

# Whistleblower protection mechanism- A mandate in the current Indian scenario

Ms. Shikha Sachdeva  
Assistant Professor, Department of Commerce,  
Kirori Mal College, Delhi Univ.  
Delhi, India  
shikhasachdeva.5@gmail.com

**Abstract-**Whistleblowing is not new nowadays with every now and then a new corporate malpractice coming into light. Whistleblowing has grown from its infancy stage in India as number of times a lot of recommendations have been put forward and been withdrawn, and is hopeful that it will take the shape of a concrete law very soon. Whistleblowing could be understood as anything related to the disclosure of violation of rules and regulations, law or violation of any safety regulation leading to hazardous consequences by any person known or unknown to the organization, it could also mean disclosing any practice by the individual which could malign the reputation of the organization and in turn is unfavorable for the company's financial interests. This paper gives arguments discussing about the significance of whistleblower's protection law for India giving examples of negative retaliation and reprisals faced by the whistleblowers of India. This paper also talks about the strong legal framework of other developed nations and also establishes a positive relationship between corporate governance and whistleblowing, which complement each other.

**Keywords-** Whistleblowing, Corporate governance,  
Clause 49

## INTRODUCTION

Whistleblower as well understood acts to bring wrongful practice to management's attention or to public's attention so that corrective action can be taken for the situation. The issue comes out in legitimacy of the whistleblowing activity, because when a social practice issues in consequences which marginalize or endangers the agent, when the agent may become a paria for "committing the truth", it is impossible to claim that practice is regarded as legitimate or not. (Natalia Dandekar, 1991)<sup>[1]</sup>

Whistleblowing as the name speaks for itself, to blow the whistle. As a watchman does in order to warn the people who are unaware of any wrongdoing

in their locality, the same goes with an employee, an auditor, an internal member or an outsider to an organization who in the case of finding someone into any sort of illegitimate or illegal practice blows the whistle whether internally, that is, to his supervisors, top authority of the same organization or externally, that is, to the media or police officials thinking that an action will be taken against the person causing such kind of harm to the organization. But is it really happening in our country? Are the whistleblowers safe in a country like India? Do people like us have the courage of blowing the whistle after watching the fatal end of SatyendraDubey and Manjunath, the renowned whistleblowers who were killed brutally after bringing into light the wrongdoing in their respective fields? Why can't our country adopt a concrete law to protect the whistleblowers?

The answers to the above questions could not be found as yet. After the unfateful killing of the 31 years old NHA engineer, SatyendraDubey, a lot of agitation and outcry could be seen amongst the citizens of the country which henceforth brought forward the importance for the whistleblower's protection act in the Indian constitution. This general need of the whistleblower's protection was given the shape of public disclosure and protection bill by the Indian lawmakers in the year 2009 which got acceptance in Loksabha but is still waiting to see the light of the day as it got stalled in Rajyasabha. The question here arises as to why is it becoming so difficult for the government of India to affirm to such a significant step? There is a need of an unprecedented step to be taken immediately by the government to at least give some assurance to the potential whistleblowers that in case they face any negative retaliation the judicial system of the country is there to decide between the right and the wrong and give justice.

## Examples of Whistleblowers in India

It can be felt that whistleblowing in India is only becoming a matter of writing anonymous complaints because of the fear of facing dire consequences starting from the bad reputation, losing the job, boycott from peer group leading to quitting the job on his own by the whistleblowers to the dreadful ones like suicide due to excessive harassment at the workplace or even murder or killing by the wrongdoers, the latter being commonly seen in our country. As this anonymity in complaints lacks credibility, so no strong action could be taken against the wrongdoers rather the culprits become more alert and ultimately the whistleblower becomes the victim. This victimisation of the whistleblowers is day by day increasing and in aggravated more when RTI was legalised by the government. The RTI activists are every now and then being killed of raising voice against the wrongdoing, one of the recent cases being of Amit Jhetwa who was a social worker and an Indian environmentalist, he was an RTI activist involved in probing the activities of illegal mining outside the Girforest, several times he was beaten up by the goons and then finally he was shot dead on 20<sup>th</sup> July 2010. And then comes the story of the people involved in his killing, after a lot of agitation CBI made an arrest of the people who conspired of the killing. Like this there had been number of cases of attacks, abduction and torture of RTI activists becoming a part of daily newspaper.

One of the high profiled examples of whistleblower retaliation can be seen in IAS Ashok Khemka case, who is an IAS officer in the State of Haryana, his story seems like a tale of postings. Approximately he has been posted 45 times in his career of 20 years as wherever he went he blew the whistle for corruption in government departments, also he brought into limelight a land deal corruption in Gurgaon and around for conversion of commercial land. He reported many irregularities in the land allotments and brought this into notice of the government, though he received S R Jindal Prize in 2011 for "Crusade against Corruption" for exposing corruption in high places and also received ManjunathShanmugam Trust Commendation on Public Works in 2009 but on the other hand the negative reprisals which he had to face were not only detrimental from his career's point of view but also were demoralizing and destrengthening, on the contrary twocharge sheets were filed against Khemka for failing to fulfill his responsibilities at Haryana seed development corporation.

So there is a dire need for India to bring into reality the law which is only in papers till now and changing hands for recommendations. Not only creating law but a bigger challenge for the Indian government would be to successfully and efficiently implementing the law and effectively enforcing it.

## Scenario in Other Countries

In countries like USA, UK which have concrete laws specially framed for protecting the whistleblowers, very less cases of malpractices and mismanagement come to the knowledge because of fear of being punished by law, but in our country where every day a new scam, a fraud, a malpractice, illegal activities are coming into light the prevalence of this law becomes an indispensable part but government still is reluctant in making it a mandatory clause of company's act.

