



WHISTLE BLOWING

Balancing on a Tight Rope

Knowledge Paper Series - 5



**THE INSTITUTE OF
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भारतीय कम्पनी सचिव संस्थान

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WHISTLE BLOWING– BALANCING ON A TIGHT ROPE

Preface

“Where do the evils like corruption arise from? It comes from the never-ending greed. The fight for corruption-free ethical society will have to be fought against this greed and replace it with 'what can I give' spirit.”

Dr. A.P.J. Abdul Kalam

Comprehending the significance, the Government of India mandates the practices of curbing corruption and eliminating black money at the utmost precedence. Hon'ble Prime Minister Shri Narendra Modi has gone full throttle to fight this menace, starting from setting up of a Special Investigation Team (SIT), Foreign Assets Declaration Scheme, renegotiation of bilateral treaties on Double Taxation Avoidance Agreement (DTAA), Benami Transactions (Prohibition) (Amendment) Act, 2006, Demonetisation, Deregistration of Shell Companies and Goods and Services Tax etc.

To support the initiatives of the Government in curbing the hazards of corruption, the Institute of Company Secretaries of India recently released a publication on “Corporate Anti-Bribery Code”, on October 4, 2017 on the occasion of the commencement of ICSI Golden Jubilee Year Celebration, to be adopted voluntarily by the private sector, to tackle the supply side of bribery. This Code is an important institutional initiative in curbing corruption in India, and recommends for a mandatory whistle blower policy to be adopted by the private sector.

A host of mechanism and solutions to address this menace include increased criminal prosecution for bribery, increased transparency and reporting, and improved governance. Yet the tools often suggested to combat corruption include expanded use of whistleblowing in terms of incentives to encourage it and laws to protect whistleblowers. While whistleblowing alone is not a solution to corruption,

it is one of the tools that can improve governance and create ethically and legally healthy organizations and administration.

The ICSI has always been in forefront in supporting and promoting Good Governance practices. As a step ahead, the Institute has brought out this Knowledge Paper on ***Whistle Blowing – Balancing on a Tight Rope***, to advance the acumen of professionals, stakeholders and public at large on basic concepts of whistle blowing and the details of laws protecting the whistle blowers in India as well as in other jurisdictions.

I commend the dedicated efforts of Ms. Khusbu Mohanty, Assistant Director in preparing the manuscript of this knowledge paper under the guidance of Ms. Sonia Baijal, Director, Professional Development, perspective & studies, ICSI.

I am sure the readers will find this knowledge paper quite informative and enriching their reservoir of knowledge.

Date: November 17, 2017

Place: New Delhi

CS (Dr.) Shyam Agrawal

President

The Institute of Company Secretaries of India

ऋतं वदिष्यामि । सत्यं वदिष्यामि ।
तन्मामवतु । तद्वक्तारमवतु ।
अवतु माम् । अवतु वक्तारामवतु वक्तारम् ॥ऋग्वेद*

*I Speak about the Divine Truth, I Speak about the Absolute Truth,
May That Protect Me, May That Protect the Preceptor,
May that Protect Me, May that Protect the Preceptor.*

Prelude

Every organization desires Honesty from and among its Employees. The presence of honesty allows for complete dedication to the organization's mission and success. By encouraging a Whistle Blowing, the organization promotes transparent structure and effective, clear communication. Whistleblowing is a behavior that is often intensely motivated by one's ethics, as well as a desire to do good for the company or the public.

While some may view Whistleblowing as “Snitching,” others perceive it as an act of bravery and stemming from a dedication to ethics. Whistleblowers are employees that feel an obligation to provide information or viewpoints that run contrary to the actions of one or many individuals within their organization. They choose to stand against and decide to become a non-conformist to an organization's current practices by reporting unlawful activities. At their core, those who are willing to blow the whistle are true to themselves and their values, experiencing the dire need to relay information that could harm other individuals, and there is no doubt in their mind that they must take such actions to right a wrong. It's the disclosure of TRUTH against perceived wrongdoing, misconduct, unethical activity within public, private or third-sector organisations to the public or to those in authority.

DEFINITION OF WHISTLE BLOWING



The International Labour Organization (ILO) defines it as “the reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employers.”

In the context of International Anti-Corruption Standards, the 2009 OECD Recommendation of the Council for further combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Recommendation) refers to protection from “discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities...”

The United Nations Convention against Corruption (UNCAC) refers to “any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.”

The Council of Europe Civil Law Convention on Corruption refers to “employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.”

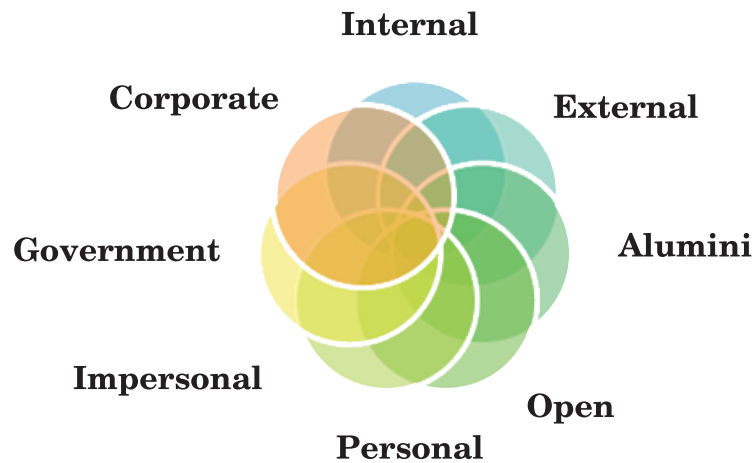
Some important Definitions of Whistle blowing:-

R.M Green (1994) defines a Whistleblower as an Employee who, perceiving an organizational practice that he believes to be illegal or unethical, seeks to stop this practice by alerting top management or failing that by notifying authorities outside the organization.

Boatright (2003) Whistle blowing is the release of information by a member or former member of an organization this is evidence of illegal and/or immoral conduct in the organization that is not in the public interest.

Koehn (2003) Whistle blowing occurs when an employee informs the public of inappropriate activities going on inside the organization.

TYPES OF WHISTLEBLOWERS



- Internal:** When the whistleblower reports the wrong doings to the officials at higher position in the organization. The usual subjects of internal whistleblowing are disloyalty, improper conduct, indiscipline, insubordination, disobedience etc.
- External:** Where the wrongdoings are reported to the people outside the organization like media, public interest groups or enforcement agencies it is called external whistle blowing.
- Alumini:** When the whistle blowing is done by the former employee of the organization it is called alumini whistle blowing.
- Open:** When the identity of the whistleblower is revealed, it is called Open Whistle Blowing.
- Personal:** Where the organizational wrongdoings are to harm one person only, disclosing such wrong doings it is called personal whistle blowing.
- Impersonal:** When the wrong doing is to harm others, it is called impersonal whistle blowing.
- Government:** When a disclosure is made about wrong doings or unethical practices adopted by the officials of the Government.
- Corporate:** When a disclosure is made about the wrongdoings in a business corporation, it is called corporate whistle blowing.

ABOUT WHISTLE BLOWING

Among other things, Whistle Blowing can be an act of free speech, an anti-corruption tool, and an internal management dispute mechanism. One of the first modern definitions of Whistle Blowing was given by US consumer activist Ralph Nader in 1971 who described it as “An act of a man or woman who, believing that the public interest overrides the interest of the organization he serves, blows the whistle that the organization is involved in corrupt, illegal, fraudulent or harmful activity.

US Academics Marcia P. Miceli and Janet P. Near defined 'Whistle Blowing' as, “the disclosure of organizational member's (former or current) disclosure of illegal, immoral or illegitimate practices under the control of their employers to persons or organizations that may be able to effect action. They describe Whistle Blowing as a four state process:-

- A triggering event occurs, involving questionable, unethical, or illegal activities, and this leads to an employee to consider blowing the whistle.
- The employee engages in decision making, assessing the activity and whether it involves wrongdoing, gathering additional information, and discussing the situation with others.
- The employee exercises voice by blowing the whistle; alternatively, the employee could exit the organization, or remain silent out of loyalty or neglect.
- Organization Members react to, and possibly retaliate against the whistle-blower.

