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# Deficiency in the Indian Whistle Blower Protection Law

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## ABSTRACT

*In order to ensure effectiveness in the governance of corporate affairs in a company/organisation, there must be absolute transparency in the overall affairs. In order to move towards such a goal, there is the need for strict policies and effective managers to ensure the transactions/affairs within the company or with outside organisations are transparent. To tackle the issue of whistle blowing, organisations would construct a mechanism which would ensure any fraud or illegal activity would be disclosed in an immediate manner. The organisation would in turn work towards resolving the issue. The absence of such system can lead to any person who had or has been employed by the involved organisation to whistle blow. Whistle blowing can involve an employee to disclose any illegal or corrupt business activity committed by the company to the public at large. The Whistle Blowers Protection Act, 2014 had been introduced by the Indian Government to ensure legislative protection is provided to the respective employees. However, there has been an ongoing debate on whether necessary inclusions must be made to the legislation as for example, the act does not protect whistle blowers from the private sector. It applies to complaints filed against public servants or government officials. This essay will shed light on the challenges faced by the employees with the existing framework.*

**Keywords:** Whistle Blower, Framework, Confidential, Private Sector.

## I. INTRODUCTION

The Parliament enacted such a legislation to ensure a framework has been provided to inquire upon the information passed by the informant and to also provide protection to the employees who have whistle blown. The complaints or information would be with respect to the unethical or illegal activities that may have been done by officials working for the Government. Considering their high ranking position, it could lead to certain officials to misuse the power they have been provided with. The Act can be favourable for numerous reasons, one of which being that whistle blowers who suffered employment retaliation can be ordered by the Central

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Vigilance Committee (CVC) to restore to their original employment.<sup>3</sup> it is also an advancement to the Indian legal landscape because the law pushes the threshold for the burden of proof on the public official to show that if any adverse action was taken against a whistle blower, such action is not be considered as retaliatory in nature. With the aim of protecting the integrity of public officers, the act has checks and balances that prevent the harassment of public officers. For instance, monetary penalties mentioned in the Act are present so that complainants are wary of paying high penalties.<sup>4</sup>

## **II. ANY PRECAUTIONS?**

According to the Whistle Blower Protection Act, a public servant's commission of crime under the Prevention of Corruption Act 1988, wilful abuse of authority or wilful abuse of discretion that results in demonstrable harm to the government or demonstrable wrongful gain for the public servant or any third party, or the committing of or an attempt to commit any of these offenses by a public servant.

Only "genuine concerns" may be reported by stakeholders of a firm under the vigil system, according to the Companies Act. Despite the fact that the Companies Act does not define "concerns," it would be wise to assume that it does.

There may be opposition and even reprisal involved to prevent such revelation in the type of job that whistleblowers conduct, which involves disclosing the truth in public or in front of an authorized person. The job that whistle-blowers do is evident because they expose the errors and dishonest practices of some institutions and businesses, which could lead to retaliation. Despite being aware of this, they have the courage to report it. However, some whistle-blowers prefer to keep their name a secret for the same reasons as were previously stated. Rules and laws are in place to shield whistleblowers from those with ill intentions who target them for retaliation and cause them harm.

## **III. A TRIBUTE TO SATYENDRA DUBEY**

Mr. Dubey had graduated from IIT Kanpur and had taken up the role of managing the construction work taking place in Jharkhand. It was called the Golden Quadrilateral project and the project was introduced to create a four lane highway which could connect the major cities of India. Mr. Dubey however, had carved out financial foul play done by the engineers of the project. He had fired them and also ensured reconstruction of a road which was initially done

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<sup>3</sup> *Important features of the "whistle-blowers" resolution* (no date). Available at: [https://www.cvc.gov.in/sites/default/files/whistle\\_0.pdf](https://www.cvc.gov.in/sites/default/files/whistle_0.pdf) (Accessed: January 8, 2023).

<sup>4</sup> Chapter VI, Offences and Penalties, Whistle Blowers Protection Act 2014.

not by the set standards. This had caused the mafia to assassinate Mr. Dubey as he was a whistle blower of their actions since his appointment. The lack of protective measures had led to the Mafia assassinating an innocent whistle blower and if such deficiency continues, such cases are likely to continue. The corruption cases across the country has been on the rise and the lack of protective measures for whistle blowers is alarming for India.

