frank Wall Street Reform and Consumer Protection Act, 2010. This act armed the whistleblowers with powerful anti-retaliatory action from their employer. It extended the limitation period of filing a complaint against retaliation from 90 days to 180 days. It also extended protection not only to employees of publicly traded corporations but also parent corporations.<sup>33</sup>

#### **(B) U.K.**

United Kingdom was the first European state to introduce laws for protection of ‘whistleblowers’ The collapsing of BCCI bank and sinking of Herald of Free Enterprise acted as catalyst to drive whistleblowing policies in UK. **Public Interest Disclosure Act, 1988; shortened as PIDA** is a framework that provides protection to workers who make qualitative disclosures. This Act was passed on the recommendation of the Nolan Committee Report, 1995. This Act brings into its ambit various crimes, miscarriage of justice, failure to comply with legal obligation, etc.<sup>34</sup> It further allows these individuals to claim compensation for victimization following such disclosures.<sup>35</sup> It also makes clear that the disclosure can be of acts already occurred, is occurring or may occur in future ,inside the territory of united

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<sup>30</sup> Hesch, Joel D, Whistleblower Rights and Protections: Critiquing Federal whistleblower Laws and Recommending Filling in Missing Pieces to Form a Beautiful Patchwork Quilt, LIBERTY UNIVERSITY,L.R:Vol.6:ISS.1,(2011),Feb22,2016)Article4.[http://digitalcommons.liberty.edu/lu\\_law\\_review/vol6/iss1/4](http://digitalcommons.liberty.edu/lu_law_review/vol6/iss1/4).

<sup>31</sup> Section 302 of the Act, mandates that senior corporate officers personally certify in writing that the company’s ‘financial statements’ comply with SEC disclosure requirements and fairly present in all material aspects the operations and financial condition of the issuer." Financial statements are required to be accurate. (S.401) Officers who sign off on financial statements that they know to be inaccurate are subject to criminal penalties, including prison terms.

<sup>32</sup> Wanger S., Dittmar L., “The Unexpected Benefit of Sarbanes- Oxely”, (2006). Available at: <https://hbr.org/2006/04/the-unexpected-benefits-of-sarbanes-oxley>

<sup>33</sup> Biswas D. & Kurian N., Corporate Governance Through Whistleblowing- A critical analysis with special reference to India, Law Mantra, Vol. 4 Issue 3, 2011.

<sup>34</sup> The Public Interest Disclosure Act 1998, S43 Bc11.

<sup>35</sup> The Public Interest Disclosure Act of 1998, S43 B c12.

kingdom or even outside where any other country's law may have application.<sup>36</sup> Further another important legislations are the **Employment Rights Act, 1996 and The Enterprise and Regulatory Reforms Act, 2013.**<sup>37</sup>

## V. CASE REVIEW OF THE CONCEPT OF WHISTLEBLOWING IN INDIA

Whistleblowing is an evolving concept in India. Even if this concept is now recognised by all the organisations of the Indian corporate sector, judicial interpretation of this concept lacks. There are only a few case laws that the researcher has come across where the judiciary has defined and interpreted the law and also recognised the need for whistleblower's protection.

Like in the case of *In Indirect Tax Practitioners Association vs. R K Jain*,<sup>38</sup> the Apex Court explained who a whistleblower is. He is identified as a person who raised concerns about the wrongdoings occurring in an organisation or by body of people. Further this very court in the case of *Manoj H Mishra v. Union of India & Ors*,<sup>39</sup> explained that 'one of the basic requirements of being accepted as a whistleblower is that his primary motive for the activity should be in furtherance of public good. A "whistle blower" would be a person who possesses the qualities of a crusader. His honesty, integrity and motivation should leave little or no room for doubt. It is not enough that such person is from the same organization and privy to some information, not available to the general public. The primary motivation for the action of a person to be called a "whistle blower" should be to cleanse an organization. It should not be incidental or byproduct for an action taken for some ulterior or selfish motive. To say, the activity has to be undertaken in public interest, exposing illegal activities of a public organisation or authority'.

