



Whistle Blowing in India- introspection

Arjumand Bano

Research Scholar

Department Of Business Administration

Deen Dayal Upadhyay Gorakhpur

University

Dr. Sanjay Baijal

Professor

Department Of Commerce

Department Of Business Administration

Deen Dayal Upadhyay Gorakhpur University

Abstract

Some of the largest frauds the world has seen in the last five years have been detected by whistleblower complaints and tip-offs. Despite global recognition for whistleblower India has had very little success in harnessing this channel to detect frauds. People at dominant positions in Corporate often adopt practices which are corrupt or unethical to satisfy their selfish motives. Such malpractices should be reported to the higher authorities by the members of the organization. The present paper deals with the concept and importance of whistle blowing in an organization. The article highlights the status of whistle blower in Indian scenario and throws light on the miserable treatment of whistle blower. The article also tries to inculcate some of the suggested remedies in whistle blower protection program to safeguard the position of whistle blower.

Introduction-

Whistle blowing is not a new thing as reporting any wrongdoing in the company is understood as act of righteousness but the aftereffects of whistle blowing especially in India are quite scary. The concept of Whistle-blowing known in the business world as an act of uncovering unethical behaviors made by the employee or anyone in the same field. Whistle blowing in short is altering the others to misconduct or doing something in wrong. In other words, whistle blowing could be defined as raising a concern over any wrong or misdeed in the organization but concern must be a genuine concern about a crime, criminal offence, miscarriage of justice, dangers to health and safety and of the environment and the cover up of any of these. Whistle blowing is taken from the English police officers when they know there is a crime happened they blow their whistle. Whistle blowing is the act of exposing fraud, waste, abuse or other misbehavior in a company or organization. As per Peeples, Stokes, & Wingfield, Whistle blowing is the disclosure by organization members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action.

In the past, two corporate scandals including Corporate Scandals- Enron and Worldcom, Sheron Watkins and Cynthia Coopers became the headlines of newspapers and afterwards whistle blowing gained a lot of recognition as the fraud and misstatements of the two big corporate giants came into limelight and the whistle was blown by two gutsy ladies. In the contrast when a young engineer, Satyendra Dubey tried to expose the corruption in the Golden Quadrilateral Highway construction Project by writing a letter to Prime minister and he lost his life in the hands of unidentified miscreants. The death of Satyendra Dubey raised concern about the safety and security of whistle blowers.



A **whistleblower** is a person who exposes misconduct, alleged dishonest or illegal activity occurring in an organization. The alleged misconduct may be classified in many ways; for example, a violation of a law, rule, regulation and/or a direct threat to public interest, such as fraud, health and safety violations, and corruption. Whistleblowers may make their allegations internally or externally. Whistle-blowing refers to an employee's informing the public about the illegal or immoral behavior of an employer or organization.

There is a vast difference between complaint and whistle blowing, as any complaint can't be included in the category of whistle blowing, the complaint has to be related with current or ex workplace and complaints made by service users, relatives or representatives is not whistle blowing.

Types of Whistle Blowing

- **Internal whistle-blowing:** it is blowing the whistle inside the organization for example-designated officer, workers or bosses in the same organization.
- **External whistle-blowing:** blowing the whistle to law enforcement agencies or to teams worried with the matters for example Lawyers, Mass media, law enforcement.

Reasons for Whistle-Blowing

- **Unlawful behavior:** There are many forms of behaviors and illegal actions so in this case must to blow the whistle because it will lead to very bad result .for example, someone will lose his /her life or lose his/her job.
- **Un-procedural behavior:** Behavior may be un-technical since it interrupts clearly communicated actions in the form of rules and policies that leading the operations of the organization.
- **Immoral behavior:** Its mean the behavior will be illegal because he/she not going or following the world behavior guidelines for example: Safety, respecting, honest, responsibility .Illegal behavior may hurt the others feelings .In this kind of situation you must not blow your whistle.
- **Wasteful behavior:** This behavior if the person trying to waste the resource of company. So, you have to tell your boss about what's happen. Example, There was an employee in a municipality. He is a manger of equipment's store and he steals some equipment. His colleague couldn't keep silent he take an action and tell the boss about that.

