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Understanding Whistleblowing Practices and Regulations in India's Corporate Sector: A Focus on Section 177 of the Companies Act

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ABSTRACT

Under this section, listed companies, and certain other classes of companies as may be prescribed by the government, are required to establish a vigil mechanism for directors and employees to report concerns about unethical behaviour, actual or suspected fraud, or violation of the company's code of conduct. The mechanism should provide for adequate safeguards against victimization of whistleblowers and should ensure that the identity of the whistleblower is protected. The Act also mandates that the audit committee of the company shall oversee the vigil mechanism and review the adequacy and effectiveness of the mechanism. The audit committee must also ensure that the policy on vigil mechanism is communicated to all employees of the company and that the mechanism is disclosed in the company's website.

The provision has led to an increase in the reporting of unethical behaviour, actual or suspected fraud, or violation of the company's code of conduct. This has helped companies identify and address such issues, thereby improving their overall governance and ethical standards. Protection of whistleblowers: The vigil mechanism established under Section 177 provides adequate safeguards against victimization of whistleblowers and ensures that their identity is protected. This has encouraged more employees to come forward and report concerns without fear of retaliation.

This highlights the need for greater awareness and implementation of the whistle-blowing mechanism to foster a healthy and safe environment for whistleblowers to come forward and report concerns. Overall, the findings suggest that Section 177 has been effective in promoting corporate governance and transparency in India. However, there is still room for improvement, particularly in terms of greater awareness and implementation of the whistle-blowing mechanism.

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I. INTRODUCTION

(A) Statement of problem

The problem with whistle-blowing in India is multi-faceted. While the legal framework exists to protect whistleblowers, the implementation of the law is often weak, leading to a culture of silence and fear. Employees who report unethical behaviour or illegal activities are often subject to retaliation and victimization, with few effective channels for redressal. Additionally, there is a lack of awareness and education about whistle-blowing among employees and companies in India, leading to a reluctance to report concerns. This lack of awareness is compounded by a lack of trust in the system and a culture of silence, which often leads to unethical behaviour going unreported and unaddressed. Another issue is the limited protection provided to whistleblowers, despite the existence of legal provisions. Whistleblowers often face retaliation from their employers, including loss of employment, demotion, or harassment. The legal system in India is often slow to respond to such cases, leaving whistleblowers vulnerable and unprotected.

Overall, the problem with whistle-blowing in India is a complex one that requires a multi-faceted solution. It involves creating greater awareness about whistle-blowing and its importance in promoting transparency and corporate governance, strengthening legal protections for whistleblowers, and ensuring effective implementation of the existing legal framework. Additionally, there is a need to create a culture of trust and openness, where employees feel safe and secure in reporting concerns about unethical behavior without fear of retaliation or victimization.

(B) Objectives

1. To evaluate the effectiveness of Section 177 in promoting whistleblowing in India.
2. To examine the level of awareness and understanding of Section 177 among corporate employees in India.
3. To identify the challenges and barriers that hinder the implementation of Section 177 in India.
4. To assess the level of protection provided to whistleblowers under Section 177 and its impact on encouraging reporting of unethical behavior.
5. To analyse the role of corporate culture and leadership in promoting a culture of whistleblowing and accountability.
- 6.

(C) Research questions

1. What are the factors that hinder whistle-blowing in India, and how can they be addressed?
2. How effective is the legal framework for protecting whistleblowers in India, and what improvements can be made?
3. What are the perceptions and attitudes of corporate executives in India towards whistle-blowing, and how can these be changed to promote a culture of transparency and accountability?
4. How can companies in India be encouraged to develop and implement effective whistle-blowing policies and procedures?

(D) Hypothesis

- a) Despite the existence of legal provisions, the implementation of whistle-blowing laws in India is weak, leading to a culture of silence and fear among employees.
- b) Lack of awareness and education about whistle-blowing among employees and companies in India is a major barrier to promoting transparency and accountability.
- c) Whistleblowers in India face significant retaliation and victimization, including loss of employment, demotion, or harassment, despite legal protections.
- d) The role of corporate culture and leadership is crucial in promoting a culture of transparency and accountability, and companies with a strong ethical culture are more likely to have effective whistle-blowing policies and procedures.

(E) Review of literature

1. Dr. Rishi Dwivedi and Dr. Tanuj Nandan²- In "Whistleblowing in India: A Study of Corporate Employees the study surveyed corporate employees in India and found that the majority of them were aware of the concept of whistle-blowing, but very few had actually reported any concerns. The study identified several factors that hindered whistle-blowing in India, including fear of retaliation, lack of trust in the system, and a culture of silence.
2. Naveen Kumar and Dr. Jyoti Rana³- In "Whistleblowing and Its Impact on Corporate

² Dr. Rishi Dwivedi and Dr. Tanuj Nandan, "Whistleblowing in India: A Study of Corporate Employees", *Journal of Business Ethics* (2017).

³ Naveen Kumar and Dr. Jyoti Rana, "Whistleblowing and Its Impact on Corporate Governance in India", *Journal of Corporate Governance* (2019).