Other academicians have focused on Whistle Blowing as mostly an element of free speech and the right of individuals to express dissent. An expansive view of Whistle Blowing can be taken which treats it as a means to promote accountability by allowing for the disclosure by any person of information about misconduct while at the same time protecting the person against sanctions of all forms.

Whistle Blowing involves the revelation of misconduct or illegality occurring in an organization. This necessarily involves disclosing secret information beyond the bounds intended by those trying to keep it secret, and often this involves publication and disclosure to the general public. By virtue of the fact that whistle-blowers exist within the organizations they are exposing, they are almost always under some contractual or statutory requirement not to disclose the information they are disclosing. If one takes these obligations at face value then it would appear that Whistle blowing must always be regarded as a breach of law, and possibly also a breach

of ethics, at least in so far as it involves a breach of contract with the organization where the whistle-blower is employed. Under such a view, Whistle Blowing can never be legally justified, and it is only through an ethical imperative to break the law that it could be justified ethically.

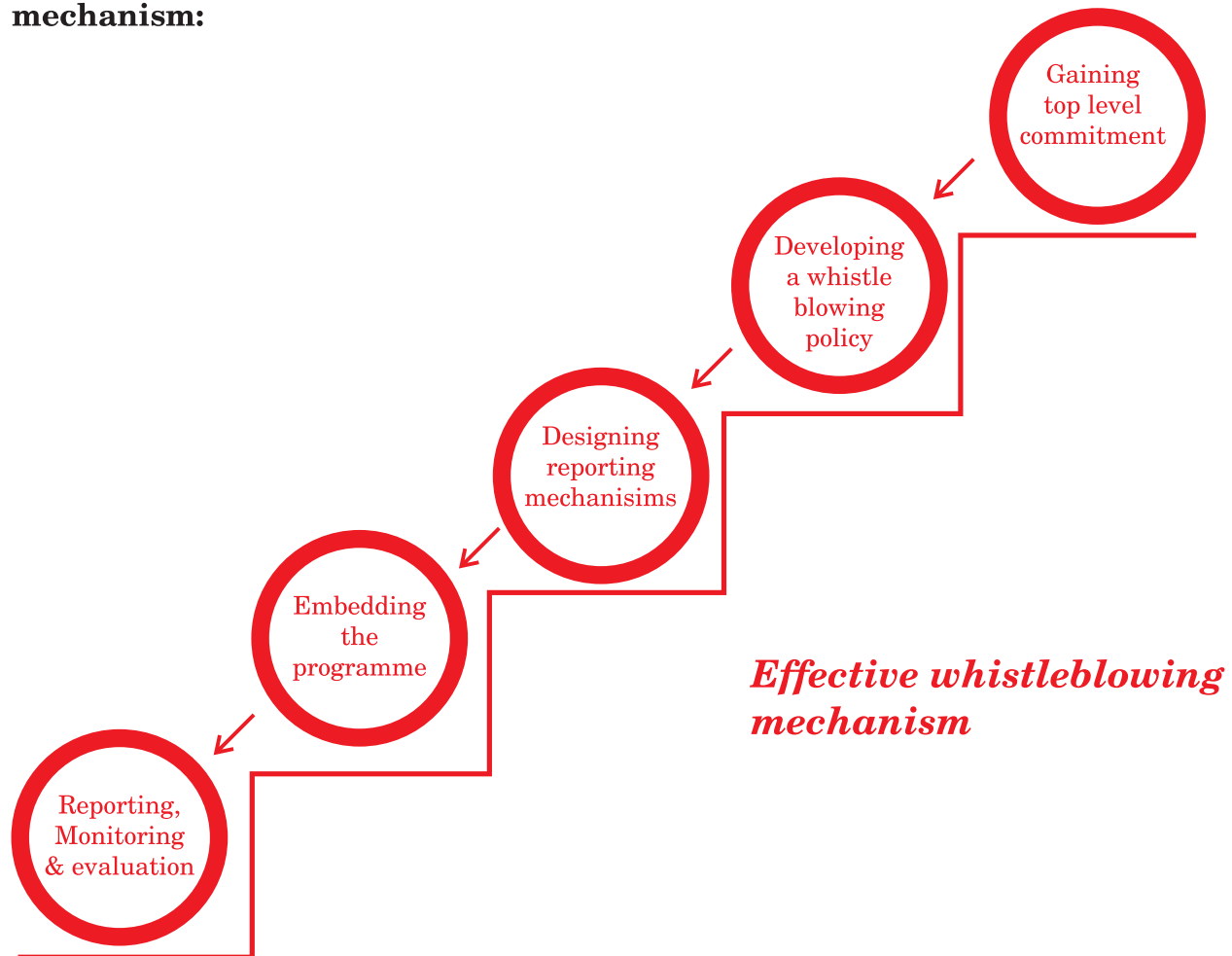
Most Whistle-Blowers are Internal Whistle-Blowers, who report misconduct on a fellow employee or superior within their company. One of the most interesting questions with respect to internal whistle-blowers is why and under what circumstances people will either act on the spot to stop illegal and otherwise unacceptable behaviour or report it. There is some reason to believe that people are more likely to take action with respect to unacceptable behaviour, within an organization, if there are complaint systems that offer not just options dictated by the planning and control organization, but a choice of options for absolute confidentiality.

External Whistle-blowers, however, report misconduct to outside persons or entities. In these cases, depending on the information's severity and nature, whistle-blowers may report the misconduct to lawyers, the media, law enforcement or watchdog agencies, or other local, state, or Govt. agencies.

A professional under loyal duty towards his employment, act as porous soil, retaining the information that would hamper the image of the organisation and disclosing information that would materially accommodate the organisation's perspective, on the contrary ethical priorities call for larger disclosure demonstration.

Recent revelations about the extent and details of the massive National Security Agency (NSA) surveillance program have been made possible mostly by the actions of a single whistle-blower, Edward Snowden, presently in hiding from the wrath of the US government, whose secrets he had brought in public knowledge. Despite repeated denials by its officials, it is now evident that the NSA runs a data-collection and spying network which collects masses of data on the private communications of non-US citizens, and some private communications on US citizens. It does so without requirement for any individual warrants for its targets, and without requirement for any probable cause with respect to any of the individuals whose communications are collected. Proving the old adage that no good deed goes unpunished, Snowden is presently facing charges from the US government for theft of government property and unauthorized disclosure of defence and intelligence material. He is also subject to widespread vilification in the establishment media, where he has been branded as a “traitor” and a “cross-dressing Little Red Riding Hood.” It is an ethical hound for whether for supporters of the massive power apparatus of the US government, Snowden is a criminal, deserving of scorn and imprisonment gratifying the US government or is he a hero of the “law-breaking” variety — a man who “stole” government documents to expose the activities of its most corrupt and secretive agencies.

Best practices in designing and implementing effective whistle blowing mechanism:



Seven dimensions of Organizational Culture that influence the Employee Reflection Process that ultimately leads to Whistle Blowing Behavior are:

- 1) Vigilance 2) Engagement 3) Credibility 4) Accountability
- 5) Empowerment 6) Courage 7) Options

Who is a Whistle-blower?

Independence is a quality that can be possessed by individuals and is an essential component of professionalism and professional behaviour. It refers to the avoidance of being unduly influenced by a vested interest and to being free from any constraints that would prevent a correct course of action being taken. It is an ability to 'stand apart' from inappropriate influences and to be free of managerial capture, to be able to make the correct and uncontaminated decision on a given issue.

Whistle-blowers have been called '*canaries in the coalmine*'. They have been accused of '*committing the truth*'.

सत्येनधार्यतेपृथ्वीसत्येनतपतेरविः ।
सत्येनवायवोवान्तिसर्वसत्येप्रतिष्ठितम् ॥

["SatyendharyateprithviSatyentapteravi:
SatyenvativayushchaSarvmsatyepatishthitam."]

