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Whistle Blowers Protection under Corporate Governance System

RUSHIL DESHPANDE¹

ABSTRACT

A good corporate governance system forms the basis of a long-lasting business by providing better transparency in the system. This clear lens not only allows for a healthy working system but further helps develop more confidence amongst the investors of the company. To ensure there is no leak in the system and to ensure a clean business, the Whistleblowers play a major role in the organisations. These individuals are the ones that fight injustice within organisations and make them do the right thing. However, this too has its own set of challenges. This paper will allow you to better understand the current state of the Whistleblowing system across India and will also provide for a comparative analysis amongst countries like USA, Australia & New Zealand. It will further take into consideration the importance of whistleblowing with respect to Insider Trading activities. To provide for a better analysis, an Empirical study was also conducted with subjects ranging from different age groups, backgrounds and experience with respect to their confidence in the notion and standards of protection of a whistleblower in the corporate system.

Keywords: Corporate Governance, Whistle Blowers, Insider Trading, Comparative Analysis, Case Laws.

I. INTRODUCTION

Sir Adrian Cadbury described , “Corporate Governance is the system by which companies are directed and controlled.....”²

In today’s ever-developing world, various companies are in a constant fight for their superior existence. The investors of the companies such as the shareholders not only want a good return on their investments but also want for their investments to be safe. Since, there are thousands and lakhs of investors in a company, it becomes the sole responsibility of the management of the company to work towards protecting the interests of the company and its shareholders. This is where the profound system of corporate governance comes into play.

¹ Author is an Advocate, India.

² Ruchi Kulkarni and Balasundram Maniam, Corporate Governance — Indian Perspective, International Journal of Trade, Economics and Finance, Vol. 5, No. 4, August 2014, 364-368.

The concept of corporate governance has been around since decades, and has seen development in different countries at different timelines. Despite it being around for several decades, the term Corporate governance has become a word of interest across the globe in the last decade and has gained a lot of significance in this ever-growing world of corporates coming into existence on an everyday basis. Corporate governance is not just a mere guiding principle, it has become a major responsibility for the corporations to keep their actions accountable under the law by providing for a better transparency, accountability and security of the management systems. It can be defined as a set of standards which aim to improve the overall image, effectiveness and efficiency of the corporation whilst maintaining certain social responsibilities and set norms on its behalf.

The system of corporate governance has a duty to ensure the legal and ethical working of the companies, and further to act in an acceptable manner. This system promotes healthy forms of working and is accepted across the globe. It is often said that a company practicing a good governance system, is usually more successful in the long run as it has a good name and reputation amongst its stakeholders. This is also important because such a system of good corporate governance empowers the company to build a brighter future and have reliability and credibility in the nation. Whereas in terms of a bad corporate governance system, there may be illegal acts, unethical behaviour, and maybe illicit acts such as sexual harassment within the organization. With such acts being a part of the company and being seen on a daily basis, it becomes extremely difficult for the organization to maintain a good name in the market and have a long lasting future amongst its stakeholders. This also makes the company lose its credibility, which ultimately leads to other companies not getting involved with them for business, making the company lose investors and funds over a short period of time and gradually come to an end.

There are various principles of good corporate governance that help improve the entire system.

- The idea of transparency under Corporate governance helps the company achieve greater heights in the long run as with a better sense of transparency the shareholders and the members of the company are able to get a better aim of the company's goals, tactics and how it works in general. Transparency gives the power to any individual/entity to review the company's actions and understand its long term plans. This leads to a higher level of trust in the company, making individuals feel more secure while investing in the company.
- Similarly another major principle of a successful corporate governance is the

accountability towards the shareholder. This means that the company is accountable to its shareholders for its operations. Also, a shareholder at any point may question any ill deeds/illegal activities that the company may be involved in making the company more accountable in its working.

Whistleblowing policy forms a part of the system of corporate governance. This policy of whistleblowing is an important one and is seen to be covered under the system of good corporate governance. This policy forms a part of the internal system of corporate governance and is considered as a system to keep a check on the unethical or illegal working of the organization and make disclosures in case of any illicit act arising in the working of the same.

A whistleblower may be an employee, contractor or any other member of an organization that may report any suspected wrongdoing at work by speaking out in a confidential manner. This may be any kind of malpractices, corruption scandals, insider trading, misconduct or mismanagement in the running of the company. In simpler terms, whistleblowing is the art of reporting any kind of a wrongdoing within an organization to either its internal parts like the human resource, senior or its external parts like media, police, higher government officials etc. Although before resorting to any such sources, a whistleblower must check the credibility of information and shall not blow the whistle based on any rumors in the organization as any other false information as such act can easily create panic amongst the shareholders and further damage the reputation of the company.

Further with respect to a better corporate governance system, the Securities and Exchange Board of India (SEBI) has under Clause 49 of the Listing agreement³ provided with proper guidelines for the companies to adopt a whistleblowing system of their own. These guidelines provide the employees a means to report any kind of malpractice in the organization to the audit committee of organization. They also provide for a safe environment and undertakes to protect such employees from harassment of any kind or termination of services.

(A) Literature review

The concept of whistleblowing is one with potential for growth. Over the years, people have gotten more comfortable investing with the coming of a more secure and a transparent system of corporate governance. It is because of the amended corporate governance guidelines that there is a better system in place for all members of the company.

These guidelines under the system of corporate governance have laid down various clauses for

³ SEBI Listing Agreement, Clause 49

the whistleblowers, both inside and outside of the company. As it can be understood, the whistleblowers in the society are no less than a hero for preventing any kind of corruption, or misconduct on the part of a company by informing the various internal or external sources about it. Although Whistleblowers policy has been recognized amongst various countries across the globe, there remains an unfilled gap in its secure implementation and its adaptability with a threat to the whistleblower.

There have been several authors with exceptional ideas on the topic of Whistleblower policy. With that as a reference, hereby are stated a few of those authors and writers to help in the better understanding of the concept of whistleblowers in a corporate governance system:

Mr. Nikhil Varshney & Ms. Amartya Saha in their paper **“The Whistleblower Bill, 2010: A Critical Analysis”**⁴ write about the importance of the whistleblower bill and state how such policy framework should be available to all listed companies and banks to avoid misconduct/unethical practices in the organisation. They mention a brief history of the bill and state the benefits provided to the whistleblowers in the corporate sector. They state the rationale of the bill and write about the main provisions of the same. They further write about its impact on the system and provide their insight and suggestions to fix the loopholes in the imperfect whistleblower bill, 2010. They also state that despite the whistleblower bill being a non-mandatory practice in the system, it may prove to be a good practice for a better corporate governance.

A journal published by Mr. Vivek Sadhale, Mr. Vikas Agarwal and Mr. Amit Atre on the subject **“Corporate Governance Situation in India as compared to other countries with specific reference to Corporate Governance in US”**⁵ talks about the concept of Corporate governance and its dynamic environment. They talk about the need for a system of corporate governance in today’s developing world and put down a comparative analysis of the corporate governance code between India and the United States of America. They conclude that most practices in both India and the US are similar in nature and the only major difference lies in terms of practices and approach of the regulating agencies like the SEC and SEBI.

An article published in the International in-house counsel journal by Mr. Vikas Agarwal, Mr. Amit Atre and Mr. Vivek Sadhale on the subject **“The situation in India compared to other countries with specific reference to corporate governance in the UK”**⁶ talks about the

⁴ Nikhil Varshney & Amartya Saha, *The Whistleblower Bill, 2010: A Critical Analysis*, 1 NAT’L L.U. DELHI Stud. L.J. 79 (2012).

⁵ Vivek Sadhale, Vikas Agarwal & Amit Atre, *Corporate Governance: Situation in India as Compared to Other Countries with Specific Reference to Corporate Governance in US*, 2 INT’L. IN-House Counsel J. 675 (2008).

⁶ Vivek Sadhale, Vikas Agarwal & Amit Atre, *Corporate Governance. The Situation in India Compared to Other*

corporate governance system in India and its various beneficial aspects in the smooth governing corporate system. The writer talks about the success of the system and draws out a comparative analysis of the corporate governance system between India and the United Kingdom. They further state that the establishment of the Cadbury and Greenbury committees have given UK an edge in terms of a more successful corporate governance code.

Dr. Vijay Kumar Singh in his paper **“Whistle Blowers Policy Challenges and Solutions for India with Special Reference to Corporate Governance”**⁷ writes about the challenges faced by the whistle blowers policy in India and states how the reformed policy works to safeguard the whistleblowers against unfair treatment by the alleged violator. The writer has done a comparative review of the whistleblower policies in different countries like United Kindgdom, Australia, New Zealand and the USA, and has further examined the scope for formulating a common whistleblowing policy in specific corporate sectors for a more successful corporate governance. He has further presented the valuable recommendations of the N.R. Narayana Murthy Committee on the emphasis of having an ‘internal policy on access to audit committees’ which helps cover the whistleblowers from unfair termination or any other discriminatory practices in the course of their employment. He further mentions that the whistleblowers help to keep a check on corruption levels in the society and should be protected at every cost. With that being said the author aims to discover whether there should be a common whistleblower policy for all sectors of the society or should each sector have a specific whistleblower policy. To conclude he has emphasised on that no laws on corporate governance shall be enough till the mindset of the management changes.

Mr. R. Balakrishnan in his paper **“Formulating a Whistleblowing Policy and it’s Implementation”**⁸ writes about the formulation of the whistleblowing policy and states the relevant laws that form the same. He further states the proper process for the implementation of the whistleblower policy for its successful implementation. He also states that an internal whistleblowing policy is the key of a good corporate governance system in the long run.

Mr. Jonathan Macey in his paper **“Getting the word out about fraud: A theoretical analysis of whistleblowing and insider trading”**⁹ talks about the idea of whistleblowing and insider trading as complementary to each other as the whistleblower might disclose an inside

Countries with Specific Reference to Corporate Governance in the UK, 2 INT’L. IN-House Counsel J. 835 (2009).

⁷ Vijay Kumar Singh, Whistle Blowers Policy Challenges and Solutions for India with Special Reference to Corporate Governance, 3 GNLU J.L. DEV. & POL. 5 (2013).

⁸ R. Balakrishnan, Formulating a Whistleblowing Policy and Its Implementation, 3 INT’L. IN-House Counsel J. 1 (2010).

⁹ Jonathan Macey, Getting the Word out about Fraud: A Theoretical Analysis of Whistleblowing and Insider Trading, 105 MICH. L. REV. 1899 (2007).

information from within an organisation. Although he states that despite there being a related link between the two, these are two different activities with several practical differences, which he has explored in his research paper. He concludes by stating that insider trading on whistleblower information, results in release of information about corporate misconduct.

Mr. Sandeep Parekh in his paper **“Prevention of Insider Trading and Corporate Good Governance in India”**¹⁰ talks about the concept of insider trading and how trading with the inside knowledge could lead to civil and criminal liabilities. He adds that inside information leads to unfair advantage in trading and that every investor/trader should engage in fair trade and shall be subjected to identical market risks. He also states that the end of such insider trading would lead to a successful corporate governance system in the organisation. To conclude, the author suggested that a corporate governance rating system should be put into use so as to pressure the management to comply with an effective corporate governance system. He further suggested that any organisation that does not follow corporate governance guidelines shall be penalised.

Mr. Robert G. Vaughn in his paper **“State Whistleblower Status and the Future of Whistleblower Protection”**¹¹ talks about the status of different states in terms of the whistleblowers policy and addresses the conceptions of whistleblowing and the kind of disclosures that are followed by the whistleblower system. He further mentions that different states have suggestions with respect to various law reforms which provide them with a better and a more profound approach towards the future of whistleblower protection system.

Mr. Michael A. McGrail in his paper **“Corporate Governance”**¹² writes about the concept of corporate governance and provides a better in-depth understanding of the same by giving an insight of a publicly traded company named El Paso. The paper talks about the conflict arising between the board members and the management of the company in the merger and acquisition process. He stated that such problems could have been address with there being a mechanism for good corporate governance between the board members and the management and stated that different departments of the organisation should work together for a successful management of such organisation, making corporate governance the key factor to a successful organisation.

Ms. Shivangi Dhawan and Ms. Anupreet Kaur Mokha in their paper **“Whistle blowing: Facing**

¹⁰ Sandeep Parekh, Prevention of Insider Trading and Corporate Good Governance in India, 32 INT’l Bus. LAW. 132 (2004).

¹¹ Robert G. Vaughn, State Whistleblower Status and the Future of Whistleblower Protection, 51 ADMIN. L. REV. 581 (1999).

¹² Michael A. McGrail, Corporate Governance, 2012 A.B.A. RECENT DEV. PUB. UTIL. COMM. & Transp. Indus. 97 (2012).

challenges in India”¹³ write about the instances of whistleblowing and its effects that follow. They write about why blowing a whistle in a country like India has been so difficult over the years and focus on problems it has caused for the whistle blowers. They narrow down their research to find linkages between gender and the position in the organisation, and further aim to address the factors that discourage the whistleblowers in coming forward with any such activities. They also believe that the management should provide with financial incentives for disclosure any wrongdoings in the company to avoid any unethical practices that may compromise the goodwill of the company.

Mr. Kim Loyens and Mr. Wim Vandekerckhove in their study on **“Whistleblowing from an International Perspective: A Comparative Analysis of Institutional Arrangements”**¹⁴ talks about the institutional framework which is most fit to implement whistleblowing legislations on an international level. The study aimed to do a comparative study of the governmental and the non-governmental whistleblowing agencies to find similarities and differences between these agencies, and to identify the challenges that may be faced with the installation of such agencies. Their study revealed that while several countries provide for a specific care system for whistleblowers, most governmental whistleblowing agencies do not invest in preventing the wrongdoing or provide for any training to improve its working.

Ms. Kanika Chaudhry in the paper **“Whistle Blowing: Comparative Analysis Of India And U.S.”**¹⁵ write about the concept of whistle blowing and how it has gained importance in India over the course of the last decade being an effective tool for protection of the employees of the organisation. The paper also does an in-depth comparison between the Indian whistleblowing system and the whistleblowing system of the USA and further seeks to provide recommendations to the Indian Government to amend the laws on whistleblowers policy to make them more effective and help protect the interest of employees in the organisation. The author has also taken into consideration case studies from both India and the USA to help understand the situation of the whistleblowers policy in these countries.

Mr. Terry Morehead Dworkin and Ms. Melissa S. Baucus in their paper **“Internal vs. External Whistleblowers: A Comparison of Whistleblowing Processes”**¹⁶ did a quantitative and qualitative analysis of 33 cases of internal and external whistleblowers who were fired

¹³ Shivangi Dhawan & Anupreet Kaur Mokha, Whistle blowing: Facing challenges in India, Asian J. Management; 8(3) (July - September, 2017), (<https://www.researchgate.net/publication/319985327>).

¹⁴ Kim Loyens & Wim Vandekerckhove, Whistleblowing from an International Perspective: A Comparative Analysis of Institutional Arrangements, *MDPI Adm. Sci.* 2018), (www.mdpi.com/journal/admsci).

¹⁵ Kanika Chaudhry, Whistle Blowing: Comparative Analysis of India and U.S., 5 CASIRJ, 27-34 (2014).

¹⁶ Terry Morehead Dwoekin & Melissa S. Baucus, 17 JBE, 1281-1298 (1998).

wrongfully for reporting wrong-doings by the organisation. The in-depth study conducted by the authors revealed that the external whistleblowers having less tenure with the organisation with greater evidence of wrong-doings experienced a more aggressive retaliation by the management than the internal whistleblowers. The authors also addressed the problem that despite the level of retaliation, both internal and external whistleblowers were ultimately fired soon after they reported the organisation's wrong-doings.

