

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 8 | Issue 1

---

2025

© 2025 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [support@vidhiaagaz.com](mailto:support@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Whistleblowing in India: Legal Protections and Contractual Constraints on Blowing the Whistle

---

RICHA ABRAHAM<sup>1</sup> AND CHARANYA ANJALI<sup>2</sup>

## ABSTRACT

*In the context of globalization and the increasing prevalence of business fraud, deception, and corruption, the role of whistleblowers has become increasingly critical. India enacted the Whistle Blower Protection Act in 2014, aligning with a growing international recognition of the need for such measures to uphold corporate integrity. It is imperative to assess whether the Act contains potential loopholes that could allow companies to evade accountability and to ensure that the legislative objectives are not compromised by contractual constraints, such as non-disclosure agreements, which might obstruct the reporting of illicit activities. The principle aim of this study is to analyze the fundamental provisions of the Whistleblower Protection Act and to evaluate its effectiveness particularly in relation to the impact of non-disclosure agreements on the reporting process.*

**Keywords:** Whistleblowers, Companies Act, SEBI guidelines.

## I. INTRODUCTION

The term “whistleblower” originates from the German word “whistle”, symbolizing the act of disclosing or exposing misconduct. The act of whistleblowing refers to the audacious actions undertaken by individuals to reveal illegal, unethical, or morally wrong activities within an organization. Typically done by present or former employees of entities to individual within relevant authorities to address the issues. The *Harshad Mehta*<sup>3</sup> scam of 1992 stands as a notable illustration to this reference, where the journalist Sucheta Dalal exposed financial fraud and misuse of banking instruments. Whistleblowing serves as an effective mechanism in cases of corporate fraud by exposing misconduct and ensuring that parties responsible are held accountable and subjected to appropriate legal action. In cases of fraud, courts are often willing to “lift” the corporate veil when it is proven that the company is merely an instrumentality for wrongful conduct. Whistleblowers act as crucial players in this context by providing insider information and exposing the intent behind sham transactions that courts may not have access

---

<sup>1</sup> Author is a student at O.P Jindal Global University, India.

<sup>2</sup> Author is a student at O.P Jindal Global University, India.

<sup>3</sup> *Harshad S. Mehta v. Central Bureau Of Investigation*, 1992 (24) DRJ 392.

too.

Non-disclosure agreements (NDAs) are legally enforceable contracts that establish a confidential relationship between an individual possessing sensitive information and another who will gain access to that information. The purpose of such an agreement is twofold: provides confidentiality and protection. The question then raises whether such an agreement can be comprised to blow the whistle on fraudulent activities of the entities.

## II. RELEVANT STATUTES

The Companies Act of 2013<sup>4</sup> along with The Securities and Exchange Board of India<sup>5</sup> (SEBI) through amendments to Clause 49 of the Listing Agreement, mandates certain categories of companies to establish mechanisms for receiving complaints regarding grievances or concerns raised by directors or employees. Additionally, The Whistleblower Protection Act of 2014 enacted by the Parliament, represents an initiative that seemingly encourages individuals to report suspected malpractice within the public sector organization. The act mandates that whistleblowers can make disclosures in public interest without facing retaliation, though anonymous complaints are generally not permitted.

In India, there have been numerous instances of whistleblowers facing severe repercussions including murder which have been attributed to suicide or being transferred. Thus, making the need for their protection extremely essential. Few examples of such cases have been illustrated below:

- i. *The M. Shanmugam Manjunath Case*<sup>6</sup> – Mr. Manjunath was assigned as a manager for Indian Oil Corporation in Uttar Pradesh and was appointed as a whistleblower by higher authorities. After he was identified, he was subsequently murdered as no protection was provided to him and no consequent action was taken in response to him being murdered.
- ii. *The Satish Shetty Case*<sup>7</sup> - A social activist tasked with uncovering land scams in Maharashtra, utilized the RTI Act to expose irregularities in construction projects. He aided investigation into these scams which led to his identity was disclosed. Satish was later found dead in a park under suspicious circumstances.

---

<sup>4</sup> The Companies Act, 2013, No. 13, Acts of Parliament, 2013 (India).

<sup>5</sup> The Securities and Exchange Board of India Act, 1992, No. 15, Acts of Parliament, 1992 (India).

<sup>6</sup> Hari Narayan, The extraordinary tale of an ordinary man, THE HINDU (Sep. 30, 2024), <https://www.thehindu.com/features/magazine/The-extraordinary-tale-of-an-ordinary-man/article12291362.ece>.