भावार्थ :

सत्य से पृथ्वी का धारण होता है, सत्य से सूर्य तपता है, सत्य से पवन चलता है। सब सत्य पर आधारित है।

It means that the earth, the sun and the wind are all held by truth, truth here meaning the natural laws. Each and every force is governed by natural laws and so it shall prevail.



Cynthia Cooper, World Com; (left to right), Coleen Rowley, the FBI; and Sherron Watkins, Enron were named TIME's 2002 Persons of the Year

Cynthia Cooper exploded the bubble that was WorldCom when she informed its board that the company had covered up \$3.8 billion in losses through the prestidigitations of phony bookkeeping.

Coleen Rowley is the FBI staff attorney who raised a memo to FBI Director Robert Mueller about how the bureau brushed off pleas from her Minneapolis, Minn., field office that Zacarias Moussaoui, who is now indicted as a Sept. 11 co-conspirator, was a man who must be investigated.

Sherron Watkins was the Enron Vice President who wrote a letter to chairman Kenneth Lay in the summer of 2001 warning him that the company's methods of accounting were improper.

A whistle-blower is defined as someone who exposes wrongdoing, fraud, corruption or mismanagement. In many cases, this could be a person who works for the government who would report misconduct within the government or it could be an employee of a private company who reports corrupt practices within the company.

Whistle-blowers may make their allegations internally (for example, to other people within the accused organization) or externally (to regulators, law enforcement agencies, to the media or to groups concerned with the issues). There is some reason to believe that people are more likely to take action with respect to unacceptable behavior, within an organization, if there are complaint systems that offer not just options dictated by the planning and controlling organization, but a choice of options for individuals, including an option that offers near absolute confidentiality. However, external whistle-blowers report misconduct on outside persons or entities. In these cases, depending on the information's severity and nature, whistle-blowers may report the misconduct to lawyers, the media, law enforcement or watchdog agencies, or other local, state, or federal agencies.

Whistle-blower Vs. Informers

Often the term Whistle-blower is confused with the term Informer who have generally a bad reputation, and known as "Mukhbir" popularly. The most important distinction between the two terms is the liability of the person disclosing the information. Informants are often themselves involved in some sort of unethical enterprise and are using the disclosure of information as a means to reduce their liability, either voluntarily, or due to coercion. They are in a subordinate place to the body or person they are disclosing to and must follow their orders or face sanctions. Another difference is that the informants often seek favours or remuneration for their disclosures but the same is not true in case of whistle-blowers. However, a few types of anti-corruption laws do allow for rewards to be given to those that disclose, typically a part of the money recovered in corruption cases.

Independence versus Accountability

Independence is a quality possessed by individuals and is an essential component of Professionalism. It refers to the avoidance of being unduly influenced by a vested interest and to being free from any constraints that would prevent a correct course of action being taken. It is an ability to 'stand apart' from inappropriate influences and to be free of managerial capture, to be able to make the correct and uncontaminated decision on a given issue.

Independence creates the need for greater accountability and greater accountability creates the conditions for strengthened independence. Independence and accountability should be seen, in other words, as twin pillars which support any professional whether related to Governance or other, answerable for responsible decision-making. In the context of professionalism, a balancing approach to independence and accountability is not just lead to sort out effective, efficient and appropriate decision making, but ultimately to enhance transparency of the management and processes of institutions.

Accountability and Independence in the Era of Governance

The concept of accountability has been applied in many different ways. The usage of the term is argued to have both expanded and gained distance from its original meaning.

In ethics and governance, accountability is answerability, blameworthiness, liability, and the expectation of account-giving. As an aspect of governance, it has been central to discussions related to problems in the public sector, non-profit and private (corporate) worlds. In leadership roles, accountability is the acknowledgment and assumption of responsibility for actions, products, decisions, and policies including the administration, governance, and implementation within the scope of the role or employment position and encompassing the obligation to report, explain and be answerable for resulting consequences.

What does a Governance Professional do?

The modern era is much talking about governance and the role of professionals whether they are Governance professionals or other professionals. The governance professional can hold different titles, depending on the organisation. You may be called Company Secretary, or Legal Counsel, or Chief Financial Officer or may be called Chief Governance Officer or Chief Risk Officer. The title will vary depending on the circumstances of each entity. Governance professionals are there not for just complying with the requirement set up by the regulators but it is their accountability to safeguard the interest of the stakeholders of the organisation and the society as a whole.

The governance professional's role is to enforce a compliance framework to safeguard the integrity of the organisation and to promote high standards of ethical behaviour. S/he has a significant role in assisting the board of the organisation to achieve its vision and strategy.

WHETHER SENSE OF RESPONSIBILITY AND ACCOUNTABILITY LEAD TOWARDS WHISTLE BLOWING?

Accountability of a person actually depends upon what the person himself/ herself feels the duty towards the society or the stakeholders or the community at large. It is equally important to think whether a person is complying or doing something just for the sake of the regulations and legislations or doing it morally based on the guilt he/she has inside or there is a sense of responsibility that it is the moral duty of the person to take the accountability of the works or things done by him or on behalf of others and works for the betterment and improvement of the society. One of the most important constituent for being accountable is the degree of independence a person has with him/her.

It is globally acknowledged that the existence of legislation does not make whistle-blowers out of ordinary people. Most whistle-blowers have one thing in common — a strong sense of right and wrong. They feel it as their accountability to go ahead and 'blow the whistle' even if they become ostracised from friends and co-workers or are fired. In fact, harassment and victimisation of whistle-blowers is the norm inspite of legislation, or they are ignored.



Whistle-blowing, as it relates to fraud, is the act of reporting fraud, waste, and abuse. Reporting any act of wrongdoing is considered whistle-blowing, regardless if it's reported by a public or private employee or to persons inside or outside of the victim organization.

Major Whistle Blowing Legislations around the World

Many countries have devised and adopted a variety of laws and procedures for protecting and encouraging Whistle Blowing as discussed below:

The United States

The US has dozens of whistle-blower laws at the state and federal level, as well as separate clauses in legislation designed to achieve other health, safety or welfare objectives. The three principal acts, however, are the Whistle-blower Protection Act 1989, the Corporate and Criminal Accountability Act (Sarbanes-Oxley Act), and the False Claims Act.

(A) The Whistle-blower Protection Act 1989

The Whistleblower Protection Enhancement Act, 2012 was signed into law in November 27, 2012. The Whistleblower Protection Enhancement Act (WPEA) provides millions of federal workers with the rights they need to report government corruption and wrongdoing safely. The WPEA makes federal whistleblower rights stronger than at any time in history, lapping those created by the Whistleblower Protection Act of 1989 (WPA). This update is long overdue, as WPA protections were very weak.

The WPA was a landmark good government law with the mandate to protect federal employees who report waste, fraud and abuse. Over the past two decades, the WPA has fallen victim to hostile judicial activism. Unfortunately, with every month that passed before enactment of the WPEA, the status of federal government whistleblowers continued to erode due to a lack of viable rights.

Formerly under the WPA, federal employees were not eligible for whistleblower protections if they:

- were not the first person who discloses given misconduct
- made a disclosure to a co-worker
- made a disclosure to a supervisor
- disclosed the consequences of a policy decision, or
- blew the whistle while carrying out job duties

Sections 101 and 102 of the WPEA restore the original intent of the WPA to adequately protect whistleblowers by clarifying that a disclosure does not lose protection because: (1) the disclosure was made to a person, including a supervisor, who participated in the wrongdoing disclosed; (2) the disclosure revealed information that had previously been disclosed; (3) of the employee or applicant's motive for making the disclosure; (4) the disclosure was made while the employee was off duty; or (5) of the amount of time which has passed

since the occurrence of the events described in the disclosure. Section 101(b)(2) also clarifies that a disclosure is not excluded from protection because it was made during the employee's normal course of duties, providing the employee is able to show that the personnel action was taken in reprisal for the disclosure.

