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A Qualitative Study on Whistle Blowing Policy and Laws related to it

ANIMESH BHARADWAJ¹

ABSTRACT

This article discusses a major issue that most corporations and their personnel face: whistle blowing. The objective of this research is to shed some light on whistle blowing, which has received little attention in recent years. In recent years, little has been done to encourage staff to blow the whistle and adopt a positive stance. Despite the fact that this approach has been introduced, it has received little attention. The whistle blowing policy, as well as many legislation related to it, are the focus of this study. It also analyzes the two major landmark instances that prompted India to implement a whistleblower policy. This study also discusses many statutes and legislation related to whistle blowing. The purpose of this article is to raise awareness and promote whistle blowing policies so that firms may implement them and a consistent work environment can be maintained, as well as a sense of freedom for employees to provide feedback and take strong stands against any wrongdoings.

Keywords: Whistle Blowing Policy, Satyendra Dubey Case, Manjunath Case, Whistleblowers, Laws, Whistle Blowing Protection Act 2014.

I. WHAT IS A WHISTLE BLOWING POLICY?

Whistle blowing policy means that the organization enables its employees the freedom to disclose or reveal the facts to management, putting an end to any unethical, immoral, or criminal work. When an employee of a firm takes action against the firm for unlawful conduct committed by the firm, this is known as a whistle blowing policy. The purpose of a whistle blowing policy is to encourage employees to raise their voices against wrongdoings and increase their sense of belonging inside the firm.

II. WHISTLE BLOWER

A whistle blower is an individual or a group of individuals who detect and reveal something illegal, wrong, or immoral inside an organization, whether it is a public or private business agency, such as a scam, fraud, leakage, or secret information or behavior.

¹ Author is a student at Amity Law School, Noida, India.

A whistleblower is an employee of who reports an action that he or she suspects is illegal or dishonest.

To clarify the concept of whistleblower, "it is like speaking up against something that is negative or against the betterment." There are several examples of whistleblowers that have stood up to powerful forces and brought about significant improvements.

III. HISTORY OF WHISTLE BLOWING

The word "whistle blowing" was coined in 1963 in response to reports that Otto Otopka had provided sensitive information regarding security threats in the new US administration to the Senate Subcommittee on Internal Security's chief counsel.

The word "whistle blowing" is thought to be derived from the tradition of police blowing their whistles when they saw a crime being committed in order to alert the public and other police officers of the threat.

However, after the World Com and Enron cases, which had a significant effect on the public and accounting rules, most businesses and the general public began to be concerned about whistle blowing.

IV. AIMS OF THE POLICY

The Policy is intended to guarantee that you can express concerns about wrongdoing or malpractice inside the Council without fear of being victimized, discriminated against, or dismissed as a result of your actions. It's also meant to encourage and empower you to bring significant issues to the Council's attention rather than ignoring an issue or "blowing the whistle" outside.

The objectives of this strategy are to:

- Encourage you to feel comfortable speaking up about major issues at any time, as well as confronting and acting on practice concerns.
- Allow you to express your concerns and provide feedback on any steps taken.
- Make certain that all of your questions are answered, and that you know how to pursue them if you aren't satisfied.
- Assure you that any disclosure you make in good faith will be protected from reprisal or mistreatment.

V. WHISTLE BLOWING TYPES

(A) Internal Whistle blowing

Whistle blowing within a company is a method of exposing misconduct. Internal whistle blowing is the act of reporting misconduct to another individual within one's company or organization. Someone who works at a chain of coffee shops and reports wage and hour infractions to the company's corporate headquarters is known as an internal informant.

Some firms have internal whistleblower rules and processes in place, such as an anonymous news hotline. Employees must follow the processes set forth in their employment contracts.

(B) External Whistle blowing

A whistleblower that exposes corruption to outlets outside his or her business, such as law enforcement or the media is known as an external whistleblower.

When it comes to this form of whistle blowing, the individual that reveals the suspected misconduct must do so with good conscience, which ensures he or she must have a fair suspicion that wrongdoing is taking place and take reasonable measures to disclose it to the proper authority. When an informant may not behave with good conscience, the Whistleblower Defense Act may not extend, because he or she is not shielded against demotion or firing as a consequence of the study. The employee must therefore agree not to engage in the criminal conduct in order to be protected by the statute.

