

# Role of Whistleblower in Corporate Governance

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## ABSTRACT

Whistleblowing has evolved as a fundamental mechanism within corporate governance systems, serving as a vital instrument to improve organizational transparency, accountability, and ethical behavior. This abstract presents an overview of the multidimensional role of whistleblowing in the corporate setting, emphasizing its importance in minimizing misconduct, protecting stakeholders' interests, and maintaining business integrity.

In contemporary corporate governance, whistleblowing is recognized as a powerful means for employees and insiders to report unlawful or unethical activities within their organizations. It is crucial for identifying and rectifying various forms of misconduct, such as financial fraud, corruption, environmental violations, and workplace harassment, which can have far-reaching consequences for businesses, employees, and the wider community.

This abstract explores the key elements of effective whistleblowing systems, emphasizing the importance of clear reporting channels, robust protection for whistleblowers, and impartial investigative procedures. A well-designed whistleblowing program not only encourages employees to come forward with their concerns but also ensures that these concerns are addressed promptly and fairly. Furthermore, the paper discusses the ethical and moral dimensions of whistleblowing, highlighting the ethical dilemmas faced by whistleblowers who often confront personal and professional risks when disclosing wrongdoing. It examines the ethical principles that guide both whistleblowers and organizations in navigating these complex situations.

The abstract also addresses the impact of whistleblowing on corporate culture and reputation. When organizations respond appropriately to whistleblower disclosures, they can strengthen their ethical foundations and build trust among stakeholders. Conversely, mishandling whistleblowing cases can lead to reputational damage and financial liabilities.

**Keywords:** Corporate, Companies Act, 2013

## PROBLEM STATEMENT

Over the past few years, the corporate sector in India has drawn attention due to several contentious incidents that various whistleblowers have revealed. The Infosys controversy was the most recent incident to rock the business community. In India, the whistleblower policy is still being developed. The fear of being exposed prevents many employees and those outside the organization who are aware of any wrongdoing by the company from coming forward and exposing it.

One of the most glaring flaws in India's whistleblowing policy is that the Whistleblower Protection Act, 2014, while ignoring the law commission's recommendation in its 174th report, also disregarded the second administrative reforms' recommendation in its fourth report, which recommended that the private

sector be excluded from the purview of the Whistleblower Protection Act, 2011 and was published in the year 2007.

In furtherance to this, the Whistleblower Protection Act was amended in the year 2014, this amendment restricted any person from reporting the disclosure of any corruption activity if it falls under any of the 10 categories which mainly relate to:

- Economic, scientific interest, and the national security of India.
- Cabinet Proceeding.
- Intellectual property.
- Disclosures are not permitted, if the same is prohibited. under the Official Secrets Act, 1923.

This amendment is modelled around Section 8 clause 1 of the Right to Information Act, 2005, this amendment would nullify the intent of the whistleblower protection act as it would discourage the people to come forward and expose corruption within a company.

## INTRODUCTION

While analyzing the corporate governance landscape in India, one may discover many cases of good corporate governance as well as cases where organizations have failed to implement effective corporate governance. Over the last few years, the number of corporate frauds and failures has skyrocketed, compelling regulators and governments to enact rigorous regulations and policies to combat such corporate frauds. The concept of corporate whistleblowing is a relatively new concept in corporate governance.

The concept of whistleblowing generally means that a certain organization or corporation is given a heads-up about any type of corruption or unlawful conduct occurring within the organization or company. According to *Ahern, McDonald, Katharyn, and Sally*. Whistleblowing is defined as an attempt made by an existing or former member of an organization to alert a higher authority of that organization or the public about dangerous misconduct or any wrongdoing engendered or concealed by the organization.

Whistleblowing may also be defined as the process of revealing any type of unethical action occurring within an organization or firm by an employee or any other individual with knowledge of such acts. Whistleblowing is defined by the International Labour Organization (ILO) as "**reporting by employees or former employees of illegal, irregular, dangerous, or unethical practices by employers.**"

The phrase "Whistleblower" has yet to be defined in any statutory legislation; consequently, it may be assumed that the legislature intended the term to have a broad scope. In general, a whistleblower is a person or employee of an organization who has insider information regarding any type of corruption, fraud, or abuse of power by top-level management that occurs within the corporation.

Furthermore, by implementing an effective whistleblowing mechanism, an organization or corporation can ensure that personnel are discouraged from engaging in illegal actions, as well as uncover any wrongdoing in advance. An effective whistleblowing mechanism would also allow the whistleblower to report any type of wrongdoing without fear of repercussions.<sup>1</sup>

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<sup>1</sup> "The purpose of whistleblowing is to expose secret and wrongful acts by those in power to enable reform."