The decision to blow the whistle is backed by both moral and practical reasons. There are various reasons cited by Researchers (**Nader et.al. 1972 and Dandekar1993**) for whistle blowing:

- Misuse of official funds for private purposes.
- Official powers used for private gain.
- Discrimination by age, race, or sex.
- Corruption.
- Dumping of industrial pollutants causing harm to public.
- Deceptive advertising.
- Non-enforcement of laws.
- Adulteration.
- Sexual harassment



Benefits of Whistle Blowing

The sense of doing right things and intolerance of misconduct is regarded in society and the person who owes such qualities is also respected. Such people are intrepid, brave, courageous, and responsible and live with high moral values and ideologies. They possess the courage to stand against the misconduct and malpractice which they believe is unethical. They are loyal people and get a lot of happiness in making the society better and never listen to their selfish desires but the decision of whistle blowing is not easy as they face innumerable repercussions of their act so it is important that the organization and Government should support such people and strengthen their willpower so that they could stand against misdeeds and misconduct with more power and vigor.

The Benefits of Whistle Blowing could be described as following:

Rises security of the organization: when we feel that the person with ethical principles is watching others in the organization, the chances of wrong doing decreases and security of the organization increases. The activity will help in detecting un-ethical or misconduct in the organization .

Highlights organization's code of ethics: Every organization must have their codes of ethics and behavior to have a better observing of employees acts.

Advance the management: Make sure any management that consider about moral standard will be always successful.

Enhance employees' ethical behaviors: The employees will be aware that there is someone watching him/her .So, he will be careful before doing something wrong.

Barriers to whistle-blowing-

- **Management apathy or resistance-** Many organizations make their internal reporting system available to staff who may wish to use it, but do not positively encourage its use. Only a very few seek to instill a sense of obligation by sending the message that staff who become aware of wrongdoing yet fail to sound the alarm are complicit by their apathy or indifference.
- **Cultural and historical obstacles-** On the one hand, there was a general willingness to foster a culture grounded in strong ethical values, and recently, this has been given added impetus by the trauma of highly-public corruption scandals. On the other hand, the idea of positively promoting the use of an internal reporting system was very often seen as a step too far — and this despite acknowledging that internal reports had often played a vital role in averting further scandal. Research shows that in many countries the business community was not ready to embrace internal reporting mechanisms.
- **Union relations-** Cooperation with trade unions can be critical to the successful take-up of an internal reporting mechanism, particularly in companies with a tradition of active consultation, and where staff resistance is likely to be strong.
- **Fear to retaliation-** The whistle blowers hesitate in reporting about misdeeds in the fear of retaliation as when the blow whistle against the people of high positions they attack them and take revenge. The aim of whistle blowers is to help the community but when they see that people at key positions are not supporting them they are discouraged.



- **Liability**
- **Liability related to law-** sense of responsibility regarding law is very heavy.
- **Employee suspicion or fear-** Reporters making use of anonymous reporting mechanisms to register legitimate concerns are in all likelihood motivated in part by fear — fear of being ostracized, fear for their jobs, their future, even their safety.

Negative Aspects of Whistle Blowing-

- Increases cost- when information is shared either with subordinates or superiors it always increases cost and it also creates mistrust which within the organization which leads to affect output.
- Demoralize Employees- whistle blowing creates an atmosphere of spying and counter spying which demoralizes employees in the organization.
- Low income group employees feel scared
- Misuse of Whistle blowing for harassing employees- Whistle blowing may be used as the tool for harassing people and also for settling previous scores.

Objectives

1. Give an overview of the concept of Whistle Blowing.
2. To do a detailed analysis of the position and need for protection of whistle blowers in India

Whistle blowing in India-

Though the Whistle Blowers Protection Act, 2011 was approved by the Cabinet of India as part of a drive to eliminate corruption in the country's bureaucracy and passed by the Lok Sabha and Rajya Sabha on 21 February 2014 and received the President's assent on 9 May 2014. The Act has not come into force till now. The act provides a mechanism to investigate alleged corruption and misuse of power by public servants and also protect anyone who exposes alleged wrongdoing in government bodies, projects and offices. The wrongdoing might take the form of fraud, corruption or mismanagement. The Act will also ensure punishment for false or frivolous complaints. But the stories of whistle blower are pathetic and depressing.

The Key features of the Whistle Blowers Protection Act are as follows-

1. Protection of Whistle blowers from victimization in their workplace.
2. Maintain secrecy of whistle blower's identity and violation of the same will be penalized by the CVC (Central Vigilance Commission).
3. Contains provisions for imprisonment up to 3 years and a fine up to Rs. 50000.
4. Penalization for officials who try to mislead the CVC.
5. Provisions for addressing issues against the Central and state government employees and employers of Public Sector.
6. Bill also seeks to protect the honest government officials and punishes those who file false complaints and charges will be liable for Imprisonment up to 2 years and fine up to Rs. 30000.

