

Judicial Activism or Judicial Vacuum? A Doctrinal Analysis of Whistleblowers Protection Through Indian Case Law (2011-2025)

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Abstract

Public officials and corruption are often exposed by “whistleblowers” but their legal protection in India is weak and are not always followed.¹ The purpose of this Article is to analyse whether the judicial approach to the protection of whistleblowers is a true judicial activism or judicial vacuum in practice through a doctrinal study of the Indian case law from 2011 to 2025.² It examines the interpretation of the Right to Information Act, 2005, the Whistleblowers Protection Act, 2014, constitutional rights under Article 19 and 21 along with remedies under Article 32 and 226 by the Supreme Court and High Courts.³ The analysis shows that, although courts often use “activist language” and validate whistleblowing’s public-interest value, they have yet to convert that language into effective and easily enforceable protections for whistleblowers against retaliation, harassment, and institutional indifference.⁴ It identifies gaps in the complaint redressal system, non-framing and/or non-implementation of statutory rules and the inability of the judiciary to establish comprehensive protection systems.⁵ It concludes that this blend of rhetorical activism and structural paralysis has resulted in a “judicial vacuum” in whistleblower protection and suggests doctrinal and legislative changes to bring judicial discourse more in line with effective protection for whistleblowers against maladministration and corruption in India.⁶

I. Introduction

Protection of whistleblowers has become a crucial point in the development of India’s transparency, accountability and anti-corruption regime.⁷ In the Indian context the term whistleblower could be defined as a person, usually a public servant, RTI applicant or private citizen, who exposes corruption, misuse of power or illegality in public institutions, often at the risk to their own lives, in the public interest.⁸ Whistleblowing is now increasingly framed as a form of public interest information seeking and information disclosure, in the form of a disclosure Act, the Right to Information Act, 2005, and the Whistleblowers Protection Act,

¹ Transparency International, Whistleblower Protection and the Right to Information in India (Transparency International Publications, 2022).

² Upendra Baxi, “The Avatars of Judicial Activism: Explorations in the Geographies of [In]Justice” in S.K. Verma & Kusum (eds.), Fifty Years of the Supreme Court of India: Its Grasp and Reach (Oxford University Press, 2000) 156.

³ Constitution of India, arts. 19, 21, 32 & 226.

⁴ State of Uttar Pradesh v. Raj Narain, (1975) 4 SCC 428.

⁵ Whistle Blowers Protection Act, 2014, ss. 3, 4, 11 & 17.

⁶ Venkatesh Nayak, “Whistleblower Protection in India: Between Law and Implementation”, 12(2) Indian Journal of Constitutional Law 88 (2021).

⁷ Law Commission of India, Public Interest Disclosure and Protection of Informers, Report No. 179 (2001).

⁸ Peter Jubb, “Whistleblowing: A Restrictive Definition and Interpretation”, 21(1) Journal of Business Ethics 77 (1999).

2014.⁹ Whistleblowers are valuable precisely because they are in a unique position in relation to transparency and accountability in public governance.¹⁰ They bring to light practices of maladministration, irregularities, and abuse of public office and thus make it possible to see how corruption takes hold. As a result, they trigger dormant legal and institutional responses, such as audits, investigations and disciplinary measures. Whistleblowers in a country with large public sector, and a culture of disclosure based on the RTI, don't simply play a role; they form part of the very essence of the state's legitimacy as an accountable institution. However, whistle-blowers continue to be threatened, harassed and sometimes even subjected to targeted violence in India,¹¹ suggesting the need to address basic concerns regarding the protection afforded under the law and in institutions.

This article challenges the responsiveness of the Indian judiciary for this vulnerability. It does so with the concept as hinted in the title: “Judicial Activism or Judicial Vacuum?”¹² On the other hand, Supreme Court and High Courts have in several occasions implemented progressive and rights based terminology for the RTI-applicants, whistleblower and public interest disclosure cases, where they have been concerned with the freedom of speech and expression under Article 19(1)(a) of the Constitution and the right to life and personal liberty under Article 21 of the Constitution.¹³ The proclivity to be in the business of directions to ensure protection of the complainant, to oversee investigations, and to highlight the constitutional importance of transparency can be described as judicial activism. Conversely, these expressive measures have not been consistently followed up with enforceable and institutionalized protections for whistleblowers in practice.¹⁴ Often, the lack of the ability to create lasting remedies, monitor the application of protection orders, and enforce the statutory mechanisms by the executive results in “judicial vacuum” in practice – words without action.¹⁵

Based on this background, the article poses two major research questions. What has the Indian judiciary understood and applied whistleblower protection in the last 15 years (2011–2025) specifically under the RTI Act 2005, the Whistleblowers Protection Act 2014 and constitutional provisions?¹⁶ Second, “is there any disparity between the rhetoric of transparency and the actual security that is available to the whistleblower in India?” The article attempts to sketch the outline of a potential “whistleblower-protection jurisprudence” and assess whether the five

⁹ Right to Information Act, 2005; Whistle Blowers Protection Act, 2014.