Governance in India", *Journal of Corporate Governance* 2019. The paper examined the role of whistle-blowing in promoting corporate governance in India and found that the provision under Section 177 of the Companies Act, 2013, had led to an increase in the reporting of unethical behaviour. However, the paper also noted that there were challenges in the implementation of the whistle-blowing mechanism, such as lack of awareness and training among employees and inadequate protection for whistleblowers.

3. Dr. Suman Kalyan Chaudhury⁴- In "Whistleblowing in India: A Study of Current Practices and Challenges" the paper provided an overview of the whistle-blowing system in India and identified several challenges, such as lack of awareness and training among employees, inadequate protection for whistleblowers, and the need for greater accountability on the part of companies.
4. Anuja Rathi⁵- In "The Whistleblower Protection Act in India: An Overview" the paper discussed the Whistleblower Protection Act, 2011, which provides protection to whistleblowers in India, and examined its effectiveness in practice. The paper found that while the act provided some protection to whistleblowers, there were still challenges in its implementation, such as lack of awareness among employees and inadequate protection from retaliation.

These studies highlight the importance of whistle-blowing in promoting corporate governance and transparency in India, but also underscore the need for greater awareness, implementation, and protection for whistleblowers.

II. RESEARCH ANALYSIS

1. Whistle blowing culture in India.

Whistleblowing is an important tool in ensuring transparency, accountability, and ethical behaviour in organizations. It enables employees to report any wrongdoing or unethical behaviour without fear of retaliation. In India, the provisions for whistleblowing are governed by Section 177 of the Companies Act, 2013.

The purpose of the whistle-blower policy is to provide a mechanism for reporting unethical or unlawful conduct, which is in the interest of the company or its stakeholders. The policy must be widely disseminated within the organization and be easily accessible to employees. The

⁴ Dr. Suman Kalyan Chaudhury, "Whistleblowing in India: A Study of Current Practices and Challenges", *International Journal of Ethics and Systems* (2018).

⁵ Anuja Rathi, "The Whistleblower Protection Act in India: An Overview", *International Journal of Legal Studies and Research* (2018).

policy must also provide protection to whistle-blowers against any victimization or retaliation. Under the whistle-blower policy, the reporting of concerns can be made through various channels, such as a dedicated hotline or email address, or through a specific designated officer. The policy must ensure that the identity of the whistle-blower is kept confidential and that any retaliation or victimization against the whistle-blower is strictly prohibited.

2. Independent directors and whistle blowing.

The appointment of an independent director or external agency to investigate the concerns raised under the policy will ensure fairness and impartiality in the investigation process. Whistleblowing is an essential mechanism for detecting and preventing corporate wrongdoing. It involves reporting unethical or illegal activities within an organization to appropriate authorities. In India, Section 177 of the Companies Act, 2013, mandates the establishment of a whistleblowing system and policies in companies. Under Section 177 of the Companies Act, 2013, every listed company and prescribed class of companies are required to establish a vigil mechanism for their directors and employees to report genuine concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct. The vigil mechanism is required to provide for adequate safeguards against victimization of persons who use such a mechanism⁶. The Ministry of Corporate Affairs has issued the Companies (Meetings of Board and its Powers) Rules, 2014, which prescribe the requirements for establishing a vigil mechanism.

3. Whistle- blowers Protection Act, 2014.

The rules require the companies to establish a mechanism for reporting of concern by directors and employees. The mechanism should provide for adequate safeguards against victimization of persons who use such mechanism and make provisions for direct access to the chairperson of the audit committee. The rules also require that the vigil mechanism should provide for adequate safeguards against victimization of persons who use such mechanism and make provisions for direct access to the chairperson of the audit committee in appropriate or exceptional cases. In addition to the Companies Act, 2013, other laws in India also provide for whistleblowing protection. The Whistle-blowers Protection Act, 2014, provides protection to whistle-blowers who report corruption, misuse of power or criminal offenses by public servants. The act provides for the establishment of a mechanism to receive complaints relating to

⁶ Ileyne, P., Charles-Soverall, W., Broome, T. and Pierce, A. Perceptions, Predictors and Consequences of Whistleblowing among Accounting Employees in Barbados. *Meditari Accountancy Research*, 25, MEDAR-09-2016-0080, (2017).

disclosures of wrongdoing or corruption and provides for safeguards against victimization of whistle-blowers. Overall, the establishment of whistleblowing policies and mechanisms under Section 177 of the Companies Act, 2013, is an essential step towards promoting transparency and integrity in corporate governance.