## WHISTLEBLOWING POLICIES ADOPTED BY SOME INDIAN CORPORATE COMPANIES

It has been proven that having a strong and effective corporate governance structure is a vital component of an organization's or company's day-to-day operations. In recent years, events such as *Satyendra Dubey's* murder, the *Satyam Computer Scandal*, the *Infosys Scandal*, and the *Ranbaxy Scandal* have highlighted the difficulties faced by whistleblowers in India due to a lack of regulation.

Considering these controversies, companies such as "*The Heritage Food (India) Ltd*", "*Wipro*", "*Infosys*", and "*Tata Motors, Reliance Industries*" have implemented whistleblower policies in recent years to protect the identity of any employee who wishes to expose any type of wrongdoing that may be occurring in the company.

### • THE HERITAGE FOOD (INDIA) LTD

The Heritage Food (India) Ltd limited implemented the whistleblower policy with the primary goal of giving all of its employees the opportunity to voice their concerns about any unethical or inappropriate practices that may be occurring within the organization. According to the company's whistleblower policy, all communications made by the whistleblower are presumed to be made in good faith, all communications must be made in writing, and all disclosures must indicate evidence of any unethical or improper activity. Unless otherwise required by law, the corporation would take all reasonable steps to hide the whistleblower's identity in order to protect the whistleblower from harassment or victimization. When the company gets a complaint alleging wrongdoing, the management board will take reasonable steps to undertake a comprehensive investigation and, if necessary, will appoint an independent individual to conduct the inquiry.

### • WIPRO

On the 15th of April 2003, Wipro Limited publicly implemented its whistleblower policy (also known as the Ombuds Policy) to strengthen the company's corporate governance and discourage any of its workers from engaging in any malpractice or impropriety.

When a complaint is received, it is investigated by a designated Ombudsperson. All information communicated to the Ombudsperson would be in writing, and the company would assume that the complainant communicated in good faith. The company would ensure that the identity of the complainant is kept private in order to protect the complainant from retaliation or victimization.

Wipro Ltd.'s whistleblower policy limits the time frame in which a complainant can voice their concerns; the policy stipulates that the complainant must give all necessary information within three months of becoming aware of the infraction.<sup>2</sup>

### • TATA MOTORS, RELIANCE INDUSTRIES

The Vigil Mechanism and Whistleblower Policy adopted by Reliance Industries Limited outlines the method that the whistleblower or complainant must follow when making any disclosures. The policy also requires the formation of an Ethics and Compliance Task Force, which will investigate all allegations made by the whistleblower or complainant under the supervision of the Audit Committee. Based on an examination of these organizations' whistleblower policies, it is clear that all of them have established

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<sup>2</sup> "Infosys whistleblower complaint: Audit panel finds no financial impropriety", The Business Standard, Published on 10th January 2020.

multiple platforms for employees to voice their concerns. In comparison, several multinational corporations, such as Deloitte and KPMG multinational, encourage their staff to be anonymous complainants, whereas Indian corporations do not. It may also be seen that each company has its own structure and protocol for whistleblowers to report their concerns.

## WHISTLEBLOWING MECHANISMS IN INDIA

When compared to the legislative frameworks implemented by nations such as the United Kingdom and the United States of America, India's legislative framework for whistleblower protection is still in its infancy.

Several pieces of legislation lay down provisions governing the process of whistleblowing and granting protection to the whistleblower. The following are the laws:

- The Whistleblowing Protection Act, 2014.
- The Companies Act, 2013 read along with “The Companies (Meeting Board and its Power) Rules 2014.
- The SEBI’s Equity Listing Agreement.

### 1. THE WHISTLE BLOWING PROTECTION ACT, 2014

On August 24, 1999, Shri N. Vittal, the then-Central Vigilance Commissioner (CVC), wrote to the Law Commission of India, expressing his worries over the safety of innocent persons who risk their lives to expose any type of corruption or misconduct by public servants. In his letter to the Law Commission of India, he cited a speech by then-Prime Minister Shri. Atal Bihari Vajpayee, in which he criticized the unchecked and uncontrolled rise in corruption. While proposing that the Law Commission of India draught a bill to protect the identity of whistleblowers, he emphasized the need for zero tolerance not just from the public but also from government officials.

In response to this letter, the Law Commission of India drafted the 'Public Interest Disclosure and Protection of Informers) Bill 2002, citing the provisions of the UK Public Interest Disclosure Act, 1998, the Australian Public Interest Disclosure Act, 1994, the New Zealand Protected Disclosures Act, 2000, and the US (Federal) Whistleblower's Protection Act, 1989, in its 179th report.

In its fourth report on 'Ethics in Governance,' the Second Administrative Reforms Commission emphasized the importance of developing legislation to protect whistleblowers. The Ministry of Personnel authorized the Chief Vigilance Commission (CVC) as a competent authority to hear all complaints alleging corruption involving any government officer or employee and to conduct any preliminary investigation into the complaint in an April 2006 notification.