In the case of *S.M. Matloob vs. The Director General*,<sup>40</sup> the Company Appellate Tribunal of Delhi interpreted the intent of the Whistle Blower Protection Act, 2014. The court held that the intent of the act reveals that the law makers have been more vigilant not only qua the value of such disclosures by whistle blowers who make disclosures but also to provide protection to such whistle blowers who often make these disclosures at considerable risk to them. In *Manjit Singh Khera vs. State of Maharashtra*,<sup>41</sup> Justice Radhakirshnan iterated that identity of persons making disclosures should often not be revealed as it poses them a threat to their lives.

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<sup>36</sup> The Public Interest Disclosure Act of 1998, S43 B c12.

<sup>37</sup> Vaeshney N & Murjani R., Whistleblowing Regime in the U.S and the U.K.: The Way Ahead for India, CNLU LJ (6) [2016-17] 107.

<sup>38</sup> (2010) 8 SCC 281.

<sup>39</sup> Civil appeal arising out of SLP No 9126 of 2010.

<sup>40</sup> MANU/CA/0677/2014.

<sup>41</sup> (2013) 9 SCC 276. Also see: Avinash Kumar vs. Aruna Asaf Ali, MANU/CI/0918/2015.

## VI. SAGA OF WHISTLEBLOWING IN INDIA

Year	Whistleblowing Episodes in India
1992	<p><u><i>Harshad Mehta Scam – Whistleblower : Sucheta Dalal</i></u></p> <p>On 23 April 1992, journalist Sucheta Dalal exposed Harshad Mehta’s illegal methods in a column in The Times of India. Mehta committed a fraud of 5 billion from the banking system of India by buying shares of the Bombay Stock Exchange. This was big game changer in the banking system and the field of journalism.</p>
2002	<p><u><i>NHAI scam- Whistleblower: Satyendra Dubey</i></u></p> <p>Satyendra Kumar Dubey, a 32 year old project director at NHAI spotted huge financial irregularities in handling of Golden Quadrilateral Highway Project, 2003. On November 11, he had send anonymous letter to the PMO telling the PM how many contractors had “submitted forged documents to justify their technical and financial capabilities” to win bids for the contract and also requested the PM to maintain confidentiality of this disclosure. However this letter was forwarded along with the CV to the Ministry of Road, Transport and Highways. On the fateful night of November 27, Dubey was shot dead in front of Circuit House in Gaya.</p>
2005	<p><u><i>Malpractices in Indian Oil Corporation- Whistleblower: Manjunath Shanmugam</i></u></p> <p>Manjunath Shanmugam (also called as ‘machan’) IIM graduate &amp; sales officer at Indian Oil Corporation, was shot dead when he blew up the corruption and oil adulteration racket at two petrol pump in Lakhimpur at Uttar Pradesh. When dealers started operating them he conducted a surprise raid and came back bearing 6 bullets, dead.</p>
2018	<p><u><i>Punjab National Bank Scam- Whistleblower: Hari Prasad</i></u></p> <p>On 26<sup>th</sup> July, 2016 Bangalore based businessmen Hari Prasad wrote to the PMO drawing his attention to the huge scam coming up in PNB, however it was a failed attempt. Prior to this he filed a complaint against the fraudster Mehul Choksi. He also wrote to the ED, CBI, SEBI to look into the matter but nobody took action on it.</p>

## VII. PROTECTION OF WHISTLE BLOWERS IN INDIA

***“Whistleblowers protection is a policy that all government leaders support in public but few in power tolerate in private”***

– Thomas M. Divine

Whistleblowers are those who cannot afford to build resentment of not standing up against the truth. They are the real heroes of today's world, the ones which society is longing to follow. Hence the country cannot afford to lose its honest officers who stand up against all odds and risk their lives. The longstanding history of India depicts how whistleblowers were harassed, humiliated, isolated, designated with poor performance ratings, face criminal prosecution, threatened and even dismissed due to the disclosures made by them. Not surprisingly, these whistleblowers face retaliation by the organisations as well. In some cases the victimisation may even extend by targeting the whistleblowers family members. The result of such valiant efforts costed them their lives at times. Hence the need of protecting whistleblowers cannot be overemphasised.

