

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 2

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

A Comparative Analysis of Whistle-Blower Protection Legislations in India, UK and USA

ABHISHEK KUMAR SRIVASTAVA¹

ABSTRACT

Whistle-blower is a person inside the organization who blows a whistle against any unlawful or immoral activity. The policy of the whistle-blower provides adequate safeguard to the whistleblower against unfair treatment by the alleged violator. Here I am referring the example of Gaurav Taneja ex- pilot of Air Asia was suspended because he informed DGCA about the violation of the safety norms which has been established by the DGCA. Another example is of Satyendra Dubey who was killed because he blowed the whistle against corruption. Through my paper I want to analyze and compare the legislation and associated administrative practices for managing the whistle blowing processes within the states of India, UK and USA. The researcher also analyses whether the whistle-blower legislation is different or similar in some extent in these countries. Through this paper author also try to find out whether there should be a common whistleblower policy for all the sectors of the society or specific legislations for every sector like private, corporate, government etc. By using the doctrinal research as method the researcher is also likely to figure out the problems involved in the execution of the whistle-blower legislation in the above said countries and with regard to conclusion the researcher analyses possible solution to the above said problems.

Keyword: Legislation, Whistle-blower, immoral activity.

I. INTRODUCTION

In the case of **Winters v. Houston Chronicle Pub. Co**² the term whistleblower was first discussed by justice Doggett. The term whistleblower has originated in United Kingdom. The purpose behind the whistle blowing is always to aware the public or the authorities about the illegal activity or crime i.e. to safeguard the public good.

A whistleblower is a person, who could be an employee of a company, or a government agency, disclosing information to the public or some higher authority about any wrongdoing, which

¹ Author is a LL.M Student at Chanakya National Law University, Patna, India.

² 795 S.W.2d 723 (Tex. 1990)

could be in the form of fraud, corruption, etc.

The whistleblowers can be classified into two types i.e. Internal and External Whistleblower. The Internal whistleblowers are those who blow the whistle about the mismanagement, illegal activity or misconduct to his superior officer within the organization while on the other hand the External whistle blowers are those who blow the whistle or report the same to law enforcement authorities or media. However if we observe all the institution whether private or government they restrict publishing institutional or organizational information the whistle blower faces various problems like death threats, dismissal from employment, assault and physical harm. Here is the relevance of an Act to protect the whistleblowers who safeguards the public interest by taking several risks.

(A) Difference between whistle blowers and the informers

Sometimes people get confused between whistle blower and the informers in local language the informers are known as the *mukhbirs*. But the role of the informer and the whistle blower is different the law considers the whistleblowers as an ethical person because mostly they don't involve in any act that is legally incorrect. But there is a very high chance that an informer had a criminal background or he himself indulges in the wrongdoing. I think the main difference between the both is the law provides the protection to the whistle blowers but does not provide any kind of safety to the informers sometime the informers will get victimized by the law enforcement mechanism.

II. HISTORICAL BACKGROUND OF WHISTLEBLOWER ACT IN INDIA

In India the first bill regarding the protection of the whistle blower was initiated in the year 1993 by (the then chief vigilance commissioner) Mr. N. Vittal. After that in the month of December in the year 2001 the law commission of India recommended that in order to eliminate the corruption and illegal activities a law to protect whistleblowers was essential and submitted its report on 'Public Interest Disclosure Bill' to Mr. Arun Jaitley (then Minister of Law, Justice and Public Affairs) along with the draft bill. However the draft of the Public Interest disclosure bill of 2002 was circulated in January 2003. After that in the corruption case of NHAI i.e. National Highway Authority of India the disclosure was made by the Mr. Satyendra Dubey but unfortunately he was murdered in the year 2003 itself. After that due to the public and the media outrage led the demand for the enactment of the whistle blower bill. In 2004 the Apex Court of the land came into the picture and passes an order to establish machinery that will look into the complaint till a proper act is not passed by the parliament. After the intervention of the Supreme Court the government of India notified a resolution to enable Central Vigilance Commission to

