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**WHISTLEBLOWER PROTECTION IN CORPORATE SECTOR**- Smriti Verma<sup>1</sup>**ABSTRACT:**

The present abstract showcases an analytical investigation carried out on the corporate sector's whistleblowing mechanism, emphasizing its significance in advancing accountability and transparency in corporate society. Reporting or making public illegal activity, corruption, and misbehavior is known as whistleblowing.

In order to stop fraud and expose corruption in both the public and commercial sectors, whistleblowers are a crucial part of the corporate governance machinery. Globally, regional accords, international conventions, and diverse civil groups have been instrumental in promoting concerns pertaining to whistleblower protection. In order to establish the necessary legislation, member states of several countries have signed numerous international accords. The Indian government's Whistle Blowing Protection Act, 2014 has changed throughout time to meet new issues in the public sector.

This article attempts to explain India's whistleblower policy, which aims to give whistleblowers legal protection. The paper concludes by highlighting the importance of whistleblowing in the fight against corporate fraud and to improve corporate governance. The purpose of this article is to increase knowledge on the extent to which businesses or organizations have whistleblower policies.

**Keywords**-corporate society, whistleblower, legal protection, transparency.

**INTRODUCTION:**

Whistleblowers, to put it simply, are people who alert others in positions of power to correct wrongdoing when they witness instances of waste, fraud, abuse, corruption, or threats to public health and safety. Being an agency or company "insider" is not necessary to serve as a whistleblower; most whistleblowers work inside the entity where the wrongdoing is

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occurring. It is important that the person divulges information concerning misconduct that would not have been known otherwise.

A corporate whistleblower is a current or former employee of a business who exposes wrongdoing by the business or its personnel. Misconduct may include theft, fraud, abuse, or wastage. The usual channels to which whistleblowers bring their concerns include senior management, a government agency, or a supervisor.

In order to make sure that businesses are held responsible for their activities, whistleblowers are crucial. A lot of wrongdoing would go undetected and unchallenged if whistleblowers weren't there.

Whistleblowing is not necessarily motivated by major criminal activity. Employee behaviour that involves minor theft, improper use of sick leave, or exploitation of business resources for personal benefit may be reported by an employee. Whistleblowing is not universally seen as the appropriate method of exposing malpractices.

A company's ability to properly administer and function depends on its whistleblower process. The Narayana Murthy Committee Report<sup>2</sup> on business Governance served as the basis for the government's attempt to develop an obligatory whistleblower policy for listed companies in India. However, due to significant business resistance, the plan was changed to be optional. The Satyam scandal<sup>3</sup>, which exposed several problems related to corporate governance, provided an answer to the query of whether corporate India needs the policy to be mentioned as a mandatory requirement in the CG reports.

Anyone who divulges information about unethical activities connected to the government is shielded under the Whistle-blowers Protection Act of 2011, which was passed in 2014. There are many inconsistencies in this Act, despite its pressing necessity, one of which being the exclusion of corporate whistleblowing. Economic reform of corporate governance has been associated with whistleblowing. It guarantees that businesses don't make choices that could place their own interests ahead of those of other stakeholders. The act of drawing attention to or warning others about an unlawful or criminal act occurring within an organization is

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<sup>2</sup>Dell, "SEBI \_ The Report of Shri N R Narayana ...Orate Governance [For Public Comments]"

<sup>3</sup><https://blog.iplayers.in/case-study-satyam-fraud-case>

sometimes referred to as whistleblowing. In addition to internal processes and procedures, it has been essential in increasing company awareness of employee behaviour.

Every listed business must put in place a monitoring system for directors and staff in accordance with section 177(9) of [the Companies Act of 2013](#)<sup>4</sup>. Two Additionally, the firm needs to implement a whistleblower mechanism that provides enough protection against victimization of whistleblowers in compliance with the amended section 49 of the listing agreement.

Laws are in place to shield informants from reprisals from their employers. While these laws differ from nation to nation, they usually give whistleblowers certain legal safeguards, like making it illegal for employers to fire or take other negative action against them.