¹⁰ S. Vandekerckhove, Whistleblowing and Organizational Social Responsibility (Ashgate Publishing, 2006).

¹¹ Commonwealth Human Rights Initiative, Safeguarding the Truth-Tellers: Protection of Whistleblowers in India (CHRI Report, 2023).

¹² Upendra Baxi, “The Avatars of Judicial Activism: Explorations in the Geographies of [In]Justice” in S.K. Verma & Kusum (eds.), *Fifty Years of the Supreme Court of India: Its Grasp and Reach* (Oxford University Press, 2000) 156.

¹³ Constitution of India, arts. 19(1)(a) & 21; *People’s Union for Civil Liberties v. Union of India*, (2004) 2 SCC 476.

¹⁴ Venkatesh Nayak, “Whistleblower Protection in India: Between Law and Implementation”, 12(2) *Indian Journal of Constitutional Law* 88, 102 (2021).

¹⁵ Commonwealth Human Rights Initiative, *Safeguarding the Truth-Tellers: Protection of Whistleblowers in India* (CHRI Report, 2023) 37.

¹⁶ Right to Information Act, 2005; Whistle Blowers Protection Act, 2014.

years from 2011–2025 have been an era of doctrinal consolidation or simply of sporadic activism.¹⁷

The article has the following structure. Section 3 builds on the conceptual/doctrinal framework by elucidating the meaning of ‘whistleblower’ in the Indian context, and examining debates of judicial activism and judicial inaction.¹⁸ The methodological approach and the limits of the case-law analysis are presented in Section 4. Section 5 discusses the statutory and institutional framework for protection of whistle blowers, that is Whistleblowers Protection Act, 2014 and its interaction with Right to Information Act 2005. Section 6 provides doctrinal analysis of Supreme Court and High Court rulings between 2011 and 2025, themed and chronological in the tension between judicial activism and a judicial vacuum.¹⁹ Section 7 provides a theoretical reading of this tension by placing the jurisprudence of whistleblowers in the context of a larger discussion on the part played by the Indian judiciary in accountability. The key gaps and vulnerabilities in the current framework are highlighted in Section 8, with proposals for doctrinal, legislative and institutional changes to enhance protection in Section

9.²⁰ The article ends with a consideration of the possibility of the Indian judiciary transcending rhetorical activism to a more coherent and effective regime of protection for whistleblowers.

II. Conceptual and Doctrinal Framework

The concept of whistleblower protection in an Indian context relates to the legal and institutional protection extended to persons who report on corruption, illegality or serious maladministration in the public sector, and usually in the public interest.²¹ The whistleblower is not just a complainant, it is a person who brings to light misuse of public office, waste of public resources or abuse of power, often at the risk of being retaliated against by their professional peers, ostracized by society and even physically harmed. The safeguards for these are based on the principle that disclosure can help improve transparency and accountability in governance and that, if they are not sufficiently safeguarded, they might be discouraged from disclosing.²² The concept of “public-interest disclosure” versus “malicious complaint” plays a key role in the doctrinal framework of whistleblower protection. Indian legislation has not yet developed a complete regulatory definition of “whistleblower,” but “whistleblower” is implicit in the framework of the Right to Information Act, 2005, and the Whistleblowers Protection Act, 2014. The former is about the right of the public to get access to information to subject wrongdoers to public scrutiny, while the latter is about protecting anyone who exposes

¹⁷ S. Muralidhar, “Judicial Responses to Governance and Accountability in India”, 8 International Journal on Governmental Financial Management 45 (2019).

¹⁸ S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press, 2002) 251.

¹⁹ *Central Board of Secondary Education v. Aditya Bandopadhyay*, (2011) 8 SCC 497.

²⁰ Law Commission of India, *Public Interest Disclosure and Protection of Informers*, Report No. 179 (2001).

²¹ Law Commission of India, *Public Interest Disclosure and Protection of Informers*, Report No. 179 (2001) 12.