Mr. Tamar Frankel in his article on **“Insider Trading”**¹⁷ writes about the nature and position of corporate insiders exploiting the idea of insider trading. The writer suggests that one punishment of insiders practicing insider trading should be to disqualify their position in the corporate sector. He further writes about what information may be considered as insider information and also provides his reasoning towards prohibiting the use of insider information before the information becomes publicly available.

Dr. Purnima Sehgal in her paper **“Can Whistleblowers live ‘Happily Ever After?’ A Review of Literature on Whistleblowing and its Implications”**¹⁸ write about the brave act of reporting an illegal act/wrong-doing by the whistleblowers and states their role in the development of a successful corporate governance system. This paper aims to review the existing literature on the whistle blowing policy and further aims to study the consequences that such whistleblowers may face. The author for a detailed understanding examines the laws with respect to whistleblowers in different parts of the world and highlights some of the prominent cases for a more effective system. He concludes to say that the whistleblowers are the hero of the world and should be protected from being tortured for doing the right thing.

Ms. Nimisha Bhargava and Dr. Mani K. Madala in the paper **“An Overview of Whistleblowing: Indian Perspective”**¹⁹ talks about the idea of whistleblowing, the consequences of the act and further provides with recommendations to improve the whistleblowing system in a developing country like India. The author also cites various episodes from the year 2002-2010 with respect to whistleblowing instances and the consequences that followed post such whistleblowing.

Dr. U.M. Premalatha in the paper **“Whistle Blower And Protection Policy: A Therapy To Corporate Unscrupulous Practices”**²⁰ writes about the whistle blowers protection policy in

¹⁷ Tamar Frankel, Insider Trading, 71 SMU L. REV. 783 (2018).

¹⁸ Purnima Sehgal, Can Whistleblowers live ‘Happily Ever After?’ A Review of Literature on Whistleblowing and its Implications, 8 IRJMST, 262-270 (2017).

¹⁹ Nimisha Bhargava & Mani K. Madala, An Overview of Whistleblowing: Indian Perspective, 4 IJIRSET, 334-339 (2015).

²⁰ U.M. Premalatha, Whistle Blower And Protection Policy: A Therapy To Corporate Unscrupulous Practices, 2

this developing world and how it can act as a therapy to a more principled practice. The author in this paper writes about how blowing the whistle on an allegedly fraudulent malpractice in an organisation has in several cases led to grave losses to such whistleblowers. The author has also cited various famous cases in different countries to help understand the gravity of such situation. The author also states that the laws should be made stricter to make sure that the interests of the whistleblowers are protected and that there lies no threat to their life.

Ms. Nimisha Bhargava and Ms. Mani K. Madala in their paper **“An Overview of Whistleblowing Status in Various Continents Across the World”**²¹ address the concept of whistleblowing in various continents across the globe. They also focus upon the literature review available with respect to the same and use graphs and pie charts to help make understand the presence/absence of a whistleblower system in different countries across the globe. They have further tabulated the key findings of different countries to show the presence/absence of a whistleblowing system.

Mr. Vivek Sadhale, Mr. Vikas Agarwal & Mr. Amit Atre in their paper **“Corporate Governance in India as compared to Corporate Governance in Singapore”**²² write about the corporate governance system in Singapore on terms of a comparative understanding with India. The author believes that despite there being an economic strength difference between the two countries, there is more that India may be able to adapt from the corporate governance system in Singapore. The authors further suggests various factors that could help India develop its corporate governance system in order to achieve new heights.

Ms. Nancy Reichman in her paper **“Insider Trading”**²³ states the concept of insider trading and mentions how it involves the unlawful use of material like non-public information. The author aims to analyse the securities industry and its structural vulnerabilities towards the unlawful use of inside information by organisations and traders. The author also suggests that the system needs to build a dynamic model that is capable enough to adapt to the regulatory environment to put a more secure system in place in the fight against insider trading.

Mr. Thomas E. Geyer in his article on **“Inside Insider Trading”**²⁴ provides an overview of the concept of law of insider trading and explains that a person in possession of any material, non-

IJBEMR, 194-200 (2012).

²¹ Nimisha Bhargava & Mani K. Madala, An Overview of Whistleblowing Status in Various Continents Across the World, 3 IJMSSR, 47-62 (2014).

²² Vivek Sadhale, Vikas Agarwal & Amit Atre, Corporate Governance in India as Compared to Corporate Governance in Singapore, 4 INT'L. IN-House Counsel J. 1 (2011).

²³ Nancy Reichman, Insider Trading, 18 CRIME & Just. 55 (1993).

²⁴ Thomas E. Geyer, Inside Insider Trading, 17 OHIO LAW. 6 (2003).

public information has the duty to abstain from trading and has the duty to disclose such information before trading. He explains the various prevailing theories of insider trading with a landmark case involving a company named “ImClone systems” to help in the better understanding of the insider trading theories.

Mr. Michael D. Guttentag in his paper **“Selective Disclosure and Insider Trading”**²⁵ discusses the line separating insider trading material from selective disclosure material. He states that the insider shall be liable to disclose selective information only if the insider would personally benefit from the information. He further states the receipt of personal benefit should be sufficient condition for finding that a selective disclosure is deceptive enough to trigger insider trading liability. He also stated several tests that may help draw a line between selective disclosure in terms of insider trading.

Mr. Peter Molk in the paper **“Uncorporate Insider Trading”**²⁶ writes about the concept of insider trading law and traces its history back to several years. He also writes about the problems being posed by the recent modern developments in the corporate sector in terms of the insider trading laws. Based on the problems, the writer suggests to reintroduce certain insider trading laws as he believes it is these laws that would help in developing a better system of fair dealings and good faith.

Mr. Brian Martin in his paper **“Illusions of Whistleblower Protection”**²⁷ writes about there being various variations of the whistleblower story. He also writes that there are various channels for the protection of the whistleblowers and addresses the problems faced by the whistleblowers despite that. He further writes that despite there being channels for whistleblower protection, a well-connected employee would usually not turn towards the official bodies unless there are better prospects available to such employee.

Mr. James A. Kehoe in his paper **“Exporting Insider Trading Laws: The Enforcement of U.S. Insider Trading Laws Internationally”**²⁸ writes about the laws governing insider trading in the USA and how is amongst the strictest laws in the world. He further states how the SEC has begun entering into agreements with foreign securities regulators towards there being uniformity among insider trading laws. The author further writes about how the US insider trading regulations are essential for protecting the investors and believes that they should be

²⁵ Michael D. Guttentag, *Selective Disclosure and Insider Trading*, 69 FLA. L. REV. 519 (2017).

²⁶ Peter Molk, *Uncorporate Insider Trading*, 104 MINN. L. REV. 1693 (2020).

²⁷ Brian Martin, *Illusions of Whistleblower Protection*, 5 UTS L. REV. 119 (2003).

²⁸ James A. Kehoe, *Exporting Insider Trading Laws: The Enforcement of U.S. Insider Trading Laws Internationally*, 9 EMORY INT'L L. REV. 345 (1995).

recognised globally.

Mr. K.R. Sawyer in his paper **“Whistleblowing: Making it work”**²⁹ writes about the whistleblowers and the tests that really define the status of a whistleblower in the world. The author has put down his own experience in terms of whistleblowing and has come up with 5 tests that form the core of a whistleblower. He has narrowed down the 5 tests as: the test of values, loyalty, justice, inversion and lastly the test of self-worth. He further examines the relevance of each of these tests and the role they play in the real world.

Mr. Rajat Sethi, Ms. Misha Chandna, & Ms. Aditi Agarwal in their article **“Insider Trading: Circumstantial Evidence Is Evidence Enough?”**³⁰ writes about the role of circumstantial evidence in proving violations of insider trading norms under the SEBI guidelines in India. The authors state that the Indian insider trading laws were formulated with the idea to protect the interests of the investors by SEBI and while these laws protect the investors, the weightage of circumstantial evidence in insider trading being accepted as admissible varies. Although, the authors believe that given the nature of insider trading, it is difficult to procure direct evidence of any such wrongdoing and so it understandable if SEBI relies upon circumstantial evidence in trading violations. They also suggest that there should be developed certain sound principles for governing reliance on circumstantial evidence to ensure a right balance between circumstantial evidence and standard of proof for establishing an offence.

Ms. Li Chen in her article **“A Review of Research on Whistle-Blowing”**³¹ writes about the concept of whistleblowing, and how it has been seen to be an effective mechanism for the timely correction of non-ethical behaviour in the organization. This article reviews the origin, concept and the methods to measure a whistleblower's behaviour from various different theoretical aspects. The author in her article has stated three different theoretical models and explained each of them in 4 different stages. The author has further written about various different influencing factors that influence the whistleblowing intention and behaviour including individual factor, Organizational factors, and even National factors. To conclude the author states that every nation has a different method of dealing with whistleblowing based on their own cultural and economic environment and the same should be respected.

Ms. Shweta Mehrotra, Mr. R. K. Mishra, Mr. V. Srikanth & Mr. Govind Prasad Tiwari, Mr. E. V. Mahesh Kumar in their paper **“State of Whistleblowing Research: A Thematic**

²⁹ K.R.Sawyer, Whistleblowing: Making It Work, National Conference of Whistleblowers Australia, September 11, (2005), https://www.researchgate.net/publication/252570095_The_Test_Called_Whistleblowing

³⁰ Rajat Sethi, Misha Chandna & Aditi Agarwal, Insider Trading: Circumstantial Evidence Is Evidence Enough?, 32 NAT'L L. Sch. INDIA REV. 205 (2020)

³¹ Li Chen, A Review of Research on Whistle-Blowing, 9 AJIBM, 295-305 (2019)

Analysis³² talks about the growing problems of corruption, money laundering and unethical behaviour in the corporate world and state how there is a need for encouraging whistleblowing in public interest for promoting accountability in the system. The author have further talked about various cases of whistleblowing that affected the country at large, including the PNB scam, the Nirav Modi Scam etc. The authors have done an in-depth analysis of over 315 research papers and articles and have stated the topics like regulatory mechanism, ethics, role of whistleblowers and whistleblower protection are the key problems that are being talked and written about right now by various authors. The authors further state that with the growing problems of corruption, whistleblowing has been seen as an important topic of discussion presently. To conclude, the author states that an empirical research in the Indian context can help to narrow down the gap and bring more clarity with respect to whistleblowers protection against the unethical and corrupt practices.

Ms. Monika Makhija & Dr. Shweta S. Kulshrestha in their paper **“A Qualitative Study On Impact Of Whistle-Blowers On Performance Of The Organisation”**³³ writes about the current organisational environment in the corporate world where every individual aims to achieve top positions, which usually causes them to adopt unethical and illegal methods. In such cases, it becomes the duty of the other employees working in the same corporation blow the whistle on such illegal activities. The authors believe that the company needs to put in place a system for providing information about such illegal activities, so that the ethical employees of the company are able to come forwards to report such illegal activities. The author further proposes a procedural model for reporting illegal acts of the company and its employees which would make the system more efficient in protecting the whistleblowers.

(B) Gap analysis

A good corporate governance system is a set of rules that help form the goodwill of the organization. In this constantly changing world of corporates, there are numerous activities of financial frauds, insider trading and malpractices that are made aware by the acts of whistleblowers. India, like several other countries has formed a part of these corporate frauds despite various checks put in place. The whistleblowers act for the benefit of the company and the society at large by spotting malpractices within organizations and disclosing them to the authorities either inside or outside the organization.

³² Ms. Shweta Mehrotra, Mr. R. K. Mishra, Mr. V. Srikanth & Mr. Govind Prasad Tiwari, Mr. E. V. Mahesh Kumar, State of Whistleblowing Research: A Thematic Analysis, 9 FIIB, 1-16 (2019)

³³ Ms. Monika Makhija & Dr. Shweta S. Kulshrestha, A Qualitative Study On Impact Of Whistle-Blowers On Performance Of The Organisation, 7 IJESS 596-602 (2018)

The literature mostly consists of studies regarding the concept of whistleblowers rather than recognizing the steps undertaken by corporates to encourage whistleblowing activities. However, there is limited literature available with respect to the loopholes that exist in implementing the whistleblower legislation. The role of whistleblowers in the world of corporates and the current level of protection provided to whistleblowers in the country and other jurisdictions has not been examined in-depth.

There is a need to analyse the legislative framework of Whistle Blower Protection in India and co-relate the established concepts of Insider Trading and Whistle Blower Protection which enhance the Corporate Governance system. There is also a need to understand the benefits and drawbacks in the legal system and address and the changes that are required.

(C) Hypothesis

The whistleblowers form a major part of the a system of successful corporate governance. This system was not seen to be important in the last century, but over the last decade whistleblowers have gained a tremendous amount of importance and the protection of these whistleblowers has been seen to be of paramount importance. These whistleblowers are the saviours of the society as they understand the impact these organizations can make on the society and its stakeholders. They believe that every company should be answerable to its stakeholders and be transparent in their day to day activities so as to prevent any malpractice or unethical behaviour on part of the company or its directors. This paper explains the role of whistleblowers, their protection along with the legislative systems put in place for their safety, both before and after they blow the whistle. It further aims to help understand the opinion of the general public with respect to the concept of whistleblowing, making it an empirical research paper.

(D) Research objectives

- To understand the concept and position of a whistleblower.
- To understand the level of protection given to employees in corporates.
- To Understand the principles and guidelines laid down by legislative committee.
- To understand how good corporate governance system prevents insider trading.

(E) Research questions

Several authors have done extensive research on various topics relating to company laws in India, but this article will focus on brief study with respect to “The Whistleblowing policy under the corporate governance system”.

- Q 1. What action have corporates taken in order to encourage whistleblowers in cases of breaches Corporate Governance and Insider trading?
- Q 2. Whether the legislative framework laid down by the government agencies is effective in achieving a successful whistleblowing policy in India?
- Q 3. How does the act of Insider trading affect the practice of good corporate governance in India?

(F) Research methodology

The present study is an attempt of exploratory research based on the information collected from various secondary sources such as books, research journals available online, various websites, articles, bare acts and magazines in order to achieve the objectives. Also, an online questionnaire (Annexure-1) was circulated and responses were collected from over 76 respondent, the data of which has been further analysed.

This study covers the Whistleblower policy under the corporate governance system in India and how it plays a vital role in a successful corporate governance system.

(G) Limitations of the study

The Whistleblower's policy is crucial for the development and growth of any successful business. It not only covers legality of the work, but also the ethics of the methods used. It is a role of prime importance under the corporate governance system. To understand it better, I have tried my best to collect the most recent data and information from credible authors for writing this paper. Though I did face challenges in categorizing data collected, I have ensured to publish the quality data available from credible sources.

II. CORPORATE GOVERNANCE BASED WHISTLEBLOWER PROTECTION

(A) Evolution of corporate governance

The model of good governance is a very old concept that has been seen in India since the third century B.C. where Chanakya (Vazir of Parliputra) elaborated fourfold duties of a king viz. Raksha, Vriddhi, Palana and Yogakshema. In terms of substituting the king of the State with the Company CEO or Board of Directors, the principles of Corporate Governance refer to protecting the shareholder's wealth (Raksha), enhancing the wealth by proper utilization of assets (Vriddhi), maintenance of wealth through profitable ventures (Palana) and above all safeguarding the interests of the shareholders (Yogakshema). Despite being around since the

early ages, this model of Corporate Governance was not seen as one of primary importance until the later 1990s³⁴.