## **RETALIATION FOR WHISTLEBLOWERS**

When someone is subjected to reprisal in any way for reporting wrongdoing, this is known as whistleblower retaliation. This can manifest in several ways, ranging from being turned down for a promotion to getting fired altogether. In many jurisdictions, it is unlawful to retaliate against whistleblowers; those who do so risk heavy fines or even jail time. If you believe you are the target of reprisals for raising the alarm, there are a few actions you can take. Document everything first. No matter how minor the act of revenge, keep a record of it. If you choose to file a lawsuit, this will be beneficial. Second, inform someone. Discuss the situation with a dependable friend or relative.

In addition to offering assistance, they could be able to assist you in acting. Finally, get legal counsel. A qualified lawyer can assess your situation and provide you with legal advice. Be assured that you are not alone if you have experienced whistleblower reprisal. Numerous courageous people have reported misconduct, and as a result, they frequently faced reprisals. However, you may contribute to a safer and more moral workplace by speaking up.

## **THE CURRENT SCENARIO AND THE HISTORY OF WHISTLE BLOWER PROTECTION.**

People that divulge private information to third parties have existed throughout history. Whistleblowing was first considered by the Ancient Greeks centuries ago. In his speech

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<sup>4</sup><https://www.advocatekhoj.com/library/bareacts/companies2013/index.php?Title=Companies%20Act,%202013>

against Leokratis, the Athens orator Lycurgus stressed the need for someone to come forward and expose wrongdoers because neither judges nor laws can have noticeable results on their own. Kautilya suggested that "Any informant (suchaka) who supplies information about embezzlement just under perpetration shall, if he succeeds in proving it get as reward one-sixth of the amount in question: if he happens to be a government servant (bhritaka), he shall get for the same act one-twelfth of the amount." This suggests that the idea of a whistleblower existed even in ancient India.

The moral foundation of society is destroyed by corruption, which is like rust in a society. The political-administrative system loses the trust of the average person. There are a plethora of texts that provide a detailed picture of Indian history and demonstrate the existence of corruption in prehistoric India. Corruption prompted the development of measures to combat it, and over time, the administrative system matured. Vedic literature, Buddhist treatises, Jain literature, Dharma shastras, Indian Puranas, Ramayana, Mahabharata, Manu Smriti, Shukra Niti, and Artha shastra are excellent sources of information about the structure and duties of Indian government.

The King is instructed by the Manu Smriti to use soldiers and spies to find transgressions. Informant and investigating officer are mentioned in the Katya Yana Smriti. This implies that the king had an organization similar to the police today to help with the administration of justice and the existence of informants in the system during that time. In ancient India, the king possessed a centralized system of power for managing the states.

The topic of whistleblowers was also covered by Kautilya. Any informant (suchaka) who supplied information on financial misconduct was eligible for rewards. One sixth of the disputed amount was the award he was entitled to. Only one-twelfth of the entire payment was to be handed to the informant if he happened to be a government servant (bhritaka). The former received a larger proportion because it was harder to expose corruption when operating outside the system. However, efforts to create an administration devoid of corruption were seen as more of an obligation for government employees. Kautilya proposed the death punishment for an informant who subsequently withdrew his statements regarding the charges against the defendants.

Beyond employing spies to uncover fraud cases, Kautilya also discussed an intra-departmental, self-checking mechanism headed by a chief officer (Adhi Karna) to identify

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and discourage impending cases of corruption. Although such provisions would undoubtedly cause people to reconsider before making accusations, the threat of capital punishment was too severe to assist people in rooting out the corrupt.

### **THE IDEA BEHIND WHISTLEBLOWING**

All organizations want their employees to be honest with one another. Being honest makes it possible to devote all of one's energy to the success and mission of the business. The company encourages openness in its structure and efficient, unambiguous communication by supporting whistleblowers. A person's ethics and a desire to benefit the organization or the public are often the driving forces behind whistleblowing behaviour. While some would consider blowing the whistle as "snitching," others see it as a courageous act that results from a commitment to morality. Whistle blowers are workers who feel compelled to provide information or opinions that contradict the conduct of one or more individuals within their company.

### **WHY ARE WHISTLEBLOWING HOTLINES REQUIRED BY COMPANIES?**

Whistleblowing hotlines are necessary for businesses for several reasons. Primarily, they offer staff members a secure and private channel for reporting unethical or unlawful actions. This is significant because it frees workers from the worry of facing reprisals from their employers when they report misconduct.