²² Transparency International, *Whistleblower Protection and Transparency Governance* (TI Publications, 2022) 18.

wrongdoers from victimization.²³ Meanwhile, each law has provisions limiting the use of these tools to prevent "frivolous, vindictive and politically motivated" disclosures. The elements of a “malicious complaint” normally depend on the failure to establish a good faith belief, failure to establish a substantial public interest and the existence of a demonstrated intent to harass or damage reputation. In practice, courts have relied on these principles to balance the right to reveal the wrong with the risk of the abuse of transparency-based instruments.²⁴ Most importantly, the scope of protection for whistleblowers in India is determined by the interplay between the Whistleblowers Protection Act, 2014 and its subsequent amendments with the Right to Information Act, 2005. The RTI Act serves as a large source of information-based empowerment to enable citizens to file requests for and check records of public authorities, many of which are de facto whistleblower information in the public domain. The Whistleblowers Protection Act, 2014, on the other hand, seeks to protect the victim from victimization and to afford procedural and substantive protections to those who raise allegations of wrongdoing, including through the provision of a mechanism to submit complaints to the Competent Authority, and (in theory) seek relief.²⁵ Most of the amendments to the Act which occurred, particularly in 2015, aimed to clarify the definition of “public interest disclosure” and elide some of the ambiguities, to clarify the powers of Competent Authority and to solve some procedural gaps, while the rules proposed to put these amendments into practice have not been completely developed or applied.²⁶ The conflict between these two laws is therefore a dual one, one in the realm of information- access and one in the realm of individual-protection, and courts are brought into the mix to resolve tensions between these two tracks. In the Indian constitutional discourse, “judicial activism” is typically said to refer to the judicial approach that goes beyond following strict precedents or statutory interpretations in order to fill in perceived omissions or gaps in governance, social justice or rights protection.²⁷ Activist decisions frequently include continuing mandamus, structural remedy-style orders or giving sweeping interpretations of constitutional provisions to force or steer executive and legislative action. This kind of activism is often argued to be necessary because the judiciary is the only branch of government that can act in areas where others are unable or unwilling to do their duty, for example in the sphere of civil liberties, environmental protection, transparency etc. Meanwhile, judicial activism has been charged with trampling on the boundaries of the judiciary, issuing unenforceable orders, or replacing judicial judgment with democratic discussion. Judicial inaction, sometimes referred to as “judicial vacuum” or more pointedly, a failure to intervene or provide anything more than marginal, non-supervisory remedies

when there is obvious harm or failure in the system, is the flipside of judicial activism. In those cases, however, the judiciary could use formalistic concepts of justiciability, show excessive

²³ Venkatesh Nayak, “Whistleblower Protection in India: Between Law and Implementation”, 12(2) Indian Journal of Constitutional Law 88, 93 (2021).

²⁴ Central Board of Secondary Education v. Aditya Bandopadhyay, (2011) 8 SCC 497.

²⁵ Whistle Blowers Protection Act, 2014, ss. 3–11.

²⁶ The Whistle Blowers Protection (Amendment) Bill, 2015, Bill No. 97 of 2015.

²⁷ S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press, 2002) 3.

deference to the Executive, or issue vague or unsupervised instructions—and this might leave the distance between law and practice intact.²⁸ The issues of judicial activism and judicial inaction have been most prominent in the Indian context in relation to socio-economic rights, environmental governance and transparency-based claims like under the RTI Act. The distinction between activism and inaction is not always a clear-cut one; a particular choice may involve activist rhetoric, and one outcome might be unenforceable, and the other would be limited by institutional constraints, so there is a tension between personal ambition and institutional limitations. This binary can be helpful in the analysis of whistleblower and transparency issues cases in the application domain. In a few RTI related and whistleblower involving writ petitions, a proactive attitude has been taken by the Courts, placing emphasis on the constitutional significance of the right to know, directing the creation of FIRs, directing the conduct of special investigations or tracking the welfare of an RTI applicant, who might be at risk. These gestures may be seen as a way of demanding more accountability and that the judiciary be seen to be committed to transparency. Meanwhile, many of these orders are sporadic and uncoordinated, and there is little trace of them in the form of actual, concrete protections for whistleblowers.²⁹ The lack of a consistent, doctrine-driven approach to assessing whistleblower-related claims, and the under-enforcement of protection-friendly directions, is a form of judicial vacuum—the courts repeatedly recognize the issue of whistleblowers, but don't set up a lasting remedial structure. This section therefore situates the analyses of the case-law to follow in this dual context of activism and vacuum, and asks whether it can be said that there has been development of a coherent jurisprudence or continued fragmentation and weak enforcement of responses to whistleblowing in the courts during the decade of 2011 to 2025.³⁰

