

# The Limited Efficacy of the Whistle-Blower Protection & Analysis of Whistleblower Legislation in India

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## ABSTRACT

This research examines the intricacies of whistleblower policies in India, tracing the meaning of whistleblowing and critically examining the current legal framework. It identifies the failures of the present system, especially in the government, where the mechanism tends to fail, diluting its ability to foster good governance. It attempts a comparative assessment of the whistleblower policies of the United States and the United Kingdom in order to point out weaknesses in the existing Indian legal mechanism. The research also identifies bottlenecks against successful whistleblowing and suggests reforming the system by measures including corporate leniency in antitrust law, improved stock exchanges roles, and other new mechanisms.

Majorly to tackle the issue of corruption and corrupt activities, the Government of India introduced regulatory measures, including a whistleblower scheme, to create confidence among individuals to reveal the illicit operations within organizations and in government institutions. The scheme came into the limelight following a series of high-profile scams that hurt India's economy tremendously. The Whistle Blowers Protection Act of 2014 was enacted for safeguarding whistleblowers and eliminating corruption. Nonetheless, in spite of its enactment, the Act is still not implemented, which raises very serious questions regarding its practicality and effectiveness. Lack of awareness of whistleblower rights, fear of retaliation, and bureaucratic inertia are major hurdles. The lack of a specific agency to monitor the enforcement of the Whistle Blowers Protection Act makes the situation worse, making whistleblowers open to harassment and court cases. This encompasses designing awareness programs to make people aware of their rights, developing autonomous institutions for examining complaints from whistleblowers, and ensuring speedy and equitable redressal of grievances. Technology's role in enabling anonymous reporting and whistleblower protection is also underscored in the study. Through closing these gaps and carrying out inclusive reforms, India is capable of developing an accountable and open governance framework ultimately developing a society in which there will be an incentive for a whistleblower instead of risk.

**Keywords:** Whistleblowing policy, corporate leniency, corruption, illegal practices, corporate governance, whistleblowing mechanisms.

## INTRODUCTION

*“The courage of whistleblowers is the lifeblood of accountability; without their voices, corruption thrives in the shadows, unchecked and unchallenged.” Thomas Frank, American author and journalist.*

Corporate governance is a system of corporate control wherein companies use it to govern and regulate its operations, encompassing interactions between the company management, board of directors, and owners. Corporate governance can only be effective if the company ensures that it does so with integrity, transparency, and accountability. For these to be ensured, the system of whistleblowing has become necessary in imposing and maintaining effective corporate governance rules. Some of the most recognized whistleblowing acts known internationally include the 'Panama Papers,' 'Uber files,' and 'Wikileaks.' Individuals came to understand the meaning of the mechanism of whistleblowing all over the world via such scandals. A whistleblower is composed of two different words, i.e., 'whistle' and 'blowing', meaning literally to release information or data to the world in general. Such information mostly pertains to illegal or spurious dealings on the part of public or private organizations. One who makes available such information is called a 'whistleblower.' Whistleblowing serves as a significant function for identifying and addressing corporate and public organization malpractice that goes unmonitored otherwise. It functions as an intra-organization accountability mechanism against corporate malpractices to identify and correct immorality. For example, in Panama paper leak, the whistleblower brought the tax evasiveness of the entities utilizing the offshore shell firms in the tax havens into light. In the example of Uber, the whistleblower made known the dubious strategy of the firm to capture international control over the respective enterprise. But in India, the concept of whistleblowing gained significance following the senseless killing of Mr. Satyendra Dubey in 2003, subsequent to his whistleblowing on the Golden Quadrilateral project.

India has a large number of listed corporations worldwide and thus it is much needed for it to adopt a good practice of whistleblowing under its law in order to facilitate transparency and good corporate governance. Whistleblowing is merely an act of disclosure of the fraudulent, illegal activities being practiced in an organization by the existing or former employees. The most significant hindrance for whistleblowers in India is the absence of a robust legislation that safeguards them. Well-known cases like the ones of Shanmugam Manjunath, Satish Shetty, and Amit Jethwa tell us about the dangers of the whistleblowers and how their lives are at stake and they need protection under legislation. As, there is no solid legislation defining the activity of whistleblowing across India.

## **HYPOTHESIS**

The effectiveness of whistleblower mechanisms in India is significantly influenced by the strength and enforcement of its legislative framework, such as the Whistleblowers Protection Act, 2014. However, gaps in implementation, lack of awareness, and inadequate protection for whistleblowers often hinder their ability to report corruption and malpractice without fear of retaliation.