In order to make sure that businesses are abiding by the law, whistleblowing hotlines are also helpful. Companies can save themselves a lot of money and other consequences by giving employees a mechanism to report such infractions. Furthermore, by averting problems from occurring, whistleblowing hotlines can aid in preserving a business's brand.

Whistleblowing hotlines are a crucial component of any organization's code of ethics and compliance. They serve to guarantee that businesses are in line with the law and give employees a way to report misconduct without worrying about facing reprisals. You ought to think about setting up a whistleblower hotline if your business doesn't already have one. We at All Voices provide a whistleblower hotline together with a comprehensive platform for managing employee feedback.

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## HAVING A WHISTLEBLOWER HOTLINE HAS ITS ADVANTAGES

To prevent and identify misconduct within a business, a whistleblower hotline is a valuable resource. A hotline can aid in mitigating possible hazards like fraud, corruption, and other unethical or unlawful behaviours by giving staff members a private way to report problems.

One whistleblower hotline's many advantages are as follows:

- **Encouraging workers to voice issues:** A hotline gives workers a private, secure means to voice concerns without worrying about repercussions. This can assist prevent minor issues from becoming major ones by encouraging staff members to voice their concerns as soon as possible.
- **Early problem detection:** A hotline can assist businesses in identifying and addressing problems before they worsen by enticing staff members to report possible issues.
- **Establishing a culture of integrity:** By conveying the message that misconduct will not be accepted, a hotline can assist in establishing an environment of accountability and integrity inside a company. This may serve as a deterrent to workers participating in immoral or unlawful behaviour.
- **Increasing risk management:** A hotline can assist companies in enhancing their risk management procedures by helping them detect any threats early on. By doing this, the possibility of future costly errors or mishaps can be decreased.  
Improving reputation: An efficient hotline can improve a company's reputation by showcasing its dedication to moral and responsible business conduct.

## IS WHISTLEBLOWING ILLEGAL?

Providing information regarding misconduct within a company is known as whistleblowing. It can be reported to a management or supervisor inside, or it can be reported to a regulator, law enforcement organization, or the media externally.

Whistleblowing is sometimes regarded as a brave gesture, but it can also be dangerous. Retaliation against employees who speak out against their employer could include firing or demoting them. They might even be sued for defamation in certain circumstances. Federal legislation that expressly shields informants from reprisals does not exist. On the other hand,

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under certain conditions, a number of laws provide restricted protection. For instance, employees who report hazardous working circumstances are protected by the [Occupational Safety and Health Act](#)<sup>5</sup>.

### **THE WHISTLEBLOWERS PROTECTION ACT OF 2014**

In 2001, the Indian legislation Commission made the recommendation that a legislation protecting whistleblowers was required to eradicate corruption. To address this issue, it had also written a law.

The Supreme Court of India ordered the Central government to put "administrative machinery in place for acting on complaints from whistleblowers until a law is enacted" in 2004 in response to a petition filed following the horrific murder of an NHAI official.

- In 2004, the government issued a resolution known as the "Public Interest Disclosure and Protection of Informers Resolution (PIDPIR)" in response.
- With the passage of this resolution, the Central Vigilance Commission (CVC) gained the authority to handle whistleblower allegations.

A particular law to protect whistleblowers should be enacted, according to a 2007 report by the Second Administrative Reforms Commission.

- The UN Convention against Corruption, to which India has been a signatory since 2005 (though it has not yet been ratified), encourages states to support public officials in denouncing corruption and to shield experts and witnesses from reprisal.
- The Convention also offers protections against mistreatment of the complainant.

In order to comply with these laws, the Whistleblowers Protection Bill was proposed in 2011 and ultimately passed into law in 2014<sup>6</sup>. It is now required of firms to take notice of any such complaints under the [Securities and Exchange Board of India regulations](#) and the [companies Act, 2013](#).

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<sup>5</sup>OSHA, "Occupational Safety and Health Act of 1970"

<sup>6</sup><https://pib.gov.in/Pressreleaseshare.aspx?PRID=1541243>

The act creates a procedure for handling complaints about claims of official servant corruption or deliberate abuse of authority or discretion, as well as for initiating or requesting an investigation into such disclosures.

- Adequate protections against victimization of the individual filing such a complaint are also provided by the statute.

It permits anyone to disclose information in the public interest in front of a Competent Authority, including public employees. The law has defined many authorities that are competent in detail. For example, the Prime Minister is the competent authority to file a complaint against any union minister.