However, the Act has certain limitations as well. The Provisions of Act covers only the government sector and includes only those who are working for Government of India, the bill fails to include the state government and private sector employees within its ambit. Moreover, there is no clarity on the kinds of protection that a whistle blower is entitled to receive.



Cases of whistle blowing in India-

It is widely felt in the country that whistle blowing here is only a matter of writing anonymous complaints because of the fear of facing dire consequences starting from the bad reputation, losing the job, boycott from peer group leading to quitting the job on his own by the whistleblowers to the dreadful ones like suicide due to excessive harassment at the workplace or even murder or killing by the wrongdoers, the latter being commonly seen in our country. As this anonymity in complaints lacks credibility, so no strong action could be taken against the wrongdoers rather the culprits become more alert and ultimately the whistleblower becomes the victim. This victimization of the whistleblowers is day by day increasing and in aggravated more when RTI was legalized by the government. The RTI activists are every now and then being killed of raising voice against the wrongdoing, one of the cases being of **Amit Jhetwa** who was a **social worker and an Indian environmentalist**, he was an RTI activist involved in probing the activities of illegal mining outside the Girforest , several times he was beaten up by the goons and then finally he **was shot dead on 20th July 2010**. And then the story of the people involved in his killing, after a lot of agitation CBI made an arrest of the people who conspired of the killing. Like this there had been number of cases of attacks, abduction and torture of RTI activists becoming a part of daily newspaper. **NHAI engineer, SatyendraDubey, 31, was killed brutally on 27th Nov 2003** by unidentified gunmen in the town of Gaya, a lot of agitation and outcry could be seen amongst the citizens of the country which henceforth brought forward the importance for the whistleblower's protection act in the Indian constitution. One of the high profiled examples of whistleblower retaliation can be seen in **IAS Ashok Khemka case**, who is an IAS officer in the State of Haryana, his story seems like a tale of postings. Approximately he has been **posted 45 times in his career of 20 years** as wherever he went he blew the whistle for corruption in government departments , also he brought into limelight a land deal corruption in Gurgaon and around for conversion of commercial land. He reported many irregularities in the land allotments and brought this into notice of the government, though he received **S R Jindal Prize in 2011 for "Crusade against Corruption"** for exposing corruption in high places and also **received**

ManjunathShanmugam Trust Commendation on Public Works in 2009 but on the other hand the negative reprisals which he had to face were not only detrimental from his career's point of view but also were demoralizing , on the contrary two charge sheets were filed against Khemka for failing to fulfill his responsibilities at Haryana seed development corporation. So there is a dire need for India to bring into reality the law which is only in papers till now and changing hands for recommendations. Not only creating law but a bigger challenge for the Indian government would be to successfully and efficiently implementing the law and effectively enforcing it. **Shehla Masood**, (1973-2011), She was the secretary of NGO Udai. NGO Udai was created in 2004, it recently ventured into tiger and forest conservation. **Masood was an activist working primarily on wildlife conservation, and also supported other causes like good governance, RTI Act, Police reforms, environment, women's rights & issues and transparency.** She sat on a fast in support of Anna Hazare's India against Corruption campaign. She was actively involved in raising issues related to the deaths of tigers in the various sanctuaries of M.P. Shehla herself was working for the Shyama Prasad Mukherjee Trust, organizing events for them from Srinagar to Kolkata to Delhi. She had asked for details about Narmada Samagraha, an NGO backed by the BJP Rajya Sabha MP. She was about to leave for Boat Club in Bhopal to join the anti-government protest to bring the Jan-Lokpal



Bill when she was killed. She co-founded RTI Anonymous, a service for whistle blowers for filing anonymous Right to Information (RTI) Applications with Indian Government departments without getting victimized, with her friends just a few days before her death. **Shehla Masood was posthumously awarded the award for her relentless effort under the category, 'Crusade Against Corruption'**. Masood was constantly living under threat, as revealed by her in an interview before she was shot dead. **On August 16, 2011 at around 11:19 AM, she was shot by an unidentified assailant from point blank range. Masood was about to leave in her car when she was shot in the driver's seat.**

Unfortunately the position of whistle blower in India has not been the same as in other developed countries. A Whistle blower policy is one of the basic features of Corporate Governance Norms. However, despite being a mandatory recommendation in the Murthy Committee Report whistle blower policy was diluted and made non mandatory provision under the Clause 49 of the Listing Agreement (Securities and Exchange Board of India) because of the lobbying of the Indian Corporations. In India the much controversial murder of Satyendra Dubey who tried to expose the corruption in the Golden Quadrilateral Highway Construction Project by writing a letter to the Prime Minister, gathered policy makers' attention towards the protection of whistle blowers. In India, till today due to absence of any legal protection to whistle blowers discourages them to raise their voices and those who take the courage of raising their voices has often paid the price for it.