Over a period of time, the non-existence of such corporate governance system led to lack to transparency, undesirable market practices, poor disclosures which caused a need for an improved governance system. India was lagging behind in terms of adopting and enforcing a successful system for corporate governance. It was with the coming of liberalization in 1991 that highlighted the role and need for corporate governance. The government amended the Companies Act, 1956 in order to make better rules for a better corporate governance system. One of the most important reform was enforced in 1992 by the Securities and Exchange Board of India (SEBI) and the Ministry of Corporate Affairs (MCA).

Although, the main objective of SEBI was to oversee stock trading, it gradually led to the formation of several corporate governance rules and regulations. This step on part of SEBI promoted the need for adopting a successful system of corporate governance, for which various committees came into existence.

The following are a few of the major committees that helped reform the corporate governance system India, and enhanced its potential for a more compelling future:

1. Confederation of Indian Industries (CII):

The CII in the year 1995 set up a taskforce under the chairmanship of Mr. Rahul Bajaj, who was a reputed industrialist. A final draft of this was completed in 1997 which stated what changes in law were necessary to be made in India with respect to composition of board of directors, practices of corporate to be followed, role of auditors, increasing investor awareness, protection of investors etc. It also looked into various aspects of Corporate Governance and was the first to criticize nominee directors in the company. The main idea of this was to increase accountability, transparency in the system along with a better compliance. Finally, in April 1998, the CII released the code called “Desirable Corporate Governance”.³⁵

2. Kumar Mangalam Birla Committee Report

Although, the CII code was appreciated by the corporate sector and various other companies, it was felt that under the Indian conditions, a statutory code rather than a voluntary code was more appropriate. Thereby, a major initiative was undertaken by SEBI when it set up another committee under the Chairmanship of Mr. Kumar Mangalam Birla on 7th May, 1999 with the intent of promoting and improving the standards of successful corporate governance. This

³⁴ Dr. M. Madhumathi, Corporate Governance In India- Evolution And Challenges”, 1 IJCRT, 82-92 (2011)

³⁵ Report Of The CII Task Force On Corporate Governance, 2009

committee was of significance as it gave the world of corporate a law under “Clause-49” of the Listing Agreements of the Stock Exchanges enforced in the year 2000.³⁶

3. Department of Corporate Affairs (DCA)

In May 2000, the Department of Corporate Affairs (DCA), now known as Ministry of Corporate Affairs (MCA) created a task force under the name of “Taskforce on Corporate Excellence through Governance” under the chairmanship of Dr. P.L. Sanjeev Reddy (Secretary of DCA). Under this a study group was created to study different corporate governance and provide with their valuable recommendations on raising governance standards among companies in India. This study group further advised to set up an independent centre for corporate excellence.³⁷

4. Naresh Chandra Committee Report

Later in the year 2002, a committee was appointed by the Ministry of Finance and Company Affairs under the chairmanship of Naresh Chandra. This committee was formed to scrutinize and recommend amendments to the law involving Auditor-Client relationship and the role of independent directors. This committee made recommendations in the system of corporate governance under 2 key aspects, i.e. financial and non-financial disclosures, and independent auditing and board oversight of management.³⁸

5. Narayana Murthy Committee Report:

The SEBI in the year 2003, constituted a committee under the chairmanship of Mr. Narayana Murthy for reviewing the implementation of the corporate governance code by listed companies and issue of revised clause 49. Certain major recommendations were made by the committee primarily with respect to audit reports, independent directors, risk management, code of conduct etc.³⁹

6. J.J. Irani Committee Report:

This committee was formed under the Chairmanship of Dr. J.J. Irani in December, 2004 with the task of advising the government on the revised laws of the Companies Act, 1956. The committee further recommended that the law needs to recognize the concept of “Whistleblowers” and enable protection to individuals who may expose companies by bring their illicit activities into light especially those on terms of fraud and even harassment.

The above stated committees and reforms helped shaped the system of good corporate

³⁶ Swadia, Bhavik. (2020). CORPORATEGOVERNANCE M.COM2. 10.13140/RG.2.2.26625.20328.

³⁷ Md. Baharul Islam, Corporate Governance In India: An Overview, 2 IJLLJS (2015)

³⁸ Jyoti Yadav, Evolution of Corporate Governance in India, 8 CASIRJ, 56-62 (2017)

³⁹ Report of the SEBI Committee on Corporate Governance, 2003

governance as we see today. These committees laid down a framework of the for improving the corporate governance system and further provided with the Clause 49 of the Listings agreement, which has been seen as a strong pillar under the law.

(B) Understanding the system

In today's ever-developing world, various companies are in a constant fight for their superior existence. The investors of the companies such as the shareholders not only want a good return on their investments but also want for their investments to be safe. Since, there are thousands and lakhs of investors in a company, it becomes the sole responsibility of the management of the company to work towards protecting the interests of the company and its shareholders. This is where the profound system of corporate governance comes into play.

In the world of huge corporates running its operations day and night, there may be certain scenarios where an person or an entity, in order to achieve a quicker promotion or to make more money may somewhere do an act that is forbidden under the laws and regulations of the company. This simple act may have a huge burden on the safety of the company and its reputation amongst its shareholders. It can be said that in today's competitive world everyone wants to make more money than they would have working in their jobs, this usually leads to an illegal act on the part of an employee of a company.⁴⁰ Seeing this, a system of good corporate governance was needed to be put in place to ensure a level of fairness and transparency in the running of a company. To achieve this the corporate governance system provided different parts of a company with various moral and ethical duties. These duties is what formed the pillars of a system of good corporate governance in companies. The few pillars of a good corporate governance system may be fairness of the company, the responsibilities of directors towards the shareholders of the company, the accountability of all employees towards the management, transparency in the corporate system and a quality leadership from the directors of the company⁴¹.

The concept of corporate governance has been defined as a set of principles, ethics, morals, rules & procedures that help in the more successful functioning of the corporates. The term "governance" with reference to corporates means control. This could mean controlling an organization, controlling the corporate bodies, ethics, principles etc. Corporate governance establishes a system whereby directors of the company are entrusted with duties and

⁴⁰ Goel, P. Implications of corporate governance on financial performance: an analytical review of governance and social reporting reforms in India. *AJSSR* 3, 4 (2018)

⁴¹ Indrajit Dube, Is Corporate Governance the Answer to Corporate Structural Failure, 8 *US-China Law Review* 413 (2011)

responsibilities with respect to the directing the company's affairs. This role of directors makes them responsible to the shareholders (owners), creditors, customers, employees, and even the society at large.

Although a company needs to do a lot more than just attaining a level of corporate governance practices, it should work to fulfill the best interests of all its members. This does not only mean running of the company in a profitable manner, but also making sure that it is within the scope of good ethics. It should be planned out in a manner so as to encourage a more suitable atmosphere for corporate responsibility and reliability. This idea of good corporate governance has attained a high level of recognition over the last decade, due to famous corporate scandals such as that of Enron and Satyam which were involved in unethical business practices.

Corporate governance forms a major part of a company's name and its reputation amongst investors. To understand this, a better understanding of the importance of corporate governance is needed. There are various reasons for a good governance system in the corporate world:

- It helps to ensure that the management of the company considers the best interest of stakeholder in the company.
- It helps the company in a constant economic growth and further helps deliver a long term success rate.
- A good governance system helps attract more investors and achieve a higher level of growth in the market place by promoting transparency. This further helps create trust amongst the investors.
- It further helps to improve control over the management and avoid risky management by the directors of the company.
- It helps creates a good reputation and reduce wastage, corruption, risk and management.
- It helps adopt transparent procedures in business and arrive at decisions after complete examination of the information.
- It helps to disclose all the relevant facts and information with respect to the business to the stakeholders and other partners of the business.

Under the system of Corporate Governance, Certain fundamentals have been provided which help differentiate unethical practices from the ethical ones, these are seen under the core principals of Corporate governance system:

1) Transparency:

A key element of good corporate governance is transparency. This transparency helps promote good governance by incorporating a system of checks and balances between the company's personnel including the member of the management, board, auditors and even the shareholders. This transparent approach of the company's actions help ensure proper and timely disclosure of all documents and relevant information to achieve a better decision making. Further, this system allows all key members to attend the Annual General Meetings, and stay updated with all risks and opportunities that the company may have in its course in future.

2) Accountability:

Under this system of corporate governance, it is the duty of the company to take into account the interest of all shareholders before making any business decisions. The company has such accountability both towards the shareholders as well as the society at large. This means that all disputes and grievances that arise on part of the shareholders or the society are to be resolved in a timely manner. Further, to benefit the society at large, the company may provide for benefits such as charities, donation for a specific social cause, promoting education, establishing hospitals, schools etc.

3) Employee Welfare:

A business/company can only run effectively if it has the full support of the public and the employees within the organisation. Employees being the major assets of the company are entitled to certain perks and benefits, providing the employees with a better learning experience and more exposure for opportunities. This further includes rewards of performance, housing scheme benefit, educational facilities for children of the staff members etc. This is considered as good corporate governance as the company takes of its employees and their welfare.

(C) Understanding whistle blowers

A term whistleblower has originated from a German word 'whistle' which means to expose any wrongdoing in the anticipation of bringing it to a halt. 'Whistleblowing' on the other hand may be defined as any activity that is deemed illegal, immoral or unethical in its approach within an organization i.e. public or a private organization. Any individual that comes forth to report any such violation or unfair practices may come to be known as a 'Whistleblower'.

Though it is to understand that the concept of whistleblowing has not been accepted universally. And while in various organizations may be marketing unsafe products, violating law or even polluting the environment over a certain limit, all these activities amount to a clear violation,

and an individual or an employee may inform of such matters to their superiors immediately.⁴²

The concept of whistleblower is vital and is necessary to keep in control the illegal/unethical practices that take place within organizations on a daily basis. An individual or a group of people may, in order to make more money or achieve a quicker promotion may turn to do an act that may be unethical/illegal under the law. As simple as it may seem, an illegal act can seriously damage the reputation of an organization amongst its stakeholders and further have a huge burden on the reliability of the company⁴³. To ensure that no such act takes place, a system of good corporate governance is needed to be placed within an organization so as to ensure a higher level of transparency in the system. This system would help to reduce the number of unethical organizational practices and promote a healthy growth for the future of the company.

The Whistleblowing policy forms a part of the system of corporate governance. A whistleblower may be an employee, contractor or any other member of an organization that may report any suspected wrongdoing at work by speaking out in a confidential manner. This may be any kind of malpractices, frauds, corruption scandals, misconduct or mismanagement in the running of the company.⁴⁴ In simpler terms, whistleblowing is the art of reporting any kind of a wrongdoing within an organization to either its internal or its external parts. Such illicit acts could be the acts conducted in the past, currently pursued acts, or even the acts that may be in the stages of planning. Although before resorting to any such sources, a whistleblower must check the credibility of information and shall not blow the whistle based on any rumors in the organization as any other false information as such act can easily create panic amongst the shareholders and further damage the reputation of the company.⁴⁵ This can also be done in case employees believe there to be an unethical or illegal practice of the higher management.⁴⁶ A whistleblower can broadly be classified into 2 broad categories:

1) Internal Whistle Blowing:

When a disclosure regarding an improper, fraudulent conduct of an employee or a superior manager is made to the higher authorities within the organization, it is known as internal whistleblowing. Such scenarios may cover cases of disloyalty, theft, sexual harassment, or exploitation of company resources. This mode of whistleblowing helps retain the good name of

⁴² Arjumand Bano and Sanjay, Whistle Blowing in India – Introspection 3 IJETMS, 243-252 (2015)

⁴³ Nimisha Bhargava, Mani K.Mandala, An overview of Whistle Blowing: Indian perspective”, 4 IJRSET, 334-339 (2015).

⁴⁴ Shikha Patheja, System Of Whistle Blowing In India 4 IJSR, 361-362 (2015)

⁴⁵ Sonal Nagpal, Whistle Blowing Mechanism – A move towards better Corporate Governance, 3 GJMBS, 855-860 (2013)

⁴⁶ Culiberg, B., Mihelič, K.K. The Evolution of Whistleblowing Studies: A Critical Review and Research Agenda. J Bus Ethics 146, 787–803 (2017).

the company as the employees are made to maintain a code of secrecy thereby not damaging the reputation of the company in the outside world. Ex: Reporting to Human resources, senior member of the company etc.

2) External Whistle Blowing:

When a disclosure of a wrongdoing or an unethical conduct is reported to government agencies, newspapers or individuals outside the scope of the company, it is considered to be as external whistle blowing. This method is usually resorted to, when the whistleblower attains no relief or assistance from any authority within the organization with respect to any illicit act of the organization. Being a loyal employee, the mode of internal whistleblowing is generally preferred, but usually in case no action being taken against a reported illegal activity, the individual may resort to bring the matter to the attention of the world outside the company. Once the matter reaches the scope of the outside world, the situation may escalate severely from thereon. Ex: Police, Media, Government official etc.

A whistleblower may make disclosure of such illegal, fraudulent acts to either an internal sources or an external source. This will help the individual do the right thing and expose the true face of the organization to the world and promote a healthy corporate governance system.⁴⁷

(D) Laws governing whistleblower practice in india

a. The Companies Act, 2013

The Companies Act, 2013, provides for various provisions that have been made for the successful running of companies in this world of corporates. It is the law that governs the legal and ethical running of the organization and ensures no business outside the prescribed scope of this act. In case of any information of misconduct made with respect to the running of the organization, an inspection and investigation of company related affairs may be looked upon. This act further provides for a vigilance mechanism through its auditing committee in case of disclosure of any unethical or illicit activity within the organisation.

- *Sections 206 to 229, The Companies Act, 2013: These sections incorporate detailed provisions relating to the “inspection, inquiry and investigation”. Section 208 of the Act, empowers an Inspector apart from the Registrar to inspect records. Also the Registrar/Inspector has the power to furnish any recommendations to conduct investigations in such a matter.*

⁴⁷ Chen. L., A Review of Research on Whistle-Blowing, American Journal of Industrial and Business Management,9, 295-305 (2019).

- *Section 210, The Companies Act, 2013 on the other hand states that the Central Government may order an investigation into the affairs of the company either: a) on the receipt of a report of the registrar or inspector of the company b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; c) in public interest.*
- *Section 211 of The Companies Act, 2013 provides for the establishment of a Serious Fraud Investigation Office (SFIO) that empowers the central government to investigate for frauds relating to a company. This investigation is headed by the Director of the office and consists of various experts from different fields like banking, taxation, capital market, corporate affairs etc.⁴⁸*
- The role of auditors of the company was to report materials related to frauds or misappropriation of assets in a company, but with the coming of Section 177 (9), it blessed the auditors with the responsibility to act as the whistleblowers of the company by reporting any cases of fraud or mismanagement within the organization directly to the Central government. This section made it mandatory for listed companies, companies that accept deposits from public and companies that borrowed money from public financial institutions over a sum of Rs. 50,00,00,000/- (Rupees Fifty Crore) to establish a vigilance mechanism for the directors and the employees to report their genuine concern.

b. Securities And Exchange Board Of India (SEBI), 1992

- The Securities and Exchange Board of India (SEBI) under its circular dated August 26, 2003 amended the Principles of Corporate Governance and incorporated the Listing Agreement. Under this clause, the Indian companies are to formulate a policy for Whistle blower system as the same has been mentioned under *Clause-49 of SEBI, Non-Mandatory Requirements (Annexure I D)*. This clause states that:
- *“The company may establish a mechanism for employees to report to the management concerns about unethical behaviour, actual or suspected fraud or violation of the company’s code of conduct or ethics policy. This mechanism could also provide for adequate safeguards against victimization of employees who avail of the mechanism and also provide for direct access to the Chairman of the Audit committee in exceptional*

⁴⁸ SEBI Act, 1992

*cases. Once established, the existence of the mechanism may be appropriately communicated within the organization.”*⁴⁹

c. Whistleblower Protection Act, 2014

The Whistle Blower Protection Act, 2014 has laid down a mechanism to receive complaints from various sources disclosing various acts of corruption, abuse of power against any public servant and provides for its investigation. This act also aims to provide safeguards against the victimization of the any individual that makes the complaint. This further allows any individual person, including a public servant to come forward and make a public disclosure before a competent authority. Ex: The competent authority for any complaint against a union minister is the Prime Minister of India.