<sup>7</sup> *Whistleblower RTI activist yish Shetty killed*, THE HINDU (Sep. 29, 2024), <https://www.thehindu.com/news/Whistleblower-RTI-activist-Satish-Shetty-killed/article16837452.ece>.

- iii. *The Air Asia Case*<sup>8</sup> - Gaurav Taneja, a pilot for Air Asia publicly alleged that the airline was violating air safety regulations, following his disclosure he was terminated from his position.

Consequently, the WPA of 2014 was enacted to safeguard and protect interests of such individuals and establish a proper procedure within the legal context.<sup>9</sup>

### III. HISTORY BEHIND THE STATUTE

In reference to 179<sup>th</sup> Law Commission Report of 1999, the then Chief Vigilance Commissioner, Mr. N. Vittal, urged the Law Commission to draft legislation that would encourage the disclosure of corrupt practices by public officials, while providing protection to individuals who made such disclosure.<sup>10</sup> A Bill was recommended by the commission in 2002 titled “The Public Interest Disclosure Bill”. However, the implementation of a formal whistleblower protection legislation was yet delayed. The need for such laws became urgent in 2004 following the landmark case of *Satyendra Dubey*<sup>11</sup>, in which Dubey, an engineer working of the National Highways Authority of India was murdered after exposing corruption. The incident generated significant public outrage leading to the supreme court passing an interim mechanism to protect whistleblowers until a formal statute could be passed. The Whistleblower Protection Act was subsequently passed as part of efforts to address corruption within the Indian Bureaucracy. However, the Act is yet to be operationalized. In 2015, the government introduced an amendment that sought to prevent whistleblowers from disclosing information classified under The Official Secrets Act of 1923, which would in turn subdue the effect and protection provided under the 2014 act. Further incongruencies with the exiting legislature would be examined below.

#### (A) Loopholes in the Enactment

The current legal framework for Whistleblowers does not extend to private companies, resulting in a lack of protection for whistleblowers within these entities. This situation is exacerbated by the prevalence of NDAs in such organizations. Notable instances such as the DLF coal scam

---

<sup>8</sup> AVIATION SAFETY INDIA, <https://www.aviationsafetyindia.com/explained-why-gaurav-tanejas-allegations-against-airasia-india-may-set-a-precedent-the-pilot-who-was-suspended-by-airasia-india-has-raised-three-issues/> (last visited Oct. 1, 2024).

<sup>9</sup> Kritika Sharma, *Analysis of Real Consequences Faced By Whistle-Blower; in Indian Corporations*, AK LEGAL (Oct. 1, 2024), [https://aklegal.in/consequences-faced-by-whistle-blower-in-indian-corporations/#\\_ftn18](https://aklegal.in/consequences-faced-by-whistle-blower-in-indian-corporations/#_ftn18).

<sup>10</sup> 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).

<sup>11</sup> Where the law stands on whistleblowers in India, THE ECONOMIC TIMES (Sep.27, 2024), <https://economictimes.indiatimes.com/news/company/corporate-trends/where-the-law-stands-on-whistleblowers-in-india/infosys-episode/slideshow/71770940.cms>.

and the 2G scam, highlight the challenges faced by whistleblowers in the private sector. Although The Securities and Exchange Board of India (SEBI) amended Clause 49 to include all listed companies, further reforms are necessary to modify the WPA of 2014 to enhance its efficacy.<sup>12</sup>

SEBI further contains provisions that reward individuals acting as whistleblowers, there is a significant gap regarding rewards for reporting unlawful activities in the present protection statute of WPA. Moreover, the imposition of a seven-year limitation period from the date of the offence restricts the whistleblower's ability to disclose information that may have been relevant years prior.

The primary objective of the WPA is to prevent exploitation and safeguard the rights of whistleblowers. However, the Act fails to adequately address the implications of victimization. Section 5(1) stipulates that the requirement to conceal the identity of the whistleblower is negated if the information is disclosed to any authority other than a "competent authority" thereby jeopardizing the anonymity of those who wish to remain unidentified, in case they reveal information to media or other authorities. Furthermore, Section 5(4) presents the complainant with only two options: disclose their identity or independently gather all the material evidence, both of which undermine the very purpose of the legislation and delineate the judicial protection guaranteed to them.<sup>13</sup>

Additionally, there is no provision for penalties against individuals who threaten whistleblowers and their families for disclosing information which further degrades the significance of the act. While SEBI has established provisions for protection of whistleblowers, the specific statutory framework lacks explicit mention of these protections. The existence of SEBI policies leads us to wonder the necessity of having a dedicated legislation which is essentially broader and more ambiguous than the general guidelines.