VI. WHISTLE BLOWING ON THE INTERNET

Our protection standards change as our society and workplaces change. In recent years, a new category of whistleblower has emerged as an advocate for customer and employee safety in online spheres: the cyber whistleblower. Data breaches of cloud computing services, encryption flaws, hacking, and unsafe procedures are all revealed by these whistleblowers.²

VII. LAWS RELATED TO WHISTLE BLOWING IN INDIA

There have been several cases of threatening or blackmailing of the whistleblowers. Corruption is an evil which is not good for social as well as economical development. A person who stops or takes stand against their own company with a will to finish corruption requires protection against these big organizations. Proper laws were required so that whistleblowers can take stand without any fear. Several cases happened such as Satyendra Dubey national highway Golden Quadrilateral case in 2003 or Shanmughan Manjunath Case, etc which proved that laws

² <https://s-tlawfirm.com/different-forms-whistleblowing/>

are required for dealing with whistle blowing cases in India. Therefore, here we are going to discuss several laws or legal regimes which are available to deal with whistle blowing cases:

(A) Whistle Blower Protection Act 2014

The Whistle Blowers Protection Act, 2011 (renamed the Whistle Blowers Protection Act, 2014) is an Act of the Indian Parliament that establishes a mechanism to investigate allegations of public servant corruption and abuse of power, as well as to protect anyone who reports alleged wrongdoing in government bodies, projects, and offices. Fraud, corruption, or mismanagement is examples of misconduct. False or frivolous complaints would likewise be punished under the Act.

The Act was endorsed by the Indian Cabinet as part of a campaign to clean up the country's bureaucracy, and it was enacted by the Lok Sabha on December 27, 2011. The Bill was passed by Rajya Sabha on 21 February 2014 and received the President's assent on 9 May 2014.

As we all know Whistle Blowers Protection Act, 2014 was passed in order to protect the whistle blowers of any organization and help them to take stand against corruption without any fear.

An overview of the act is discussed below:

1. The need of Public Interest Disclosure is mentioned in Section 4 of the statute

“(1) notwithstanding anything contained in the provisions of the Official Secrets Act, 1923, any public servant or any other person including any non-governmental organization, may make a public interest disclosure before the Competent Authority.

(2) Any disclosure made under this Act shall be treated as public interest disclosure for the purposes of this Act and shall be made before the Competent Authority and the complaint making the disclosure shall, on behalf of the Competent Authority, be received by such authority as may be specified by regulations made by the Competent Authority.”

The act also discusses several powers and functions of the competent authority (Section 3(b)) and other inquires in relation to public interest disclosure.

2. Section 11 to Section 14 discusses regarding the protection of the persons making the disclosure such as “safeguarding from victimization, protection of witnesses or other persons, protection of identity of complainant, power to pass interim order.”

Several offence and penalties are mentioned in the act from **Section 15** onwards.³

Some of the pros and cons of this act are mentioned below:-

³ Whistle Blowers Protection Act, 2014, Acts of Parliament, 2014 (India)

i. Pros

The need of disclosing public interest to the appropriate authorities is crucial. On the complainant's request or based on its own knowledge, the Competent Authority has been given the authority to offer adequate guidance to the competent agencies for the safety of the complainant or witness. It can also order that the government employee who made the revelation be reinstated in his old job. Unless it determines otherwise or is ordered by a court, the Vigilance Commission is expected to protect the complainant's name and relevant documentation. Furthermore, the Commission has the right to make interim orders to prohibit any further acts of corruption while the inquiry is ongoing. He or she may file an application with the Competent Authority seeking redress if he or she has been victimized as a result of filing a complaint, making a disclosure, or providing assistance in an investigation, and the authority will take whatever action it deems appropriate, including issuing appropriate directions to the concerned public servant or public authority.

ii. Cons

The Whistleblowers Protection Act of 2011 does not include any measures to promote whistle blowing (financial incentives), does not address corporate whistleblowers, does not extend its authority to the private sector, and does not define victimization. Furthermore, the Act's competent authorities are severely limited, and if the competent authority's ruling does not satisfy the complaint, the complainant has no right of appeal. There are only mechanisms for appealing the imposition of a penalty. The Act does not define a system for examining charges of corruption, deliberate abuse of authority, deliberate misuse of discretion, or lower-level judge misconduct.⁴

(B) SEBI

According to the Securities Exchange Board of India, every publicly traded company must establish a whistleblower policy and make employees aware of it. This permits employees to report instances of price sensitive information breaches that have gone undetected. SEBI has also designed an incentive system that will take effect in December 2019 to encourage "Informants" to report infringement of insider trading restrictions to SEBI.