Whistleblowers have very less incentive to report the frauds and corruption within the organisation, especially when the whistleblower belongs to the public sector. The interests of the whistleblower are completely jeopardised when the report the alleged wrongdoings. Protection to whistleblowers is important if the organisations want to encourage the whistleblowers to report the wrongdoings. The whistleblowers need to believe in their management's integrity in order to make the reporting. Those complainants who report the illegal or unethical practices adopted by the organisation are not liked by all. Persons reporting the wrongdoings are sometimes even subject to reprisal in the forms of dismissals, harassment or even physical violence. Recognising the need for Whistleblower protection, many conventions like the United Nations Convention against Corruption, The Council of Europe's civil and criminal law conventions on corruption, etc. introduced the requirements of whistleblowing protection.

**The World Health Organisation recommends the following to safeguard the interests of the whistleblowers from retaliation:**

- i. Temporary reassignment
- ii. Transfer to another office or function for which whistleblower is qualified
- iii. Placement on special leave with full pay
- iv. Or any appropriate action on a case-by-case basis.<sup>42</sup>

In India the Whistleblowing Protection Act, 2014 gives limited protection to the Whistleblowers. This law gives protection to the identity of the Whistleblowers. It also has strict norms to prevent victimization. The law provides strong anti-retaliation provisions to

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<sup>42</sup> WHO, Whistleblowing and Protection against retaliation, Policy and Procedures, 2015.

combat victimization. It has also given the CVC enough power to investigate and protect the whistleblowers. However the law faces a lacuna. The Companies Act, 2013 as well as the SEBI Clause 49 has made it compulsory to establish mechanism to receive complaints related to such grievances.

#### Shortcomings:

1. The law lacks specific criminal penalties for physical attacks on whistleblowers and given the number of violent attacks on complainants in the past, this is not a minor concern.
2. In the case of Common Cause vs Union of India, the Supreme Court held that a whistleblower cannot be punished if he makes any disclosures in public interest. The act prescribes that every disclosure should be made in public interest. However the word 'public interest' is not defined. This makes it a topic left to interpretation and can vary due to various perceptions.
3. There is no scope for anonymous complaints to be filed. This is a demotivating provision.
4. No incentives have been offered to a person making important disclosures. However as per section.17 a person can be penalized for making false complaints. If the act prescribes a punishment it should also reward the whistleblower for its courage.
5. The law does not provide civil penalties for workplace retaliation.
6. The law does not define the term 'victimization'. At the same time it has given a relatively narrow definition to the term 'disclosure'. This limits the effectiveness of the complaint mechanism. Hence the law is not enough.

### **VIII. ANALYSIS OF WHISTLE BLOWERS POLICY OF A FEW INDIAN & INTERNATIONAL COMPANIES**

#### **1) Hindustan Unilever Limited (India)**

HUL have some established procedures for employees to lodge their grievances. However the whistleblowing mechanism is for reporting those issues which are skipped under this mechanism and which are serious or sensitive issues. Complaints in HUL shall be raised to the relevant business heads. The policy drafted by HUL is very flexible; it has provided a dedicated email id for communications to whistleblowers. They have also offered telephone service for whistleblowers that are not comfortable to pen down their concerns. In case of serious concerns the whistleblower may directly approach the Management Committee or

chairman of the audit committee. The Company Secretary is regarded as the Compliance officer under the whistleblower policy.<sup>43</sup>

## **2) CIPLA Ltd. (India)**

The Whistleblower policy of Cipla provides an avenue to the whistleblowers to report any violation, wrongdoing or non-compliance with the Code of Conduct and policies of Cipla. Complaints can be addressed to the Ethics Committee that has been formulated. Complaints can be reported via email or by a written complaint. In case of exceptional cases the complaints are dealt by the chairman of the Audit Committee.<sup>44</sup>

## **3) TATA Steel (India)**

The latest whistleblowing policy for Business Associates was issued by the TATA steel on 28<sup>th</sup> May 2019. The Company has adopted a code of conduct called the 'Tata Code of Conduct' which lays down the principles which that govern the actions of its employees. This policy has set out the procedure of how all disclosures concerning financial matters shall be addressed to the Audit committee. Other issues shall be informed to the Chief ethics counsellor. It is compulsory for the Whistleblower to disclose their identity in the manner prescribed by the policy. Anonymous disclosures are not entertained as it is not possible for the company to interview the Whistleblower. The investigation will be completed within 45 days of the disclosure being made. The policy clearly sets out that no unfair treatment will be meted out to the whistleblower.<sup>45</sup>