## **WHISTLEBLOWING MECHANISM IN INDIA**

In India, the law of whistleblowing is scattered and included in different legislations and therefore weaker than in other nations. The major frameworks that govern whistleblowing are the Whistleblowers Protection Act, 2014 (yet to be implemented), provisions under the Companies Act, 2013, the SEBI Listing Agreement, and the Companies (Meetings of Board and its Powers) Rules, 2014.<sup>1</sup> This fragmentation perplexes whistleblowers as they do not know how to comprehend their rights and remedies in law. The Whistleblowers Protection Act, 2014 The history of whistleblower protection in India dates back to the

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<sup>1</sup> Companies (Meetings of Board and its Powers) Rules, 2014

suggestions made by Mr. N. Vittal, Chief Vigilance Commissioner, in 2001. On the basis of his proposals, the Law Commission prepared the Public Interest Disclosure (Protection of Informers) Bill, 2002<sup>2</sup>, with the objective of promoting revelation of corruption and maladministration by public servants and protecting informants. Later, in 2004, the government launched the Public Interest Disclosure and Protection of Informers Resolution (PIDPIR), which gave power to the Central Vigilance Commission (CVC) for investigation and taking action against grievances. Nevertheless, fears about ineffective protection did not cease. In 2007, the Second Administrative Reform Commission emphasized the need for better laws to guard whistleblowers, especially in response to tragic incidents involving whistleblowers between 2001 and 2011<sup>3</sup> like those of Shanmugam Manjunath, Satish Shetty, and Amit Jethwa. The incidents caused the Supreme Court to direct the establishment of a mechanism to address whistleblower grievances. The Indian government, however, brought the Whistleblowers Protection Bill, 2011<sup>4</sup>, which later became the Whistleblowers Protection Act, 2014<sup>5</sup>. The Act was brought with the objective of establishing a systematized system of whistleblowing to promote disclosure of fraud, corruption, and malpractices along with providing protection against harassment and victimization. Although it was notified, till now, the Act has not been implemented. Challenges facing the Whistleblowers Protection Act, 2014. The Act is only applicable to public authorities and not private bodies.<sup>6</sup> The Act does not allow the Central Vigilance Commission to give recommendations. The Act does not enable complaints to be made anonymously even with overwhelming evidence. Contrary to other places such as the United States of America, the Act does not offer rewards or incentives to successful disclosures. The government introduced the amendments to the Act in 2015 for the sake of national security, but the Whistle Blowers Protection (Amendment) Bill, 2015 lapsed in 2019. The government has been condemned by transparency activists of companies for not making full use of the Act.<sup>7</sup>

### THE COMPANIES ACT, 2013

Under the corporate domain, Section 177(9) of the Companies Act, 2013 directs listed companies to set up a vigilance mechanism for directors and staff to report secretly without fear of reaction<sup>8</sup>. The provision was previously limited to only listed companies but then the scope got expanded; however, still, the model is not providing protection to unlisted companies, unicorns, and SMEs. Moreover, internal reporting systems are still in the control of management and thereby undermine the protection of whistleblowers.<sup>9</sup>

### SEBI RULES AND CARO 2020

SEBI's Clause 49(IV) requires companies to develop and communicate a whistleblower policy, ensuring that employees first report concerns to their supervisors before escalating them, while protecting

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<sup>2</sup> Law Commission prepared the Public Interest Disclosure (Protection of Informers) Bill, 2002

<sup>3</sup> Gupta, A. and Singh, R. (2020) *Whistleblowing and Corporate Governance in India: An Empirical Study*. International Journal of Corporate Social Responsibility, 5(1), pp. 1–12.

<sup>4</sup> Whistleblowers Protection Bill, 2011

<sup>5</sup> Mehta, P. and Sharma, N. (2021) *Whistleblowing in the Indian Public Sector: Issues and Challenges*. Public Administration Quarterly, 35(4), pp. 512–530.

<sup>6</sup> Bhattacharya, S. and Rahman, M. (2019) *Whistleblowing in India: Challenges and Opportunities*. Journal of Business Ethics, 156(4), pp. 987–1002.

<sup>7</sup> Chakraborty, D. (2018) *Legal Framework for Whistleblowers in India: A Critical Analysis*. Indian Journal of Law and Society, 9(2), pp. 45–60.

<sup>8</sup> Section 177(9) of the Companies Act, 2013

<sup>9</sup> The Companies Act, 2013

whistleblowers from termination or discrimination<sup>10</sup>. SEBI, in 2019, encouraged reporting of insider trading violations additionally through a rewards system. Incentivizing these initiatives<sup>11</sup> (CARO 2020) makes it mandatory for listed companies to report all whistleblower complaints received in their auditor's report. This ensures disclosure to be more transparent by discouraging companies from disregarding complaints under whistleblower that are anonymous in nature and helps stakeholders evaluate internal controls and fraud detection more effectively.