- *Section 5 and 6 of the Whistleblower Protection Act, 2014* talks about the “Inquiry in relation to Public Interest Disclosure”. These section state the powers and functions of a competent authority to inquire and investigate upon receipt of disclosures relating an any illicit activity. These sections further provide for certain matter that may or may not be inquired under the act as certain matters may be outside the scope of this act and may be covered under other acts such as Commissions of Inquiry Act (1952), Public Servants (Inquiries) Act (1850) etc.
- *Section 7 to 10 of the Whistle Blower Protection Act, 2014* talks about the “Powers of the Competent Authority”. These sections talk about the powers that are provided to the competent authorities for the purposes of any inquiry that may be raised and the authority shall be vested with powers similar to the Civil courts while trying a suit under the Civil Code. It further states that the competent authority may take assistance from the police authorities to ensure the completion of the inquiry within a prescribed time period from the date of such disclosure.
- *Section 11 to 13 of the Whistle Blower Protection Act, 2014* deals with the “Protection of the persons making disclosure”. The central government as provided under the law has the duty to ensure that the identity of an individual is not revealed and that no individual/public servant making disclosure of any fraudulent activity is victimized upon disclosure. It also states that upon an application by an individual to a competent authority regarding such disclosure, the competent authority shall issue appropriate directions to the government authorities to take necessary steps to protect such

⁴⁹ SEBI Act, 1992

individual/public servant and their identity.

- Sections 15 to 22 of the *Whistle Blower Protection Act, 2014* talks about “*Offences and Penalties*”. These sections state the penalties that may be imposed towards an organization or official for refusal of accepting complaints, giving incomplete/incorrect or misleading records to the competent authority. It further provides for penalties and punishments that may be imposed for revealing the identity of the complainant, false disclosures etc. These sections also provide for any appeal that may lie to the high court for any penalty that may be imposed upon the individual.
- However, this act like several other acts have faced a lot of criticism and challenges, a few of which have been explained below:
 - One among the many challenges that came into picture with respect to this law was its jurisdictional applicability. This act was established to receive complaints relating to disclosure on any allegation of corruption or misuse of power by a government employee or agency, and did not cover any wrongdoing on the part of an individual working under the private sector. Any act by an individual under the private sector was seen to be outside the scope of this Act.
 - The *Whistle Blowers Protection Act, 2014* has provided for various definitions that cover the scope and act of whistleblowing. However, the meaning of the term “*disclosure*” has been set out in a limited manner and could have been broadly defined and explained, similar to countries like the USA, UK etc.
 - While, Section 16 of the aforesaid act talks about the penalty for revealing the identity of the complainant, it does not allow complaints to be made in an anonymous manner or under an anonymous name and further states that no action may be taken by a competent authority unless the identity of the complainant has not been established. However, in order to ensure the safety of an individual/public servant, the act further mentions that in case any person negligently reveals the identity of the complainant, he/she may be liable to a fine extending to Rs. 50,000/- (Rupees Fifty Thousand) and may even face imprisonment for a term up to a period of 3 years. While this makes the act more secure as the safety of the complainant is of paramount importance, there needs to be a provision to keep the identity of the complainant as anonymous whilst ensuring proper action being taken.
 - It can be further seen that under the act, that no provisions have been made to

encourage the acts of the whistleblowers. The whistleblowing activity could be promoted within the system if the government had provided for certain financial incentives to the whistleblowers. This would encourage more individuals to come forward and report any wrongdoing within the system, as the act of whistleblowing may hamper their position in the society at large.

- Several bills that are drafted and enacted without public consultation and opinion often lack important provisions. However, this act was formed post consultation from the general public and several opinions were collected from the individuals. This matter of public debate and consultation made the bill and its provisions more efficient and fair in public's opinion.
- It can be further seen that this law promotes a balance in the system and addresses the need to protect honest officials of the government agencies from harassment. This is seen to be done under Section 17 of the act and the same provides for punishment for any false disclosures that may be made by an individual against the government agency/official. It further states that an individual making any false disclosure may be punished with imprisonment for up to 2 years and further be liable for a fine up to Rs. 30,000/- (Rupees Thirty Thousand). This helps to ensure that no individual working for the government is exploited for an invalid reason.
- Further in case any government official is penalised for misleading comments/incomplete report or by any means reveals the identity of the complainant, such official shall be given an opportunity to appeal to the High court of that particular jurisdiction within a period of 60 days from the date off the order of the competent authority. This helps provide an opportunity to the government official to put forward their truth.

(E) Safety of whistleblowers in corporates

The act of whistleblowing is a heroic one. In the functioning of a corporate system in the world, the whistleblowers shall be regarded as the saviours of the society as they aim to eliminate corruption and help safeguard the interests of the general public. But these saviours often face many difficulties and challenges in dealing with the constant threats for reporting a company's fraudulent acts. In most cases, it's the employees of the organizations that become aware of the malpractices or misconduct activities within the organization, however it is due to their fear of not being taken seriously, or further being victimized, that these employees choose not to report

such activities despite having knowledge of the same⁵⁰. Such activities can be seen in several cases of fraud, safety violations, sexual harassment etc. and is often hidden to keep the trust of the people in the company and not to ruin their public image.

So, to ensure safety for the whistleblowers in India, the government came up with the “Whistleblower Protection Act, 2014”.

Under the system of Corporate governance, several factors are made to ensure a smooth and effective running of the organization. Factors like whistleblowing and the protection of whistleblowers are categorised under a fair system of corporate governance. This is one of the major factors that promote a good corporate governance system and minimize the wrongdoings within an organization.⁵¹

The formation of the structure of a good corporate governance was formed by various committees such as K.R. Mangalam Committee, Narayan Murthy Committee, Department of Corporate affairs etc. and the same took several years. Certain major recommendations provided with respect to ‘Clause 49’ by the Narayan Murthy Committee in 2003 were taken into account and put down under the law. This committee provided for a role of whistleblowers.

Clause-49 of SEBI, Non-Mandatory Requirements (Annexure I D) states:

*The company may establish a mechanism for employees to report to the management concerns about unethical behaviour, actual or suspected fraud or violation of the company’s code of conduct or ethics policy. This mechanism could also provide for adequate safeguards against victimization of employees who avail of the mechanism and also provide for direct access to the Chairman of the Audit committee in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organization.*⁵²

Although Clause 49 of the Listing agreement keeps the whistleblowing policy as a non-mandatory item, the same should be changed and be made mandatory as it is of vital importance in the corporate system. As per the agreement, the whistleblowers are supposed to approach the internal auditing committee to provide for any information with respect to any kind of misconduct in the company. This may be with concern to frauds, unethical behavior, sexual harassment etc. It is also to note that the auditing body is made to be independent of the company so as to avoid any collusion of part of the auditing body⁵³. In order to ensure the safety of the

⁵⁰ Dr. Hema Doreswamy, Whistle Blower Policy in Indian Listed Companies: A study, 2 IJARD, 862-868 (2017)

⁵¹ Ponnu.CH, Naidu.K, Lamri.W, Determinants of Whistle Blowing, 4 IJBR,276-298 (2008)

⁵² SEBI Corporate Governance in listed Companies – Clause 49 of the Listing Agreement

⁵³ Dr.Singam Sunitha, A Study on Whistle Blowing Mechanism In Corporate India, 4 JBM 23-30 (2016)

employee of the company, certain key aspects were laid down like:

1. **Confidentiality:** A high level of confidentiality shall be maintained with respect to the identity of the employee who undertook the task to reveal the misconduct of the company. This is of vital importance as in case the whistleblower's identity is revealed he/she may face discrimination from the management and various other seniors in the company.
2. **Time sensitive:** This process should be simple to understand and should take a brief amount of time for the committee to resolve the matter completely. This means that any kind of a reported misconduct shall be inquired with high priority without any delay. This would further help to better understand the situation and resolve the same within a reasonable amount of time.
3. **Comfortable Process:** There should be a high level of comfort in communicating with the members of the auditing committee so no necessary detail is skipped out. This could be helpful as disclosure of any information by the whistleblower would require a level of confidence in the system.
4. **No retaliation:** The auditing committee and the members of the board shall ensure that no negative action like cancellation or termination from services shall be taken against the whistleblower after the misconduct is disclosed by the individual. This is important as various whistleblowers have received immense pressure and loss of job opportunities in other companies due to retaliation on part of the management.
5. **Safe Communication:** The organization should employ various reporting mechanisms within the process like e-mails, websites, hotline numbers, suggestion box etc. so it becomes easier on the part of its employees to report a wrong.

The whistleblowing policy shall promote and encourage the employees, customers and other members/non-members of the company to report evidence of any kind of misconduct within the organization. In India, a mandatory mechanism shall be put in place in every company/organization to ensure the practice of good corporate governance. This vigilant mechanism will safeguard the victimization of whistleblowers in companies.

(F) Pros and cons of whistleblowing

The whistleblowers have been seen as the saviours of the society, but despite that there are various factors that affect their working in the organization. While the act of whistleblowing is a heroic one, there are various pros and cons attached to it. These pros and cons affect the

decision making and the future of a whistleblower and are hence considered of high importance.

a. Pros Of Encouraging Whistleblowing:

The act of whistleblowing has seen various pros and has helped numerous organizations to maintain a high level of ethical working. This is seen as a tool for discouraging unethical practices within organizations, thereby maintaining a good reputation amongst its stakeholders. This act of whistleblowing has numerous benefits that come to be seen over a number of years. A few of these have been stated below:

1. **Promotes Trust and Confidence for Stakeholders:** The role of a whistleblower is to promote a healthy system in the organization and to ensure any activity conducted is in compliance to the law. With a policy for whistleblowing set in place, an image of high ethical standards is shared with the world that promotes more trust and confidence in the company's stakeholders. This maintains the goodwill of the organization and further benefits the company by providing for higher returns on investments. So, to understand this better it is the employees that ensure a high level of check on the activities of the organizations. Thus, the employees are the key towards a better governance system as they keep a check on the daily activities of the organization and report any malpractices in the same.
2. **Exposure to Risk reduced:** The promotion of whistleblowing activities with a provision for internal complaints has been a huge benefit to the organizations itself as it has drastically reduced the loss of reputation and financial damage amongst the world. Any act of misconduct within the organization can be reported to the internal channels of the organization and be resolved within very little time, however in case an external mode was preferred, it would have led to loss of reputation amongst other legal challenges faced by the organization.
3. **Promoting CSR:** Similar to the system of corporate governance, the principle of Corporate Social Responsibility promotes for a transparent work environment. This promotes a system of pure and transparent decision making that is beneficial to all stakeholders of the organization. Thereby in order to promote a healthy system of working, employees should raise their voice against any misconduct as it would help stop unlawful acts on parts of the organization and in turn enhance the working environment of the same.
4. **Protects Interest of Stakeholders:** A whistleblower is an individual that chooses to raise his/her voice in order to expose any corrupt practices within the organization. The

employees of the organization are usually the first ones to be aware of any such malpractice. However, as seen in various cases, the person who raises their voice is the one that suffers the most through victimization or retaliation from the management. Hence, it is important to maintain high ethical standards and an effective whistleblowing policy for everyone's best interest by promoting transparency and accountability within the organization.

b. Cons Of Whistleblowing:

While the act of whistleblowing does empower the employees to raise their voice against any malpractice in the organization, there have been seen to be various challenges that are faced in the implementation of the system. Some of these challenges are briefly explained below:

1. **Managing Proofs:** While the law encourages the organizations to implement the whistleblowing policy, it becomes the responsibility of the whistleblower to prove the allegations made against the accused. In order to prove these allegations, the whistleblower shall have all the data/documents to convince the top management of the validity of these charges. However, if the management is not convinced the allegations will be ignored and the organization may lose faith and trust in the whistleblower.
2. **Retaliation:** Being a whistleblower, the risk of retaliation from the organization and its colleagues is expected and is often seen to happen. Although, the laws/policies put in place state that there shall not be any retaliation against the whistleblower, however the implementation of such laws/policies is usually different. Upon whistleblowing by an employee, the retaliation may reach a level which may force the whistleblower to resign or get transferred and may further lose the opportunity of growth within the organization.
3. **Personal Risks:** The act of whistleblowing may carry a lot of risks not merely upon the job of the individual but further may extend to the family of individual whistleblower. The alleged accused may take a complaint against them upon their ego and may try to physically harm the individual's family or further try to take revenge from them in any other manner.
4. **Future Employment Issues:** The whistleblowers are usually not liked by the management of companies, based on their acts of whistleblowing in the past. This may make finding a good career opportunity for them a difficult task and may further be rejected during interviews. In other words, once an individual/group acts as a whistleblower, several companies see them as a problem and prefer not to hire them or

to be associated with in the future.

(G) Channels for reporting

The employees of the organization should be trained and informed about the policy of whistleblowing. Their set protocol would not only help them to be safe after an act of whistleblowing, but would further keep them anonymous amongst the other members of the company, helping to ensure that no negative action such as fired from the job, pay-cut, unfair treatment is taken against the whistleblower. There law of whistleblowing provides for various methods and channels for reporting a misconduct of an organization on a daily basis.

As we discussed, on the internal structure of the organization, an auditing committee is formed. This auditing committee helps to enforce the system of whistleblowing, while keeping the identity of the individual hidden from the organization. This is one of the easiest methods to report the disclosure of any unlawful/unethical act within the organization, and still be a loyal employee to both the organization as well as the society at large. Further, there are various other mechanism that may be used by an individual whistleblower to report illicit acts from within the organization.⁵⁴ These act could potentially save the organization from the untimely doom. These include the use of whistleblowing hotlines, incentivization of the employees etc.

In today's technologically driven society, mere virtual presence of an individual solves over half the problems of contacting an individual and staying connected. In terms of the whistleblowing system, there are organizations that work using whistleblowing hotlines under the system to reports any acts of whistleblowing and are solely formed for helping and protecting the whistleblower after such illegal acts of the organization are disclosed.⁵⁵ These hotlines act as a third party that report the findings of such individual upon investigation to a higher authority, so appropriate action may be taken with respect to such acts of the faulty organization. Again, this method will ensure the safety of the individual by keeping him/her anonymous under the law.

Further this system of whistleblowing shall be promoted from within the organization, and certain incentives shall be laid down for employees who disclose such fraudulent activities within the organization. This could include a simple raise in pay, more company benefits, or even promotion in the company as the employee shows his faithfulness towards the organization by reporting any illegal/unethical activity within the organization to a higher authority within

⁵⁴ Srividhya.S, Stalin C.Shelly, Whistle Blowing Protection – A watch dog for the organization, 1 IJSSIR, 204-211 (2009).