## **4) DELLOITE (International)**

It is a must to state that the whistleblowing policy of Deloitte is well thought out policy. This Policy describes the protections available to whistleblowers, what matters are reportable, how you can report your concerns without fear of Detriment, and how Deloitte will support and protect you. This Policy does not apply to third parties (other than Eligible Whistleblowers). It sets out a reportable conduct further expounding it with examples. Any whistleblower having a 'reasonable ground to suspect' can report their concerns. NAVEX Global Inc. delivers 24\*7 services to the whistleblowers of Deloitte to report their concerns. Furthermore the whistleblowers can even directly contact the CEO, Ethics Officer, etc. to report. False and

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<sup>43</sup> HUL, Whistle Blower Policy. Available at: [https://www.hul.co.in/Images/whistle-blowing-policy\\_tcm1255-439110\\_en.pdf](https://www.hul.co.in/Images/whistle-blowing-policy_tcm1255-439110_en.pdf)

<sup>44</sup> CIPLA, Whistle Blower Policy, 2019. Available at: [https://www.cipla.com/sites/default/files/2019-02/Whistle-Blower\\_0.pdf](https://www.cipla.com/sites/default/files/2019-02/Whistle-Blower_0.pdf)

<sup>45</sup> TATA Steel, Whistle Blower Policy for Directors & Employees, 2019. Available at: <https://www.tatasteel.com/media/6776/wb-policy-de.pdf>

misleading disclosures can lead to strict actions.<sup>46</sup>

### **5) KPMG International Ltd. (International)**

The Whistleblowing policy of KPMG provides a platform to the Whistleblowers to report any potential wrongdoing that has happened in the past or is likely to happen in the future. The concerns can also be raised anonymously. The concerns can be reported to the relevant Engagement Partner or Ethics and Independence Partner or Chief Risk Officer, etc. A Whistleblower Hotline is provided for anonymous reporting. This policy also sets out the manner in which protection will be provided to the Whistleblowers briefly.<sup>47</sup>

#### **Findings:**

- i) All these companies provide a platform for the relevant parties to speak up against the wrongdoings or unethical practices within the organisation.
- ii) On comparison with the whistleblower policies between Indian and International Companies it can be seen that some International companies do encourage anonymous complaints however Indian companies do not.
- iii) The structure of the channel of reporting is different in different companies.
- iv) Some companies have dedicated services for noting the Whistleblowers concerns.
- v) Companies have stated the consequences of lodging frivolous complaints this might have a negative impact.
- vi) The International policies are comparatively well structured and have given a broad perspective in understanding the whistleblowing policy of that organisation.

## **IX. ISSUES & DRAWBACKS OF THE WHISTLE BLOWING POLICY IN INDIA- AN ANALYSIS**

The legal framework surrounding whistleblowing is at a very nascent stage in India. It needs to be a policy more than words on paper. Having a whistleblowing policy in the organisation is going to do no good to the organisation. It is important that it implemented well. Trust is the bedrock of implementation of the whistleblowing policy. The companies should have a trustworthy environment where the official's makings such reports feel protected. There are many challenges like trust, unawareness of the mechanism, misconceptions of the

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<sup>46</sup> Deloitte, Whistleblower Policy, 2019. Available at: <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/about-deloitte/deloitte-au-about-whistleblower-policy-201219.pdf>

<sup>47</sup> KPMG, Whistleblowing Policy, 2019. Available at: <https://assets.kpmg/content/dam/kpmg/au/pdf/2019/kpmg-australia-whistleblowing-policy.pdf>

mechanisms, etc. that the organisations have to still overcome to effectively implement this mechanism.

One of the most important drawback of the Indian whistleblowing policy is that there is no procedure provided under the Indian law to deal with the received complaints. So generally the complaint is evaluated and investigated on the basis of nature of the issue raised. The law is only applicable to listed companies and certain other class of companies. It does not mandate private unlisted companies to adopt a whistleblowing policy. The procedure for internal investigation by companies is left unclear. Further the manner of investigation into whistleblower complaints and ensuring compliance with regulations is unclear. A huge amount of money is involved in corporate frauds. Considering this it is important to not only have a strong mechanism but also have an effective implementation system, which India lacks.