Internal Affairs of the company has legislated their own whistle blower policies one of the classic examples are :

### **TATA Industries Whistle Blower Policy.**

Tata Industries Limited (TIL) Board of Directors approved the Whistleblower Policy on 1 August 2023, which is a demonstration of the company's adherence to ethical business practices, transparency, and accountability. The policy is complementary to the Tata Code of Conduct (TCOC) and is designed to ensure a safe and retaliation-free forum for stakeholders, including employees, customers, and partners, to raise concerns of unethical or illegal behaviour such as fraud, corruption, abuse of company assets, violation of human rights, and other misconduct. It stresses that a culture has to be created in which individuals can raise issues in good faith without fear of retaliation. It covers every TIL employee, director, consultant, and contractor, as well as subsidiaries, associates, and joint ventures, in order to have a uniform ethical level in the company. It provides a proper process for bringing and conducting inquiries into concerns and guarantees confidentiality, fairness, and legality. Protected Disclosures can be reported in different formats, e.g., through a third-party helpline for ethics, by electronic mail, or by post mail, with confidentiality provided in the event of an adequate amount of evidence being offered. The investigation process is administered by the Chief Ethics Counsellor, starting from initial investigation, thorough examination, and forwarding the report to the Board. Investigations are objectively carried out maintaining natural justice procedures and data confidentiality. The policy also extends protection from retaliation to whistleblowers, witnesses, and investigators and provides proper treatment of vexatious or malicious complaints. The policy is familiarized by conducting training and sensitization programs periodically, and the Board scrutinizes the performance of the policy from time to time to see whether it complies with the requirements of regulations and organizational objectives. The Whistleblower Policy in its entirety reflects TIL's commitment to building a culture of good governance and integrity.<sup>12</sup>

## **WHISTLE-BLOWING LAWS OF OTHER COUNTRIES**

### **UNITED STATES**

The U.S. possesses a myriad of laws to safeguard the federal employees such as The False Claim Act, Whistleblower Protection Act, The Occupational Safety and Health Act, IRS Whistleblower Informant Award, and the Sarbanes Oxley Act, commonly referred to as The Corporate and Criminal Fraud Accountability Act, 2002 which safeguards the employees of a publicly traded company. Whistleblower Protection Act, 1989 is a significant safeguard for whistleblowers reporting any government agency abuse

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<sup>10</sup> SEBI's Clause 49(IV)

<sup>11</sup> the Companies (Auditor's Report) Order, 2020

<sup>12</sup> Tata whistle blower policy <https://www.tata.com/content/dam/tata/pdf/tata-industries/Whistle-Blower-Policy-Tata-Industries.pdf>

of authority against the government as a federal law<sup>13</sup>. The United States previously had only the False Claims Act of 1963 to assist US whistleblowers and prevent any illegal or fraudulent activities carried out by agents and suppliers during the Civil War period.<sup>14</sup> The provisions of this act was that, in case any single individual could unearth any fraud to the federal government which caused any loss, then he would receive thirty percent of the amount brought back from fraud<sup>15</sup>. But the Civil Service Reforms Act, 1978 provided the initial legal framework to safeguard whistleblowers and their interests. But this specific act did not appeal to the bureaucrats and found few Federal officials wanting.<sup>16</sup> Then came into force the Federal Whistleblowers Protection Act 1989. This act enveloped the person working in the private and government sectors safeguarding various classes and segments of individuals with special emphasis on the independence of the whistleblower with maximum authority being with the whistleblowers in their case such as curtailing the role of the special counsel by lessening their discretionary authority, safeguarding the whistleblower through establishment of the virtual shield and evident burden of proof. Additionally, the Special Counsel cannot reveal any information regarding the whistle-blower unless they agree in writing. The act required their written agreement to do so due to the risk of speculation. Also, almost 20<sup>17</sup> new amendments were added to the act to offer further protection, such as payment of medical bills and other damages that followed. The Sarbanes-Oxley Act of 2002 has provisions that assist whistleblowers and give them protection. Section 806 protects whistleblowers in publicly traded companies if they report fraud. The protection is also given to those who assist in investigating the frauds. In addition, Section 1107 also gives protection of whistleblowing to private companies as well, and it protects any person who reports federal law violations. The offenders of the act can be punished and sent to prison for 10 years.