⁵⁵ Zachary W. Smith, Privacy and Security Post-Snowden: Surveillance Law and Policy in the United States and India, 9 INTERCULTURAL HUM. Rts. L. REV. 137 (2014)

the organization, or directly to the auditing committee of the organization that is made to be independent of the same.

(H) Corporate governance and whistle blower's policy in india

Since the practice of corporate governance came into existence, India formed committees for providing better policies for a smooth running of corporates. The first report with respect to Corporate governance was provided by the Birla committee. Although, this committee provided the world with Clause-49 of the Listings Agreement, it did not take into account the idea of a whistleblower. To fix this, the Narayan Murthy Committee was formed in the year 2003 which took into account whistleblowing policies as a part of good corporate governance system.

The Narayan Murthy Committee report emphasized on the “Internal policy on access to auditing committees” to help an individual to safely approach the auditing committee in case of any misconduct or unethical behavior in company without bringing the same to the knowledge of the Board of the Company. This report laid down various provisions for safeguarding the whistleblowers from unfair termination or any other kind of unfair employment practices. They also laid down that the auditing committee of a company shall on an annual basis prepare a report of any misconduct on part of the company. Further to ensure that the internal auditors are protected from being removed by the management, the power of the appointment and the removal of the auditors was vested in the Chief internal auditor that was independent from the company.⁵⁶

Despite there being clear guidelines that were promoted by the Narayan Murthy Committee to safeguard the whistleblowers from any kind of misconduct by the companies in India, most corporates did not support or adapt any of these recommendations. These safeguarding measures later received immense pressure from the corporates which led to SEBI suggesting that such measures shall not mandatorily be followed by corporates and that the corporates had an option to not comply with it. This was later added to the listing agreement under clause 49 by Securities and Exchange Board of India (SEBI).

In my opinion, the recommendations provided by the Narayan Murthy Committee for safeguarding the whistleblowers could have been successful if the same was made to be mandatory by the government. These recommendations could have helped the corporates achieve a new level of ethical practice and achieve a higher quality of corporate governance. But since SEBI succumbed to pressure and declared the guidelines as non-mandatory, various challenges were faced by the whistleblowers with respect to disclosing any valuable information

⁵⁶ Clause 49 of SEBI Listing Agreement.

about the misconduct in corporates. Sadly, this has led to a continued growth of various kinds of misconducts within corporates for which most individuals have no inside forum to report to.

(I) Major whistle blower cases: (2002-2013)

i) Satyendra Dubey, NHAI Scandal (2002)

One of the major cases of Whistleblowing was that of Mr. Satyendra Dubey, a Civil Engineer who was brutally murdered in case of whistleblowing. In his lifetime, Mr Dubey was promoted to the role of project director and was posted in Jharkhand to supervise the construction of the “Golden Quadrilateral” project. He was in charge of releasing funds for the construction of the National Highway. Over time, he discovered that the contracts were awarded upon forged documents and huge advances were given out to the contractors.

Upon information of this, Mr. Dubey wrote several letters to the National Highway Authority of India (NHAI) and the Prime Minister’s Office (PMO) describing the various financial irregularities in the project and exposed the mishandling of funds by 3 of his engineers. However, despite repeated letters, neither the NHAI nor the PMO responded with respect to this issue.

This act of whistleblowing, made to see Mr. Dubey as a hindrance in the business of the road mafia that embezzling the money off the highway contracts. This lead to the brutal murder of Mr. Dubey for blowing the whistle on the financial irregularities in the system. After this incident, the Central Vigilance Commission (CVC) was empowered to act on complaints of such nature and protect the whistle blowers.

ii) Manjunath Shanmugam, Petrol Pump Scandal (2005)

Mr. Manjunath Shanmugam was a graduate and was acting in the role of marketing manager in the company “Indian Oil Corporation”. In the course of his tenure he came to detect a petrol adulteration racket at the IOC’s outlet out in Lakhimpur Kheri. Upon knowledge of this, Mr. Shanmugam being an honest official ordered to shut down two petrol pumps in the area. To his surprise, it was found that the two petrol pumps were reopened a month later. On 19th November, 2005, the body Mr. Shanmugam was found. Later, the main accused and the owners of petrol pumps were arrested along with 8 other accused. This was an act of whistleblowing on part of Mr. Shanmugam that got him killed.

iii) V. Saseendran, Malabar Cement (2010)

Mr. V. Saseendran, an Employee at Malabar Cements Limited wrote to the Chief Minister of Kerela along with the Vigilance Director and the Industries Minister informing them about the

corruption in the company that was making losses in its term. He informed the authorities that the Managing Director's secretary was involved in the leak of vital information on part of the company. Mr. Saseendran, in 2007 was the individual who had witnessed the audit reports of the company stating a loss of Rs. 400,00,00,000/- (Rupees Four Hundred Crores) because of corruption. This act of whistleblowing on his part lead to serious threat to his life from the company and the people behind it. Later, in the January, 2011, Mr. V Saseendran and his two sons were found hanging in their house in Kerala.

iv) Ms. Durga Shakti Nagpal, Sand Mining (2013)

Ms. Durga Shakti Nagpal was a civil servant and officer in the Uttar Pradesh (UP) cadre of the Indian Administrative Service (IAS). Ms Durga came into picture when she went to Kadalpur, a village in UP to conduct an investigation on a complaint that was filed. This complaint that was filed was with respect to an illegal construction of a mosque on the land that was under the purview of the government of India. The planning involved in the creation of this mosque was done by Bhati, a chairperson, of the UP State Agro Industrial Corporation Limited. This chairperson offered villagers money and further told them that there was no need to acquire permission from the government to build a religious place like a mosque. Since this mosque was made without prior permission of the government, Ms. Durga was under an obligation to get it demolished and clear the land it was created upon. After this act of demolition, the chairperson Bhati, informed the Akhilesh Yadav, Chief Minister of UP about the act of tearing down a religious building. To avoid any controversy the CM suspended Ms. Durga on 28th July, 2013 and later she was targeted in a campaign that was carried upon by her against the illegal sand-mining activities in the state.

III. INSIDER TRADING BASED WHISTLEBLOWING SYSTEM

The concept of Insider trading has been around since the 1920s and has been considered as India's one of the most notable financial crimes, as it creates a huge problem for the regulatory authority in tracing the entities involved in this act of insider trading and benefitting from the information provided.⁵⁷ While everyone wants to make quick easy money, knowledge is sometimes not adequate and legal in its nature. This can happen in cases where any individual or a company has access to certain knowledge that is not known to the world at large. This act of acquiring benefit from such piece of information for making monetary benefits is covered under the scope of insider trading.

⁵⁷ Roman Tomasic & Brendan Pentony, Insider Trading and Business Ethics, 13 LEGAL Stud. F. 151 (1989).

(A) Laws associated with insider trading in india

The regulatory body that is empowered with the duty to ensure proper governance in the system is the Securities and Exchange Board of India (SEBI). It has the duty to keep a check on any unusual activities/transactions that may occur with respect to the purchase or sale of securities listed by the securities boards.

However, since the term insider trading has a broad scope it is covered under various acts, a few of them being the SEBI Regulations Act, SEBI Prohibition of Insider Trading Regulations Act and the Companies Law. However, the term insider has been defined under Section 2(e) of the SEBI Prohibition of Insider Trading Regulations Act, 1992. It defines insider as *any person who is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or has received or has had access to such unpublished price sensitive information.*⁵⁸ This act also talks about the communication of such UPSI under Section 3 of the act and states that no insider shall communicate any UPSI relating to a company to any person, including another company.

Further, this act has a broad scope and covers all the other possibilities that could arise with respect to insider trading or any smaller or larger components of insider trading. It not only deals with the act of insider trading conducted by an individual, but further looks into the parties connected to the act, create inquiries, prepare a report and submit the same to the board along with making further policy disclosures with respect to the act of insider trading. However, certain exceptions have been made under the act that allows the communication of certain insider information for legitimate purposes and for the performance and discharge of any such legal obligations.

The Companies Act, 2013 under Section 195 of the act talks about the “*prohibition of insider trading of securities*”. This section further defines the act of insider trading as *an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial personnel or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company, or an act of counselling about procuring or communicating directly or indirectly any non- public price-sensitive information to any person.*⁵⁹ This section

⁵⁸ Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 1992

⁵⁹ The Companies Act, 2013

talks about dealing in any securities based on an unpublished price sensitive information as that may give an advantage to certain individuals or entities. This section further states that any individual or entity that may by any means contravene the provisions of this section, shall be liable to punished under the act. This punishment could lead to imprisonment for a term that may extend to 5 years and further be penalized for a fine not less than Rs. 5,00,000/- (Rupees Five Lakh), which may further be extended to Rs. 25,00,00,000/- (Rupees Twenty Five Crores) or three times the amount of profits made through the act of insider trading, whichever is higher or both.

Based on these laws, every company is bound by certain duties and obligations on its part to ensure there arises no cases of insider trading. These steps have been taken by the SEBI (Prohibition of Insider Trading) Regulations, 1992 to ensure that there arises no defaults in trading and helps to put in place a more secure and stable system, whilst maintaining the rules and compliances associated with the act of insider trading. A few of the many duties that are imposed by SEBI upon the companies are stated below:

- The duty of organizations to appoint a senior level personnel, like a Company Secretary as the compliance officer to keep a check on the compliance duties of the company and maintain a strict check around all the other activities of the company.
- To address the need for setting up an appropriate mechanism for dealing with any discrepancy with the running of the company and its departments, and to provide for a code of conduct for the internal working of the company procedures after a thorough due diligence of the internal parts of the organization.
- The duty to follow the rules laid down under the Code of Corporate Disclosure Practices (Schedule-II) as provided for under the SEBI Regulations, 1992 and to ensure there is no unchecked activities within the organization that may be against the said code.
- The company has the obligation to keep a check on the price sensitive information and look for any discrepancies with respect to the same, upon knowledge of which the company shall address the issue with the SEBI on a prompt basis.
- The duty of the company to prescribe procedures for pre-clearance of trading activities and further entrust the compliance officer of the company to be responsible for adherence of the same.
- Further, it is the duty of the company to ensure that any such price sensitive information is stored as confidential information on a computer that has adequate data security and

is not accessible by every individual employee or high level personnel.

These are the duties that are provided for and are entrusted to be taken care of by the company in accordance with the rules and regulations provided by SEBI Regulations, 1992 failing which the SEBI may impose any of the few penalties under its scope for the violation of such rules. A few of these penalties are defined below:

- The SEBI has the power to penalize a company in case there is any activity of insider trading that may be outside the scope of the rules and regulations provided by SEBI. It may impose a penalty anywhere between Rs. 5,00,000/- (Rupees Five Lakhs) to Rs. 25,00,00,000/- (Rupees Twenty Five Lakhs) or even 3 times the amount of profits made through the act of insider trading.
- The SEBI may also initiate a criminal prosecution on part of the company with respect to conducting any insider activity or with the use of any Unpublished Price Sensitive Information.
- The SEBI also has the power to issue any such order that it deems fit prohibiting any insider from dealing with the securities of the company to ensure the compliance of the rules and not leading to the misuse of any such unpublished information.

The act of using insider information for the benefit of an individual or an entity is illegal and forbidden under the law. This act does not only amount to bad working of the organization or the careless work on part of the employees and compliance officer but is often seen to damage the reputation of the company. This act whereby an entity uses unpublished price sensitive information is that of bad corporate governance. This small act of benefitting based on a non-public information is seen as an act that disrupts the system and affects the goodwill of the organization. This act is one of the many acts that affect an organization's good corporate governance system and makes the entity less reliable and more questionable in the eyes of its shareholders, public, stakeholders etc.

To fight this, the role of whistleblowers attained more attention than ever. As understood a whistleblower may be an employee, or even a senior personnel member in any organization that may choose to report any kind of suspected wrongdoing within the organization by speaking out in a confidential manner. This may further include any kind of malpractices, corruption scandals, insider trading etc. These whistleblowers are seen as the saviours of the society as they aim to reduce corruption and work towards diminishing the fraudulent acts in the company that may give it a bad name.

The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2019 (Third Amendment) has provided for reinforced Informant mechanism in the system, to reduce the such acts of insider trading within the Indian markets. The SEBI under Chapter IIIA, Section 7D of its Prohibition of Insider Trading Regulations, 2019 has provided for a system of rewarding the informers of an unlawful act such as one of insider trading. This has been seen to be done under the sole discretion of the board and the informant is advised to fill out an application under the system addressing the details of the said informant. It is to understand that these rewards payable to the informants are paid from the Investor Protection an Education Fund and previously was set to be anywhere between Rs. 10,00,000/- (Rupees Ten Lakhs) to Rs. 1,00,00,000/- (Rupees One Crore). However very recently these rewards have been raised from the previous high of Rs. 1,00,00,000/- (One Crore) to a newer high of Rs. 10,00,00,000/- (Rupees Ten Crore).

(B) Insider trading cases

i) Hindustan Lever Ltd vs SEBI (1998)⁶⁰

This was one of the major cases that helped define the concept of insider activities. This has been seen as one of the earliest cases of Insider trading in India. In this case shares worth Rs. 8,00,000/- (Rupees Eight Lakhs) were bought by HIL from the Unit Trust of India (UTI). It was seem that after a few months, a merger was seen taking place between HIL and another subsidiary. Seeing this as more than a coincidence, SEBI carried out an investigation and held that it was considered as a case of Insider Information, leading to an appeal to the appellate authority. Seeing this, SEBI made an amendment to its regulations and added the word “unpublished”, which was later used to define the term “Unpublished Price Sensitive Information” in India.

ii) Rakesh Agrawal Vs. Securities Exchange Board of India (2003)⁶¹

Mr. Rakesh Agrawal was the Managing Director (MD) of a private company under the name of ABS company Pvt Ltd. This company was in terms of negotiation with Bayer A.G. which was a company based out of Germany. Mr Agrawal by means of such negotiations had access to unpublished information with respect to Bayer’s company. The SEBI paid attention to these negotiations when it came to their attention that the brother-in-law of Mr. Agrawal had purchased a lot of shares of ABS Pvt Ltd. and had offered these shares to Bayer in the open market with an open offer. This benefitted the ABS company as the value of these shares that

⁶⁰ Hindustan Lever Ltd vs Securities Exchange Board of India (1998) 18 SCL 311 MOF

⁶¹ Rakesh Agrawal vs. Securities Exchange Board of India (2004) 49 SCL 351 SAT

were acquired by Mr Agrawal's brother-in-law provided him with an opportunity for making substantial gains from the ABS company. After the negotiations were finalized, Bayer overtook the business of ABS.

The 51% of the shares that were acquired by the Bayer company were not public, this made ABS an insider and responsible for trading and making profits based on insider information.

This act was considered as one involving insider trading and was said to be a violation of regulations of the SEBI act. The SEBI conducted its diligence and processed all paperwork and held Mr. Agrawal liable for the act of insider trading and also ordered to initiate criminal proceedings against the same under Section 24 of the SEBI act. It further ordered Mr. Agrawal to provide for a compensation of Rs. 34,00,000/- (Rupees Thirty Four Lakhs).