(B) The Sarbanes-Oxley Act

The Sarbanes-Oxley Act was passed in 2002 to combat corporate criminal fraud and to strengthen corporate accountability. It was a legislative response to the fraudulent activities exemplified by World Com and Enron Corporation. The Act provides for enhanced financial disclosures and auditor independence of publicly held corporations. Section 301 of the Act requires that audit committees of the boards of public corporations establish procedures for 'the confidential, anonymous submission by employees' of complaints regarding internal accounting controls or auditing matters. The Act provides some protections and assistance for the whistle-blower. Employees are not required to complain to their employers first, but may complain to a Federal regulatory or law enforcement agency; any Member of Congress or any committee of Congress; or a person with supervisory authority over the employee. It does entertain the right of the whistle-blower to take legal action if they suffer retaliation. Those found guilty of retaliation are liable to up to ten years in prison. The impact of the Sarbanes-Oxley Act, however, is primarily limited to financial matters.

(C) The False Claims Act

Designed to stop fraud against the government, this act was passed during the US civil war under the administration of Abraham Lincoln. Regarded as the single most successful Whistle Blowing legislation in the country, the False Claims Act works by providing the whistle-blower between 15 and 30 per cent of the government's total recovery, the percentage depending on the extent to which the whistle-blower took the action that enabled the recovery to take place. It was amended in 1986 to establish protections for whistle-blowers, and to prevent harassing and retaliation against them. The Bill, which permits an anonymous disclosure, has been copied by a number of states in the US.

The United Kingdom

In UK, to protect whistle-blowers, legislation was enacted in the wake of well-publicized scandals and disasters that occurred in 1980s and early 1990s. These included the collapse of Bank of Credit and Commerce International (BCCI), the drowning of four children at Lyme Bay, and the Clapham Rail crash.

(A) The Public Interest Disclosure Act of 1998

The Public Interest Disclosure Act (PIDA) became effective on July 2, 1999, in England, Wales and Scotland, as an amendment to the Employment Rights Act of 1996. PIDA covers both private and public employees (except police officers), and provides that “a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done on the ground that the worker has made a protected disclosure.” Under the PIDA, whistle-blowers must use prescribed channels for making disclosures in order to retain the Act's protection. The disclosure can be made to the employer itself or an appropriate authority, and forbids the disclosure to media. As is clearly apparent, the UK's scheme is materially different from that of the United States, which does not require employees to use any particular channel to raise their concerns.

Canada

Canada has very few laws which pertain directly to Whistle Blowing. The federal government enacted the Public Servants Disclosure Protection Act in 2007. The intent of this act is to protect most of the federal public service from reprisals for reporting wrongdoing. However, this Act has been extensively criticized as setting too many conditions on whistle-blowers and for protecting wrongdoers.

Several provinces also have legislation which protects whistle-blowers to an extent:



Section 28 of the New Brunswick Employment Standards Act, Chap. E-7.2, provides specific protection for those reporting wrongdoing.
In Ontario, the Environmental Protection Act, R.S.O. 1990, c. E.19 and the Environmental Bill of Rights, S.O. 1993, c. 28 provide protection.
Saskatchewan's Labour Standards Act provides protection, although the reporting must have been done to a lawful authority.
A number of other acts provide narrow protections to individuals reporting wrongdoing under those acts.

Australia

Australia has amended its Corporations Act to provide protection to officers, employees, and contractors and their employees. The Act provides protection against any retaliation against a whistle-blower and gives them a civil right, including the right to seek reinstatement of employment. It also provides qualified privilege against defamation and precludes contractual or other remedies being enforced including civil and criminal liability for making the disclosure. Secrecy provisions in any employment will not preclude Whistle Blowing. Disclosures which are covered include those made to the securities regulator; the company's auditor or a member of the audit team; a director, company secretary or senior manager of the company; and any other person authorized by the company to receive revelations of this kind. Interestingly, whistle-blowers must give their name before making the disclosure in order to receive protection under the Act.

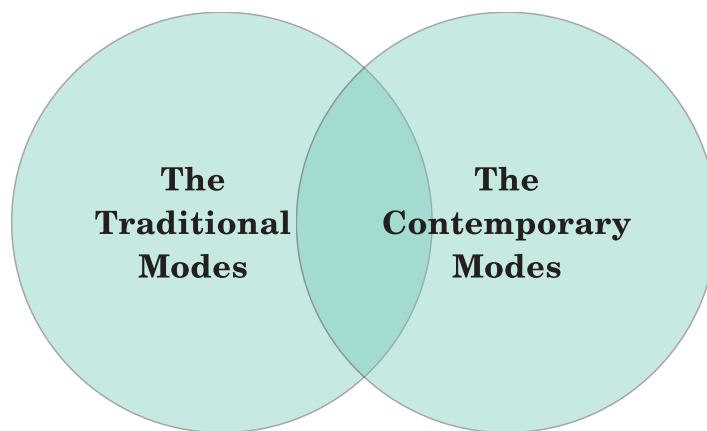


SCENARIO IN INDIA

None can doubt that a Strong and Effective Whistle-blowers Protection Law in India is urgently required. Whistle Blowing is capable of gifting a Free, Transparent and Just Social Order and it can eliminate the arbitrariness, officialdom and corruption from a society.

I. Modes of Whistle Blowing

The modes of Whistle Blowing can be grouped under the following categories:



(A) **The Traditional Modes:** The traditional methods of Whistle Blowing can be grouped under the following categories:

- (i) **The Constitution of India, and**
- (ii) **The Statutory Enactments**
- (i) ***The Constitution of India:***

The Constitution of India provides means of Whistle Blowing in the form of PIL and enforcement of “Public Law Remedy” for the violation of Fundamental Rights. The difference between these two remedies is very crucial. In the former case the process of Whistle Blowing safeguards the interest of public at large whereas in the latter case invoking various Constitutional Remedies redresses personal violation of Fundamental Rights. The Constitution of India is not intended to be the arena of legal quibbling for men with long purses. It is made for the common people. It should generally be so construed as that they can understand and appreciate it.

The more they understand it the more they love it and the more they prize it. It is really the poor, starved and mindless millions who need the court's protection for securing to themselves the enjoyment of Human Rights.

The Socio-Justice tool through which these aspirations of the Constitution and people of India are achieved is known as “Public Interest Litigation” (PIL). PIL means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights and liabilities are affected. The evolution of PIL in India has an interesting background.

In the famous case of *Kesavananda Bharati v State of Kerala*, the Supreme Court ultimately put a brake on the arbitrary and unreasonable power of Legislature to destroy the “Basic Features” of the Constitution. Thus, the seeds of PIL could never have been planted had the Supreme Court not brought justness and fairness in the “Indian Legal System” in the year 1973, by formulating the “Doctrine of Basic Structure”.

Justice Krishna Iyer sowed the seeds of the new dispensation in *Mumbai Kamgar Sabha v Abdulbhai Faizullabhai* and used the expression PIL and “Epistolary Jurisdiction” in *Fertilizer Corporation Kamgar Union v U.O.I.* In between, the Supreme Court interpreted the expression “Procedure Established by Law” as a procedure which must be “Just, Fair and Reasonable” in the year 1978.

Where public functionaries are involved and the matter relates to the violation of the Fundamental Rights or The enforcement of public duties, the remedy would still be available under the “Public Law” notwithstanding that a suit could be filed for damages under the “Private Law”. It was more so when it was not a mere matter of violation of an ordinary right of a person but the violation of Fundamental Rights which was involved as the petitioner was a victim of rape which is violative of the Fundamental Right of a person as guaranteed U/A 21 of the Constitution”. Thus, the collective force of PIL and “Public Law Remedies” provides us the medium of “Constitutional Whistle Blowing”.

(ii) The statutory enactments:

The statutory enactments like Indian Penal Code, 1860, the Prevention of Terrorism Act, the Code of Civil Procedure, 1908, etc. also provided means for fighting against civil and criminal wrongs and the same also proved effective deterrent for the commission of further wrongs. The same are, however, incomplete without the means of “information technology” that can provide the safest, secure and strongest form of Whistle Blowing. This takes us to the contemporary modes of Whistle Blowing.