receive complaints of corruption for Central Authorities in May 2004.³ In the year 2005 the RTI act came into the picture and this legislation gives a weapon to the RTI activist to seek information from the public authorities by means of the document and this movement led to various disclosures of the corruption and the legal activities that were going on behind the public domain. The RTI act was a very crucial act because right to get information or to be an informed citizen is a fundamental right. However this RTI act not provides any kind of the protection to the person who discloses any such activity. Since 2010, at least 12 RTI activists have been murdered for seeking information to “promote transparency and accountability in the working of every public authority” of India. On August 26, 2010 Union Minister of State for Personnel, Public Grievances and Pensions Prithviraj Chavan introduced the Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010, or the Whistle-blower Bill, in the Lok Sabha. Finally in the year 2014 the Indian Parliament passes the whistle blower protection act, 2014 but this act is not yet operational. In comparison with the countries like United States and the United Kingdom the Whistle-blowing is still a work in progress in India.

However the companies act 2013 and the SEBI i.e. Securities and Exchange Board of India have made it mandatory for certain classes of companies to set up mechanisms to receive whistleblower complaints. It added that whistleblowers are the best source of information on malpractices in any organization — public or private.⁴

III. CONSTITUTION OF INDIA AND WHISTLE BLOWING

The motive of the whistle blowing is to give interest to the public at large. If a whistle blower discloses the illegal activity or any information regarding the corruption that will ultimately give benefit to public at large because the money involved in the corruption is of the taxpaying citizens of the country. The constitution of India provides means of whistle blowing in the form of Public Interest Litigation and enforcement of Public Law Remedy for the violation of the fundamental rights. The socio justice through which these aspirations of the constitution and the people of India are achieved is known as Public Interest Litigation. The collective force of Public interest Litigation and the Public law remedy provides us the medium of constitutional whistle blowing.⁵

³ lipi.thapliyal (no date) *Whistleblower protection in India*, *LegalServicesIndia*. Available at: <http://www.legalservicesindia.com/article/1187/Whistleblower-Protection-In-India.html> (Accessed: March 30, 2023).

⁴ *Where the law stands on whistleblowers in India - infosys episode* (no date) *The Economic Times*. Available at: <https://economictimes.indiatimes.com/news/company/corporate-trends/where-the-law-stands-on-whistleblowers-in-india/sebi-mandates-provisions-for-whistleblowers/slideshow/71770786.cms> (Accessed: March 30, 2023).

⁵ https://www.icsi.edu/media/webmodules/45th_nc/WhistleBlowing_BalancingonaTightRope.pdf

(A) Legitimacy of the whistle blower under the Constitution of India

Under the Article 19 (1) (a) of the constitution of the India it guarantees all the citizens of freedom of speech and expression. But this right is not an absolute right it has certain reasonable restrictions under the same Article 19 (2). That means if any information that consists any kind of information that will hamper upon the integrity, sovereignty of the country and disturbs the friendly relation with foreign states and led to any kind of security threat to the country shall not be disclosed. This article provides freedom of information that will help the citizens of the country to be informed about the happening in the country and this is very essential right in a democratic country like us. So if the whistle blowers are not protected then various information's will not come out. In the case of **People's Union for Civil Liberties v. Union of India AIR 2004 SC 1442** the right to information was further elevated to the status of a human right which is necessary for making governance transparent and accountable. It was also emphasized that governance must be participatory.⁶ Right to information is part of the right to free speech and expression guaranteed under Article 19 (1) (a). Justice V.R. Krishna Iyer, in the **S.P. Gupta case** observed that right to express one's thoughts is meaningless if it is not accompanied by related right to secure all information on mailers of public concern from relevant public authorities; people had the right to know about every public act, and the details of every public transaction undertaken by public functionaries.⁷

Article 21 of the constitution of India provides Right to Know in the case of **R.P. Limited v. Indian Express Newspaper** the court observed that it must be remembered that people in general have a right to know in order to be able to take part in a participatory development of the industrial life and democracy. The court observed that the right to know was a basic right, to which citizens of a free country aspire, in the broad ambit of the right to life under article 21 of the Constitution.⁸

In the case of **PUCL vs. Union of India**⁹ the supreme court specified certain grounds on which the government can hide or withhold the information relating to various matters like:-

1. National security like, Defence etc
2. International relations

⁶ AIR 2004 SC 1442

⁷ Ltd, A.A. (2022) *Constitutional perspective on the right to know*, Law Teacher. LawTeacher. Available at: <https://www.lawteacher.net/free-law-essays/constitutional-law/constitutional-perspective-on-the-right-to-know-constitutional-law-essay.php> (Accessed: March 30, 2023).