## **X. NARAYANA MURTHY COMMITTEE REPORT ON CORPORATE GOVERNANCE, 2003**

At a convention organised by the All India Management Association on corporate governance Mr. N R Narayana Murthy, Chairman of Infosys said that ‘*Whistleblowing should not be an act of vengeance by disgruntled employees. The whistleblowers shall have data and proof to substantiate his/her claims against a company.*’<sup>48</sup> The Narayana Murthy Committee was constituted by SEBI to evaluate the existing corporate governance practices and ways to improvise the same. In 2003 the committee submitted its report on Corporate Governance. The primary issues discussed by the committee were related to audit and disclosures. This committee after several deliberations had proposed certain rules for the whistleblowers policies and recommended SEBI to change certain rules on company disclosures. The committee suggested that the personnel who observed an unethical practice should be able to approach the independent audit committee without necessarily informing the Board. The committee also affirmed the need for providing whistleblowers protection from unfair termination or other unfair and prejudicial employment practices.<sup>49</sup> Many such recommendations of the committee were then incorporate in the Revised Clause 49 of the Listing Agreement in 2013.

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<sup>48</sup> Mishra R. B., Narayana Murthy bats for external probe into whistleblower complaints, 2020. Available at: [https://www.business-standard.com/article/companies/narayana-murthy-bats-for-external-probe-into-whistleblower-complaints-120092101097\\_1.html](https://www.business-standard.com/article/companies/narayana-murthy-bats-for-external-probe-into-whistleblower-complaints-120092101097_1.html)

<sup>49</sup> SEBI, The Report of Shri N R Narayana Murthy on Corporate Governance, 2003. Available at: [https://www.sebi.gov.in/reports/reports/mar-2003/the-report-of-shri-n-r-narayana-murthy-committee-on-corporate-governance-for-public-comments-\\_12986.html](https://www.sebi.gov.in/reports/reports/mar-2003/the-report-of-shri-n-r-narayana-murthy-committee-on-corporate-governance-for-public-comments-_12986.html)

## XI. CORPORATE GOVERNANCE AND WHISTLE BLOWING POLICY

Corporate Governance is beyond the realm of law. It stems from the culture and mindset of management and cannot be regulated by legislature alone. It fosters the economic progress of India. It is considered to be an efficient tool to ensure good governance. This concept is not a new one and dates back to the third century when *Chanakya* highlighted the importance of good governance practices in a company. In order to understand the concept of corporate governance and whistleblowing policy, one must understand the term ‘Corporate Governance’. The term governance has evolved from a Latin word ‘*gubernare*’ which means rule to steer. Corporate governance is about setting procedures to manage and handle the steering of the company. The **Cadbury Committee** report defined Corporate Governance as “the system by which companies are directed and controlled.”<sup>50</sup> The **Organization for Economic Cooperation and Development (OECD)** defines corporate governance as “the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.”<sup>51</sup> Hence corporate governance is not just corporate management but it includes a mechanism of operating and controlling of a company with a view to achieve long term strategic goals to satisfy every person associated with the company. At the same time it also strives to work within the bandwidth of the law.<sup>52</sup> Corporate Governance is about commitment of values and following an ethical code of business. It helps to make distinction between personal and corporate funds in the management of the company.<sup>53</sup> It acts as a bridge between shareholders, stakeholders, employees, customers and the Board of Directors.<sup>54</sup> It safeguards the interests of the management and the stakeholders of the company.<sup>55</sup> Subsequently it sets out guidelines by which a company is governed and by which the Board of Directors can ensure fairness, transparency, and accountability of the company’s relationship with every person associated with it.<sup>56</sup>

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<sup>50</sup> Report on The Financial Aspects of Corporate Governance, 1992. Available at: <https://ecgi.global/sites/default/files/codes/documents/cadbury.pdf>

**Cadbury, Adrian. Report of the Committee on the Financial Aspects of Corporate Governance, (1992).**

<sup>51</sup> Organization for Economic Cooperation and Development, OECD Principles of Corporate Governance 11 (2004), <http://www.oecd.org/dataoecd/32/18/31557724.pdf>.

<sup>52</sup> Ajay Sharma, Whistleblowing as a Tool to Corporate Good Governance-An Indian Perspective. Res. J. Humanities and Social Sciences. 2018; 9(3): 671-676. doi: 10.5958/2321-5828.2018.00112.2.

