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A Study on the Laws Regarding Protection of Whistle-Blowers in India

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ABSTRACT

Whistleblowing is a heroic and a noble act that helps in preventing fraud, corruption and wrongdoings within an organisation. Even though the efforts of the whistle-blower and the risk taken by them in disclosing information is appreciated and valued, they face various challenges from peers, senior management, individual or group against whom he has whistle-blower. There have been various incidents which have occurred in India showcasing need for India to implement effective laws which will protect the whistle-blower and their interest. Cases like Satyendra Dubey, the Shanmugam Manjunath case, among others, demonstrated the necessity of regulations to handle whistle-blower cases in India. Provisions regarding whistle-blowers are contained in Companies Act, 2013, SEBI(LODR) rules and Whistle-blower Protection Act, 2014 which has not been implemented. However, the existing legislation has a lot of loopholes and setbacks. This paper studies the need for having laws for protection whistle-blowers and the existing laws regarding the same. This paper will also analyse the existing laws and the shortcomings in them.

Keywords: Whistle-blower, Protection, Disclosure, Wrongful activity, Fraud.

I. INTRODUCTION

The corporate world has experienced an enormous boom in the recent years. On one side there has tremendous growth and increase in opportunities while the other is a darker side including corruption, fraud, abuse of power and various other wrongful practices. These unlawful and unethical activities have a huge impact on the growth and development of the economy. There are various legislations in India to stop these evils however despite that India has witnessed various scams like the Satyam scam, the Commonwealth Games scam, the 2G spectrum scam and various others. These frauds cannot be seen by the outside world however in most of these cases the members within the organisation are aware about the wrongdoings in the organisation and can disclose the true picture of the organisation.²

Whistleblowing refers to disclosure by a present or past employee or by an outside agency

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² Kritika Sharma, Analysis of Real Consequences Faced by Whistle-Blower, in Indian Corporations, AKLegal (Last visited March 7, 2023), <https://aklegal.in/consequences-faced-by-whistle-blower-in-indian-corporations/>.

reporting wilful misconduct such as fraud, corruption, illegal or unlawful activities being carried out within the organisation.³ Whistleblowing is often driven by one's morals and to do good for the public. Whistle-blowers are true to themselves and their ideals, disclosing information that could harm others. Whistleblowing can be considered as a form of free speech and a tool against corruption.

Whistle-blowers are nation's conscience keeper, risking their safety to highlight the wrongdoings and bring attention to them. Even though whistle-blowers are valued and appreciated for taking the risk they face severe consequences like hostile attitude by peers or senior management, administrative harassment, risk to personal and their family's safety and also can lead to them losing their job. Internal members of the organisation or any other person who is aware about the wrongdoings in an organisation are often reluctant to disclose the information due to the fear of losing everything that they have. The lack of adequate safeguards to the whistle-blowers acts as a major setback in eliminating these frauds and wrongdoings in an organisation. The protection of whistle-blower is very important in a nation like India where there is widespread corruption and ineffective administration.

(A) Research Objectives

- To study the need for protection of whistle-blowers in India.
- To study the existing Indian laws regarding protection of whistle-blowers.
- To analyse the shortcomings in the existing law regarding protection of whistle-blowers.

II. NEED FOR PROTECTION OF WHISTLEBLOWERS

There have been various incidents where the whistle-blowers are murdered, threatened or are harassed which poses a serious threat to democracy, free speech, transparency and corporate governance. Whistle-blowers face severe consequences for disclosing the true state of an organisation like hostile attitude by peers or senior management, administrative harassment, risk to personal and their family's safety and also can lead to them losing their job. Fraud and corruption are sin that hinder economic but also social advancement. An individual who stands up to their own organisation with the intention of ending wrongful activities needs protection from these powerful groups. Several incidents have occurred in India which showcase that there is a need for India to implement effective laws which will protect the whistle-blower and their interest. Cases like Satyendra Dubey case from 2003 and the Shanmugam Manjunath case,

³ Karthik Shiva. B, *Whistle Blowers Protection Law in India – Safeguarding the Guardians of Good Governance*, Vol. 4, Issue1, M S R Journal of Law, 116-131(2018).

among others, demonstrated the necessity of regulations to handle whistle-blower cases in India.