### United Kingdom

United Kingdom is the first European Union nation to have passed legislation to safeguard whistleblowers. The Public Interest Disclosure Act, 1998(UK Act) addresses the provisions under the Whistleblowers mechanism in the UK.<sup>18</sup> The act is applicable to all the public sector and private sector employees and others like agency workers, contractors, and trainees. Public Interest Disclosure Act, 1998 provides a right to a person to reveal something or report anything in the public interest. However, it is not applicable on some authorities such as army and police. This law also extends to the employees whose jobs have been cut off based on whistleblowing disclosure or other detrimental impact, in their defence and right to compensation and prevention of being subject to detrimental treatment. This legislation lays down three kinds of disclosure, which are. Internal Disclosure under Section 43-C: It discusses the disclosure within the company or organisation by the employee to the employer or other persons. Section 43-F Regulatory Disclosure: It discusses publishing the report to any person appointed by the Secretary of State and who

<sup>13</sup> Near, J.P. and Miceli, M.P. (1985) *Organizational dissidence: The case of whistle-blowing*. Journal of Business Ethics, 4(1), pp. 1–16.

<sup>14</sup> Devine, T. and Maassarani, T.F. (2011) *The corporate whistleblower's survival guide: A handbook for committing the truth*. Berrett-Koehler Publishers.

<sup>15</sup> Rothschild, J. and Miethe, T.D. (1999) *Whistle-blower disclosures and management retaliation: The battle to control information about organization corruption*. Work and Occupations, 26(1), pp. 107–128.

<sup>16</sup> Miceli, M.P., Near, J.P. and Dworkin, T.M. (2008) *Whistle-blowing in organizations*. New York: Routledge

<sup>17</sup> Callahan, E.S. and Dworkin, T.M. (1994) *Who blows the whistle to the media, and why: Organizational characteristics of media whistleblowers*. American Business Law Journal, 32(2), pp. 151–184.

<sup>18</sup> Lewis, D. (2001) *Whistleblowing at work: On what principles should legislation be based?*. Industrial Law Journal, 30(2), pp. 169–193.



is neither part nor member of the company or organisation.<sup>19</sup> As the very name suggests, it is a form of disclosure which is being made to large numbers of people like members of parliament, media of police or any other associated personnel. But the act declares three conditions that must be fulfilled before they are in a position to make disclosures of this kind. Firstly, lodging a complaint under Section 43-C or 43-F<sup>20</sup> would cause them real harm. Again, there are no defined or mandatory authorities in the act to which a complaint is to be made. And thirdly, one person alone could not lodge a complaint under Sections 43-C and 43-F of the law.<sup>21</sup>

## IMPACTFUL SCEANARIO IN INDIA

### Mr. Satyendra Dubey in the year 2003

Mr. Satyendra Dubey's case, being a whistleblower who exposed corruption in the Golden Quadrilateral highway project in 2003, remains a milestone in India's history of whistleblowing. Dubey was an Indian Engineering Service (IES) officer working for the National Highways Authority of India (NHAI) and uncovered vast corruption, including irregularities in award of contracts, shoddy quality of construction, and misappropriation of funds. Despite his efforts to file these grievances through formal channels, his grievances were virtually ignored. Taking a bold step, he wrote a comprehensive letter to the Prime Minister's Office (PMO) in 2003 exposing the magnitude of the corruption. Alas, his identity had been revealed, and he was assassinated in November 2003, apparently as revenge for his whistleblowing. The Satyendra Dubey case is one of the most quintessential examples of the greatest hurdles that face Indian whistleblowers such as the lack of robust legal safeguards and institutional assistance. India at the time lacked a robust law to protect whistleblowers, and people like Dubey were left vulnerable to retribution. His murder uncovered the risk faced by whistleblowers when they expose corruption in politically and commercially risky projects. The killing of the whistleblower case also came at the mention of government inefficiency and irresponsiveness at offices where a whistleblower's issue is generally marginalized or gagged. Dubey's assassination precipitated nationwide popular discontent and call for further strengthening whistleblower protection regulations. Despite passage of the Whistle Blowers Protection Act of 2014, implementation of this bill remains dispiriting, and the life of the whistleblowers is still exposed with immense danger. Satyendra Dubey's case is a painful reminder of how a culture of openness and accountability has to permeate government as well as business life. It is an emphasis on the necessity of assuring anonymity be safeguarded, providing legal immunity, and establishing institutional mechanisms for rewarding whistleblower revelations free from harassment. Dubey's legacy continues to shape debate around moral governance and the important role that whistleblowers have in fighting corruption, but his untimely death also reminds us of the distance still to be travelled in making them effective and safe.<sup>22</sup>

<sup>19</sup> Vandekerckhove, W. and Lewis, D. (2012) *The content of whistleblowing procedures: A critical review of recent official guidelines*. Journal of Business Ethics, 108(2), pp. 253–264.