<sup>53</sup> Khurana A, “CORPORATE GOVERNANCE: - A CASE STUDY OF SATYAM COMPUTERS SERVICES LTD.”, Scholarly Research Journal for Humanity Science & English Language, VOL. 3/14, , 2016.

<sup>54</sup> L. J. P. Singh, “Ethics, corporate governance & investment,” Indian Streams Research Journal, vol. 2, issue 12, Jan. 2013.

<sup>55</sup> Thapar M., Sharma A., “Corporate Governance in India: An Analysis”, Journal of Economic and Social Development – Vol 4. No 1., March 2017.

<sup>56</sup> Karn Marwaha , (2017), " Corporate governance and whistle blowing in India: promises or reality? ",

With respect to corporate governance whistleblowing can be considered a system that companies adopt to monitor the operation of business, to make firms policies, and to achieve objectives more effectively and successfully. Whistleblowing acts as an indispensable tool for ensuring good corporate governance. Good governance ensures that the management of the company ensures the best interest of everyone. Employing good governance helps to reduce the potential risks of frauds and wrongdoings within the organisation. Whistleblowing mechanism acts as a safety valve to maintain a healthy corporate culture. It encourages individuals to make disclosures through an appropriate channel before it converts to a serious problem. The board of directors of every organisation shall consider the effectiveness of whistleblowing policies and make it a part of the internal control environment.

Whistleblowing and corporate governance are closely linked with each other if they are properly implemented. Whistleblowing policy can help to promote good governance by developing a sound monitoring system within the organisation which can help bring profits to the organisation and stakeholders. This mechanism can only be conducive in a transparent and accountable organizational environment. Hence if the board of directors keep a robust approach in implementing the whistleblowing policies it can help companies to avoid potential law suits, negative media coverage and damage to the organisations reputation. Simultaneously it also helps to build a free chain of communication within the organisation where the employees can fearlessly report their concerns. The increasing roles of whistleblowing in maintaining a healthy corporate culture has mandated organisations to strengthen their internal structure so as to curb the wrongdoings at an initial stage.

Disclosures by whistleblowers have saved cores of rupees and numerous lives in the corporate sector. The constant efforts of whistleblowers have helped to expose the wrongdoings within many organisations across the world. These whistleblowers are now seen as the 'Keepers of Corporate Conscience'. Hence if we want to protect the corporate conscience, we should also protect our conscience keepers, our whistleblowers.<sup>57</sup>

Institutionalising whistleblowing procedures need the enactment of corporate ethics. A survey conducted by Deloitte highlights a perspective and need for awareness of whistleblowing policies in corporate cultures. It says that "*while the world is witnessing a catastrophic situation called 'COVID-19', many organisations tuned to remote working mechanisms. However, despite the change in location of work, many of the ethical dilemmas*

*and policy violations that would require to be reported via whistleblower programmes continue to persist. Organisations which invested in robust whistleblowing programmes have been able to address these issues. Interestingly, many large organisations in countries with more mature whistleblower programmes have scaled up their operations during the COVID-19 pandemic. They have also begun utilising their whistleblower infrastructure to provide a COVID-19 helpline to resolve employee queries and provide guidance to company policies for operations. In some cases updates on employee health and well-being have also been gathered through this mechanism.”<sup>58</sup>* Hence it is expected by the organisations to come up with a systematic approach to implement whistleblowing policies and use it as a effective tool for enhancing corporate governance.

In today’s situation the need of whistleblowing policies cannot be underestimated. It is expected by every company’s board of directors to come up with well-structured policies in order to promote good governance. Additionally the organisations shall also spread awareness about this mechanism and educate its employees about the types of complaints or grievances that have to be addressed with the support of this channel. ‘Trust’ is an essential factor that will play a major role in determining the effectiveness of the whistleblowing policy of the organisation. Hence the organisation shall look towards building strong fiduciary relationship with their employees and stakeholders so that they feel protected and empowered to follow stand up against the wrong practices within the organisations.