(C) Companies Act, 2013

Under the Companies Act of 2013 and its instructions, certain firms are obligated to build a "vigil system" to report actual concerns. Furthermore, the Companies Act mandates that such

⁴ Adishhalarnkar, Whistleblowers and their protection in India: an overview, Legal Service India, <http://www.legalservicesindia.com/article/1693/Whistleblowers-and-their-Protection-in-India.html>

a system be accompanied by adequate safeguards against exploitation of persons who use it. The specifications of the process must also be publicized on the company's website and in the board of directors' annual report. According to the Companies and (Meetings of Board and its Powers) Rules, 2014, if a director or employee files multiple frivolous complaints, the audit committee or a director nominated to serve on the audit committee may take appropriate action against the director or employee, including reprimanding.⁵

VIII. WHISTLE BLOWING CASES

(A) Satyendra Dubey Case

The National Highway Authority of India engaged an IIT Kanpur graduate. He was assigned to the "Golden Quadrilateral" project, which was a major undertaking aimed at connecting India's four corners. He oversaw the disbursement of cash. Satyendra Dubey discovered the project's flaws. Satyendra Dubey came to know that there are discrepancies in the project. Contracts awarded based on falsified documentation. Contractors have been given large sums of money. Subcontracting to minor contractors who lacked the technical competence to operate on this mammoth project was rampant, with the contracted business L&T subcontracting the job to minor low-tech organizations controlled by the local mafia. Everyone seems to be participating in the "theft of public money," from government engineers to MNC construction corporations to local criminals.

Satyendra Dubey took the initiative to Blow the Whistle. He submitted a letter to his employer, NHAI Project Director S. K. Soni, and Brig Satish Kapoor, the engineer in charge of oversight, in 2002. He wrote a letter to the Prime Minister. The similar letter was sent to the Chairman of the NHAI. He foresaw difficulty and drafted a second letter, asking anonymity once more. After all of this, nothing was done, and Satyendra Dubey was killed in 2003.

After Dubey's death more than 50,000 people signed a petition urging the government to take action. The inquiry lasted a long time. Three persons were captured by the CBI in 2010 for the murder of Satyendra Dubey during a robbery. The Central Vigilance Commissioner was given the authority to investigate and safeguard whistleblower allegations. Only for central government personnel, corporations, and authorities owned by the government, the CV has been designated as the designated agency to accept written complaints from whistleblowers.

(B) Manjunath Case

Manjunath, an IIM-Lucknow graduate, revealed the corruption and oil adulteration scheme in

⁵ The Companies Act, 2013, No. 18, Acts of Parliament, 2013(India)

Uttar Pradesh's Lakhimpur Kheri area. When he arrived at the fuel pump operated by the principal accused Pawan Kumar to collect samples of contaminated gasoline purportedly supplied from his outlet, he was shot dead. Manjunath allegedly threatened to revoke Mittal's gasoline pump's license for selling tainted fuel, according to the prosecution. The next day, his corpse was discovered in a vehicle in the Maholi region of Sitapur district.

The assassination of Manjunath sparked widespread indignation, and the investigation was handed over to the CBI. The trial court convicted all eight defendants in 2007, calling the murder plotted. Pawan Kumar was given the death penalty, while the other seven were given life sentences.

IX. CONCLUSION

This article provided an outline of India's whistle blowing laws and associated legislation. Whistle blowing is a critical component of social and economic progress, since it aids in the elimination of corruption. To encourage whistle blowing and encourage employees to speak up without fear, the Whistleblower Act of 2014 was enacted to protect whistleblowers. Despite the fact that the legislation was established, whistle blowing policy has received little attention in recent years. The majority of corruption goes unreported, and even when it is, little action is done. Though numerous corporations have adopted whistle blowing policies, little attention is placed on them; the policies exist solely for the sake of name. More stringent standards are required; the legislation lacks enough sanctions, which is why whistleblowers are not well protected. The amount of corruption is rising, and employees remain mainly silent out of fear of retaliation because whistle-blowing regulations are rarely enforced. Political meddling in big organizations is also a significant factor. Employees don't have much say in the matter. In India, there is no explicit whistleblower statute that applies to private employers. Some progressive corporations (particularly MNC subsidiaries) have included a policy as part of expanding their worldwide policies to encompass individual workers or groups of workers, as well as third parties in some situations. The goal of this policy should be to encourage workers (or anybody else) to disclose problems without fear of being victimized, discriminated against, or otherwise disadvantaged.