#### IV. LACUNAE IN THE LAW

**Rise in Corporate scams:** With enriching corporate experiences that have recently risen in the country, it has also called for strengthened and protective mechanisms to promote corporate growth. Frequently, corporate settings comprise of several stakeholders who's interest is of maximal interest. The fabric of the 2011 Act is limited because it is equipped to address only complaints addressing irregularities or corruption in the public sector. By failing to address the private sector and the corruption therein, the present legislation is grossly deficient. To put it in numbers, as per a survey conducted by PWC, 95% of companies from India had seen new types of frauds in the past two years.<sup>5</sup>

**Non-inclusion of Private Sector complaints:** The Indian domain does not address the whistle blower policy in private employment settings. It can be a considered a complex process because a skilfully constructed policy should encourage employees to expose the misdoings of the company or employed individuals without being victimized or penalized. Other reasons include that certain organizations that handle similar complaints are merely used as communication channels. Unless the ultimate decision rests on the internal mechanism of the company, a sound use of any whistle blower policies will fail. Further, there is no mandatory requirement to adopt whistle blower policies that protect whistle blowers, which create uncertainties and unsuccessful use of the policy.<sup>6</sup> At the core of it, these policies are made voluntarily without any legal requirement to do so, which may also be a contributing factor to the weak use of whistle blower polices in private settings.

**“Confidential document”:** The main issue with the Amendment bill passed in 2015 was the fact that it had not permitted any confidential documents as per the Official Secrets Act 1923. The intention to enact such a law is to provide a voice and protection for the whistle blowers. If

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<sup>5</sup> PwC's Global Economic Crime and Fraud Survey 2022: India Insights. Available at: <https://www.pwc.in/assets/pdfs/global-economic-crime-survey.pdf> (Accessed: January 21, 2023).

<sup>6</sup> Kapoor, M. and Kanuga, S. (2021) *India: The Indian Disposition On Whistleblowing In A Private Company*. Mondaq, 4 November. Available at: <https://www.mondaq.com/india/directors-and-officers/1128912/the-indian-disposition-on-whistleblowing-in-a-private-company> (Accessed: February 5, 2022).

such a restriction is imposed on them, the whole purpose of the Act is defeated.<sup>7</sup> Ensuring transparency must be initiated with allowing any document which would disclose corruption or illegal activity to be submitted by the complainant.

***Confusion with respect to the applicability of the Act for PSUs:*** Even with regard to the applicability over public offices, the Act is limited in addressing all problems that may arise under the umbrella. For instance, the act permits only disclosures that are covered under the Official Secrets Act, 1923. While devising the pith and substance of the Act, it was not applicable to public sector undertakings (PSUs). However, this was a gross lapse in law as it did not deliver the real intentions of the drafters. PSUs were later interpreted as public servants under the Act. Indian jurisprudence also pointed along the way that the benefits of protection under Indian law would not be accorded to officers of government companies or public undertakings even if those persons were considered as "State".

## V. CONCLUSION

Whistle blowing policies are pivotal to any public administration but a mere Act with no implementation mechanisms will be futile. An organized protective system that empowers complainants and promotes ethical conduct is essential to the working of the Act's main objective. The aim of the act is also weaved into several international declarations of the ILO and UDHR that confer whistle-blowing is a right in and of itself by protecting the individual's physical and moral integrity and the public interest. The effectiveness of the Act is also challenged with cultural contexts of societies. Complainants must feel safeguarded while reporting and feel that the legal regime is viable and legitimate. To maintain any organizational culture, whistle blower policies must be set out straight in work contracts and handbooks, reminding existing employees and new comers of the goal. In India, the law has shortcomings with respect to the major problems faced by the complainants such as victimising the whistle blower. To ensure a stringent application of the aims and purposes of the whistle blower policy, organisations must come together to develop comprehensive action plans that address the root of the issue. Such policies must be drafted keeping in mind the role of whistle blowers in any society that is fundamental to the working of the public and private sector.

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<sup>7</sup> Sharma N, "Amendment to Whistleblower Protection Law Sparks Outrage among Civil Society Activists" (*The Economic Times* May 16, 2015) <<https://economictimes.indiatimes.com/news/economy/policy/amendment-to-whistleblower-protection-law-sparks-outrage-among-civil-society-activists/articleshow/47303193.cms>> accessed February 26, 2023