However, later an appeal was set out to the Securities Appellate Tribunal (SAT) and the tribunal reversed the order and gave the verdict that the appellate Mr. Agrawal did this act to secure his interests in his company.

iii) India-bulls Insider Trading Case

This has been one of the major and recent case relating to the act of insider trading. Under this, the Executive Directors of India-bulls were accused of an act of insider trading and making gains worth Rs. 87,00,000/- (Rupees Eighty Seven Lakhs) based upon the access to unpublished secret information of the sale of property and huge portions of land which was under a subsidiary of the company India-bulls itself. Based on the explanation of the regulator for SEBI, it was understood that the Executive Director (ED) of India-bulls Venture Ltd. was in the management committee of India-bulls, making such ED an insider along with her husband who had become party to such information. They were held liable for the unlawful gains that were made by them from the year 2017-2019.

Upon information of such insider act, SEBI ordered strict criminal action to be taken against India-bulls Venture Finance and both the ED along with her husband were liable to pay back a sum of Rs. 87,00,000/- (Rupees Eighty Seven Lakhs).

iv) Sameer C. Arora vs SEBI (2004)⁶²

This was a case under which an individual named Mr Sameer C. Arora was held liable for the act of insider trading by the SEBI. Seeing this, SEBI had restricted him from dealing (buying/selling) in any kind of securities in the share market for a period of 5 years. However, based on the rules set by SEBI, the individual could buy or sell certain securities only with the

⁶² Sameer C. Arora vs SEBI (2004) 59 SCL 96 SAT

permission of SEBI. Seeing this act as a hindrance in the trading activity, Mr. Sameer appealed to the Securities Appellate Tribunal (SAT) challenging this restrictive trading practice. The SAT allowed the appeal and set aside the order of restrictive trading stating that SEBI did not possess sufficient evidence of the accused being involved in Insider Trading and the restrictions on the individual were raised removed.

The act of insider trading as understood is one of the major crimes that India has to deal with. This act not only affects the individual but also affects the organization as well as its shareholders. Despite the fact that this act of insider trading may be conducted by an individual alone, the SEBI conducts a complete inquiry on not the individual alone, but also takes into account any connected parties that may have benefitted from the same or been a part of such act. The SEBI further prepares and submits a report to the board of the company and may direct the organization to make further disclosures. While India has put in place several laws like SEBI Prohibition of Insider Trading Regulations Act, 1992, SEBI regulations Act and the Companies Law to combat this meness of financial crimes in the country, it has been seen that the number of such insider trading acts has only seen to be increasing.

As we understand the SEBI has laid down guidelines and set up appropriate mechanisms in the country to ensure curbing of such insider trading. However, the defaulters tend to find some kind of a loophole in the system which may provide them with adequate relief from punishment. SEBI has also imposed heavy penalties in case of non-compliance of any such guidelines to ensure a good governance system. While SEBI cannot track every single act of Insider trading alone, there is a desperate need for individuals to act as whistleblowers and disclose such necessary information to either the internal mechanism of the organization or directly to SEBI. This act of an individual shall promote a heathy system of corporate governance and shall reduce corporate frauds drastically.

Further, to better understand the system of whistleblowing and a healthy corporate governance, a comparative analysis between a few countries has been provided in the upcoming chapter.

IV. COMPARATIVE STUDY BETWEEN USA, AUSTRALIA, NEW ZEALAND

(A) United States Of America (USA)

The USA has enacted and enforced various whistleblowing laws at both the federal as well as the state level to enhance the whistleblowing system and to achieve its success amongst all sectors. Although under this system there are several acts with respect to whistleblowing including the Civil Service Reform Act (1978), No Fear Act (2002) etc. the law covers whistleblowing activities and their protection under majorly under 3 principal acts viz False

Claims Act, the Whistleblower Protection Act, 1989 and the Corporate and Criminal Accountability Act (Sarbanes-Oxley Act).

The False Claims Act, 1986 was originally put in place to fight against the fraud that was conducted by the suppliers during the times of the civil war. This act entitled the whistleblowers to receive a small percentage of the sum recovered from the act of fraud that takes place. This act helped the US achieve a better system for revealing fraudulent acts and also earn a small sum for such valuable information, however it was not very successful.⁶³ Further in order to ensure invalid complaints under this, the employee filing the complaint is held accountable for any false claim provided they knew their claim was invalid from the beginning from the beginning when they decided to file the same as a complaint. If such claim was untrue in nature, the complainant was liable for double the damages that were initially claimed.

Further under this system, the False Claims Acts offers limited protection for employees and workers who may provide for tips about defective products and services being delivered to the US government, this also prohibits safeguards to the employee who provided the tip.

Things came to become better only after the enactment of the Federal Whistle Blowers Protection Act, 1989. This act was needed to improve the system and there were seen to be more than a hundred similar statutes in various different states of the US to protect different classes of whistleblowers. This also included the right to disobey any illegal orders from superiors. Based on the law, the Federal Whistleblowers Protection Act, 1989 provides for 4 pillars to improve the system. These include:

- i) Giving the whistleblowers a better control over their own cases by proving them an expanded subject matter and personal jurisdiction for hearings under the Merit System Protection Board (MPSB).
- ii) To make the Office of Special Counsel a more viable and a risk free option by eliminating provisions by granting discretionary authority to the Special Counsel.
- iii) Expanding the level of protection by eliminating prior loopholes in the system and broadening the shield for a protected conduct of illegal employer conduct.
- iv) It further created a more realistic legal burden of proof in order to enable whistle blowers to prevail.

The whistleblower Protection Act, 1989 was yet another act that was enacted and enforced federal to disclose to the government any illegal/corrupt act observed from activities in the

⁶³ Peter Bowden, A comparative analysis of whistleblower protection, AAPAE, 1-15 (2005)

course of their employment. This act provides for the protection of whistleblowers and their jobs and further provides for protection from pay-cuts, demotions, firing in their job, dismissal etc. However with respect of such act of whistleblowing, the whistleblower is required to present the information and relevant documents to back up their claims regarding the unlawful act of whistleblowers in case a dispute is filed. Furthermore to this in case of any false complaint, the whistleblower may be subjected to criminal charges.

- Sarbanes Oxley Act (SOX):

In the year 2002, after the collapse of several corporates like Enron and WorldCom the American Congress passed the Sarbanes-Oxley Act. This act was enacted to combat corporate criminal fraud to meet a high level of accuracy in the system along with laying down a high level of protection of employees in publicly traded companies. It also provided for an improved financial disclosures promoted the independence of auditors in publicly held corporations. This act further encourages the employees of an organization to promote the act of whistleblowing and deals amongst frauds and functioning of publicly traded companies under S. 806, 301 and 1107 of Sarbanes-Oxley Act, 2002.⁶⁴

This act aims to protect the employees of both public companies as well as private companies in terms of making disclosures that relate to a federal offence making the investors feel more secure in terms of law against corruption. This also helps promote the level of investments in the markets of the USA and further provides for a great impact on trades at a global level. Under this act, certain specific provisions help provide for an advanced system that may provide for better efficiency. These sections include:

- Section 806 of the Act provides for protection for employees of publicly traded companies who report and provide evidence of fraud to any federal body or a law enforcement agency. This provision states that a whistleblower providing any information or assisting in the investigations of the violation of any federal laws in terms of fraud against shareholders are protected from any retaliation from the company or any of its senior personnel. The law further states that any employee that may be retaliated against such act shall be entitled to necessary relief that may include compensatory damages, compensation for litigation costs, reinstatement etc.
- This act under Section 301 also requires for auditing committees to overcome the problems of whistleblowing and to reduce corporate frauds. This section compels the

⁶⁴ Sarbanes-Oxley Act, 2002

creation of auditing committees to develop mechanisms for reporting any fraudulent acts within the organization. This includes tracking such fraudulent acts, and act upon the information provided by employees in a confidential manner. These policies enforce the act of whistleblowing and encourage companies to be more efficient in their approach towards whistleblowers.

- Further under Section 1107 provides for any act of retaliation against the informers in their course of whistleblowing not limiting to public corporations. This provision provides for extended protection to any person that may choose to report any fraudulent act that may be in violation of any federal law. These individual choosing to step forward as whistleblowers are protected from any retaliation from the offenders and any violator trying to influence the whistleblower may be fined and may also face imprisonment for a period up to 10 years.

(B) Australia:

In comparison to various other developed countries in terms of the whistleblowing policy, Australia has not been lagging behind. Australia has come forwards as one of the major developing countries in protecting the interests of its whistleblowers and has enacted laws both at the federal as well as the state level. The protection under these laws vary upon the subject matter of disclosure and does not protect all disclosures.⁶⁵ It can be understood that any disclosure on subjects such as national security or immigration at the federal level may not be protected and the individual disclosing information on such matters may face potential jail-time. Under the Australian system, the first whistleblowing laws were introduced in Queensland based on the recommendations of the Fitzgerald report made with respect to investigations into public misfeasance as it shed light on undiscovered laws that were needed in the society. This report stated:

“There is an urgent need.....for legislation which prohibits any person from penalizing any other person for making accurate public statements about misconduct, inefficiency, or other problems within public instrumentalities. What is required is an accessible independent body to which disclosures can be made confidentially (at least in the first instance) and in any event free from fear of reprisals. The body must be able to investigate any complaint. Its ability to investigate the disclosures made to it and to protect those who assist it, will be vital to the long-term flow of information upon whom its success will depend.”

Over a course of time another committee on matters of criminal law namely the Gibbs

⁶⁵ Paul Latimer & A J Brown, Whistleblower Laws: International Best Practice, 31 UNSW, 766-793 (2015)

Committee made similar recommendations on the matter in issue. In compliance of these recommendations an act under the name of Public Interest Disclosure Act, 1994 was enacted and enforced in the country. Seeing this different states enacted one of the two acts i.e. *Whistleblowers Protection Act* as well as *the Public Interest Disclosures Act* which were constantly amended and improved.

Over the years Australia has made significant changes in the whistleblower protection laws in the private sectors along with its latest amendments to extend its reach under the corporations Act. Recently, in the Australian legislation passed the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act, 2019. This act has helped to provide greater protections for whistleblowers under the system. This step was taken in support and accordance of the Australian Securities and Investments Commission (ASIC) in order to help the company officers and its senior managers to help them better understand and comply with their obligations under the new corporate whistleblower protection regime.⁶⁶

This Whistle Blowers Act, 2019 has aimed to strengthen the protections that have been offered to the whistleblowers through all these year in terms of an improved, more forwards looking approach in terms of misconduct in the corporate and financial sectors. Such disclosures can be made by any eligible whistleblower which includes and past or present employees, associates, suppliers of the organization. Further, a qualifying disclosure could be the disclosure of an eligible whistleblower that has 'reasonable grounds' to suspect any misconduct, danger to the public or the financial system, improper state of affairs of any kind of contravention of any laws.

The old laws practiced in Australia were similar to those in the USA as the whistleblower was not protected under the system if the information was untrue and also the whistleblower was liable to fine under such circumstances, this system changed over the years with the amendments under the law. Under this newly amended act, all disclosures relating to misconduct or illegal activities are covered under this system which may include acts of gross mismanagement, fraud, unethical behaviour by any individual etc. Further it may include any improper affairs including systematic issues that may or may not amount to an unlawful conduct in the system. Also under this new act, a whistleblower despite having ulterior motives will be eligible to be protected by the government despite if they have information or reasonable grounds to suspect information relating to misconduct or improper affairs in the system.

⁶⁶ Kath Hall and Heather Cork, 7 Back to Basics: Reforming Australia's Private Sector Whistleblowing Laws, 93-102 (2017)

This system of whistleblowers have become more and more successful over the years and any disclosure made by an 'eligible whistleblower' upon 'reasonable grounds' will be protected against any detrimental conduct against such individual by the government. Such conduct may include demotion, discrimination, harassment or any harm to the reputation or property of the whistleblower. Such eligible whistleblower in case of any detrimental conduct against him/her is also entitled to seek compensation if the same is proven and thereby the burden of proof then shifts to the company to prove that the act of disclosure was not due to any detrimental conduct towards the whistleblower.

Further, the eligible whistleblower has the right for their identity to be kept confidential and has the ability to make disclosures regarding misconducts on an anonymous basis. The breach or threat of breach of such confidentiality of the identity of an eligible whistleblower by an entity may attract heavy civil penalties of up to \$1.05 million for individuals and about \$10.5 million or 10% annual turnover for companies. However, the identity of such whistleblower may be revealed if the whistleblower consents to the same, if disclosure is made to ASIC or the Australian Federal police or to the legal practitioner in the course of obtaining advice about whistleblower laws.

(C) New Zealand:

Amongst various developed countries with successful whistleblowing system in place, we now look at New Zealand which is amongst the developing countries and has over the years seen instances of misconduct amongst corporates. The Protected Disclosures Act, 2000 has been actively battling the problem of misconduct and unfair practices within the organization. This act has various provisions that are similar in nature to that of Australian laws, subject to certain modifications. Various sections were provided under this act to combat misconduct and have a more reliable system put in place. Amongst various prime sections, Section 17 of the act states that in case any retaliatory action is undertaken by the employer of a whistleblower, the employee shall enforce his/her rights and file for compensation under the law. The act also provides immunity from civil and criminal proceedings to an individual who has made a protected disclosure about the misconduct of the organization. Further, similar to the Australian laws, the whistleblower may choose to hide his identity and be anonymous or may choose to reveal it for disclosure to a particular authority or to seek advice through a legal practitioner about the whistleblower laws.

This act has been dealing with problems of misconduct and unlawful acts within corporates, but now after 20 years of its application under the law, a new amended bill has been put into motion

with the idea to redraft the law, cover its loopholes and improve its system. However it will continue to be equally or more effective than the previous act and aims to continue the purpose of the act i.e. to facilitate the disclosure and investigation of any kind of wrongdoing at the workplace and to provide for better protection under the law. The new bill further aims to :

- Provide for an in-depth definition for serious wrongdoing and extend its application and use-case to cover private sector enterprises as well.
- To enable the people to report any misconduct/wrongdoing within the organization to a suitable authority, while enabling a clear disclosure with suitable proof.
- To lay down internal procedures for public sector organizations and require them to provide for a proper disclosing act.
- It further aims to clarify the forms of adverse conduct that an individual discloser may face post the act of whistleblowing.

In furtherance to this new bill, the present act provides for a system of good protection of a whistleblower and maintains the secrecy of the whistleblower's identity to the highest level as the disclosure of such identity may risk the life of an individual. In order to ensure a high level of safety of an individual employees job, the whistleblowers are protected from civil liability, criminal liability as well as administrative liability. On terms of this, any company or organization that may try to infringe the rights of any such employee may face legal disputes and further face an action under the Human Rights Act in the country.

Based on the comparative analysis of the laws relating to whistle Blowers Protection in various countries, it can be understood that both developing as well as developed countries in the world today are focusing on the promotion of Whistleblowing activities and reduce any kind of corruption in the system. It can be further seen that while promoting healthy competition in the markets, these act has similar to the Indian Whistle Blower Protection Act, 2014 has provided for various grounds for the protection of the whistleblowers in the country. Further, seeing the increased. Malpractices in the corporates as well as the society, the whistleblowers have now begun to be seen more as a necessity than a need in the system. There have been seen to be numerous laws that have been put in place in these countries to ensure the minimum gaps within the system, while maintaining a high level of security for the Whistle Blowers.

With that being said, countries such as USA, Australia as well as New Zealand have been successful in dealing with the problems of corporate frauds and are further encouraging the acts of the Whistleblowing to provide for a better tomorrow.