## **XII. A WAY AHEAD FOR INDIA (SUGGESTIONS & WAYS TO STRENGTHEN THE POLICY)**

The future of whistleblowing looks promising in India. Considering the amount of exposure to global education that the millennials are at, ethics will play a long run. Even so it is important for the organisations and the Parliament to support the whistleblowers. As seen above whistleblowers are playing a very important role in both public and corporate sectors. It has brought into light the various prevalent unethical activities of the system. Regardless of the law providing inadequate protection to these bold persons, they still step up and disclose the wrongdoings of the organisations. Unfortunately these whistleblowers become victims of retaliation sometimes clubbed with the life threats. Hence ensuring adequate protection and rewards to these persons is a pressing concern. Establishing an effective whistleblowing mechanism within the organisation can establish a level playing field for the company, both

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<sup>58</sup> Deloitte, Survey on the effectiveness of corporate mechanisms, 2019. Available at: <https://www2.deloitte.com/content/dam/Deloitte/in/Documents/finance/in-fa-whistleblowing-survey-report-24june2020-noexp.pdf>

within and outside the company. Some of the observations and suggestions are listed as under:

- 1) The primary short coming of the Whistle Blowing Protection Act is its limited framework. The present act only covers those whistleblowers that have exposed irregularity or corruption related to Government. While it ensures a healthy framework for government officials to blow the whistle, it not applicable to corporate employees. It is essential for the law to have a broad coverage wherein the public as well as private sector employees.
- 2) The scope of the Act has to be revised.
- 3) After witnessing the murders of many whistleblowers it is a lesson to the legislative authorities to strengthen the laws to provide protection. At the same time it is important that we the law making body inserts provisions making it mandatory for the organisation to reward these employers on making 'legitimate disclosures' in 'public good faith' considering that these are persons who choose to keep societal interest over the interest of the company or self.
- 4) The legislation shall add whistleblowing provisions in specific acts dealing with specific subjects like crime, medical practice, etc. This shall give a focused approach of dealing with whistleblowers with that particular felid and provide them the necessary protection. Reference can be taken from US which has more than 37 laws providing protection to whistleblowers.
- 5) COVID-19 has reshaped the working mechanisms of corporate structures. This calls for attention of legislators to carry out a survey and analyse the potential risks that the organisation bears and how effectively can whistleblower mechanism be implemented.
- 6) It is essentials that within the organisations the Board of Directors emphasise on training for understanding the whistleblowing programme. It is very important that the employees are well informed of the mechanism, the types of reporting's that can be made, support mechanism, who can they approach, etc.
- 7) Trust and confidence are the groundwork of the whistleblowing policy. If the employees of the organisation lack faith in the policy of the organisation it will do good to the society. This lack of confidence in the Whistleblower mechanism in Indian companies possibly led the employees to register their complaints with the US Department of Labor's Whistleblower Protection Program. This highlights the need for a strong internal system.

- 8) Every corporation shall have a special system to handle the whistleblowing complaints. If their financial position in the market permits them they shall outsource this task to obtain maximum efficiencies. The companies can refer to the 'Statement of Good Practice' (SGP) developed by the Singapore Institute of Directors in order to build an effective policy. It is important that the Indian companies tailor their policies according to the global footprints.
- 9) The Constitution of India, gives every individual the fundamental right on any occupation and trade under Art.19(1)(g). However also depend upon the availability of safe working environment. Another well settled principle is that the employers are obligated to provide an ethical workplace for all its employees. Unfortunately in absence of a practical and efficient legal recourse such rights of the employees are being rendered redundant. It also defats the legal maxim *Ubi jus ibi remedium* (where there is a right there is a remedy). Therefore the need of the hour is a strong protection mechanism.

### **XIII. CONCLUSION**

Good corporate governance practices are a *sine quo non* for running a prosperous business. All organisations aspire towards institutionalising good corporate governance practices. The ability of an organisation to promote transparency forms the basis of these good governance practices. Whistleblowing is one of the most important tool that help organisation achieve its goals. These are designed to promote public accountability within the organisation. They are created to break through the walls of silence and illuminate the wrongdoings within the organisation.

The world has witnessed scams such as Punjab National Bank, ICICI Bank, Satyam, Kingfisher, Enron, which had drastic effects on millions of people and put spotlight back on this mechanism. Corporates impact the life of every common man. It is the duty of the government to strengthen the laws and protect the general people from falling prey to the dirty corporate plays. It is time that the government pulls its sleeves and takes effort to pass concrete whistleblowing protection act.

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