(B) The Contemporary Modes

The instrument of Whistle Blowing can be invoked most effectively by combining it with the Information and Communication Technology (ICT). This is because the medium of ICT is not only speedier and economical but equally the safest and strongest. It must be appreciated that the evils of corruption, delinquencies, scams, etc. are intangible in nature and they breed due to lack of transparency and accountability. With the enactment of the Information Technology Act, 2000, more and more transparency is expected in governmental functioning by keeping people aware of the state's plan, policies, objectives and achievements. The Act facilitates e-governance by accepting electronic records and digital signatures in the government offices and its agencies. These techniques are intended to involve the use of alternatives to paper-based methods of communication and storage of information, and to facilitate electronic filing of documents with the government agencies. This will make the government offices hassle free and transparent.

The beneficial concept of Information and Communication Technology can be utilized for the following purposes:

To have access to public documents.

For making online payments of various bills and dues.

To file statutory documents online.

To file the complaints, grievances and suggestions of citizens online.

The online facility can be used to enter into a partnership the appropriate government in cases of government contracts.

The citizens can use the online facility to file their income tax returns.

The citizens will enjoy the facility of online services.

The various departments of the government can be computerized and centralized and the responsibility for its proper maintenance can be fixed on an agency like National Informatics Centre.

This sort of arrangement will definitely help in establishing a better state-citizen relationship. The informants and witnesses are better protected and this result in smooth and hassle free disclosures of social evils. In fact, the mere use of e-governance results in automatic scrutiny of various social evils as the medium of information technology recognises no pressures and approaches. Further, any manipulation in the same can be directly attributable to the persons having control over the information technology.

II. Justification for Whistle Blowing

The strongest justification for allowing the use of Whistle Blowing is that the people of India have the right to impart and receive information. The right to impart and receive information is a species of the right to freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution of India. A citizen has a Fundamental Right to use the best means of imparting and receiving information. The State is not only under an obligation to respect the Fundamental Rights of the citizens, but also equally under an obligation to ensure conditions under which the Right can be meaningfully and effectively be enjoyed by one and all. Freedom of speech and expression is basic to and indivisible from a democratic polity. The right U/A 19(1)(a) is, however, available only to the citizens of India and non-citizens can claim only right to know U/A 21 of the Constitution of India.

Thus, the Whistle Blowing gets its legitimacy under the following:

- (i) Freedom of information under Article 19(1)(a), and**
- (ii) Right to know under Article 21.**

(1) Freedom of information under Article 19(1)(a)

Article 19(1)(a) of the constitution guarantees to all citizens freedom of speech and expression. At the same time, Article 19(2) permits the State to make any law in so far as such law imposes reasonable restrictions on the exercise of the rights conferred by Article 19(1)(a) of the constitution in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, morality, contempt of court, defamation and incitement of offence. Thus, a citizen has a right to receive information and that right is derived from the concept of freedom of speech and expression comprised in Article 19(1)(a). It must, however, be noted that freedoms under Article 19, including Article 19(1)(a), are available only to citizens of India. An alien or foreigner has no rights under this Article because he is not a citizen of India. Thus to confer protection upon non-citizens one has to depend upon and apply Article 21 which is available to all persons, whether citizen or non-citizen.

(2) **Right to know under Article 21**

Article 21 enshrines right to life and personal liberty. The expressions “right to life and personal liberty” are compendious terms, which include within themselves variety of rights and attributes. Some of them are also found in Article 19 and thus have two sources at the same time. In *R.P. Limited v Indian Express Newspapers* the Supreme Court read into Article 21 the right to know. The Supreme Court held that right to know is a necessary ingredient of participatory democracy. In view of transnational developments when distances are shrinking, international communities are coming together for cooperation in various spheres and they are moving towards global perspective in various fields including Human Rights, the expression “liberty” must receive an expanded meaning. The expression cannot be limited to mere absence of bodily restraint. It is wide enough to expand to full range of rights including right to hold a particular opinion and right to sustain and nurture that opinion. For sustaining and nurturing that opinion it becomes necessary to receive information. Article 21 confers on all persons a right to know which include a right to receive information. The ambit and scope of Article 21 is much wider as compared to Article 19(1)(a). Thus, the courts are required to expand its scope by way of judicial activism.

In *P.U.C.L v U.O.I*, the Supreme Court observed that Fundamental Rights themselves have no fixed contents, most of them are empty vessels into which each generation must pour its contents in the light of its experience. The attempt of the court should be to expand the reach and ambit of the Fundamental Rights by process of judicial interpretation. There cannot be any distinction between the Fundamental Rights mentioned in Chapter-III of the constitution and the declaration of such rights on the basis of the judgments rendered by the Supreme Court.

Further, it is well settled that while interpreting the constitutional provisions dealing with Fundamental Rights the courts must not forget the principles embodied in the international conventions and instruments and as far as possible the courts must give effect to the principles contained in those instruments. The courts are under an obligation to give due regard to the international conventions and norms while construing the domestic laws, more so when there is no inconsistency or conflict between them and the domestic law. The courts in India can take clue from various foreign laws concerning Whistle Blowing by moulding the same as per the requirements of Indian conditions. The courts can also recognise the rights of the government to restrict the flow of information to general public. For instance, in *P.U.C.L. v U.O.I*, the Supreme Court specified the grounds on which the government can withhold information relating to various matters.

The Supreme Court observed: Every right- legal or moral- carries with it a corresponding objection. It is subject to several exemptions/ exceptions indicated in broad terms. Generally, the exemptions/ exceptions under those laws entitle the government to with hold information relating to the following matters:

International relations;	National security (including defiance) and public safety;	Investigation, detection and prevention of crime;
Internal deliberations of the Govt.;	Information received in confidence from a source outside the Govt.;	Information, which, if disclosed, would violate the privacy of the individual;
Information of an economic nature (including Trade Secrets) which, if disclosed, would confer an unfair advantage on some person or concern, or, subject some person or Govt., to an unfair disadvantage;	Information, which is subject to a claim of legal professional privilege, e.g. communication between a legal adviser and the client; between a physician and the patient;	Information about scientific discoveries.

Thus, if a given case does not fall within the restrictions contained U/A 19(2) or above mentioned restrictions, the same cannot be withheld from the public scrutiny.

III. Safeguards to Whistle-blowers

The existing laws contain various provisions that restrict the access to the whistle-blowers and thereby prevent their disclosure. For instance, under section 173 (6) of Cr.P.C the police officer can form an opinion that any part of the statement recorded under section 161 of the Code of a person, the prosecution proposes to examine as its witness, need not be disclosed to the accused if it is not essential in the interests of justice or is inexpedient in the public interest.

Similarly, though section 273 of the Code requires the evidence to be taken in the presence of the accused, section 299 indicates that in certain exceptional circumstances an accused may be denied his right to cross-examine a prosecution witness in open court. The concerned person or witness may be the whistle-blower, whose identity can be concealed by the courts in the interest of justice. Further, the Law Commission of India and other Commissions have also contributed significantly for the protection of whistle-blowers. The 14th Report of the Law Commission (1958) examined, *inter alia*, the question of providing adequate facilities to witnesses attending cases in courts. The 4th Report of the National Police Commission (1980) acknowledged the troubles undergone by witnesses attending proceedings in courts. The 154th Report of the Law Commission (1996) particularly noted: “Necessary confidence has to be created in the minds of the witnesses that they would be protected from the wrath of the accused in any eventuality.” In its 178th Report (2001), the Law Commission recommended the insertion of section 164A in the Cr.P.C to provide for recording of the statement of material witnesses in the presence of Magistrates where the offences were punishable with imprisonment of 10 years and more. On the basis of this recommendation, the Criminal Law (Amendment) Bill, 2003 was introduced in the Rajya Sabha and is pending enactment. The Law Commission's 179th Report on Public Interest Disclosures and the Protection of Informers, states thus: “Good-faith whistle-blowers represent the highest ideals of public service and challenge abuses of power. They test loyalty with the highest moral principles but place the country above loyalties to persons, parties or Governments”. The same also seems to be stress of the “consultation paper on witness identity protection and witness protection programmes” issued by the Law Commission. These provisions must be construed in a liberal manner by the courts to protect the whistle-blowers.