The legislation expressly prohibits anonymous complaints and specifies that if the complainant fails to provide identification, a responsible body will not take any action.

- A complaint may be filed for a maximum of seven years.

**Exemptions:** The Special Protection Group (SPG), which was established by the [Special Protection Group statute of 1988](#), and its officers are exempt from the statute.

**Appellate Court:** Anybody who feels wronged by a Competent Authority order has sixty days from the date of the order to file an appeal with the relevant High Court.

- **Penalty:** A fine of up to Rs 50,000 and a term of imprisonment of up to three years are imposed on anyone who wilfully or maliciously divulges the identify of a complainant.

A person may face up to two years in prison and a fine of up to Rs. 30,000 if they disclose information dishonestly and with knowledge that it is inaccurate, false, or misleading.

**A consolidated annual report** detailing the performance of its operations is prepared by the Competent Authority and submitted to the Central or State Government. It is then presented, as appropriate, before each House of Parliament or State Legislature.

Overriding the [Official Secrets laws of 1923](#), the Whistleblowers Act permits the complaint to disclose information in the public interest before a suitable body, even in cases where the disclosure violates the later laws but does not compromise the nation's sovereignty.

- A bill for amendment was introduced in 2015, proposing that whistleblowers should not be permitted to reveal any records classified under the Official Secrets Act of

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1923<sup>7</sup>, even if the disclosure is intended to expose instances of criminal activity, power abuse, or corruption. This lessens the 2014 Act's mere existence.

## **WHISTLEBLOWER POLICYS LEGAL REQUIREMENTS**

Legal rulings are establishing declarations of legal requirements for whistleblowing by utilizing exclusions related to public policy. Among the legal assertions are:

### **1. Improving the safety of all informants**

Numerous companies assure their staff that they will not face retaliation. If an employee exposes malpractices that violate federal laws in their firm, they will receive protection should they choose to come out with the information. The statute shields whistleblowers in the following ways.

There are provisions in Title VII of the Civil Rights Act, the Occupational Safety and Health Act, and the Age Discrimination During Employment Act that shield informants from reprisals.

### **2. Strengthening the regulations that shield informants.**

Currently, a number of US states are attempting to close the gaps left by the lack of suitable federal legislation on whistleblowing.

Because of the legal protection, employees can report to law enforcement agencies any criminal activity taking place in their workplace. Furthermore, if someone can demonstrate that they suffered a great deal as a result of reporting unlawful activity, the rules offer remedies like reinstatement along with back pay.

### **3. Work-at-will**

The concept of employment at will cannot be considered to be unchanged while new rules pertaining to whistleblowing are introduced. The "at will" doctrine has been applied in the private sector for nearly a century, but the courts have acknowledged exceptions to it.

For instance, there is only a limit to termination of employment in the event of a fair cause, and courts have frequently found implicit contracts in the statements made by hiring officials about their employees. When it comes to firing employees, a lot of judges actually think that

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<sup>7</sup><https://www.indiacode.nic.in/bitstream/123456789/2379/1/A1923-19.pdf>

some employers have behaved badly and with malice. The courts have granted such employees relief.

### **WHAT SORT OF INFORMATION IS SHARED THROUGH WHISTLEBLOWER HOTLINES?**

While there are many different kinds of reports that can be made on employee hotlines, claims of misconduct, harassment, or discrimination are among the most often made ones. Concerns concerning working conditions or safety risks, problems with pay and benefits, or disputes with coworkers are also frequent topics for reports. Whatever the situation, it's critical to keep in mind that any reports made via an employee hotline should be given careful consideration and comprehensive investigation.

### **CONCLUSION**

This paper demonstrates that The Indian government has not yet operationalized the Whistle Blower Protection Act of 2014 by notification. It is obvious that all gaps in the Act's execution should be maintained in order to safeguard whistleblowers in both the public and commercial sectors. For democracy to thrive, the rules and legal framework protecting whistleblowers should be tightened.

All complaints from whistleblowers in India have to be sent to the Competent Authority, a higher-ranking official, rather than being sent to impartial investigators or arbitrators for review. Furthermore, the Whistle Blowers Protection Bill does not penalize the business sector for the victimization of the whistleblower.

In India, laws pertaining to the protection of whistleblowers must be implemented in order to reinforce corporate governance principles.

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