- Satyendra Dubey Case- Satyendra Dubey, an IIT Kanpur graduate was assigned to the Golden Quadrilateral project. He discovered various flaws in the project. Contract were given based on forged documents, subcontracting to contractors who lacked competence and theft of public money. He informed these irregularities to NHAI and also wrote a letter to Prime Minister. On November, 2003, he was shot dead. The conversation for protection of whistle-blowers started after the gruesome murder of Satyendra Dubey.⁴
- Manjunath Case- Shanmugam Manjunath was the manager of the Indian Oil Corporation in Uttar Pradesh. He revealed the oil adulteration and the corruption and he sealed the petrol pumps due to the poor quality. His identity was discovered and he was shot dead. His murder created significant outrage, and the CBI was given the case to look into. In 2007, the trial court found all eight defendants guilty. Seven of them were given life sentences and Pawan Kumar received the death penalty.
- Air Asia Case- Gaurav Taneja, a pilot of the Air Asia airlines uncovered that the airline was violating the air safety regulations and that Air Asia was not following the protocols put in place due to the spread of coronavirus and were therefore risking the lives of the passengers travelling through the airline. He was fired from his job and the airline accused him of defaming them.⁵

III. LAWS PROTECTING WHISTLEBLOWERS

Companies Act, 2013

Section 177(9) of Companies Act, 2013 – All public listed companies should establish vigil mechanism for their employees and senior management mandatorily. Also, they should establish a whistle blower policy providing clear safeguards to whistle-blowers against victimisation.

Various provisions under section 206 to section 229 provide for framework of inquiry, inspection and investigation. Section 208 gives power to inspector to review the records and to further recommend investigation in case of doubt. Section 210 gives Central Government power to investigate on such recommendations. Section 211 established the Special Fraud Investigation Office (SFIO) with the authority to make arrests for crimes categorised as fraud.

⁴ Aditi Pareek, *Calling for Attention: Efficacy of Whistleblowing Laws in India*, Vol.4, issue 2, IJLMH, 1947-1953(2021).

⁵ Kritika Sharma, *Analysis of Real Consequences Faced by Whistle-Blower, in Indian Corporations*, AKLegal(Last visited March 7, 2023), <https://aklegal.in/consequences-faced-by-whistle-blower-in-indian-corporations/>.

Auditors formerly had no legal authority to detect fraud; today, it is their responsibility to act as tip-offs and immediately notify the Central government or other relevant authorities of any such act.

The Companies and (Meeting of Board and its Powers), 2014 enables audit committee to take appropriate action against director or employee who files repeated frivolous complaints.⁶

Securities and Exchange Board of India

Every listed company is required by SEBI to have whistle-blower policy and to make their employees aware about the policy. With effect from December 2019, SEBI also implemented a compensation system to encourage the informants to alert the SEBI to violations of insider trading regulations.⁷

Whistle Blower Protection Act, 2014

The Whistle-blower Protection Act was adopted by the legislature as part of a drive to clean the bureaucracy in India. The Lok Sabha passed it on December 27, 2011. The Bill was approved by the Rajya Sabha on February 21, 2014, and on May 9, 2014, the President gave his approval.

The main objective of the act is to provide for a structure to receive complaints regarding allegations made about corruption or wilful abuse of power against public servant and to safeguard against victimisation of the complainant.