The government finally in the light of the murder of Satyendra Dubey introduced the “Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 which was passed by the Lok Sabha in December 2011 and was also renamed as the Whistleblower Protection Bill, the Rajya Sabha after a lot of deliberation finally approved the bill on 21st February 2014, the bill received the president assent on the 9th of May 2014 yet the Act is not enforced. An Amendment to Act was introduced in the Lok Shaba in the year 2015 through “The Whistleblowers Protection (Amendment) Bill, 2015.”

The intention of the parliament while formulating this legislation was to set up an efficacious and efficient mechanism to protect the identity of the whistleblower along with setting up an efficient mechanism to receive complainants. The scope of the Act is only limited to the public sector thus excluding the private sector. The act lays down to safeguard the identity of the whistleblower thus safeguarding them from any

kind of victimization or harassment, thus encouraging employees to raise their concerns against any kind of wronging, fraud, or corruption.

The Whistleblower Protection Act, 2014 has certain flaws, one of which is that the Act, does not lay down a procedure in case the complainant wants to appeal the order passed by the concerned authorities. In the 2015 amendments, it was proposed made mandatory for the complainant or the whistleblower to reveal their names which meant that under this Act no anonymous complainants would be entertained. It can be understood that the proposed amendment is based on section 8 (1) of the Right to Information Act, 2005. The last amendment as proposed restricted disclosures that fell under certain categories.<sup>3</sup>

## 2. THE COMPANIES ACT, 2013

### • SECTION 179 (9)

When read in conjunction with Regulation 7 of the Companies (Meetings of Board and its Powers) Rules, 2014, Section 179 (9) of the Companies Act, 2013 makes it mandatory for all public listed companies to establish a 'vigil mechanism,' allowing all directors and employees to raise their concerns with the competent authorities.

Clause 10 requires the vigil mechanism to take all reasonable steps to protect the complainant or whistleblower from harassment or victimization. The clause also outlines the procedure for any complainant who wishes to raise their concerns directly before the Audit Committee's chairperson in exceptional cases. The Act also requires all of the companies on the list to submit an updated report on any such system that they have implemented on their official website.

Section 177, in addition to necessitating the formation of an Audit Committee, contains requirements controlling the Audit Committee. In 2017, Section 177 of the Companies Act was modified to change the words "every listed company" to "every publicly listed company." Setting up a vigil system benefits the company since it gives the whistleblower a platform to reveal any illegal practices, fraud, or other wrongdoing that occurs within the company.

### • SECTION 208 AND 210

Section 208 and Section 210 of the Companies Act, 2013 give the Registrar or the Inspector additional power to investigate the records of the companies and upon doing so submit a report to the central government. If further required, they need to provide the government with all the relevant documents and also provide them with any suggestions that they may have to pertain to the investigation.

Section 210 of the Act lays out the procedure that needs to be followed by the registrar or the inspector while investigating the affairs of a company.

## 3. CLAUSE 49 OF THE SEBI'S EQUITY LISTING AGREEMENT.

Through clause 49 of the SEBI's equity listing, the Security Exchange Board of India has made it mandatory for every listed business to establish a vigil mechanism and a whistleblower program. The section also requires all enterprises to guarantee that their personnel are aware of the policy in case they need to report any act of crime, fraud, or corruption, or make the company aware of any sensitive information. The section also requires firms to take all reasonable steps to protect the directors and the

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<sup>3</sup> "Whistleblower's protection is a policy that all government leaders support in public but few in power tolerate in private".

- Thomas M Devine

complaint from harassment and victimization. To encourage staff to voice their concerns, SEBI has implemented an incentive system.

## **NOTABLE CASES OF WHISTLEBLOWING IN INDIA**

When honest employees detect any wrongdoing or any malpractice being adopted by their organization, they generally tend to raise their apprehension knowing that being a whistleblower is dangerous as it could harm their employment, there are chances that they would be harassed or victimized but they still risk everything to expose any such wrongdoing.

### **1. SATYENDRA DUBEY**

Satyendra Dubey was a young project manager who worked for the National Highway Authority of India was appointed as the project director for the Golden Quadrilateral Corridor Project. During the ongoing project Satyendra Dubey noticed uncertain irregularities in the financial department because of which he suspended three engineers who were associated with the irregularities. He also uncovered that the NHAI was openly disregarding the guidelines and were allowing sub-contracting which led to the engineers using low-grade materials.

Satyendra Dubey was then transferred to another project at Gaya which was also undertaken by the NHAI, Dubey realized that the scam is not restricted to one place but is ongoing in many places and involved many high-level officials along with many powerful politicians. Satyendra Dubey being an honest employee addressed a letter to the then Prime Minister Shri Atal Bihari Vajpayee raising his concerns regarding the financial discrepancies and many other irregularities that he found such as using of low-grade material, subcontracting, etc. In his letter to the prime minister, he explicitly requested to keep his identity protected.