<sup>20</sup> Public Interest Disclosure Act, 1998 43C & 43 F

<sup>21</sup> Gobert, J. and Punch, M. (2000) *Whistleblowers, the public interest, and the Public Interest Disclosure Act 1998*. Modern Law Review, 63(1), pp. 25–54.

<sup>22</sup> Kumar, S. (2004) *The Satyendra Dubey Case: A Study of Whistleblowing and Its Consequences in India*. Journal of Business Ethics, 53(1-2), pp. 1–10

## ANALYSIS OF WHISTLE-BLOWER POLICY IN CORPORATE COMPANIES & CASE ANALYSIS

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

All Associates, Board Members, contractors, consultants, trainees, and service providers, including our subsidiaries, affiliates, and group companies worldwide, are covered by Cipla's Whistle-blower policy. This allows individuals to report any non-compliance, misconduct, or breach, particularly those concerning their Code of Conduct and company policies. They can be reported through email or written complaints, and it is not necessary for the whistleblower's identity to be revealed. However, protection for reporting by email about one's identity is not dealt with by the policy

### **DELLOITE (International)**

Deloitte's whistleblowing policy is well drafted. It stipulates the protection given to the whistleblowers, what can be reported, in what manner should reporting be done securely, and what kind of assistance Deloitte offers. The policy targets qualifying whistleblowers and not third parties. The policy invites reasonable grounds suspects for whistleblowing. NAVEX Global Inc. provides around-the-clock services for Deloitte whistleblowers to report their concerns. Additionally, whistleblowers can directly reach out to the CEO or the Ethics Officer. It's important to note that making false or misleading claims can have serious consequences.<sup>23</sup>

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

They have a whistle-blower policy called Disclosure in Confidence. This policy allows Directors, employees, and others like vendors, contractors, consultants, trainees, shareholders, and past employees to speak up and make suggestions about action taken. The policy will be for issues not within other processes. Issues may be illegal behaviour, violation of company policies, poor practices, or any kind of improper action, misconduct, or suspected fraud. Anonymous reporting is also handled and will be taken into account for investigation. For serious issues, whistle-blowers can approach the Management Committee or the chairman of the audit committee. The Company Secretary is the Compliance Officer under this policy.

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

It provides anonymous reporting of past misconduct or potential issues through a variety of channels like the engagement partner, ethics and independence partner, chief risk officer, and a special hotline—while ensuring whistleblower protection. But most Indian companies lack such strict provisions; hotlines are rarely provided, and consequences of falsification are not given much heed. Foreign companies typically have detailed protection clauses and more specific procedures. To avoid misuse such as personal vendettas or share price manipulation, audit committees verify the authenticity of claims. As per Section 177 of the Companies Act 2013, repeated frivolous complaints can result in disciplinary action, and the Whistle Blowers Protection Act, 2014, offers a maximum of two years' imprisonment for frivolous complaints.<sup>24</sup> These are, however, mostly on paper, especially in the case of anonymous complaints, since punishment may not act as a deterrent. For example, Infosys' stock fell by about 16% following a whistleblower leak, which highlights the need for a more efficient system.

<sup>23</sup> Nair, R. and Menon, S. (2016) *Ethical Dilemmas of Whistleblowing in India: A Case Study Approach*. Asian Journal of Business Ethics, 5(2), pp. 123–140.

<sup>24</sup> Kumar, S. (2017) *Protection of Whistleblowers in India: A Comparative Study*. Journal of Indian Law Institute, 59(3), pp. 321–340.

**Case of M Shanmugam Manjunath Case (1978 - 2005)**

Manjunath was a manager for Indian Oil Corporation (IOC) and was stationed at Lakhimpur Kheri, Uttar Pradesh. On his line of duty, he had shut down two petrol pumps at Lakhimpur Kheri within a span of three months for selling adulterated petroleum products. When they reopened again, he raided the petrol bunk unannounced to check the petroleum products once more. He was killed for shutting down the petrol bunk. He got six gunshot wounds and was found dead in the backseat of his car. This incident became a huge scene in the country. The session court found all the accused guilty and sentenced them to death but the high court overturned the judgement and changed the sentence to 5 accused's life imprisonment and acquitted 2 of them. Indian Oil Corporation gave compensation of 2.6 million to the family of Manjunath.<sup>25</sup>