## Foreign laws on whistleblowers

Many comprehensive laws are prevalent all across the world on the issue of whistleblower's protection, starting with

- **USA**

USA does have a framework for the protection of whistleblowers but its more of contradictory in nature. The US laws differ at state and federal level. Some of the important acts are listed below with a brief description:

- **False claims act** – it penalizes those who fraud or is involved in any malpractice in any of the governmental programmes. So it's a federal tool to reduce the frauds invoked against the government.

Stated below are certain federal environmental laws:

- Clean Water Act of 1972.
- Drinking Water Act (1974)
- Resource Conservation and Recovery Act (1976)
- Toxic Substances Control Act of 1976

- Energy Reorganization Act of 1974 (through 1978 amendment to protect nuclear whistleblowers),
- The Clean Air Act (1990).
- OSHA
- The Pipeline Safety Improvement Act (PSIA) of 2002
- Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR 21")

Others include :

- **The Sarbanes–Oxley Act, enacted on July 30, 2002** to protect the whistleblowers who bring to light corporate frauds.

- **UK**

**Public Interest Disclosure Act (PIDA) 1998** – It is the act of parliament which was enforced to protect the employees from unfair and detrimental treatment of employers.

- **CANADA**

**Office of the public sector integrity commissioner of Canada** – also federal in nature , looks into the cases who speak up abuses for the government.

### **Corporate Governance and Whistleblowing**

The system of rules, practices and processes by which a company is directed and controlled. Corporate governance essentially involves balancing the interests of the many stakeholders in a company - these include its shareholders, management, customers, suppliers, financiers, government and the community. Since corporate governance also provides the framework for attaining a company's objectives, it encompasses practically every sphere of management, from action plans and internal controls to performance measurement and corporate disclosure. Corporate governance became a pressing

issue following the 2002 introduction of the Sarbanes-Oxley Act in the U.S., which was ushered in to restore public confidence in companies and markets after accounting fraud bankrupted high-profile companies such as Enron and WorldCom.<sup>[2]</sup>

Most companies strive to have a high level of corporate governance. These days, it is not enough for a company to merely be profitable; it also needs to demonstrate good corporate citizenship through environmental awareness, ethical behavior and sound corporate governance practices.

Clause 49 in the company's act consists of the provisions of corporate governance which means giving good direction to a company by following certain compulsory provisions framed in order to make the corporate culture of India worth investing in and free from any sort of injustice towards its stakeholders. Whistleblowing policy is an optional provision in the clause 49, because of which the companies have framed their own whistleblowing policy which fulfils their own selfish interests and so that they can escape the hardships of law In case they come under the surveillance of law of the country.

Corporate whistleblowing, globally considered as one of the best tools to ensure good corporate governance, is still in its infancy in India. As per a recent study released by ASSOCHAM-Ernst & Young, whistle-blowing is being used in a very limited manner by India for fraud prevention. The report said, "Most frauds result in some form of business disruption as well as reputational and financial losses. Whistle-blowing is still at a nascent stage in India, and most Indian companies do not use it as an effective tool against fraud."<sup>[3]</sup>

Another important cause of concern is that due to the non-existence of protection of whistleblower's law, the potential whistleblower is reluctant in speaking up. He fears the negative reprisals which he could have to face because of blowing the whistle.

### **Legislative History of India**

The legislative history of whistleblower protection policy of our country is not very impressive which started in 2004 with CVC , that is , central vigilance commission formed to formally look into the complaints of people who have filed a complaint of any wrongdoing , but it lacked the authority to take any punitive action against the wrongdoer. Then in order to fight the ever increasing corruption and beauracracy which has entered the roots of our

nation, a new bill was formed the public interest and disclosure bill 2010, which got approval by the cabinet but is still waiting for its acceptance in Rajya Sabha as it is criticized for not following a consultative process while drafting it and the other major reason is because it extends to only public sector and does not take into consideration private sector.

The Corporate Governance Committee of the Private Sector Organization of Jamaica, very rightly stated

### **Conclusion**

India being a developing economy is becoming a target of many big shot multinationals to invest in, because of which the corporate culture of India is getting more westernized. Due to the influence of western culture, the corporates have incorporated new ways of helping the people who want to disclose anything wrong going on in the organization through complaint boxes, toll free complaint numbers and also rewards and awards for disclosing any mismanagement in the organisation keeping their identity under the folds. Anonymity gives them a confidence to raise their voice as there's no provision in law which would help them if the whistleblower becomes public. The new political scenario of our country after so many setbacks is bringing a ray of hope for the innocent and honest people to gain their actual positions in the organization.

### **References**

- [1]Natalie Dandekar, “Can whistleblowing be fully legitimated?” *Business and Professional Ethics Journal* , Vol. 10 (1), Pages: 89-108 (1991)
- [2] Definition of corporate governance retrieved from <http://www.investopedia.com/terms/c/corporategovernance.asp>
- [3] Mithila Mehta, “Whistleblowing policy in company” retrieved from Times of India, Sep 9, 2013
- [4]Preamble, “The Private sector organization of Jamaica code on corporate governance” available at[http://www.ecgi.org/codes/documents/jamaica\\_code\\_final\\_25oct2006.pdf](http://www.ecgi.org/codes/documents/jamaica_code_final_25oct2006.pdf)

unless and until there is a provision for the protection of the whistleblowers, the employees will be reluctant in raising their voice against illegality, immorality in the organization. The study would help in expansion of the field of whistleblowing in context of the provisions of corporate governance in India, and would also be beneficial in formulating a legislation of practical nature keeping on the edge all the findings and conclusions.<sup>[4]</sup>