⁸ Ibid

⁹ (2004) 2 SCC 476

3. Any information that violates the privacy of the individual
4. Information about the scientific research
5. Trade secrets
6. Communication between legal advisor and client or Doctor and patient.

(B) Famous incidents that led to the establishment of the whistleblower protection act in India

1. **Manjunath Shanmugam working with Indian Oil Corporation (1978-2005)** was a graduate of the Indian Institute of Management; Lucknow was shot dead on 19th November 2005. He was a perfect example responsible citizen who fought against adulteration of petrol pump owners. He rebuffed bribes and flouted even life threats. It is alleged that the murder has been done by the corrupt petrol pump owners.
2. **Satyendra Dubey case (1973 to 2003)** Late Mr. Dubey was an officer in Indian Engineering Services (IES) he was appointed as project director in the National Highway Authority of India. During the course of his duty he came to know about the corruption that was going on at that time in the National Highway authority of India Project that was going in the Place called Koderma in the state of Jharkhand at present. He had written a letter to his superior authorities in the government about the corruption but the government official put a blind fold on this matter and not took this matter very seriously. And this resulted into the transfer of the contract into the hands of the local mafias and not to the government. Apart from this he observed that the proper procedure and materials were not followed in the process of the making of the road. He also brought this matter to his superior officers in the national highway authority of India but he got no response from their after that he wrote a letter directly to the office of the prime minister Mr. Atal Bihari Vajpayee and in this letter he requested that his identity shall be kept secret but the official send his letter by putting his identity and after that due to his identity was disclose he was murdered on November 27 in the year 2003 in Gaya, Bihar. This incident was the first incident that raised the demand of the whistle blower protection act in India.
3. **Satish Shetty Case (1970- 2010).** He was the Indian social activist and he served more in the state of Maharashtra because he disclosed various land scams in the state of Maharashtra. He used the tool of the Right to Information act to expose the authorities who were indulged in the land scams in the state of the Maharashtra. Apart from the land scams he also exposed the authorities who were indulged in the corruption

happened in the construction project of the Mumbai- Pune express way led by the National Highway Authority of India. But unfortunately he was murdered by the four masked man in the early morning.

4. **Lalit Mehta Case (1972-2008)** Mr. Mehta was a Right to information (RTI) activist who had exposed ongoing scams in National Rural Employment Guarantee Act in Palamau district in Jharkhand. While he was travelling on his motor- bike he was killed by the unknown persons. After his death the National RTI Forum started Lalit Mehta Gallantry Award honoring his contribution in exposing scams via RTI.¹⁰
5. **Narendra Kumar Case (1979-2012)** Mr. Kumar was an I.P.S officer of batch 2009 and he was posted in the district of Morena in the state of Madhya Pradesh. He blew the whistle about the illegal mining of the high quality sand that is only found in the Chambal River. During the inspection of the mines he met to an accident and found dead.
6. **SP Mahantesh case.** Mr. Mahantesh was appointed as the deputy director of cooperative Audit in the state of Karnataka. He blew the whistle against the illegality in the process of the land acquisition, layout formation and allotment of sites and it involved many officials and the politicians. After that he gets various deaths threats and face various attack but he survived in all of them but unfortunately he met with an accident and the very accident led to his death after hospitalized for 4 days.
7. **Rinku Singh Rahi Case.** He was appointed as the Provincial Civil Servant (PCS) in the state of Uttar Pradesh. He was fighting against the corruption in a sponsored scheme of the Uttar Pradesh. After that he ordered an enquiry to check the allocation of the funds. By the struggle of 5 year somehow he was able to collect some discrepancies in the funds. After that he was attacked by the local gangsters and somehow manage to save his life.