Several overlapping doctrinal streams—namely, the jurisprudence related to right to know and the constitutional remedies under Article 32 and Article 226 of the Constitution of India— underpin the constitutional foundations of whistleblower protection in India. The right to information is well entrenched in judicial decisions under the framework of Article 19(1) (a) and Article 21 and the Supreme Court, as well as several High Courts, have ruled that freedom of speech and expression requires there to be a right to seek and receive information, especially information relating to issues of public interest. The Court has also connected the right to information with the right to life and personal liberty, in so far as informed participation in public life and the right to hold authorities to account is vital to the enjoyment of a meaningful life in a democratic polity. This constitutional rights interpretation has embedded transparency in the core of the constitutional rights of vocabulary and has grounded the

protection of those who want to reveal wrongdoings via information-based tools. As they are not self-executing, however, these constitutional rights are only enforceable if there are effective remedies available. ‘Habeas corpus’, ‘mandamus’, ‘prohibition’, ‘quo warranto’ and ‘certiorari’ are writs of assistance granted in Constitution to Supreme Court and High Courts to enforce

²⁸ Cass R. Sunstein, *Designing Democracy: What Constitutions Do* (Oxford University Press, 2001) 98.

²⁹ Commonwealth Human Rights Initiative, *Safeguarding the Truth-Tellers: Protection of Whistleblowers in India* (CHRI Report, 2023) 44.

³⁰ S. Muralidhar, “Judicial Responses to Governance and Accountability in India”, 8 *International Journal on Governmental Financial Management* 45, 58 (2019).

fundamental rights and to correct the failure of any legal duty to be performed.³¹ These remedies have often been used in whistleblower cases to protect against harassment, illegal transfers, or withholding of information, or to require an investigation be started or finished. In some cases, courts have accorded rights to RTI applicants, whistle blowers, and have issued directions for protection of their rights, monitoring of investigation and have also framed guidelines for protection of complainants by using writ jurisdiction. It is not just as guarantees for the enforcement of individual rights that the articles 32 and 226 are relevant to the doctrine but also because they can be used as means to organise the accountability system in the transparency-governance domain.³² Combined, the concept of right to know, the right to life and the framework of writ remedy, offer conceptual support to analyse the jurisprudence in the field of whistleblowers in India. The case-law of the past 15 years (2011-2025) will be used to illustrate how these doctrinal strands emerge in the construction of a substantive regime of whistleblower protection, and how much the judiciary has relied on them to draw upon in building these provisions.

III. Statutory and Institutional Framework

The Whistleblowers Protection Act, 2014 and its Rules provide protection to whistleblowers:

The apex of India's formal whistleblower protection is contained in the Whistleblowers Protection Act, 2014 (WPA), which was passed to implement the long-awaited requirement for a dedicated whistleblower legal regime to safeguard whistleblowers who expose corruption and misuse of powers within public bodies.³³ The Act aims to establish a statutory framework for making “public interest disclosures” and, in principle, protects the disclosure from victimisation. The 2014 Act and the subsequent amendments in 2015 also aim to strike a balance between whistleblower protection and the prevention of frivolous or malicious complaints, thus incorporating the two normative aims of transparency and abuse limitation in the form of a dual norm in the Act.³⁴ The mechanism of complaint in the WPA is founded on the notion of the Competent Authority, with a role to receive and process allegations of corruption or misuse of power. A whistleblower must make a written or electronic disclosure to Competent Authority within a **prescribed time limit** (except in cases where the whistleblower can prove that the delay occurred due to circumstances outside of his/her control). Anonymity is assumed for the initial disclosures specified by the statute, where disclosure of the complainant's identity may be withheld if it is necessary, especially when there are actual concerns of retaliation. But the application of this anonymity provision has

³¹ Constitution of India, arts. 32 & 226.

³² S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press, 2002) 287.

³³ Law Commission of India, *Public Interest Disclosure and Protection of Informers*, Report No. 179 (2001) 31.

³⁴ The Whistle Blowers Protection (Amendment) Bill, 2015, Bill No. 97 of 2015.

depended on the formulation and enforcement of specific rules, as will be shown later, which have been vague and unenforced.³⁵

The WPA's appeal-route is also of doctrinal importance. The Act provides a reference or reconsideration provision for the aggrieved whistleblower, when the Competent Authority is disappointed by its decision or action, but the exact nature of the referral or reconsideration process is largely delegated to Rules.³⁶ In practice, there is a procedural vacuum as there are no fully framed and notified procedures to challenge the unfavourable decisions or long delays. But this procedural indeterminacy has further entrenched the use of constitutional remedies under Article 32 and Article 226 despite the basis of the WPA being a self-contained statutory regime.³⁷

Importantly, the Act also sets out penalties for certain types of misconduct. The statute also specifies that the identity of the complainant may be disclosed if the disclosure is made without his or her consent, which can result in harassment, intimidation, or violence. Second, the WPA considers that a public servant should not be liable to penalty for any complaints made without proper grounds in the public interest, and that such complaints should be made only where they have a solid public interest basis. This dual regime is meant to curb the abuse of the whistleblower protection mechanisms to cover retaliatory or politically driven disclosure, while providing some protection for retaliatory disclosure.³⁸ However, these criminal sanctions are only effective if a state investigates and prosecutes cases of identity-disclosure or malicious complaints, which is often not the case and where enforcement is weak and inconsistent.