IV. *Judicial Response*

The response of the Supreme Court for providing protection to witnesses and whistle-blowers is positive and justice oriented. The Supreme Court, in *Gurbachan Singh v State of Bombay*, upheld a provision of the Bombay Police Act, 1951 that denied permission to a detainee to cross-examine the witnesses who had deposed against him. It was held that the law was only to deal with exceptional cases where witnesses, for fear of violence to their person or property, were unwilling to depose publicly against bad character. In *Naresh Mirajkar v State of Maharashtra*, the Supreme Court recognised the validity of the procedure of holding an in-camera trial. The Supreme Court was of the opinion that in certain circumstances, the identity of the witness can be kept secret and concealed by holding an in-camera trial. The decision of *Maneka Sanjay Gandhi v. Rani Jethmalani*, stressed the need for a congenial atmosphere for the conduct of a fair trial and this included the protection of witnesses. Similarly, in *A.K. Roy v Union of India*, stressing on the need to protect the identity of the informant, the Supreme Court held that the disclosure of the identity of the informant may abort the very process of preventive detention because, no one will be willing to come forward to give information of any prejudicial activity if his identity is going to be disclosed, which may have to be done under the stress of cross-examination. In *Kartar Singh v. State of Punjab*, the Supreme Court upheld the validity of ss.16 (2) and (3) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) which gave the discretion to the Designated Court to keep the identity and address of a witness secret upon certain contingencies; to hold the proceedings at a place to be decided by the court and to withhold the names and addresses of witnesses in its orders. The court held that the right of the accused to cross-examine the prosecution witnesses was not absolute but was subject to exceptions. The same reasoning was applied to uphold the validity of Sec. 30 of the Prevention of Terrorism Act, 2002 (POTA) in *People's Union of Civil Liberties v. Union of India*. In *State of Maharashtra v Dr. Praful. B. Desai*, the Supreme Court observed: "The evidence can be both oral and documentary and electronic records can be produced as evidence. This means that evidence, even in criminal matters, can also be by way of electronic records. This would include video conferencing. Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you, i.e., in your presence.

Thus, it is clear that so long as the accused and/or his pleader are present when evidence is recorded by video conferencing that evidence is recorded in the “presence” of the accused and would thus fully meet the requirements of section 273, Criminal Procedure Code. Recording of such evidence would be as per “procedure established by law”. This judgment of the Supreme Court is a landmark judgment as it has the potential to seek help of those witnesses who are crucial for rendering the complete justice but who cannot come due to “territorial distances” or even due to fear, expenses, old age, etc.

The Courts in India have the power to maintain anonymity of the witnesses to protect them from threats and harm and the use of information technology is the safest bet for the same. The testimony of a witness can be recorded electronically the access to which can be legitimately and lawfully denied by the Courts to meet the ends of justice. In *Zahaira Sheikh v State of Gujarat* (the Best Bakery Case), in the context of the collapse of the trial on account of witnesses turning hostile as a result of intimidation, the Supreme Court reiterated that “legislative measures to emphasise prohibition against tampering with witness, victim or informant, have become the imminent and inevitable need of the day.

In *Sakshi v U.O.I*, the Supreme Court referred to the 172nd Report of the Law Commission and laid down that certain procedural safeguards had to be followed to protect the victim of child sexual abuse during the conduct of the trial.

WHISTLE-BLOWER PROTECTION IN INDIA

The Companies Act, 2013

Section 177(9) of Companies Act, 2013 provides that all public listed companies have to mandatorily establish a vigilant mechanism for employees and senior executives. Further, it has been made mandatory to establish a whistle blower policy with clear and adequate safeguards against victimisation of whistle-blowers.

Viability of a whistleblowing policy depends solely upon the intent with which an organisation firstly wants to create it and secondly wants to implement it. Such policy should not only give direction to complaints regarding any violation but also should specifically convey the results and in worst case even the failure to report should also fall into the violation of policy. Some of the key points to understand the framework can be as following –



Different sections of the Companies Act 2013, covers complete framework of inquiry, investigation and inspection – all under one chapter of the Act through sections 206 to 229. These provisions increases identification of wrong practises by an external agent and thus the agent can play an important role to become an external whistle-blower. Section 208 of the act empowers an Inspector (other than registrar) to go through the records and recommend a further investigation in such matters of doubt; whereas Section 210 of the Act empowers Central Government to order an investigation on the receipt of such recommendations from registrar or Inspector or in public interest or on intimation of a special resolution passed by company to be investigated. In the same lines Section 211 has led to the formation of Special Fraud Investigation Office (SFIO) with power to arrest for offences specified as fraud. In previous context Auditors were not legally empowered to ascertain a fraud and they were just supposed to be primarily reporting such misappropriation. However now it is their onus to act as whistle-blowers and directly report any such act to Central government or concerned authorities.

Securities & Exchange Board of India (SEBI)

The Securities and Exchange Board of India ('SEBI') vide its circular dated August 26, 2003 amended the Principles of Corporate Governance incorporated in the standard Listing Agreement. Clause 49 of the Listing Agreement mentioned the formation of Whistle-blower Policy for companies. However it was not mandatory to put a policy in place, although numerous companies have adopted it wholeheartedly as it improves the compliance and governance standards – on the other hand it is mandatory to disclose adaption of such policy and number of events reported under such policy along with the number of cases resolved or pending.

Now, SEBI has replaced the Listing Agreement and notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 making it mandatory for listed companies to have a whistle-blower mechanism for their employees and directors under Regulation 22.

The listed entity shall formulate a vigil mechanism for directors and employees to report genuine concerns.

The vigil mechanism shall provide for adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism

The vigil mechanism shall also provide for direct access to the chairperson of the audit committee in appropriate or exceptional cases.

WHISTLE BLOWER PROTECTION ACT, 2014

A bill for protection of Whistle-blowers was first initiated in 1993 by Mr. N. Vittal (the then Chief Vigilance Commissioner). In December 2001, Law Commission recommended that in order to eliminate corruption, a law to protect whistle-blowers was essential and submitted its report on 'Public Interest Disclosure Bill' to Mr. Arun Jaitley (then Minister of Law, Justice and Public Affairs) along with the draft bill. In January 2003, the draft of Public Interest Disclosure (Protection of Informers) Bill, 2002 was circulated. The murder of Satyendra Dubey in 2003 for exposing corruption in NHAI and the subsequent public and media outrage led to the demand for the enactment of a whistle-blower's bill. Following the event, in 2004, the Supreme Court directed that machinery be put in place for acting on complaints from whistle-blowers till a law is enacted. Government of India notified a resolution to enable Central Vigilance Commission to receive complaints of corruption for Central Authorities in May 2004. Right to Information Act was notified in October, 2005. In 2006, The Public Services Bill 2006 (Draft) stated that within six months of the commencement of the act, the government must put into place mechanisms to provide protection to whistle-blowers. In 2007, the report of the Second Administrative Reforms Commission also recommended that a specific law be enacted to protect whistle-blowers. India is also a signatory (not ratified) to the UN Convention against Corruption since 2005, which enjoins states to facilitate reporting of corruption by public officials and provide protection against retaliation for witnesses and experts. On August 26, 2010 Union Minister of State for Personnel, Public Grievances and Pensions, Prithviraj Chavan introduced the Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010, or the Whistle-blower Bill, in the Lok Sabha. The Bill was passed in Lok Sabha on December 27, 2011 along with proposed amendments.

The Whistle-blowers Protection Act, 2014 was passed in Parliament on February 21, 2014. After the Bill was passed by Lok Sabha, certain amendments were circulated in Rajya Sabha on August 5, 2013. However, these changes were not incorporated in the Bill when it was passed by Rajya Sabha in 2014. The Whistle-blowers Protection (Amendment) Bill, 2015 was introduced in Lok Sabha on May 11, 2015 which has been passed by the Lok Sabha on May 13, 2015. The Bill is presently pending in the Rajya Sabha. The Statement of Objects and Reasons states that this Bill has been introduced to give effect to the earlier amendments which could not be passed. The Table below compares the provisions of the 2015 Bill with that of the 2013 amendments.