Other than India there are various other country that adopted variety of laws and procedure that helps in protecting and encouraging the whistleblower to come forward. Here in this paper other than India I will be discussing about the United States of America and the United Kingdom.

(A) The United States of America

The United States of America is one of the oldest countries in the world or we can say that the

¹⁰ See Supra note 6

first country in the world that enacted the law relating to the whistleblower protection. If we read about the history of the whistleblower protection act in United States then we find that within the seven months after the signing of the declaration of the independence. Benjamin Franklin became one of the first American whistleblowers in 1773 when he exposed confidential letters showing that the royally appointed governor of Massachusetts had intentionally misled Parliament to promote a military buildup in the Colonies.¹¹

If we analyze the laws for whistleblower protection in United States then we find that there are various laws for the protection of the whistleblower is available at state and federal level and there are various clauses that are inserted in legislation to achieve the health and safety objectives. However there are three main principal acts that are widely used in the United States are: -

1. **The whistle blower protection act 1989:** - The protections available under the whistle blower protection act are very weak for the whistle blowers because the rights provided under this act were not sufficient to safeguard the whistle blowing person. To overcome from this insufficiency a new legislation called WPEA i.e. whistle blower protection enhancement act, 2012 was introduced. Under the WPA the federal employees were not eligible for the whistle blower protection if they: -¹²
 - a. Made a disclosure to the co-workers.
 - b. Blew the whistle while carrying out job duties.
 - c. Made a disclosure to the supervisor.
 - d. Disclosed the consequences of a policy decision
 - e. Were not the first person who discloses given misconduct.

But after the enactment of the whistle blower protection enhancement act the section 101 and 102 of the WPEA restore the original intent of the whistle blower protection act to adequately protect the whistle blowers by clarifying that a disclosure does not lose the protection because:

¹³

- i. The disclosure was made to a person, including a supervisor, who participated in the wrongdoing disclosed.

¹¹ *The history of whistleblowing in America* (2022) *Whistleblowers International*. Available at: <https://www.whistleblowersinternational.com/what-is-whistleblowing/history/> (Accessed: March 30, 2023).

¹² https://www.icsi.edu/media/webmodules/45th_nc/WhistleBlowing_BalancingonaTightRope.pdf

¹³ Ibid

- ii. The disclosure revealed information that had previously been disclosed
- iii. The employee or applicants motive for making the disclosure
- iv. The disclosure was made while the employee was off duty
- v. The amount of the time which has passed since the occurrence of the events described in the disclosure.

Also the section 101(b) (2) clarifies that the disclosure made is not excluded from the protection because it was made during the employee's normal course of duties.

2. **The Sarbanes-oxley Act, 2002:** - This act was passed in the year 2002 to tackle from corporate criminal fraud. The impact of this act is limited only to the financial matters. The Sarbanes-Oxley act provides for enhanced financial disclosures and auditor independence of publically held corporations. This act provides some protections and assistance for the whistle-blowers.¹⁴
3. **The False Claim Act 1863:** - The false claim act was passed at the time of US civil war under the administration of the Abraham Lincoln to stop the fraud against the government. This act is also called the Lincolns law. This act was amended in the year 1986 to establish protection for the whistle blower and it also prevents the whistle blowers from harassment, assaults and from death threats. The *Franklin v. Parke-Davis* lawsuit, filed in 1996, was the first time the False Claims Act was used to prosecute private companies submitting bills for treatments that were never approved by the FDA. Since then, this statute has been used to aggressively target all types of healthcare frauds from overbilling to the payment of kickbacks and the off-label promotion of pharmaceutical drugs. Since 1987, over half of all whistle blowing recoveries have been related to the healthcare industry.¹⁵

(B) The United Kingdom

In the United Kingdom also the whistle blower protection act came into the picture after various scandals and disasters that occurred in the years between 1980s and early 1990s. Some of the major scandals are: -

1. **The Bank of Credit and Commerce International (BCCI) in the year 1986** the person who act as whistleblower was Special Agent Robert Mazur infiltrated the **bank's** private client division and uncovered their active role soliciting deposits

¹⁴ https://www.icsi.edu/media/webmodules/45th_nc/WhistleBlowing_BalancingonaTightRope.pdf

¹⁵ See Supra note 13

from drug traffickers and money launderers.