WPA's standing in relation to the RTI Act and other legislation. The RTI Act and WPA's relationship:

The Whistleblowers Protection Act, 2014 is not a standalone Act but is embedded in a larger matrix of transparency-governance laws, in particular the Right to Information Act, 2005. In many respects the RTI Act acts as a kind of whistleblower disclosure mechanism, citizens routinely making use of the disclosure mechanism in order to obtain records that disclose irregularities, corruption or maladministration in public authorities. In practice, the distinction between seeking information, or "RTI-applicant" and whistleblowing is frequently blurred, since it is often accompanied by the expectation, if not the explicit intention, to expose wrongdoing. This has created a quasi-whistleblower identity for a few RTI users, whose tellers are handled by public bodies as if they were of a more combative and adversarial nature.³⁹

³⁵ Venkatesh Nayak, "Whistleblower Protection in India: Between Law and Implementation", 12(2) *Indian Journal of Constitutional Law* 88, 97 (2021).

³⁶ Whistle Blowers Protection Act, 2014, ss. 10–12.

³⁷ Constitution of India, arts. 32 & 226.

³⁸ Transparency International, Whistleblower Protection and Transparency Governance (TI Publications, 2022) 44.

³⁹ National Campaign for People's Right to Information, RTI and Whistleblower Protection in India (NCPRI Working Paper, 2020).

However, the link between the RTI Act and WPA is not sufficiently articulated in the statute. The WPA does not expressly define a “public interest disclosure” with reference to requests based on RTI; it also does not embed the RTI complaint-mechanism within the WPA's own procedures. Therefore, the safeguards for RTI-applicants who are whistleblowers are largely irrelevant to the WPA and rely on judicial interpretation of Article 19(1)(a) and Article 21, in addition to writ remedies under Articles 32 and 226. In several RTI-related cases, courts have deemed the transparency-seeking conduct of the RTI-applicants to put them at risk and ordered that measures be taken to shield such RTI-applicants from retaliation. ⁴⁰ However, the protection of RTI-blowers is not backed by a clear statutory framework linking the RTI Act with the WPA and is therefore left to the discretion of the judiciary, resulting in a doctrinal and institutional gap.

The WPA also has a less comfortable relationship with Official Secrets Act 1923, which regulates acquisition of and release of classified information by public servants and restrictions on the release of certain categories of state information. The Official Secrets Act, as such, places a priority on “national security” and “state secrecy” over transparency, and penalises the unauthorised release of information which could be considered sensitive by the executive. This can lead to a potential **normative conflict** with the WPA, whose goal is to promote and safeguard revelations of corruption and power abuse, even those involving classified or sensitive records. In a few instances, courts have been asked to help resolve this tension with a distinction between disclosures in the “bona fide public interest” and those that could be damaging national security or disrupting current operations.

Realistically, however, the distinction between acceptable whistleblowing and prohibited disclosure is somewhat fuzzy. ⁴¹ The Official Secrets Act remains a major barrier to whistleblowing, especially when the information relates to defence, intelligence or internal security issues. The WPA, in turn, does not completely address this tension, but rather leaves the resolution of such conflicts to the judicial process and balancing of competing constitutional values: right to know, right to life and security, and rights to the state to maintain the security of the nation. This doctrinal uncertainty, coupled with the lack of detailed statutory guidance on how to handle 'security-related' disclosures, has created an environment of uncertainty for prospective whistleblowers – the type of uncertainty that may discourage them from reporting misconduct when it is most needed. The statutory and institutional provisions for protection of whistle blowers in India, taken together, suggest a disjointed and poorly operational whistleblower protection framework. The WPA, the RTI Act and the constitutional rights remedy mechanism provide the potential for a strong safeguarding framework, but the failure to develop the rules, the lack of a clear connection between the disclosures made under RTI and protection under the WPA and the ongoing conflict with the Official Secrets Act exacerbates the lack of effective protection. This doctrinal analysis will show the way that

⁴⁰ People’s Union for Civil Liberties v. Union of India, (2004) 2 SCC 476.

⁴¹ H.M. Seervai, Constitutional Law of India (4th edn., Universal Law Publishing, 2013) Vol. 1, 903.