V. DATA ANALYSIS

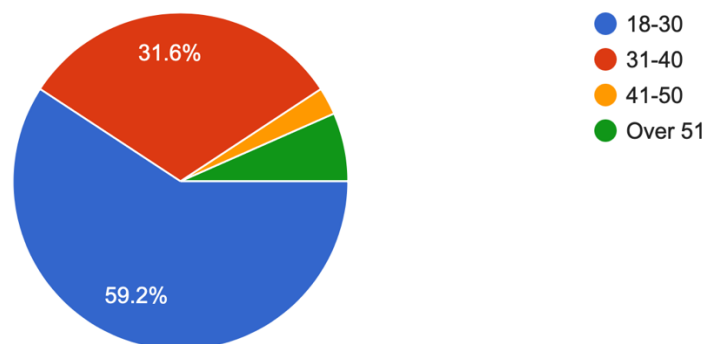
Primary data gives real shape to the work. As per the requirement of the empirical research a questionnaire was designed for such data collection. This questionnaire was then distributed to over 76 respondents (company employees, retired people) and their responses were recorded.

After the collection of data, an analysis of such data and the interpretation of its results are necessary because data collected from various sources may be in a raw form. Further, the same needs to be verified and simplified for the purpose of analysis. Data analysis helps the reader understand the subject and get a clearer idea about the same. This part contains several statistical tools.

Following is a question by question analysis of the responses received through the structured questionnaire circulated via google forms:

(I)

Age group
76 responses

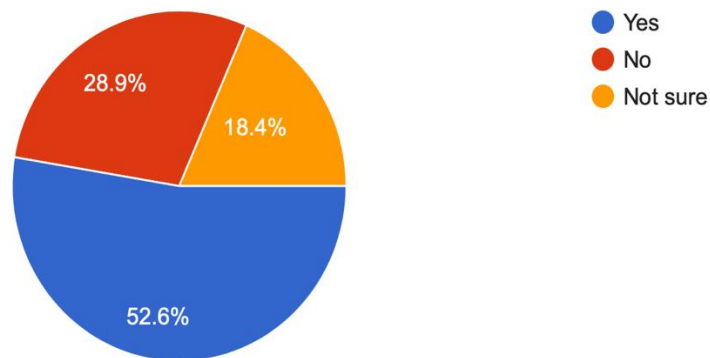


The data provided in this research paper has been collected from various people of different age groups to help understand the idea of a whistleblowing policy amongst the various age groups. This approach of collecting data from both men and women from different backgrounds and age groups help us to understand and establish a common ground amongst people of different ages regarding the survey conducted. As per the pie chart, about 59.2% of the people involved are in the age group 18-30 years that consists mainly of working company employees. About 31.6% of the people involved in the survey are in the age group of 31-40 years, meaning they have a good knowledge and understanding of the whistleblowing systems in corporate environment. The remaining 9.2% people involved in the survey are over the age of 51 years having a good experience in the corporate sector.

(II)

Do you understand what is corporate governance?

76 responses

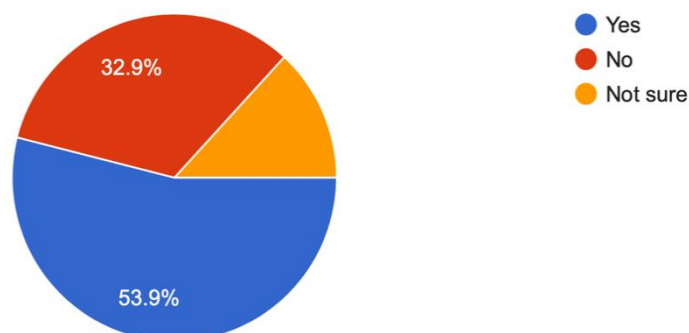


The data collected and represented in this depiction helps us to understand about 52.6% people taking the survey have a brief idea of the concept of corporate governance as most people involved in this survey are company employees. Whereas 28.9% people have no idea of what the concept of corporate governance is as some of them are involved in a private practice of work including doctors, lawyers and other privately working individuals. The remaining 18.4% of the people have a very basic understanding of the concept but are not exactly aware of what it means in the form of a company or any other organization.

(III)

Do you understand who is a whistleblower?

76 responses



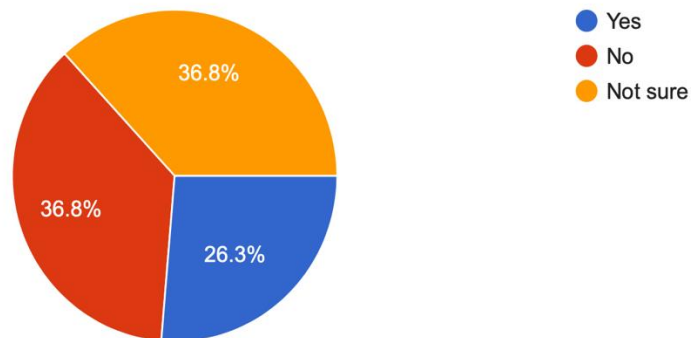
From this depiction, it can be understood that about 53.9% of the people involved in the survey understand the idea of a whistleblower and what it means in the corporate system. Whereas 32.9% people are not familiar with the term and have no clue of what it means to be a

whistleblower. The remaining 13.2% people are unsure about the term whistleblower and what it means in the corporate world.

(IV)

Do you think adequate legal protection is provided to a whistleblower in India?

76 responses

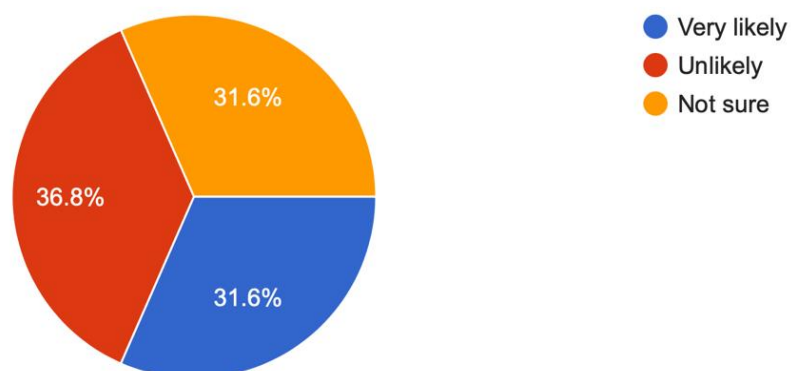


From the depiction, it can be understood that since about 50% people involved in the survey are not well aware about the concept of whistleblower, they are unsure if any legal protection is provided to the whistleblowers in India. Only about 26.3% people taking part in the survey believe that under the Indian legal system, an adequate level of protection is provided to the whistleblowers. The remaining 36.8% of the people believe that no adequate level of protection is provided under the Indian legal system.

(V)

In case of misconduct, how likely are you to blow the whistle on a company?

76 responses



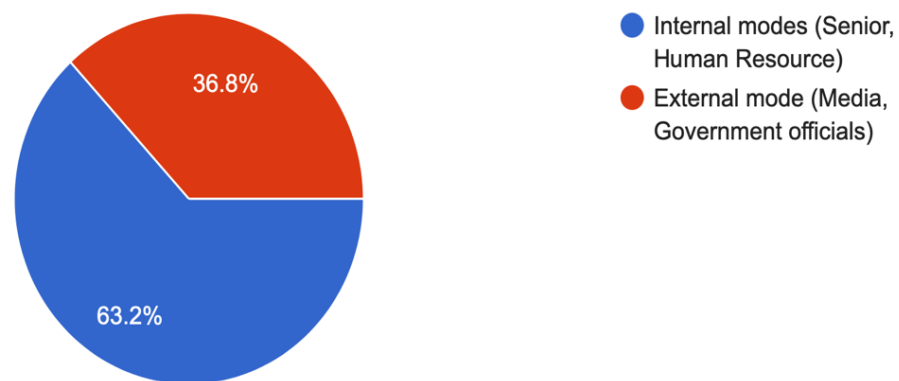
Based on the depiction, it can be understood that only a minority of 31.6% of the company

employees are likely to blow the whistle on any fraudulent activities of the company in case of any misconduct. Almost an equivalent number of 36.8% individuals are unlikely to blow the whistle on any such misconduct on part of the company due to various factors like financial dependence, due promotions for the employees for the company. The remaining 31.6% individuals are not sure about coming forward to report any such act on part of the company.

(VI)

In a company setup, which mode of whistleblowing do you think is better?

76 responses



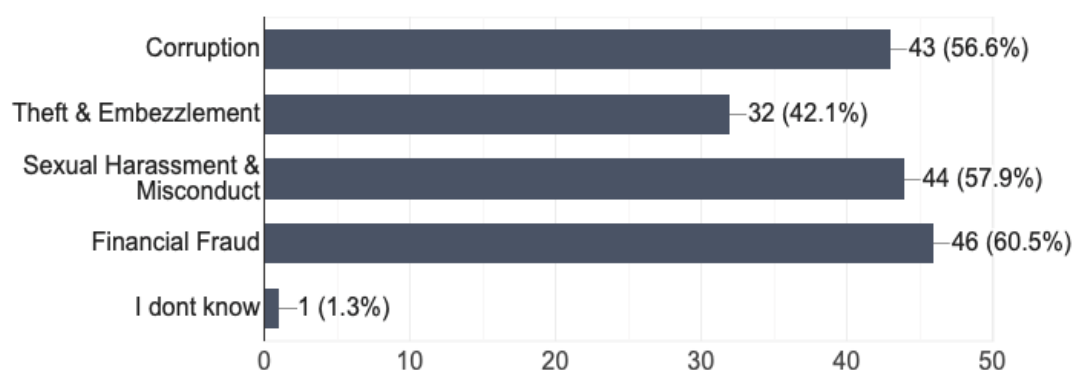
From the depiction presented above it can be understood that about 63.2% people involved in the survey believe that in case of a misconduct on part of the company, an internal route of whistleblowing should be taken i.e. by approaching a senior member or a person from human resource of the company to avoid damage to the reputation of the company. Whereas, about 36.8% of the people believe that in any misconduct on part of the company, the external route should be taken i.e. by approaching media, police or any other government official to help fix the problem by informing the public about the ill activities/misconduct on part of the company.

(VII)

What reason would you blow the whistle for?



76 responses

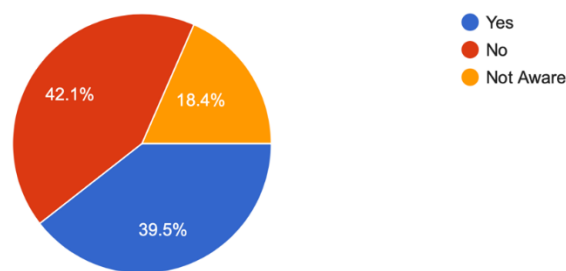


From the depiction of 76 individuals above, it can be understood that a majority of 60.5% people involved in the survey state that they would blow a whistle on the company in cases of financial fraud as these frauds may include huge sums of money. About 56.6% people also believe that corruption within the organization could be a major problem and should most certainly be reported at the first instance. About 57.9% of the people also state that in matters of sexual harassment or any other kind of misconduct, they would blow the whistle on the company as the company should be safe for all its employees. The last 42.1% people involved in this survey believe that in matters of stealing and theft from the company, they are likely to blow the whistle on the company to either an internal or an external source.

(VIII)

Do you think the enactment of the Whistle Blower Protection Act, 2014 has helped to curb corporate frauds in India?

76 responses

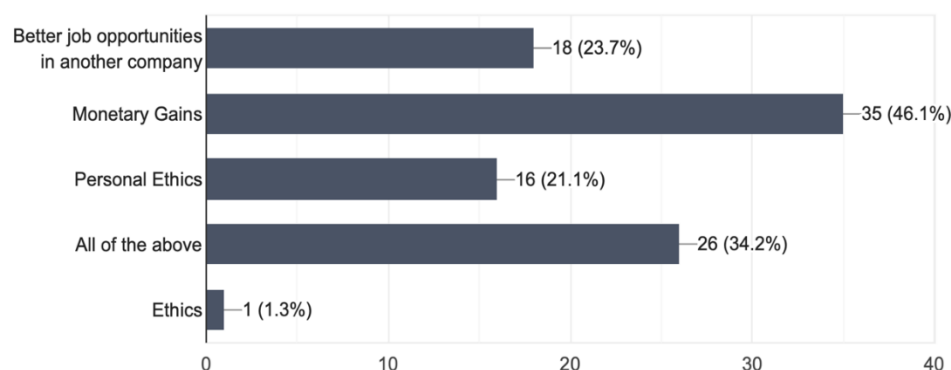


From the depiction, it can be understood that only a minority of about 39.5% individuals believe that the enactment of the Whistle Blower Protection Act, 2014 has help curb/reduce corporate frauds in the country. However a major percentage of about 42.1% individuals believe that no such enactment would help reduce the active frauds in the corporate world. However, the remaining 18.4% individuals are not aware of any such enactment under the Whistle Blower Protection Act, 2014.

(IX)

What incentive is enough for you to blow the whistle?

76 responses

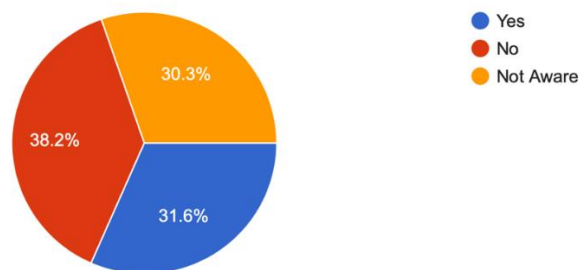


From the depiction of 76 individuals above, it can be understood that about 46.1% people involved in this survey would blow the whistle on a company for a monetary incentive. About 21.1% people state that they would blow the whistle for ethical reasons as it is the right thing to do. Only about 23.7% people state that they would blow the whistle only when they have a better job opportunity available so they could have a secure job before they would blow the whistle. The last 34.2% people state that they would only blow the whistle when they have all 3 of the above stated i.e. monetary gains, ethics, and better job opportunity.

(X)

Do you think the whistleblowing policy is beneficial for the organisational growth and shall be incorporated within organisations.

76 responses

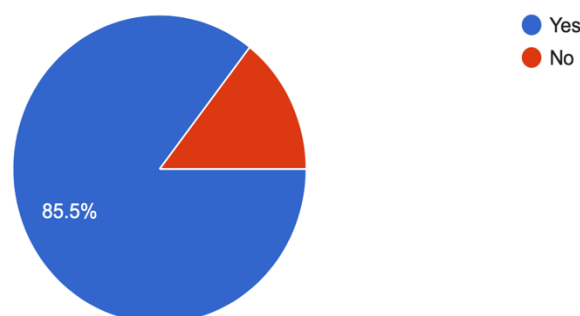


It can be seen that only a 31.6% individuals believe that a whistleblowing system put in place in an organisation is beneficial for the growth of the organization itself by reduce any corrupt practices. However, since several whistle blowers are treated differently after they blow the whistle on the company's misconduct, it has now come to believe that there would be very little effect if such policy is put in place. The majority of 38.2% individuals believe that there would arise no benefits out of any such whistle blower's policy within the organisation. The remaining 30.3% are not aware of any such policy and do not play a significant role in this survey.

(XI)

Do you think there is a need to spread awareness regarding whistleblowing policies in Corporates?

76 responses



From the depiction, we can understand that over 85.5% of the people believe that there is a need for spreading awareness regarding the whistleblowing policies in India as not a lot of people are aware with the concept of the same. Whereas the remaining 15% individuals believe that there is no need to spread awareness regarding the same.