The letter written by him along with all the documentation was forwarded to the Ministry of Transport and Highways, because of which he received an earful of criticism from the vigilance officer of the NHAI. On the 27th of November when Satyendra Dubey was found dead, even though the reason for his death could not be linked to the scam and it was suspected that he was killed when he attempted to resist a robbery.

### **2. MANJUNATH SHANMUGAM**

Manjunath Shanmugam was an employee of the Indian Oil Corporation who worked as a marketing manager. During his employment, he had issued an order to seal two petrol pumps at Lakhimpur Kheri located in Lucknow when he found out that both the petrol pumps were selling adulterated fuel. He has issued the order to seal the petrol pumps for 3 months, but when he found out that they are started operation again within a month time he went to shut those pumps during a surprise raid but was instead brutally murdered by the owner of the petrol pump and some other members of the local mafia.

### **3. DINESH THAKUR AND THE RANBAXY DEBACLE**

Dinesh Thakur joined Ranbaxy, a pharmaceutical company in the year 2003 and he was forced to leave the company in the year 2005 when he informed his seniors and the top-level management about the suspicious manufacturing practices that were undertaken by the company. Dinesh Thakur successfully provided the U.S. regulators and authorities with evidence that proved that Ranbaxy had indulged in malpractices such as falsifying drug data and was also guilty of violating good management practices. Dinesh Thakur to expose the malpractices that were undertaken by Ranbaxy also provided the authorities

and regulators with evidence proving that Ranbaxy had engaged in manufacturing and distribution of adulterated drugs.

The pharmaceutical company pleaded guilty to all the felony charges and agreed to pay an amount of 500 million dollars to settle the case. Dinesh Thakur was awarded an amount of 48 million dollars.

#### **4. INFOSYS WHISTLEBLOWER CASE**

The Chairman of Infosys on the 21st of October 2019 revealed that the audit committee after a thorough investigation did not find any merit to the allegation that was leveled against, CEO Salil Parekh and CEO Nilanjan Roy. Chairman Nandan Nilekani in a press release said that the company upon receiving complainants from a group of employees who call themselves as the “Ethical Employees” levied charges against both the executives for having indulged in financial impropriety and using unethical methods to increase the profits of the company. The chairman in his statement further mentioned that upon the complaint the audit committee along with an independent legal counsel investigated and issued the finding. According to them, there was no proof of any kind of financial impropriety and the evidence provided to them which were video recordings and emails was without merit.

#### **RECOMMENDATIONS TO STRENGTHEN THE WHISTLEBLOWER POLICY**

In India, the potential for whistleblowing appears to be promising. With numerous scandals coming to light in recent years, more and more businesses have been pushed to create an effective and efficient whistleblower program. Whistleblower Policy is an important aspect of the next corporate framework; if corporations are successful in creating a robust whistleblowing framework, it will assist discover any form of wrongdoing and prohibit employees from engaging in any kind of malpractice.

While implementing a whistleblowing framework, the company should ensure that adequate safeguards are in place to keep the complainant's identity hidden. Additionally, the company should implement an incentive mechanism in which the complainant is rewarded if they raise their concerns about any kind of wrongdoing or prove that the company is engaging in any kind of malpractice and communicates evidence that proves the allegation.

- The scope of the Act should be expanded to include private sector enterprises, as the current Act exclusively protects whistleblowers who disclose corruption, fraud, and irregularities in the government sector.
- The Regulators and Concerned Authorities should take all reasonable steps to create an effective whistleblower policy that protects whistleblower identities and protects them from victimization or harassment.
- Whistleblower provisions should be inserted into certain Acts in an effort to improve the whistleblower policy.
- Top-level management must guarantee that every employee is informed of the whistleblowing policy, and workshops must be held to make all employees aware of the same.
- Companies must also hold complainants accountable if they file frivolous complaints.

#### **CONCLUSION**

Corporate Governance is *sin non qua* for any company to operate, if a company has a strong corporate governance framework, then the company can conduct its operation with full transparency and can promote the policy of full disclosures to strengthen their relationship with all the stakeholders and their

employees. Having a good corporate governance framework will ensure stability and growth for the company.

A strong Whistleblowing Framework helps a company to implement the practice of accountability efficiently, it could further encourage the employees to elevate their concerns to the concerned authorities and prevent any wrongdoing or malpractice, corruption, or fraud in the early stages thus maintaining their reputation.

The world over the last couple of decades has witnessed scandals like the Harshad Mehta Scam, the Satyam Computer Scam, the Satyendra Dubey murder Scam, the Ranbaxy Scandal, these scandals harm many people's lives, thus the companies must protect ordinary people from being victims to such scams.

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