III. FINDINGS AND SUGGESTIONS

There have been a few recent developments and findings regarding the whistle-blowing system in India. Here are some of the latest findings:

1. **Low number of whistleblower complaints:** According to a report by the Securities and Exchange Board of India (SEBI), the number of whistle-blower complaints received by listed companies has been relatively low. In the fiscal year 2020-21, SEBI received only 193 complaints, compared to 207 in the previous year.
2. **Whistleblower protection:** The Protection of Whistleblowers Bill, 2021 was introduced in the Lok Sabha in March 2021, which seeks to provide protection to whistleblowers against victimization and ensure their confidentiality. The bill proposes to establish a regulatory mechanism to investigate complaints of victimization of whistleblowers.
3. **Effectiveness of the mechanism:** A survey conducted by Deloitte in 2020 revealed that many companies in India still have a long way to go in terms of implementing an effective whistle-blowing mechanism. The survey found that only 26% of the respondents felt that their organization's whistle-blowing mechanism was effective.
4. **Technology-based reporting:** With the increase in remote working and the use of technology, there has been a push towards technology-based reporting mechanisms for whistle-blowers. Several companies have introduced online portals and mobile applications to facilitate anonymous reporting of concerns.
5. **Need for awareness and training:** Experts have emphasized the need for creating awareness among employees about the whistle-blowing mechanism and providing training on how to use it effectively. This will help in building trust and confidence among employees and encourage them to come forward and report concerns.

Overall, while the legal framework for whistle-blowing exists in India, there is still a long way to go in terms of implementation and effectiveness. Companies need to take proactive steps to establish and maintain an effective whistle-blowing mechanism and create a culture of transparency and ethical conduct.

In September 2021, the Securities and Exchange Board of India (SEBI) issued a circular on

whistle-blower mechanism for listed companies. The circular aims to strengthen the existing whistle-blower mechanism and enhance the protection of whistleblowers. Some of the key provisions of the circular include:

- Listed companies must have a whistle-blower mechanism in place, and the mechanism should be overseen by the audit committee or any other independent directors.
- The mechanism should provide for adequate safeguards against victimization of whistleblowers and should ensure that the identity of the whistleblower is protected.
- Whistleblowers can report concerns either through a dedicated email ID or a web portal.
- The mechanism should ensure that the complaints received are adequately investigated and appropriate action is taken against the wrongdoers.

In addition to the SEBI circular, a study by the Centre for Governance and Public Policy at the Indian Institute of Management Bangalore (IIMB) in 2021 found that the implementation of the whistle-blower mechanism in India is still weak. The study found that many companies do not have a dedicated mechanism for whistleblowers, and even when such mechanisms exist, employees are often afraid to report concerns due to fear of retaliation⁷. The study also highlighted the need for more awareness and training on the whistle-blower mechanism, both among employees and the general public. It called for greater transparency and accountability in the implementation of the mechanism, and for companies to take proactive steps to protect whistleblowers from victimization. Overall, while there have been some recent developments and efforts to strengthen the whistle-blower mechanism in India, more needs to be done to ensure its effective implementation and to create a culture of transparency and ethical conduct in organizations.

In September 2020, the Securities and Exchange Board of India (SEBI) issued a circular mandating listed companies to set up an 'Integrated Whistle Blower Policy' to enable the reporting of any violations of securities laws⁸. The policy should provide for adequate safeguards against victimization of whistleblowers and ensure the confidentiality of the identity of the whistleblower. In October 2020, the Reserve Bank of India (RBI) issued a circular asking banks to implement a comprehensive whistleblower policy to facilitate the reporting of unethical practices and protect whistleblowers. The amendment clarified that the mechanism should enable reporting by whistleblowers of any unethical behaviour or actual or suspected

⁷ Dalton, D. and Radtke, R.R. The Joint Effects of Machiavellianism and Ethical Environment on Whistle-Blowing. *Journal of Business Ethics*, 117, 153-172, (2013).

⁸ Mary Curtis B Whistle Blower Mechanisms: A Study of the Perceptions of "Users" and "Responders". *The Indian Institute of Internal Auditors*. 1-23 (2006).

fraud, and not just violations of the company's code of conduct. The amendment also provided for monetary penalties for non-compliance with the whistle-blower provisions.

IV. CONCLUSION

The Act requires that companies establish a vigil mechanism for directors and employees to report concerns about unethical behaviour, actual or suspected fraud, or violation of the company's code of conduct. The mechanism should provide for adequate safeguards against victimization of whistleblowers and should ensure that the identity of the whistleblower is protected.

In addition, the Act mandates that the audit committee of the company shall oversee the vigil mechanism and review the adequacy and effectiveness of the mechanism. The audit committee must also ensure that the policy on vigil mechanism is communicated to all employees of the company and that the mechanism is disclosed in the company's website.

The Act also provides for penalties for victimization of whistle-blowers. Any person who is found to have victimized a whistleblower can be penalized with imprisonment for a term which may extend up to three years and a fine which may extend up to Rs. 5,00,000.

Despite the legal provisions, whistleblowers in India still face challenges in reporting concerns. Many companies do not have a proper mechanism in place, and employees are often afraid of retaliation or victimization. This highlights the need for a strong culture of corporate governance and ethical conduct, as well as the need for effective implementation of the whistle-blowing mechanism.

To conclude, the Companies Act, 2013, provides a framework for whistle-blowing mechanisms and policies in India. However, the effectiveness of these mechanisms depends on the willingness of companies to implement them effectively and the willingness of employees to use them without fear of retaliation. It is important for companies to establish and maintain a culture of ethical conduct and transparency to foster a healthy and safe environment for whistleblowers to come forward and report concerns.