2. **The clapham Junction Rail Crash in the year 1988** due to the signal failure caused by a wiring fault. New wiring had been installed, but the old wiring had been left in place and not adequately secured.¹⁶

The major act related to the whistle blower protection is the Public Interest Disclosure Act 1998.

- **The Public Interest Disclosure Act 1998 (PIDA)**- This Public Interest Disclosure Act became effective on July 2, 1999, in England, Wales and Scotland, as an amendment to the Employment Rights Act of 1996.¹⁷ This PIDA act covers both Public and the private employee and provides that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to the act done on the ground that the worker has made a protected disclosure.¹⁸

IV. COMPARISON BETWEEN INDIAN LAW, AMERICAN LAW AND THE ENGLISH LAW

If we read the above information regarding all three countries then we find that the Indian Administration or the Indian government is not actively considering this issue. The Indian government always ignores the cases that are disclosed due the brave people like Satyendra Dubey, Lalit Mehta etc. All of them put their life at stake to make people aware about the illegal activities that are going behind the scene. But the Indian government shamelessly ignoring this fact and always tries to escape from making the law on the whistle blower protection act in India. The Indian media and the citizens of this worked as a pressure group and forced the government to make a law on this very crucial issue. Initially the Apex court of this country also directed the government to establish a mechanism till a proper act was is not formulated. However in the year 2014 the Indian Parliament passed the law relating to the Whistle Blower Protection Act and an amendment is brought only after one year of the passage of the time. But we see the current status of the act in India then we find that this act is not in operation in India yet. There are various laws where India where we can find the traces related to whistle blower protection in the acts like official secrets act, Right to Information Act, Code of Criminal procedure, Companies Act 2013, and under the SEBI regulations.

If we look into American law then we find that the Unites States is world's first country that creates law relating to safeguard the whistleblower. The Unites States formulated the law just

¹⁶ *Clapham Junction rail crash* (2023) *Wikipedia*. Wikimedia Foundation. Available at: https://en.wikipedia.org/wiki/Clapham_Junction_rail_crash (Accessed: March 30, 2023).

¹⁷ See Supra note 16

¹⁸ Ibid

only after the Seven days of the declaration of the independence. They took this law as very serious because if a nation wanted to be developed then the authorities and the mechanism of that nation will be corruption free. Because the corruption stops the growth of the nation and ultimately it hampers the pocket of the citizens of the country who pay the taxes on regular basis. Not only the growth of the country the corrupt practice or the mismanagement stops the growth of the private individual or the private entity. The transparency between the government employee and the citizens is the essential element in any democratic country. The United States sets an example for the countries like us who did not care about the lives of the people who put their life at risk to protect the public money and the property that are at the stake. During the regime of the Former President Barak Obama the consumer protection act came into being that protects the small investors by cleaning up the Wall Street. This consumer protection law gives more power for investor protection. This law expressly prohibits the retaliation by the employers against the whistle blowers and also provides a specific section for an award for the whistle blower. This kind of approach shows that the country encourages this kind of act that will help in the overall development of the country.

In comparison to India, USA and United Kingdom our country is very poor in terms of the execution of the whistle blower protection act. We have various examples in the current days also the Ex- Pilot of the Air Asia Gaurav Taneja recently suspended by the air Asia when he disclose the fact that the policy of the Air Asia regarding landings of the Flights i.e. flap3 and the flap 4 landing. They Air Asia push their pilot to stick with the flap 3 landing that is sometimes not safe in various Runways. But after all that Mr. Gaurav Taneja got a suspension letter from Air Asia and the government body i.e. the DGCA (Directorate General of Civil Aviation) is silent on that issue. This is not the single example in our country there are various cases happened on daily basis but the government is still silent on this crucial issue.