Table 1: Comparison of the provisions of the Whistle-blowers Protection (Amendment) Bill, 2015 with that of the 2013 proposed amendments

Whistleblowers Protection Act, 2014	Official amendments- August 2013	Whistleblowers Protection (Amendment) Bill, 2015
Grounds on which public interest disclosure cannot be made Section 4(1): The Act states that any person, including a public servant or NGO, may make a public interest disclosure before a Competent Authority. This would apply, irrespective of the provisions of the Official Secrets Act, 1923.	No public interest disclosure may be if it contains: - Information likely to prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the state, relations with foreign state, or lead to incitement of an offence; - Information that involves the disclosure of cabinet papers including records of deliberations of the Council of Ministers, secretaries and other officers except as provided for under the Right to Information Act, 2005.	No public interest disclosure may be if it contains : - Information likely to prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the state, relations with foreign state, or lead to incitement of an offence; - Cabinet papers including records of deliberations of the Council of Ministers, secretaries and other officers except as provided for under the Right to Information Act, 2005. - The information has been expressly forbidden to be published by a court or tribunal, or if the disclosure of the information may result in contempt of court;

		iv. The information would cause a breach of privilege of Parliament or state legislature; v. The information relates to commercial confidence, trade secrets, intellectual property (and such disclosure would harm a competitor). However, if such information has been made available under the Right to Information Act, 2005, then it may be disclosed. vi. The information is available to the person making the disclosure in his fiduciary capacity. However, if such information has been made available under the Right to Information Act, 2005, then it may be disclosed. vii. Information is received in confidence from a foreign government;
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		viii. The disclosure of the information would endanger the life or physical safety of a person, or identify the source of information given in confidence for law enforcement or security purposes. ix. The information would impede the process of investigation / apprehension / prosecution of offenders; x. The disclosure of personal information if it has no relationship to any public interest, or if it causes unwarranted invasion of privacy. However, if such information has been made available under the Right to Information Act, 2005, then it may be disclosed.
Inquiry by the Competent Authority in relation to a disclosure		
Section 5(1): Under the Act, upon receiving a disclosure, the Competent Authority is required to: i Ascertain the identity of the complainant, and ii Conceal the identity of the complainant, unless the complainant has himself revealed his identity.	The competent authority is not to inquire into any disclosure specified above. The Competent Authority must refer the disclosure to the appropriate authority appointed by a central or state government to ascertain whether it is exempt from disclosure. The decision of the authority is binding on the Competent Authority	Same as 2013 amendments.

Certain issues that are exempt from being addressed during an inquiry		
Section 8: The Act provides that no person is required to answer any question, produce any document or render any assistance in any inquiry under the Act under certain circumstances. These circumstances are matters that relate to the sovereignty, security and integrity of India, friendly relations with a foreign state, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. It also includes information like the disclosure of Cabinet proceedings of the centre or states.	Deletes the conditions of public order, decency or morality or in relation to contempt of court and defamation. Adds 'scientific or economic interests' as one of the circumstances. A certificate by an authority of the state or central government with regard to the above will be binding.	Circumstances under which no person is required to answer any question, produce any document or render any assistance in any inquiry under the Act include the above ten conditions under which public disclosures cannot be made. A certificate by an authority of the state or central government with regard to the above will be binding.
Punishment related to the Head of the Department (drafting error)		
Section 18(2): If an offence has been committed with the consent of, or is attributable, such officer shall also be considered to be guilty of that offence.	The Bill clarifies that if the offence has been committed with the consent of, or is attributable to, any neglect on the part of any officer, other than the Head of the Department, and then such officer shall also be considered to be guilty of that offence.	Same as the 2013 amendments. Certain other amendments to correct english/ drafting errors have been made in relation to Sections 14, 18, 20, 23 and 31. They do not modify the provisions of the Act in a substantial manner.

(Ref: PRS Legislative Research)

IMPORTANT FEATURES OF THE “WHISTLE-BLOWERS” RESOLUTION

- The Central Vigilance Commission (CVC) shall, as the Designated Agency, receive written complaints or disclosure on any allegation of corruption or of mis-use of office by any employee of the Central Government or of any corporation established under any Central Act, government companies, societies or local authorities owned or controlled by the Central Government.
- The designated agency will ascertain the identity of the complainant; if the complainant is anonymous, it shall not take any action in the matter. The identity of the complainant will not be revealed unless the complainant himself has made either the details of the complaint public or disclosed his identity to any other office or authority.
- While calling for further report/investigation, the Commission shall not disclose the identity of the informant and also shall request the concerned head of the organisation to keep the identity of the informant a secret, if for any reason the head comes to know the identity.
- The Commission shall be authorised to call upon the CBI or the police authorities, as considered necessary, to render all assistance to complete the investigation pursuant to the complaint received.
- If any person is aggrieved by any action on the ground that he is being victimised due to the fact that he had filed a complaint or disclosure, he may file an application before the Commission seeking redress in the matter, wherein the Commission may give suitable directions to the concerned person or the authority.
- If the Commission is of the opinion that either the complainant or the witnesses need protection, it shall issue appropriate directions to the concerned government authorities.
- In case the Commission finds the complaint to be motivated or vexatious, it shall be at liberty to take appropriate steps.
- The Commission shall not entertain or inquire into any disclosure in respect of which a formal and public inquiry has been ordered under the Public Servants Inquiries Act, 1850, or a matter that has been referred for inquiry under the Commissions of Inquiry Act, 1952.
- In the event of the identity of the informant being disclosed in spite of the Commission's directions to the contrary, it is authorised to initiate appropriate action as per extant regulations against the person or agency making such disclosure.

SOME WHISTLE BLOWER CASES IN INDIA

- *Satyendra Dubey Case (1973–2003)*: He was an Indian Engineering Service (IES) officer posted as Project Director in the National Highways Authority of India (N.H.A.I) at Koderma, JHARKHAND. Indian Government led by Atal Bihari Vajpayee started ambitious Golden Quadrilateral project to connect all major cities of India via four and six lane highways. At this time he was responsible for the expansion of Aurangabad-Barachatti section of National Highway 2. He discovered that Larsen and Toubro had taken contract from Indian government and passed it to smaller contract mafias who were incapable of handling such a large scale project. Apart from this, he noticed that proper procedure and quality was not maintained while constructing the roads. He wrote to his senior officials in N.H.A.I and when he didn't get proper response he wrote directly to Prime Minister Atal Bihari Vajpayee office. He requested that his identity to be kept secret. But PMO officials circulated his letter along with details of his identity among the bureaucracy. The number of noting on the file bear witness to this (The Indian Express, November 30, 2003). While the file was making the rounds, not one official thought about the threat Dubey was being exposed to. Why officials in the PMO did not heed Dubey's request for anonymity is not known. But just over a year later, on November 27, 2003, he was murdered in Gaya, Bihar.
- *M Shanmugam Manjunath Case (1978–2005)*: He was a manager at Indian Oil Corporation (IOC) posted in Lakhimpur Kheri in Uttar Pradesh. Manjunath was murdered for sealing a corrupt petrol station which was selling adulterated fuel. He had sealed two petrol pumps in Lakhimpur Kheri for three months and when they started operating again he took a surprise raid to check the quality of fuel. He was shot six times and his dead body was found in the back seat of his car. This news created huge outcry in nation and media. Sessions court found all accused guilty and sentenced them to death. Allahabad high court changed the verdict to life imprisonment of 5 while acquitting the other two. Indian Oil Corporation paid a compensation of 2.6 million INR to Manjunath's Family.
- *Narendra Kumar Case (1979–2012)*: Narendra Kumar was an Indian Police Service (I.P.S) officer from 2009 batch and he was posted in Morena district of Indian state of Madhya Pradesh. Morena district is famous for fine quality of sand found in Chambal River bed which is used in construction of buildings, and in past years illegal mining is rampant in not only Morena District but in many parts of Madhya Pradesh. Narendra Kumar was posted as sub-divisional police officer in Morena district and he had been trying to stop illegal quarrying in the area. On 8th March he received information about illegally mined stones being carried in a tractor. He went to check if the information was true or not. He reached the spot and asked the driver to stop but the tractor driver ignored his warning and ran vehicle over him.