#### **IV. WHISTLEBLOWERS AND NON-DISCLOSURE AGREEMENTS**

A significant issue in whistleblower protection arises from the conflict between confidentiality agreements and whistleblower rights. Employees often face a dilemma when they are bound by NDA's and witness illegal practices, the legally binding nature of such agreements tend to prevent individuals from revealing corruption and misconduct. A study conducted revealed that individuals have reported concern about clauses in their NDA which makes themselves and

---

<sup>12</sup> Preksha Agrawal, *A Study on the Laws regarding Protection of Whistle-Blowers in India*, 6 INT'L J.L. MGMT. & HUMAN. 945 (2023).

<sup>13</sup> Ayushi Singhal, *Whistle Blowers Protection Act, 2011: Does It Truly Protect the Unsung Heroes?*, 1 J. ON GOV 1004 (2014).

family liable for regulatory penalties resulting from making protected disclosures. Furthermore, individuals often became aware of the legal limitations on NDA use only after signing them<sup>14</sup>. As stipulated above the intention of whistleblower protection acts are to empower employees to report misconduct. The legal tension between these two frameworks is exemplified in the case of *Mr. Diljeet Titus*<sup>15</sup>, where NDAs were upheld to protect business interest.

Countries such as the US, give an understanding as to how NDAs would play out, stating that they are not generally enforceable in cases involving the reporting of malpractices or matters of public interest. In contrast, Indian legislation lacks clear legal provisions on whether whistleblowers can breach NDAs. Without judicial precedents on this issue, whistleblowers in India risk legal consequences, which undermines the purpose of the protection laws.

## V. CONCLUSION

In the absence of an operational Whistleblower Protection Act, a few companies have implemented their own whistleblower policies to ensure transparency and safeguard the rights of whistleblowers. For example, TATA has incorporated a whistleblower policy into its Code of Conduct, which outlines the principle and standards governing the actions of the company and its employees.<sup>16</sup> The policy guarantees protection to whistleblowers against retaliation, such as termination, suspension etc. Similarly, Infosys has made its whistleblower policies and confidentiality agreements publicly available to promote transparency within the organization. A recent case arose wherein by a letter to the board of directors, a group of anonymous employees blew the whistle and claimed that CEO Salil Parekh of Infosys had participated in unethical business practices thereby illustrating the advantage of these implemented policies<sup>17</sup>. There is no doubt that whistleblowers are integral to promoting transparency and ensuring ethical conduct within a company. India should adopt a more structured and comprehensive policy, akin to those in Germany and the United States, to eliminate ambiguity and prevent the misuse of justice. Furthermore, the policy should mandate guidelines for all companies to have for effective protection of whistleblowers. It is recommended that amendments be made to the provisions with inconsistencies, and additional provisions be introduced to address grey areas, such as the impact of whistleblowing on confidentiality agreements. The Act holds significant

---

<sup>14</sup> Legal Services Board, *The Misuse of Non-Disclosure Agreements: Call for Evidence Themes and Summary of Evidence*, 3, 2024, [chrome-extension://efaidnbmninnibpcapjpcglclefindmkaj/https://legalservicesboard.org.uk/wp-content/uploads/2024/02/NDA-call-for-evidence-themes-and-summary-Feb-2024.pdf](https://legalservicesboard.org.uk/wp-content/uploads/2024/02/NDA-call-for-evidence-themes-and-summary-Feb-2024.pdf).

<sup>15</sup> *Mr. Diljeet Titus, Advocate v. Mr. Alfred A. Adebare And Ors*, 130 (2006) DLT 330.

<sup>16</sup> See *supra* note 8.

<sup>17</sup> Infosys faces another whistleblower complaint, CEO accused of misdeeds, THE ECONOMIC TIMES (Oct.1, 2024), <https://economictimes.indiatimes.com/markets/stocks/news/another-whistleblower-guns-at-infosys-ceo-salil-parekh/articleshow/72021969.cms?from=mdr>.

potential to enhance corporate governance if effectively implemented and reinforced with necessary reforms.

\*\*\*\*\*