**Case of Lalit Mehta (1972-2008)**

Lalit Mehta was an R.T.I activist who exposed corruption in the National Rural Employment Guarantee Act in Palamau District, Jharkhand. He was brutally killed, his face was disfigured, and it is believed that his assassins were connected with embezzlement of NREGS money. In his investigations, Mehta exposed several land acquisition scams and plot misallocation by some officials and politicians. He also wrote an expose on the BEML Employees Cooperative Society audit that had entered into dubious land transactions with prominent people. Mehta was attacked three times before his murder on May 15, 2012. He was driving back home in his Maruti 800 on the night of his death. Four attackers stopped him on the road. They pulled him out of the car and assaulted him with iron rods and fists. Once he lost consciousness, they left his body on sharp rocks. This assault occurred in a high-security zone near the home of the chief justice of Karnataka. In spite of 16 CCTV cameras, the police said that no camera had recorded the act because heavy rain was claimed to have stopped recording that day. Whistleblowing beyond India: LuxLeaks: In 2014, Antoine Deltour leaked documents proving that around 340 companies were evading taxes by constructing intricate financial arrangements. They earned billions while paying less than one percent of their earnings in tax. Deltour shared this proof with a French journalist, Edouard Perrin, who published it. Deltour was hence suspended for half a year and penalized with 1,500 Euros in 2014. In 2015, he received the European Citizens Award for his action. By 2018, charges against him were withdrawn altogether, and he was hailed as a whistleblower. As a fallout of this incident, the European Commission decided to grant protection under the EU Whistleblowing Directive to the persons who disclose illegality. Edmund Dene Morel, Morel was a British shipping clerk turned journalist who uncovered the atrocities being committed in the Congo. He agitated against slavery and collaborated on a vigorous campaign against King Leopold II's repressive regime in the country, where there were rubber plantations that used slaves. Martha: She was the wife of John N. Mitchell, a Watergate scandal participant. Listening and reading through him, she learned about the scandal and disseminated the information to the media. The Nixon campaign labelled her as unstable and stated that she was an alcoholic. John W. McCord Jr., a convicted member of the campaign, later corroborated her testimony. She provided testimony in a civil suit filed by the Democratic Party against the Committee for the Re-Election of the President (CRP) in 1973.

**CARTELS & WHISTLEBLOWERS**

The Competition Commission of India (CCI)<sup>26</sup> has introduced a new 'lesser penalty plus' regime under the Competition Commission of India (Lesser Penalty) Regulations, 2024, to enhance its whistleblowing

<sup>25</sup> Sathish K. (2006) *The Manjunath Shanmugam Case: A Study of Whistleblowing and Its Consequences in India*. Journal of Business Ethics, 65(4), pp. 379–390.

<sup>26</sup> The Competition Commission of India 2002



mechanism. Following a public consultation in November 2023, this regime incentivizes whistleblowers to expose cartel activity by offering significant penalty reductions<sup>27</sup>. Under Section 46 of the Competition Act, 2002, cartel members can receive penalty cuts of up to 100% for the first applicant, 50% for the second, and 30% for the third.<sup>17</sup> This enhanced leniency policy is central to India's efforts to combat anti-competitive practices and promote fair competition<sup>28</sup>. By encouraging insiders to report illegal activities, the CCI strengthens enforcement and deters cartel formation which is a strategy similar to those used in the USA and the UK. Continuous improvement of this whistleblowing system is vital for protecting public interest and ensuring market integrity.<sup>29</sup>

### STAGES OF WHISTLEBLOWER MECHANISM

The operation of a whistleblower system starts with the detection of wrongdoing, where one sees or discovers unethical or illegal behaviour like fraud, corruption, or violation of safety standards. The whistleblower makes a Protected Disclosure through channels that are defined, i.e., a hotline, email, or portal, and may be made anonymously or identified<sup>30</sup>. The complaint is received by the organization on a confidential basis and an initial inquiry for verification is made. If the grievance is real, a detailed investigation is set in motion and an internal or external investigator executes the investigation, collects evidence, and presents a report with suggestions and conclusions. In case of unsupported grievance, the file is closed. When the investigation is complete, the report is evaluated by the Ethics Committee or Board of Directors, who decide the necessary measures, including penalty or policy amendment. The ruling is informed to the whistleblower and the stakeholders who are responsible for confidentiality<sup>31</sup>. Anti-retaliation protection is given to the whistleblower at any point in the process. Lastly, all documents relating to the complaint and investigation are kept safe for a specific amount of time, and the whistleblower policy is reviewed routinely to determine if it is or is not effective. This is a formalized process with the advantage of transparency, accountability, and safeguard for the complainant regarding misconduct.<sup>32</sup>