Indian courts have been grappling with, and sometimes have not been able to, manage this complicated set of statutes since 2011—2025.⁴²

IV. Case-Law Analysis: Judicial Activism or Judicial Vacuum?

In this section, reported judgments of Indian courts tending to protection of whistleblowers, RTI applicants, and public interest disclosers are analysed doctrinally from 2011 to 2025. They are organised thematically in the broad context of time, and they have at times been heard in the language of “judicial activism”—promoting transparency, right to know, the public interest obligation to disclosure – but also at times not institutionalised in a coherent whistleblower protection architecture.⁴³ The outcome of these phases is a pattern of formal recognition of the Jud is not supported by any structural protections, and the doctrinal implications of that pattern are the focus of the present article.

The early phase (2011–2015) of the development of judicial recognition and limited protection:

The time around the adoption of the first whistleblower protection setting is one of decisions by Supreme Court and several High Courts recognising susceptibility to RTI-applicants and corruption-exposers, but refraining from establishing effective, institutional protection procedures. There are 3 elements that repeat throughout this phase:

- the Court’s recognition of the disclosure related to corruption as a legitimate exercise of the rights of RTI/right-to-know; and
- Conducting investigations and issuing directions for investigations (including FIRs); and

The lack of structural safeguards for the whistle-blower (in addition to assurances given on a case-by-case basis).⁴⁴

In relation to it, the Supreme Court has already held that right to seek information under RTI Act is not just an administrative right but a constitutional right to information and right of the public in transparency in **Central Board of Secondary Education v. Aditya Bandopadhyay (2011)**.⁴⁵ The Court noted that the information made available by public authorities can be used to uncover irregularities and curb the abuse of power: the Court was giving a tacit endorsement to the quasi-whistleblower role of those who apply for records that would expose wrongdoings. However, the judgment did not provide any comprehensive

⁴² Terry Hutchinson, *Researching and Writing in Law* (4th edn., Lawbook Co., 2018) 126.

⁴³ S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* 242–45 (2nd edn., Oxford University Press, 2003).

⁴⁴ Venkatesh Nayak, “Whistleblower Protection and RTI Activism in India,” 54(3) *Economic and Political Weekly* 17 (2019).

⁴⁵ *Central Board of Secondary Education v. Aditya Bandopadhyay*, (2011) 8 SCC 497.

approach to the issue of protecting such applicants from harassment or retaliation, but rather “the general duty of public bodies to act fairly and lawfully.

Another example is **Common Cause v Union of India (2013)**,⁴⁶ where a PIL emphasized the need for a separate whistleblower protection Act, and demanded that the Centre pass a whistleblower protection Act. While making observations, the Supreme Court highlighted the pivotal role played by whistleblowers in the fight against corruption and stressed the need for a robust institutional framework to protect whistleblowers from being victimized. This judgment, often referred to as the immediate

doctrinal-political impetus that led to enactment of Whistleblowers Protection Act 2014, is the most important. The most important is this judgment, which is often referred to as the immediate doctrinal-political impetus that led to the enactment of the Whistleblowers Protection Act, 2014. But, Court's answer was not institutionally constructive, instead it was legislative directed, urging the executive to define a law, without describing a corresponding judicial and doctrinal model for interim protection of existing whistleblowers.

The early rulings thus demonstrate a strong sense of vulnerability in the sense that the Court repeatedly reiterates that it emphasizes the need for transparency-seeking conduct and in some instances considers retaliation against those who apply for RTI to be illegal. However, the remedial language used is **case-specific and non-structural**. Courts conduct inquiries, suggest filing of an FIR or issue a monitoring type orders; however, they do not generally grow:

An assessment of the risk of retaliation that is standardised;

- a consistent and predictable process of how the interim protection order is applied (e.g. police-guard, transfer-freeze or relocation-assistance);
- a supervisory structure to help enforce such directions.

For this reason, the 2011-2015 period forms the doctrinal foundations of whistleblower jurisprudence and illustrates an evolving judicial-vacuum, where talk of protection does not coincide with institutional structures.

Landmark Jurisprudence (2015–2022): Activism vs. Hollow Rhetoric

High profile cases of whistleblowing and RTI related killings are accompanied by the enactment of the Whistleblowers Protection Act, 2014, and later amendments, during the post-2015 period. While these judgments are characterized by their robust, rights-based references to the “right to know”, “transparency” and “public-interest duty” of disclosure,⁴⁷ they do not necessarily provide for a strong whistleblower-safety architecture that is binding, consistent, and enforceable.