- *Lalit Mehta Case (1972–2008)*: Lalit Mehta was a Right to Information (R.T.I) activist who had exposed ongoing scams in National Rural Employment Guarantee Act in Palamau District of Jharkhand. Lalit Mehta was an engineer turned social activist. He was actively involved in activities that sought to advance rural employment, basic health facilities, right to food, and child rights. At the time he was working as full-time activist of the Right to Food Campaign. He was also the secretary of the Vikas Sahyog Kendra (VSK), a non-governmental organization based in Palamau. On the evening of 14th May 2008 he was travelling back to Chhatarpur on his motor bike when he was attacked and killed. The Chhatarpur Police found his mutilated body and a belt around his neck Kandaghati in Chhatarpur on May 15. He was strangled and his face was smashed to deformed beyond recognition. It was suspected that he was murdered by “people who siphoned off NREGS funds”. National RTI Forum started Lalit Mehta RTI Gallantry Award, honoring his contribution in exposing scams via R.T.I.
- *SP Mahantesh Case*: He was serving as a Deputy Director of Cooperative Audit in Karnataka. Through his investigation he found that there were several irregularities in land acquisition, layout formation and allotment of sites and it involved many officials and politicians. He had prepared an audit report of the BEML Employees' Cooperative Society, which was accused of making improper land allotments to several influential persons. He was attacked thrice prior to final assault that claimed his life on 15th May 2012. On the evening of 15th May he was driving home in his Maruti 800 when he was stopped by four assailants. Attackers first dragged him out and beat him with iron rods and punches. When he went unconscious, his body was thrown on sharp stones. This whole accident happened at high security zone where chief justice of Karnataka lives but according to police out of 16 CCTV cameras none was able to record footage as it was raining heavily that day. The 48-year-old died five days later due to a cardiac arrest.
- *Satish Shetty Case (1970 – 2010)*: Satish was an Indian social activist and he was noted for exposing many land scams in state of Maharashtra. He had used the Right to Information Act to expose irregularities in Government offices and construction work carried out in Maharashtra. Shetty was a systematic whistle-blower and he was credited with throwing light on several major land scams in the Talegaon—Lonavala regions a famous region in Maharashtra for Real- Estate developers and retailers. He also exposed the corruption in the construction of country's first expressway the Mumbai—Pune expressway. In the morning of 13th January he was attacked by three to four masked men with butcher's knives when he was reading a newspaper at a kiosk at around 7 on his way home from a morning walk. The police investigations proposed a different theory for the murder, and eventually the case was transferred to CBI.

- *Rinku Singh Rahi Case:* He was Provincial Civil Services (PCS) civil servant and he was fighting against corruption in sponsored welfare schemes in Uttar Pradesh (UP). He was born in Aligarh and completed his B.Tech degree in Metallurgy at NIT, Jamshedpur in 2002. In the same year, he scored All India 17th rank in GATE but he opted for a civil services career instead. Rahi ordered an inquiry into the allocation of funds by social welfare department in Muzaffarnagar over the last five years and he found discrepancies. Out of the allocated funds to be distributed as part of Old-age pension scheme, money was taken for 62,447 people but only 47,707 beneficiaries received it. There were no records for 55 million rupees distributed to 22,000 OBC students and 110 million rupees distributed to all BPL families. He also went on hunger strike to draw attention of the State Government's reply on his pending RTI applications. He was shot six times by local gangsters, damaging his jaw and the vision of one eye and he is currently working as a coordinator at Bhimrao Ambedkar coaching center in his hometown.
- *Yashwant Sonawane Case:* He was posted as Additional District Collector of Malegaon (Maharashtra). He had received information about oil adulteration carried out at large scale in Malegaon. While going to Nandgaon he spotted a few trucks parked in a very suspicious manner near the road side. Trucks of big oil companies like IOC, HPCL and BPCL were parked. When he started investigating about the trucks people indulged in oil adulteration, attacked the officer, beat him up and then set him on fire. He was declared dead on arrival at the hospital.
- *D. K. Ravi Case (1979 – 2015):* Doddakoppalu Kariyappa Ravi commonly known as D. K. Ravi was an Indian Administrative Service officer of Karnataka cadre from the 2009 batch. He was posted as Deputy Commissioner in Kolar district and was known as pro-people administrator and started crackdown of illegal sand mining and encroachment of government lands in Kolar and Gulbarga. Later on he was transferred to Bangalore as Additional Commissioner of Commercial Taxes and there he prepared a list of many tax defaulters and set a target of 1000 crores to collect from tax evading defaulters. During first two weeks of his working he collected 138 crore INR from tax defaulters and came into lime light of many political goons. He received many threat calls from tax defaulters and sand mafia. On 16th March 2015 he was found dead with his body hanging on ceiling fan in his residence in Koramangala, Bangalore. The initial police investigation, forensic and medical

evidence showed it a case of suicide but then protest erupted in cities where he worked and mass band was organized by opposition parties for handing over the inquiry to Central Bureau of Investigation (C.B.I). On 13 April, 2015, the Centre ordered a CBI probe into the mysterious death of IAS officer DK Ravi and the case is still going on.

- *V. Saseendran Case:* V. Saseendran was the Company Secretary of Malabar Cements Limited, a PSU. In 2007, Saseendran was prime witness in audit reports stating that the company registered a loss of Rs. 400 crores because of rampant corruption. Later Saseendran was forced to withdraw his allegation. In september 2010, V. Saseendran wrote to the Chief Minister of Kerla, Industries Minister and Vigilance Director informing them about rampant corruption in the loss-making company. He alleged that the managing director's secretary was leaking vital company information.

He had been found hanging in his house in Palakkad with his two sons aged eight and eleven on February 24, 2011

Conclusion:

A man is but the product of his thoughts what he thinks, he becomes.

Mahatma Gandhi

Despite a significant increase in the awareness on the importance of Whistle Blowing Practices in work place, many remain silent and choose not to report the wrongdoings of their employers. To blow the whistle is not an easy task, it needs courage, moral evaluation and one has to put the interest of the public ahead than his or her interest. Despite this, many praise whistle-blowers for heroic and noble deeds; many also condemn them as malcontent, trouble makers and misfits for exposing misfeasance and wrongdoing of their colleagues and management. Those who oppose it believe that employees should have *prima facie* duty of loyalty to their company and not to blow whistle as it will tarnish the company's image and reputation.

In order to understand the effectiveness of a whistle blowing mechanism, it is necessary to assess the awareness, usability and reliability of the grievance reporting systems among Indian companies across various sectors.

A Whistle-blower should use the proper internal channel and procedures to disclose any wrongdoing before public disclosure. The whistle-blower has evidence that would persuade reasonable people to perceive serious danger than can result from the violation. It is expected that those who have intention to blow the whistle have evaluated what is morally right or wrong of their decisions and the interests of the stakeholders involved.

“He who knows, does not speak; he who speaks, does not know”

- Lao Tzu

Whistle Blowing is a noble and heroic deed that acts as accounting and internal controls to prevent fraud and wrongdoing. Whistle Blowing would not only help to reduce white-collar crime but also to deter the collapse of the organization which is detrimental to the society and country. The role of whistle-blowers in protecting the organization is crucial. Hence, a strong ethical culture and a moral sense of duty are vital to encourage members to come forward and blow the whistle on their employers' wrongdoing.

The Whistle-blowing landscape in India is relatively nascent, with laws driving enforceability for certain classes of companies coming into play fairly recently. Therefore, it would be prudent for organisations to proactively implement the mechanism, not as a mere compliance-related factor, but also as a sound governance framework.

India needs to have Proper, Elaborate and Strong Laws related to Whistle Blowing and protection of Whistle Blowers. The Legislations should strike fear into Corrupt and unethical employees, give a sense that others are watching, they need to get their act together and work for the progress of their Organisation and Country as a whole.

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