### ANALYSIS OF WHISTLEBLOWER LEGISLATION IN INDIA

The Whistleblowers Protection Act, 2011, was enacted by the Indian Parliament in 2014 to give legal protection to whistleblowers who reveal corruption and abuse of power in the government and public sector organizations. However, though it has been enacted, the Act remains partly enforced, and whistleblowers remain susceptible to harassment and weakening of the anti-corruption process. One of the major reasons for such delays is a deficiency of political will to enact the law. Whistleblowing tends to disturb established power and patronage groups, and passing such legislation would dismantle these power blocs and patronages. The regimes have therefore been hesitant to implement the Act to prevent opposition from powerful interest groups and bureaucrats who gain from the existing status quo. The

<sup>27</sup> Competition Commission of India (Lesser Penalty) Regulations 2024

<sup>28</sup> Gupta, A. and Sharma, N. (2019) *The Role of Whistleblowers in Enforcing Competition Law: A Case Study of India*. *Competition Law Review*, 15(2), pp. 89–104.

<sup>29</sup> Rao, K. and Reddy, P. (2018) *Whistleblowing and Anti-Competitive Practices: A Study of the Indian Competition Act, 2002*.

<sup>30</sup> Patel, V. and Joshi, A. (2020) *Whistleblowing in India: A Socio-Legal Perspective on Corporate Governance*. *Journal of Corporate Law and Policy*, 9(2), pp. 67–84

<sup>31</sup> Verma, S. and Kumar, A. (2023) *Whistleblower Protection in India: A Critical Review of the Legal Framework*. *Indian Journal of Public Administration*, 69(3), pp. 456–470.

<sup>32</sup> Mehta, P. and Nair, S. (2021) *Whistleblower Protection Laws in India: A Review of the Legal Landscape*. *Indian Journal of Law and Society*, 14(1), pp. 112–130.

absence of adequate institutional machinery for its implementation is another serious obstacle in the implementation of the Whistleblowers Protection Act. The Act involves the setting up of effective machinery for the receipt and inquiry into grievances as well as effective machinery to provide anonymity and protection to the whistleblowers. India's administration and judiciary are, however, overworked and lacking in the necessary expertise to deal with the cases effectively. Secondly, lack of proper sensitization and training of government officials regarding the provisions of the Act is a hindrance in its implementation. The gruesome killings of whistleblowers Narendra Kumar and Satyendra Dubey, killed for revealing corruption, are proof of the need for an effective mechanism of whistleblower protection. The government has also not acted to correct these structural flaws, subjecting whistleblowers to attack and violence. Apart from this, the Whistleblowers Protection Act has also been criticized on the basis of scope and loopholes. It excludes private sector employees, for example, who are just as vulnerable to victimization when they blow the whistle against company malpractices. The Act provides no money or rehabilitation to harassed whistleblowers or livelihood-lost persons. These loopholes have prompted calls for reform to harmonize the law, but these have been at odds due to bureaucratic and political apathy. The government has also been apprehensive about abuse of the Act to lodge frivolous and ill-motivated charges that will contest the system. But such apprehensions can be taken care of with appropriate security and watchfulness measures and not render the Act moot. Limited implementation of the Whistleblowers Protection Act is a manifestation of a broader unwillingness to place much emphasis on transparency and accountability within Indian institutions of governance.

While the Act is a step in the right direction as a measure to safeguard whistleblowers, it cannot be fully implemented due to political opposition, institutional hesitance, and loopholes in legislation. Unless and until all these concerns are settled, there will continue to exist a working culture of hostility towards whistleblowers, and there will continue to be corruption shameful public as well as private institutions. The legislations of, and enforceability of the Act are most important to protect the whistleblowers, besides creating an environment of integrity and good governance for India.

## SUGGESTIONS

Another most significant loophole of the WPA, Act is that its application is narrow-based, since it only applies to governmental organizations. For its success, the act must be such that it takes into consideration the non-governmental organizations in order to tackle a larger segment of society. Although the whistleblowing conduct is partly governed by the SEBI rules and Companies Act, 2013 in the case of public companies, such public companies are also needed to be covered under the Whistleblowers Act. Another crucial provision that needs to be looked after in the Act is providing reward or any type of incentive to the whistle-blower. The individual who blows the whistle on fraud should be compensated financially or otherwise.<sup>19</sup> In the United States, the False Claims Act, provides that the government compensates the whistleblower with thirty percent of the amount recovered as a result of whistleblowing. These incentives will provide financial support to the whistleblower and encourage the public to report fraud more often. SEBI had also incorporated such a practice when it announced monetary reward for whoever informed about insider trading during the year 2019.