A comparison can be drawn in the cases of Sherron Watkins and Satyendra Dubey to highlight the miserable position of whistle blower in India.

Basis	SHERRON WATKINS	SATYENDRA DUBEY
country	Country United States	India
Employer	Enron Corporation	National Highway Authority of India, Government of India
Designation	Former Vice-President	Former Project Director
Reported Irregularities	Accounting irregularities within the company	Financial irregularities in the Golden Quadrilateral Project
Consequence of Showing Courage	Lauded in the press for her courageous actions and received numerous honors	Shot dead by unidentified assailants
Awards and Honors	<ul style="list-style-type: none"> ▪ Persons of the Year for 2002 ▪ Court TV Scales of Justice Award ▪ Everyday Hero's Award ▪ Women Mean Business ▪ Award from the Business and Professional Women/USA Organization ▪ The 2003 Woman of the Year 	<ul style="list-style-type: none"> ▪ Whistleblower of the year Award from the London based Index on Censorship ▪ The Transparency International's Annual integrity award ▪ The Service Excellence award from the All India



	<p>Award by Houston Baptist University</p> <ul style="list-style-type: none"> ▪ Barbara Walters included her as one of the 10 Most Fascinating People of 2002 ▪ Rolfe Award for Educating the Public about Business and Finance 	Management Association
New Regulation and Legislation post disclosure	<ul style="list-style-type: none"> ▪ Passage of the Sarbanes-Oxley Act on July 30, 2002 ▪ New Governance proposal was approved by Securities and Exchange Commission in November 2003. 	<ul style="list-style-type: none"> ▪ CVC launched an initiative to protect whistle blowers

Scenario in Other Countries-

In countries like USA, UK which have concrete laws specially framed for protecting the whistleblowers , very less cases of malpractices and mismanagement come to the knowledge because of fear of being punished by law, but in our country where every day a new scam , a fraud , a malpractice , illegal activities are coming into light the prevalence of this law becomes an indispensable part but government still is reluctant in making it a mandatory clause of company's act .

Foreign laws on whistleblowers

Many comprehensive laws are prevalent all across the world on the issue of whistleblower’s protection, starting with

• **USA**

USA does have a framework for the protection of whistleblowers but its more of contradictory in nature. The US laws differ at state and federal level. Some of the important acts are listed below with a brief description: False claims act – it penalizes those who fraud or is involved in any malpractice in any of the governmental programs. So it’s a federal tool to reduce the frauds invoked against the government. Stated below are certain federal environmental laws:

- Clean Water Act of 1972.
- Drinking Water Act (1974)
- Resource Conservation and Recovery Act (1976)
- Toxic Substances Control Act of 1976
- Energy Reorganization Act of 1974 (through 1978 amendment to protect nuclear whistleblowers),
- The Clean Air Act (1990).
- OSHA
- The Pipeline Safety Improvement Act (PSIA) of 2002



- Wendell H. Ford Aviation
- Investment and Reform Act for the 21st Century ("AIR 21")

Others include:

The Sarbanes–Oxley Act, enacted on July 30, 2002 to protect the whistleblowers who bring to light corporate frauds.

- **UK**

Public Interest Disclosure Act (PIDA)

1998 – It is the act of parliament which was enforced to protect the employees from unfair and detrimental treatment of employers.

- **Canada**

Office of the public sector integrity commissioner of Canada – also federal in nature, looks into the cases who speak up abuses for the government.