The act enables individuals including public servant to disclose matters of public interest to a competent authority. A complaint can be made within seven years from the date when the offence has taken place. The act states that any person who knowingly or recklessly discloses the identity of the complainant be punished in which the imprisonment shall not exceed term of three years or fine up to Rs. 50,000. If a person discloses information made maliciously and with knowledge of it being false, erroneous or misleading, then the person shall be punished for a term which may not extend two years or fine up to Rs. 30,000.⁸

The Whistle-blower Protection Act supersedes the Official Secrets Act, 1923 which permits the complainant to make disclosures in public interest before competent authority even if they are in violation to the Official Secrets Act but do not jeopardise sovereignty. When the Whistle-blower Protection Act of 2014 was not put into effect, the government submitted the Amendment Bill in 2015. Although the intention is to expose acts of corruption, the abuse of power, or criminal activity, the proposed amendment Bill of 2015, which was moved in the

⁶ The Companies Act, 2013

⁷ SEBI (Listing obligations and Disclosure Requirements) Regulations, 2015

⁸ The Whistleblower Protection Act, 2014

Parliament, recommends that whistle-blowers shall not be permitted to reveal any materials classified under the Official Secrets Act of 1923. The main goal was to prevent it from superseding the Official Secrets Act of 1923. The bill was not passed. The 2014 Act has not been operationalized till now.⁹

IV. SHORTCOMINGS IN THE EXISTING LAW

- The laws within its ambit does not include private companies. There is no law or provision protecting the interest of whistle-blowers in private companies. Private companies are also not mandated to have whistle-blower policy of their own.
- There is no provision which provides for any penalty for victimization of the complainant. The whistle-blowers risk their life and their family's life while disclosing information and are vulnerable to attacks. However, there is no provision protecting the whistle-blower from such attacks or harassment. Also, the penalty for revealing the identity of whistle-blower is less as opposed to the risk that they are prone to.
- The Whistle-blower Protection Act, 2014 specifically provides that no action will be taken by competent authority unless the identity of complainant is disclosed. There is no provision for anonymously filing a complaint.
- There is no provision for rewarding a person who acts as a whistle-blower and helps in stopping unlawful activities. Rewards can act as a motivation for more persons to come forward and report unlawful activities within the organisation
- The limitation period for filing a complaint by a whistle-blower is seven years from the date of the offence. The limitation period will act as a barrier in filing the complaint if the offence gets discovered after seven years.

V. CONCLUSION AND SUGGESTIONS

Being a whistle-blower is not an easy task, it takes guts to be one. Despite the rising awareness regarding whistleblowing practices still many of the employees prefer to keep quiet and not bring their employer's wrongdoings to light. Many oppose the whistle-blowers contending that employees should have a fundamental duty of loyalty to their organisation and should not report misconduct since it will harm the brand and reputation of the organisation. In India whistle-blowers face severe negative consequences including losing their job or even life. There is a need for India to have comprehensive and strong laws for protecting whistle-blowers.

⁹ The Whistleblower Protection(Amendment) Bill, 2015

The laws should make employee who indulge in corrupt and unethical practices fearful, giving them the impression that others are looking over their shoulder and that they need to get their act together and work for the advancement of their organisation as well as their country.

There is a need for various changes to be made to the for it to be effective in protecting the interest of the whistle-blowers. The laws should also to some extent include private companies as currently laws are not applicable to private sector. There should be provision for penalising victimisation of complainant and also anonymous complaints should be entertained and in order to make sure that the anonymous complaint is not frivolous provision can be made to prove the occurrence of offence beyond reasonable cause. Limitation period for filing complaint should either be removed or the provision can be changed as calculating the limitation period from the date of knowledge of offence to the complainant.

(A) Shortcomings in the existing law

- The laws within its ambit does not include private companies. There is no law or provision protecting the interest of whistle-blowers in private companies. Private companies are also not mandated to have whistle-blower policy of their own.
- There is no provision which provides for any penalty for victimization of the complainant. The whistle-blowers risk their life and their family's life while disclosing information and are vulnerable to attacks. However, there is no provision protecting the whistle-blower from such attacks or harassment. Also, the penalty for revealing the identity of whistle-blower is less as opposed to the risk that they are prone to.
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