Examples of this are several writ petitions and Public Interest Litigations (PIL) in this year relating to whistleblowing. In the case of the Vyapam scam, the Delhi High Court, for example,

⁴⁶ Common Cause v. Union of India, W.P. (C) No. 539 of 2003.

⁴⁷ Gautam Bhatia, *The Transformative Constitution* 219–25 (HarperCollins, 2019).

had granted police protection to a whistle blower and asked for documentary evidence to be submitted to Madhya Pradesh High Court for further examination.⁴⁸ Court's orders showed clear indication of the awareness of whistleblower's grave risk due to the revelation of a large-scale corruption in the medical-admission process. However, the protection afforded was subject to the specific circumstances and to the specific time period, and did not state a generalised standard under which other whistleblowers could seek the same protection. The Court did not establish a new authority, or a recurring situations model, for whistle blowing protection, instead relying on established mechanisms such as police protection, FIR registration and investigation monitoring.

In other rulings, courts have repeatedly turned to the language of the Constitution to highlight the value of whistleblowing and to leave enforcement to the executive. One of the hallmarks of this stage is the use of CBI, SITs or investigations conducted by the vigilance department.⁴⁹ Such agencies are guided by the court to investigate allegations, keep an eye on the complainant's safety and to submit regular reports. These interventions can be seen as a form of judicial activism, insofar as they require investigative action

and indicate judicial awareness of transparency. However, these directions are dependent on the willingness of the leader and the capacity of administration as there are no **binding institutional structures** to protect whistleblowers and give independent oversight powers.

The doctrinal profile is thus the one of hollow-rhetoric activism: a language of constitutional obligation and public-interest responsibility is used in the Court, but remedies are "ad hoc," "incidental," "supervisory" not "structural. There is no apparent body of case law that systematises:

- the circumstances that should justify giving a complainant anonymity;
- the uniform nature of the contents of protection orders; or The time and manner of periodic review of such orders.

The article's core argument is that despite the most activist rhetoric in the 2015-2022 period, the judiciary has failed to achieve enough to close that gap between judicial recognition and practical security for whistleblowers.

Contemporary Phase (2022–2025): Selective Intervention and Judicial Vacuum

Courts have been inconsistent and selective between 2022 and 2025⁵⁰ – in some cases they have been adamant in imposing action on high-stakes cases, while in others they have been hesitant to establish general rules that can be applied by future courts. For instance, in **Priyesh Bheda Case (2025)**,⁵¹ the Bombay High Court directed the CVC and the CBIC to ‘take into account’ the officer's request for protection within stipulated time limits and also return a written response without establishing on-going monitoring or a standing order. Other

⁴⁸ Proceedings relating to the Vyapam Scam, Delhi High Court Orders (2015).

⁴⁹ See generally investigations monitored by CBI and SITs in corruption-related whistleblower matters.

⁵⁰ Recent High Court jurisprudence on whistleblower protection (2022–2025).

⁵¹ *Priyesh Bheda v. Union of India*.

judgments have been more restrained, refusing to hold executive failures to set up dedicated whistleblower cells or WPA rules as justiciable offences,⁵² and instead deferring to policy discretion instead of imposing structural duties. When courts intervene, orders are typically monitoring, meaning that they are designed to be adhered to in the future, rather than resolving important doctrine issues like the threshold for whistleblower status, the standard content of a protection order, and where protection is located. Together these tendencies and developments create a “judicial vacuum,” that is, recognition of the significance of whistleblower protection and a faith in the executive for its enforcement and design.

Comparative Doctrinal Observations

Attitudes of the High Court and Supreme Court can be seen as ranging from one extreme to the other in a review of their decisions. The Supreme Court has set down general guidelines on transparency and public disclosure but makes case specific, non-institutional orders.⁵³ There have been some High Courts (Delhi, for instance) that have taken a protectionist approach (such as granting the police protection and scheduling a review of the documents),⁵⁴ and others that have been cautious, demanding that the claimant establishes a causal link between the disclosure and subsequent adverse action (as in **Rahul Solanki v. CRPF (2025)**,⁵⁵ where the requirement for a whistleblower to prove a causal connection with subsequent adverse action did not lead to the automatic preclusion of transfer). The outcome is doctrinal weakness: there is strong norm language but weak remedial architecture and some variability there. Supreme Court and High Courts have not yet developed consistent and effective whistleblower

protection jurisprudence, a void which this article attempts to fill with judicial and legislative ideas for the improvement of whistleblower protection.