Whistleblower programs are weak in India

Mechanism for whistle-blowing frauds is still ‘cosmetic’ in corporate India. A recent Deloitte study said despite recognition of whistleblower hotlines as a key channel to detect frauds, India has had very little success in this area because of a casual ‘tick-in-the-box’ approach in planning and implementing whistleblower programs. While 90 per cent of respondents agreed that establishing a whistleblower hotline could help reduce fraud, only 68 per cent said they were actually equipped with such a hotline or policy. However, in case of existing whistle-blowing programs the respondent indicated that they were unable to utilize the existing channels to detect frauds. The report said some common aspects overlooked in the programs were: hotlines that function only for specific durations, local language support and lack of trained call handlers. “What they (companies) need to understand is that whistle blowing channels are perhaps the only source that can help detect fraud in their early stages. Companies need to build an employee/stakeholder-friendly whistle-blowing program,” said Rohit Mahajan, Senior Director and Head, Forensic, Deloitte in India. The management’s commitment to the program and periodic communication about the actions taken on complaints were rare, the report said. “Companies should focus their communication on assuring employees that their tips will remain confidential. To demonstrate this, they may publish internal suitably anonymous examples of where a whistleblower system report led to an investigation and appropriate disciplinary action against those found to have violated the companies’ policies,” Mahajan said. “We have seen several instances where hotlines are managed by administrative or human resources professionals within the company, posing challenges to the anonymity of complaints and whistleblowers,” said Mahajan. Hotlines handled by third parties were seen by 43 per cent of respondents as a solution

Future Prospects of whistleblowers in India

Corporate scams from Satyam to NSEL to Lilliput have given investors and other stake holders sleepless nights in recent years. There are others, though, who see a business opportunity in the widespread problem. Almost three-quarters of senior executives recently surveyed in India consider fraud, bribery and corruption a significant concern. An astounding 69% of India’s companies were affected by fraud, which cost them an average 1.4% of their annual revenues, according to the recent Global Fraud Report from the Economist Intelligence Unit and Kroll, a US risk consultancy.



A few recent cases of corporate fraud have highlighted the prominent role courageous whistleblowers can play. For instance, Dinesh Thakur, a former Ranbaxy executive, submitted evidence to the US government on the company's use of fraudulent data to get approval to sell generic drugs, key evidence that led the company to pay a \$500 million fine. Jay Palmer, a consultant with Infosys, blew the whistle on the company's illegal scheme to use temporary visas to bring Indian staff to the US to work on long term contracts, resulting in US federal investigations and a \$34 million fine. But such instances are rare, as it is dangerous for these individuals to come forward in India. There have been innumerable instances of whistleblowers being killed or threatened or sidelined in their company.

Two different government policies could bring scrutiny in years to come. The new company's bill passed in 2013 and the capital markets regulator Sebi have made it mandatory for listed companies to have a whistleblower policy in place. On the other hand, an act pending in Parliament which makes it mandatory to reveal the identity of whistleblowers who provide tips about fraud in public sector companies and government programs could hamper the effectiveness of whistle blowing programs in public sector. The major problem lies not in employees ability to report, but the company managers' response. After all, reporting a problem will do little good if the most powerful people in the company are involved.

Maintenance of anonymity of whistle blower could help in promoting whistle blowers in the organization and the organization could get saved from fraud and corrupt practices. Yatish Mamniya Co-creator of whistle blower software, graduate of Carnegie Mellon University in information security policy and management and worked for over a decade in the area of cyber security, suggests anonymous reporting program, "Whistleblowers can report wrongdoing online, through their website, completely anonymously. Managers in participating companies will be alerted to the complaint, and then they could go for an audit trail to see what action was taken. "About 60% of corporate frauds are detected via anonymous tip-offs from people with knowledge of wrongdoing." Yatish added

Research Methodology

Secondary data have been used for the present study. In order to get better overview of the knowledge in the topic review of various journals, books, websites, newspapers and articles have also been done.

Conclusion

Whistle blower in India is in miserable position. As per records, whistle blowers here faced innumerable problems including mistreatment from other employees, demotion; suspension and termination from the organization and in some cases even sacrifice of life. A whistle-blower reports about misconduct within an organization and often such reporting receives hostility from affected parties. If the employees are unable to raise concerns about wrongdoing, there is a risk that a scandal could come out and will damage the company's reputation. The company needs to make sure there is an easy route to raise concerns by establishing a whistle blowing policy or whistle blowing mechanism. A whistle blowing should be just to be complied with but have to be adopted as day-to-day practice of the organization. To achieve good whistle blowing; clear definition of



Whistleblowers, non-retaliation clauses, confidentiality and due process should be ensured. There are companies in India who have voluntarily formed such policies but voluntary adoption of whistle blowing mechanism by the corporate is not enough to strengthen the position of whistle blowers. There is dire need for an effective legislation in India with the growing number of scams related to corrupt practices in corporate. Due to weak laws people at dominant position in the organization abuse their power for attainment of their selfish desires and get away with it. The need of the hour is , swift action from government in the form of stringent laws. Though Whistle Blower Protections Act has been passed by the parliament but it is also not free from its inherent faults and the success of the Act depends upon its effective implementation.

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