If we see the United Kingdom also then we find that they also have a proper codified law on this particular issue that protects the whistle blower. The United Kingdom also formulated the law on the whistle blower way back only after the 2 to 3 cases.

V. SAFEGUARDS TO THE WHISTLE BLOWER

Apart from the main code relating to the Whistle blower in India there are various other codes also that will indirectly safeguard the whistle blower in India.

1. Under the code of criminal procedure: - The section 173 (6) of the act provides If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of

justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.¹⁹

The section 273 of the codes also provides that the evidence shall be taken in the presence of the accused but on the other hand the section 299 of the code provides that in the exceptional cases the accused may be denied his right to cross examination of a prosecution witness in an open court. The person concerned to the witness may be the whistle blower and in the interest of justice his identity can be concealed by the court in the interest of justice.

2. The companies act 2013: - The section 177 (9) of the companies act provides or mandates the establishment of a vigilant mechanism for employees and the executives of the company for all public listed companies. And further this section also mandated to make a policy to with safeguard against victimization of the whistle blowers.

Section 211 of the companies act led to the formation of the special fraud investigating officer (SFIO) with power to arrest for offences specified as fraud.

3. Securities and Exchange Board of India (SEBI): - Clause 49 of the Listing agreement mentioned the formation of policy for the protection of the whistle blowers for the companies. But the creation of the policy is not mandatory for the companies. However it is mandatory for the companies to disclose the adaption of such policies and also show the case listed under the policy. But recently the securities and the exchange board of India replaces the listing agreement with the (listing obligations and disclosure requirement) regulation 2015 and this regulation made the listed companies compulsory to set the whistle blower mechanism for the employee and the directors under the regulation 22.

4. Official secrets act and the whistle blower act-

The official secrets act 1923 is an colonial era law. This act has clear object that any act or information that helps the enemy state of the Indian Territory will be condemned by this act. This act also states that no can pass over the area where the restriction is made by the government like containment zones etc. the official secrets act 1923 is the exception to the whistle blower protection act. Because any information that will hamper the integrity of the country will not be published publically.

VI. SUGGESTIONS

¹⁹ <http://legislative.gov.in/sites/default/files/A1974-02.pdf>

1. The whistle blower protection act shall be made operative by the government.
2. The whistleblower protection clause shall be inserted in every sector.
3. The government should spread awareness about the whistle blower protection act that will help people to come in front and blow the whistle about any misconduct and the illegality in any private or public forum.
4. The whistle blower protection act shall be amended by time to time because of the drastic change in the society.
5. Need to establish a department that will look into the matters pertaining to the whistle blower protection act.

VII. CONCLUSION

A man is but the product of his thoughts what he thinks, he becomes

~Mahatma Gandhi

In India the awareness about the whistleblower protection act has increased but despite the awareness people not come forward and complaint about the wrongdoer. As we know read above the SEBI (Securities and exchange board of India) mandated the establishment of the specific or we can say that a separate mechanism to lodged the complaint of any illegal and the misconduct happenings in the company and also for the protection of the whistle blowers. The work of the whistle blowers is very courageous, to blow the whistle the person has to be courageous, morally strong and put the interest of the public at large ahead of his or her interest. I think the whistle blowers should have to follow the proper channel or procedure to disclose the illegal work or the misconduct before any public disclosure. The sense of evaluation that what is morally correct or not correct should be high before blowing the whistle because the wrong disclosure of anything will hamper the interest of the stakeholders.

We need to learn from the United States and from United Kingdom that how they execute the whistleblower protection act in their respective countries. We all know that we borrowed various rights from the different constitutions of the world like, Canada, Australia, Ireland, America etc. But at present we very poor in terms of the implementation of the whistle blower protection act in our country we have to learn from them.

I think in India we need amore elaborative, strong, and the effective law relating to the protection of the whistle blower. We have a law on the whistle blower protection but the government did not made it operative till date. After the enactment of the act in 2014 an amendment bill was brought in the year 2015 and the amendment bill was not passed by the parliament because of

the time lapse.