V. Judicial Activism vs. Judicial Vacuum: Theoretical Interpretation

As discussed in Section 6, there is a clear trend in the Indian judiciary from the year 2011 to 2025 of using the term 'judicial activism' in RTI and whistleblower cases. The courts have consistently relied on constitutional values, including right to know and right to life, public-interest obligation of transparency, to uphold the legitimacy of whistleblowing, and to express concern over the safety of the whistleblower.⁵⁶ The Supreme Court and High Courts, in several landmark rulings, have mandated registration of FIRs, given central agencies such as the CBI the job of monitoring, and granted interim protection orders to individual whistleblowers as a response to institutional opacity and systemic corruption.⁵⁷ But this vocal activism has not been captured in binding, systemic, and enforceable structures for whistleblower protection. The judiciary has not yet instituted a consistent doctrine on the risk

⁵² Judicial responses concerning implementation failures under the WPA framework.

⁵³ Comparative analysis of Supreme Court and High Court jurisprudence on whistleblower protection.

⁵⁴ Delhi High Court whistleblower protection orders in corruption and RTI cases.

⁵⁵ *Rahul Solanki v. CRPF*.

⁵⁶ Constitution of India, arts. 19(1)(a) & 21.

⁵⁷ See generally whistleblower and RTI-related decisions of the Supreme Court and various High Courts between 2011–2025.

assessment, anonymity procedure or institutional protection.⁵⁸ Directions continue to be mostly ad hoc, with focus on specific factual contexts, and rely on executive compliance, not a self-executing constitutional-duty architecture. In this way, the discourse of transparency is often paralleled by a structural vacuum of little, if any, predictable legal recourse, where whistleblowers remain subject to retaliation.

This dichotomy places the current issue in context of larger Indian debate of judicial overreach and inaction. One side of the argument is that the overuse of activist language in whistleblowing-type cases is justified as a remedy for executive inattention and legislative inaction. One group of arguments justifies the use of activist language in whistleblower cases as a corrective to executive apathy and legislative delay. On the other, the lack of sustainable institutional frameworks for protection renders the judiciary's hesitations, or perhaps inability, to institutionalising its own norm-based commitments. The whistleblowing-cases illustrate, however, a hybrid situation: courts are overreaches in language, and non-institutionalises in structure; a need for a more disciplined doctrinal consolidation of whistleblower-protecting jurisprudence has become apparent.

VI. Suggestions

Upon evaluating the doctrinal approach of the research topic, it would not be incorrect to state that there is a necessity of an enforceable and comprehensive system of law pertaining to the issue of whistleblower protection in India. **9.1. Doctrinal Recommendations for the Courts**—In the light of the constitutional provisions contained in Articles 19(1)(a) and 21 of the Constitution of India, it is

necessary that the Indian courts, specifically the Supreme Court of India and the High Courts, create an "integrated doctrine of whistleblower protection" within the ambit of "right to know", "right to life". In this context, there should be a need for standardization of certain guidelines enabling the courts to take immediate steps of protection of whistleblowers under the RTI Act and PIL.

Among those changes expected in the Whistleblowers Protection Act 2014 are those pertaining to the inclusion of clauses regarding the making of anonymous complaints through RTI in case there is an apprehension of victimization. However, care needs to be exercised on the part of the law to make sure that such a provision is not abused and does not result in the denial of whistleblowing rights. At the same time, it is very important that certain punitive measures against victimization and unauthorized divulgence of whistleblower's identity be introduced. There can be no question of the fact that it is absolutely necessary to incorporate case laws alongside the rest of the evidence regarding the murder, transfer, and harassment of whistleblowers.⁵⁹

⁵⁸ Venkatesh Nayak, "Whistleblower Protection and RTI Activism in India," 54(3) Economic and Political Weekly 17 (2019).

⁵⁹ See generally cases relating to attacks and victimisation of RTI activists and whistleblowers in India.

VII. Conclusion

Therefore, the attitude towards whistleblowing by the Indian judiciary from the standpoint of rhetoric may be called **rhetorical activism**, meaning that the references to the right to know, to life, and to transparency for the common benefit were made to illustrate an understanding of the dangers of whistleblowing and thus make its practice legitimate. However, the problem is that the issue turns out to be quite different from the institutional viewpoint because, despite some rhetoric on the matter, the courts have failed so far to establish adequate whistleblower protection regimes.⁶⁰ The timeframe of 2011-2025 should be considered **decisive** as both doctrinal innovations and legislative action is required during this period to solve the problem in question. The introduction of the Whistleblowers Protection Act, 2014 along with the large number of rulings on issues of RTI and corruption indicates that there is more than enough normative basis to develop better whistleblower protection regime. From this point, it would be possible to expect the emergence of "whistleblower-protection jurisprudence" in India in the future.

⁶⁰ Constitution of India, arts. 19(1)(a) & 21.