VI. RECOMMENDATIONS, SUGGESTIONS AND CONCLUSION

The good corporate governance system as we now understand forms the basis of a healthy, long lasting business. This system helps provide transparency and accountability in the system, which in-turn provides for a better prospective to the investors in the business. Any act of malpractice such as frauds, sexual harassment, insider trading can affect the reputation of the company instantaneously. A scenario like would eventually lead to the investors losing faith in the organization and its working. To ensure this does not happen the organization shall promote transparency and accountability in the system, as this would help the stakeholders feel more secure and confident with respect to their investment in the company.

The Whistle Blower Protection Act, 2014 was aimed to curb corruption in the country. This has been seen to be one of the very major acts that have been enacted over the years. The Whistle Blowers across the globe have had a huge impact upon changing the business conditions and the industrial practices. The whistle blowers are the saviours of the society and act for the benefit for the society at large. This act negatively impacts the organization and impacts its credibility and trust among its stakeholders. It is to understand that this act of a whistle blower takes immense courage as after the identity of the whistle blower is known to the employees of the organization itself, the whistle blowers tend to receive hostility from the organization itself and may further face negative feedback from the management. India as a country needs more of such whistleblowers to completely eliminate corruption.

To combat this problem, a whistle blowing policy may be formulated within organizations, however it will be of no use unless the organization is actually committed to change and take steps to prevent any retaliation against the whistleblowers. This shall be promoted as an inherent ethical factor and shall further provide the employees with a feeling of security through the safeguards provided for by the organization in case of any malpractice that may arise. In the current scenario, whistleblowing is no more just a choice but a need for the growing nation like India.

Like every other system under a good corporate governance system, there are various other recommendations that may be helpful in enhancing the idea of whistle blowers within the organizations. A few of those suggestions and recommendations are as follows:

1. Expanding the scope of the Act:

The Whistle Blower's Protection Act has covered under it the disclosures related to the attempt to commit, the commission of any criminal offence by a public servant. Under this act, this term "disclosure" shall be broadened and shall cover disclosure of various other offences similar to that of countries like the USA. This will help cover various other disclosures under this act and shall help expand its disclosure criteria.

2. Applicability on the Private sector:

As we know that the present act does not cover any kind of complaints against officials of the private sector corporations or MNCs. This seems like a lack in the system of whistle blowing. Under this system every private organization shall mandatorily form their own internal reporting mechanisms to report any kind of misconduct within the organization. However in the absence of any such internal reporting system, the act shall impose penalty of a certain amount upon the corporates. This would help reduce corporate frauds within the country. Further, the present act should be amended and shall include the private sector corporations under its ambit so as to reduce malpractices within both the public as well as the private bodies.

3. Maintaining Anonymity:

An individual, upon blowing the whistle on any corporate organization tends to become a target for the organization. In accordance to this there needs to be a high level of safety that must be provided to the whistleblower. However, the present Whistle Blower Protection Act, 2014 only provides for an average level of security to the whistleblower. Further, Section 16 of the Whistle Blower Protection Act, 2014 does not allow complaints to be made in an anonymous manner or under an anonymous name and further states that no action may be taken by a competent authority unless the identity of the complainant has not been established. This is a problem as the minute the identity of the individual is established, he/she becomes a target. The law makers shall amend this and shall entertain disclosures while keep the identity of the whistleblower anonymous.

4. Need to Reward and Compensate the whistleblowers:

Despite being the heroes of the society, the Whistleblowers are rarely ever rewarded or compensated for their heroic acts. The Whistle Blowers Protection Act, 2014 needs to be amended and shall provide for incentives to whistleblowers, the disclosures of whom are proven valid and valuable to the society. Further, the act shall provide to cover all the direct as well as indirect expenses that may be incurred in the term of disclosure. This may further mean a relocation by the authorities, medical services for both physical as well as mental harassment

to the whistleblower etc. Further, these expenses could be made payable by the organization that was involved in the illicit act itself.

Various countries like the USA provide for a huge sum of money as compensation to the whistleblowers (usually one-fourth of the fraud amount) for their effort and safety. Similar rewards shall be entitled to the whistleblowers in India as it would encourage several individuals to come forward and do the right thing.

5. Creating awareness:

The corporates shall provide for policies of an improved whistleblowing system by promoting a healthy and ethical manner of working within the organization. The organization shall itself use promotional ideas of whistleblowing in the office premises explaining the need and use of such policies and shall further provide for staff handbooks to help the new employees understand the concept better. The organization may further hold training programmes/seminars and further ensure proper channels of whistleblowing within organizations.

6. Litigation costs:

Once the disclosure made is proven to be true, any cost of litigation that is incurred since the during the time of disclosure till the judgement of the case shall be covered by the government as otherwise the individual may be covered in huge amounts of litigation debt for doing the right thing. Seeing this all legal fees on part of the whistleblower shall be waived off completely.

7. Penalty for Revealing the identity of the Whistleblower:

Presently In order to ensure the safety of an individual/public servant, the act further mentions that in case any person negligently reveals the identity of the complainant, he/she may be liable to a fine extending to Rs. 50,000/- (Rupees Fifty Thousand) and may even face imprisonment for a term up to a period of 3 years. The amount as well as the imprisonment time shall be drastically increased to ensure no individual reveals the identity of the complainant as doing so will endanger the life of such individual complainant.

The Whistle Blower Protection Act, 2014 has been an important legislation in the Indian system. It has provided the individuals with an opportunity to come forward and disclose information of misconduct within the system.

However, like every other legislation put in place, this legislation has its own flaws which will be met in the amendments over the years. Further, this law shall adapt certain provisions like financial incentives, anonymity etc. which have been discussed above. These recommendations in my opinion will make a huge difference to the Whistle Blowers Protection Act, 2014 and

will further promote an increased number of whistleblowing activities within the system. Thus, cleaning up the system one complaint at a time.

VII. REFERENCES

- Arjumand Bano and Sanjay, Whistle Blowing in India – Introspection 3 IJETMS, 243-252 (2015)
- Brian Martin, Illusions of Whistleblower Protection, 5 UTS L. REV. 119 (2003).
- Chen. L., A Review of Research on Whistle-Blowing, American Journal of Industrial and Business Management, 9, 295-305 (2019).
- Culiberg, B., Mihelič, K.K. The Evolution of Whistleblowing Studies: A Critical Review and Research Agenda. J Bus Ethics 146, 787–803 (2017).
- Dr. Hema Doreswamy, Whistle Blower Policy in Indian Listed Companies: A study, 2 IJAR, 862-868 (2017).
- Dr. M. Madhumathi, Corporate Governance In India- Evolution And Challenges”, 1 IICRT, 82-92 (2011).
- Dr. Singam Sunitha, A Study on Whistle Blowing Mechanism In Corporate India, 4 JBM 23-30 (2016).
- Frank J. Sensenbrenner & Margaret Ryznar, The Law and Economics of Insider Trading, 50 WAKE Forest L. REV. 1155 (2015).
- Goel, P. Implications of corporate governance on financial performance: an analytical review of governance and social reporting reforms in India. AJSSR 3, 4 (2018).
- <http://dineshperspective.blogspot.in/2011/05/mpact-of-whistle-blowing.html>
- <https://blog.ipleaders.in/whistleblowing-policy-india/>
- <https://careertrend.com/info-8366554-effects-whistleblowing-business.html>
- https://ethics.csc.ncsu.edu/old/12_00/basics/whistle/rst/wstblo_policy.html
- Indrajit Dube, Is Corporate Governance the Answer to Corporate Structural Failure, 8 US-China Law Review 413 (2011).
- James A. Kehoe, Exporting Insider Trading Laws: The Enforcement of U.S. Insider Trading Laws Internationally, 9 EMORY INT'L L. REV. 345 (1995).
- Jonathan Macey, Getting the Word out about Fraud: A Theoretical Analysis of Whistleblowing and Insider Trading, 105 MICH. L. REV. 1899 (2007).
- K.R. Sawyer, Whistleblowing: Making It Work, National Conference of Whistleblowers

Australia, September 11, (2005), (https://www.researchgate.net/publication/252570095_The_Test_Called_Whistleblowing)

- Kanika Chaudhry, Whistle Blowing: Comparative Analysis of India and U.S., 5 CASIRJ, 27-34 (2014).
- Kim Loyens & Wim Vandekerckhove, Whistleblowing from an International Perspective: A Comparative Analysis of Institutional Arrangements, *MDPI Adm. Sci.* 2018), (www.mdpi.com/journal/admsci).
- Kim R. Sawyer, Jackie Johnson and Mark Holub, The Necessary Illegitimacy of the Whistleblower 29 BPEJ 85-107 (2010).
- Li Chen, A Review of Research on Whistle-Blowing, 9 AJIBM, 295-305 (2019).
- Michael A. McGrail, Corporate Governance, 2012 A.B.A. RECENT DEV. PUB. UTIL. COMM. & Transp. Indus. 97 (2012).
- Michael A. McGrail, Corporate Governance, 2012 A.B.A. RECENT DEV. PUB. UTIL. COMM. & Transp. Indus. 97 (2012).
- Michael D. Guttentag, Selective Disclosure and Insider Trading, 69 FLA. L. REV. 519 (2017).
- Ms. Monika Makhija & Dr. Shweta S. Kulshrestha, A Qualitative Study On Impact Of Whistle-Blowers On Performance Of The Organisation, 7 IJESS 596-602 (2018).
- Ms. Shweta Mehrotra, Mr. R. K. Mishra, Mr. V. Srikanth & Mr. Govind Prasad Tiwari, Mr. E. V. Mahesh Kumar, State of Whistleblowing Research: A Thematic Analysis, 9 FIIB, 1-16 (2019).
- Nancy Reichman, Insider Trading, 18 CRIME & Just. 55 (1993).
- Nikhil Varshney & Amartya Saha, The Whistleblower Bill, 2010: A Critical Analysis, 1 NAT'L L.U. DELHI Stud. L.J. 79 (2012).
- Nimisha Bhargava & Mani K. Madala, An Overview of Whistleblowing Status in Various Continents Across the World, 3 IJMSSR, 47-62 (2014).
- Nimisha Bhargava & Mani K. Madala, An Overview of Whistleblowing: Indian Perspective, 4 IJRSET, 334-339 (2015).
- Nimisha Bhargava, Mani K. Mandala, An overview of Whistle Blowing: Indian perspective", 4 IJRSET, 334-339 (2015).

- Peter Molk, Uncorporate Insider Trading, 104 MINN. L. REV. 1693 (2020).
- Ponnu.CH, Naidu.K, Lamri.W, Determinants of Whistle Blowing, 4 IJBR,276-298 (2008).
- Purnima Sehgal, Can Whistleblowers live 'Happily Ever After?' A Review of Literature on Whistleblowing and its Implications, 8 IRJMST, 262-270 (2017).
- R. Balakrishnan, Formulating a Whistleblowing Policy and Its Implementation, 3 INT'L. IN-House Counsel J. 1 (2010).
- Rajat Sethi, Misha Chandna & Aditi Agarwal, Insider Trading: Circumstantial Evidence Is Evidence Enough?, 32 NAT'L L. Sch. INDIA REV. 205 (2020)
- Robert G. Vaughn, State Whistleblower Status and the Future of Whistleblower Protection, 51 ADMIN. L. REV. 581 (1999).
- Robert G. Vaughn, State Whistleblower Status and the Future of Whistleblower Protection, 51 ADMIN. L. REV. 581 (1999).
- Roman Tomasic & Brendan Pentony, Insider Trading and Business Ethics, 13 LEGAL Stud. F. 151 (1989).
- Ruchi Kulkarni and Balasundram Maniam, Corporate Governance — Indian Perspective, International Journal of Trade, Economics and Finance, Vol. 5, No. 4, August 2014, 364-368.
- Sandeep Parekh, Prevention of Insider Trading and Corporate Good Governance in India, 32 INT'L Bus. LAW. 132 (2004).
- Sandeep Parekh, Prevention of Insider Trading and Corporate Good Governance in India, 32 INT'L Bus. LAW. 132 (2004).
- Sarah Baumgartel, Privileging Professional Insider Trading, 51 GA. L. REV. 71 (2016).
- Sawyer, K. (2004) 'Courage Without Mateship', paper presented to Australian National Whistleblower Conference (Melbourne, Australia).
- Shikha Patheja, System Of Whistle Blowing In India 4 IJSR, 361-362 (2015).
- Shivangi Dhawan & Anupreet Kaur Mokha, Whistle blowing: Facing challenges in India, Asian J. Management; 8(3) (July - September, 2017), (<https://www.researchgate.net/publication/319985327>).
- Shivangi Dhawan & Anupreet Kaur Mokha, Whistle blowing: Facing challenges in

India, *Asian J. Management*; 8(3) (July - September, 2017), (<https://www.researchgate.net/publication/319985327>).

- Sonal Nagpal, Whistle Blowing Mechanism – A move towards better Corporate Governance, 3 *GJMBS*, 855-860 (2013).
- Srividhya.S, Stalin C.Shelly, Whistle Blowing Protection – A watch dog for the organization, 1 *IJSSIR*, 204-211 (2009).
- Tamar Frankel, Insider Trading, 71 *SMU L. REV.* 783 (2018).
- Terry Morehead Dwoekin & Melissa S. Baucus, 17 *JBE*, 1281-1298 (1998).
- Thomas E. Geyer, Inside Insider Trading, 17 *OHIO LAW.* 6 (2003).
- U.M. Premalatha, Whistle Blower And Protection Policy: A Therapy To Corporate Unscrupulous Practices, 2 *IJBEMR*, 194-200 (2012).
- Vijay Kumar Singh, Whistle Blowers Policy Challenges and Solutions for India with Special Reference to Corporate Governance, 3 *GNLU J.L. DEV. & POL.* 5 (2013).
- Vivek Sadhale, Vikas Agarwal & Amit Atre, Corporate Governance in India as Compared to Corporate Governance in Singapore, 4 *INT'L. IN-House Counsel J.* 1 (2011).
- Vivek Sadhale, Vikas Agarwal & Amit Atre, Corporate Governance: Situation in India as Compared to Other Countries with Specific Reference to Corporate Governance in US, 2 *INT'L. IN-House Counsel J.* 675 (2008).
- Vivek Sadhale, Vikas Agarwal & Amit Atre, Corporate Governance. The Situation in India Compared to Other Countries with Specific Reference to Corporate Governance in the UK, 2 *INT'L. IN-House Counsel J.* 835 (2009).
- Zachary W. Smith, Privacy and Security Post-Snowden: Surveillance Law and Policy in the United States and India, 9 *INTERCULTURAL HUM. Rts. L. REV.* 137 (2014).

VIII. ANNEXURE-I: QUESTIONNAIRE

- i) What Age Group do you belong to?
- ii) Do you understand what is corporate governance?
- iii) Do you understand who is a whistleblower?
- iv) Do you think adequate legal protection is provided to a whistleblower in India?
- v) In case of misconduct, how likely are you to blow the whistle on a company?
- vi) In a company setup, which mode of whistleblowing do you think is better?
- vii) What reason would you blow the whistle for?
- viii) Do you think the enactment of the Whistle Blower Protection Act, 2014 has helped curb corporate frauds in India?
- ix) What incentive is enough for you to blow the whistle?
- x) Do you think the whistleblowing policy is beneficial for the organizational growth and shall be incorporated within organizations?
- xi) Do you think there is a need to spread awareness regarding whistleblowing policies in Corporates?