Besides, the government can also undertake the responsibility of protecting whistleblowers, and if they get harmed by any means, the government itself can bear the medical expenses. According to the United States Whistle Blowers Act, the government is responsible for bearing all the medical expenses of the whistleblower during the investigation process until the case is decided. India needs to inculcate such

provisions for the well-being of whistleblowers. Additionally, whistleblowers in the United Kingdom are categorized into several types. The same can be applied in India as well where individuals who speak up their grievances within the organization are called internal whistleblowers and those approaching a regulatory agency, such as the CVC, can be classified as regulatory whistleblowers. The power to act on a complaint in the event of a grievance is the Central Vigilance Commission for the central government and the State Vigilance Commission for the state government under the act.

Considering the sheer number of cases falling under the whistle-blower category, powers of authority can be delegated to more institutions so that complaints can be disposed of speedily and effectively. Under Sec. 6(3) of the act, the concerned authority will not investigate any matter if the complaint is preferred more than seven years after the commission of the act. This provision can be struck down since putting a time limit on the reporting of an act can prejudice only the whistleblower. It can be easily termed as a technical error on the part of companies and organizations and can be used in a malafide manner to avoid punishment. It also provides for an option in the act that it is within the jurisdiction of the competent authority to reveal the identity of the complainant if it is decided so by the authority itself or necessitated by an order of court. But the whistleblower should be informed about such revelation of identity, and if he/she does not approve of it, then such revelation shall be suppressed even if there is a court order allowing the same. Revelation of the whistleblower's name even if he/ she requested anonymity will undermine the entire purpose of the act. Also on the corporate governance front, the Board of Directors must place high importance on training on the whistleblowing program. The employees must thoroughly know how the program works, what type of reports are admissible, the support provided, and with whom one should be in touch.

Trust and confidence are the pillars of an effective whistleblowing policy. If the workers do not trust the policy of the organization, then it will not be able to provide what it is designed to. This lack of confidence in whistleblower processes in Indian organizations may be the reason why some workers report their problems to the US Department of Labor's Whistleblower Protection Program. This is evident as to why there should be a strong internal system. Every corporation must possess some system for dealing with whistleblowing complaints. Based on their financial capacity, they should subcontract the task for greater efficiency, if at all possible. The 'Statement of Good Practice' (SGP) of the Singapore Institute of Directors can be adopted by companies in structuring an effective policy. Indian firms have to make their policies appropriate based on their global presence.

## CONCLUSION

To achieve sound business growth, good corporate governance practices must be undertaken by the firms. Honest and responsible governance practices must be followed by companies so that the processes of governance are not disrupted.

Whistleblowing mechanism is an integral part of it, serving as a powerful tool for triggering public accountability of the organization. Proper use of a whistleblowing mechanism becomes even more significant in light of numerous international scandals concerning Enron, ICICI Bank, Satyam, Punjab National Bank, and Kingfisher. These incidents highlight the imperative need for an effective whistleblowing system in national legal systems. Such scams have had profound impacts on individuals and economies, putting pressure on the Indian government to enhance legislation, protect citizens from fraud, and enact a robust whistleblowing protection act. Despite existing legislation, whistleblowers in India continue to face major challenges in reporting cases. The majority of organizations lack proper

reporting channels, and the workforce is fearful of victimization or retaliation. An issue of this sort draws attention to having a strong corporate governance and ethics culture as well as effective embracing of whistleblowing policies. Even though the Companies Act, 2013 delineates the requisites of the same, companies' eagerness to institute these and the faith of employees in them without intimidation are dependent primarily on the willingness of companies. It is essential that companies develop an atmosphere of honest behaviour and transparency so that whistleblowers can bring forward their information. India has to extend its oversight apparatus on major private corporations and give shelter to corporate whistleblowers. Currently, the Companies Act, 2013 requires only listed public companies and companies with bank or public financial institution borrowings exceeding Rs. 50 Crore to implement a surveillance system to act upon whistleblower complaints. Effective and proper whistleblowing policies can help in curbing corruption and fraud in companies. Such policies must ensure that the company's interests are guarded while also fostering an environment that makes employees feel comfortable reporting issues with no fear of retribution, hence safeguarding the interest of the shareholder and the public. Some of the essential principles in designing effective whistleblower policies include the safeguarding of anonymity of whistleblowers, fair hearings of the accused, and legal analyses within reasonable time periods to determine regulatory and disclosure requirements. Governments and regulatory agencies need to concentrate on developing strong frameworks that encourage ethical business practices and safeguard whistleblower rights.

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