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# The Whistleblowing Corporate Fraud: India's Regulation

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## ABSTRACT

*Over the past few decades, the corporate sector has seen a number of progressive developments that constantly empowered many controversial corporate scandals. "This research paper begins by explaining whistleblowing an act which is an aid to many organizations or individuals in the efforts to tackle the bribery and corruption". India's growing economy necessitates significant foreign investment to fund large-scale projects, and the government makes sure to supply the necessary resources and technology. This necessitates a review of corporate governance with a focus on the whistleblower procedure in order to prevent various fraudulent practices. Therefore, it's critical that businesses maintain human resources policies and procedures that support whistleblowing behavior rather than presenting whistleblowers as traitors. With the objective to ensure the effective implementation of the whistleblowing process and other laws, as well as to create the existence of corporations, this paper is going to examine the "value" and the principles of corporate governance. It will also look at the systematic changes that have been made to current law. A doctrinal study with secondary based research has been carried out to understand the mechanism of whistle-blowers in India.*

**Keywords:** Whistle-blowers, Whistleblowing, Corporate Governance, principles.

## I. INTRODUCTION

The frequency of corporate frauds and their failures has steeply increased over the past few years, compelling governments and regulators to enact strict laws and policies to prevent these types of corporate frauds. In contrast, the idea of corporate whistleblowing is rather new in the field of corporate governance. Employees seem to be more aware of the amount of scams, with management being the main offenders. The act of disclosing information to the public or management by an employer is commonly referred to as "internal whistleblowing and the person who does so is called a whistle-blower. Whistleblowing is said to be a useful tool in the fight against these kinds of frauds. According to the cases, whistleblowing has occurred in

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India on occasion.

<sup>3</sup>According to many cases, there has been instance where whistleblowing has concluded to be the mechanism to detect fraud as for example of historic fraud by Harshad Mehta was blown out by Sucheta Dalal (well-known journalist). The concept of whistleblowing essentially means when a particular organization or a company is given a warning beforehand if any kind of corruption or illegal activity is about to happen within the organization or company. It also proves that whistleblowing behavior is one of the effective tools for an organization.

<sup>4</sup>According to Borrie and Dehn (2001) rightly said rapid developments in the outbreak of modern organization is responsible for making it gradually though for an organization to have the essential checks and control in pace for it to make easier for employees to act in professional honesty. Therefore, it is a great significance to carry out the research on whistle-blowing behavior in organizations

<sup>5</sup>Whistleblowing could also be understood as the process that reveals any kind of unethical activity happening within an organization, company by an employee, or any person privy to its activities. Since there is currently no definition for the term "whistleblower" in any statutory legislation, it is possible that the legislation intended for the term to have a wide definition. A whistleblower is, broadly speaking, any individual or employee who has access to insider knowledge regarding any sort of fraud, corruption, or misuse of authority by the company's upper management. When it comes to corporate whistleblowing, employees are frequently the first with credible information about wrongdoing or unethical practices occurring within the company, but they often withhold this information out of fear of being suspended or fired from their positions. This makes it even more crucial for a business or organization to establish a whistleblower policy that protects the identity of the whistleblower. In addition, there should be a law that protects this employees'. Corporate Governance provides the guiding principle how a company can be controlled or directed in a manner which can fulfill its goals and objectives. As it provides certain guidelines which adds value to the company and advantages to its stakeholders".<sup>6</sup>

In addition, establishing a strong whistleblower program will not only deter employees from engaging in illegal activity but also allow the company to identify any inappropriate behavior

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<sup>3</sup> Saluja Shefali, 'Whistleblowing Corporate Fraud in India, (2020)

<sup>4</sup> Nimisha Bhargava Dr Mani Mandala, 'An Overview of Whistleblowing -An Indian Perspective' (2015) *International Journal of Innovative Research in Science, Engineering and Technology* 334

<sup>5</sup> Dr Singam Sunitha, 'A Study on Whistle-Blowing Mechanism In corporate India' (2017) *ISOR-JBM* 23

<sup>6</sup> Karn Marwaha, 'Corporate Governance and Whistle Blowing in India: Promises or Reality?' (2017) *59 Int'l JL & Mgmt.* 430

well in advance.

### **(A) Problem description**

Over the previous few years, a number of contentious scandals that were made public by various whistleblowers have brought attention to India's corporate sector. The most recent controversy to rock the corporate sector was the Infosys fiasco. In India, the laws pertaining to whistleblowers are currently being developed. Employees and outsiders who are aware of corporate wrongdoing frequently hesitate to report corruption and wrongdoing out of fear. The most notable shortcomings of the Whistleblowing Policy Act, 2014 was that, in addition to disregarding the law report 174th's suggestion, it's in fourth report, issued in 2007, it also opposed the recommendation for the second round of administrative reforms. This report excluded the private.

## **II. INDIAN REGULATORY LEGAL FRAMEWORK ON WHISTLEBLOWING POLICY**

The legislative framework about the whistleblowing policy is still at a nascent stage as compared to as compared to legislative framework adopted by countries such as United States of America or United Kingdom. Some of the provisions laid down are as follows:

### **(A) The Indian Companies Amendment Act 2017**

Although the phrase "whistleblowing" is not used in the Companies Amendment Act, the concept of whistleblowing policy is present in all of its sections. Under the headings "Inspection, Inquiry and Investigation," there is a whole chapter that addresses the idea of whistleblowing. A framework for looking into corporate concerns is provided under Sections 210 through 229 of the Act. An Office for Serious Fraud Investigation shall be established in accordance with Section 211(1) of the Act<sup>7</sup>. According to the Companies Amendment Act of 2017, aiding in business interactions and corporate affairs is an individual's duty, right, and obligation, and whistleblowing is not only a voluntary act. This action promotes and motivates people to speak out against morally dubious commercial practices.

### **(B) SEBI guidelines**

<sup>8</sup> Clause 49 of the listing agreement has been amended by SEBI with the formation of the company guidelines. The agreement states that each company must have a particular system and a whistleblowing policy of its own. Employees also should have an obligation to exercise caution, and they have the right to contact the company's audit committee if they suspect fraud

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<sup>7</sup> The Indian Companies Amendment Act, Acts No 1, Acts of Parliaments, 2017

<sup>8</sup> [https://www.sebi.gov.in/sebi\\_data/commndocs/cir2803an1\\_p.pdf](https://www.sebi.gov.in/sebi_data/commndocs/cir2803an1_p.pdf)

or malpractice. The agreement also states that the employer has an obligation to safeguard its workers against harassment and layoffs of any kind. Additionally, it suggested that the businesses issue an annual declaration attesting to the fact that they did not deny or limit any individual access to audits.

### **(C) The Whistleblowing Policy 2014**

The purpose of this act was to create to a process for handling complaints about the deliberate abuse of authority against any public servant, accusations of corruption, or concerns about the disclosure of any kind of document. This act provides sufficient protections to shield the complaint from being victimized by whistleblowing, and it also covers any investigation or the organization of any individual for such disclosure.

The act also addresses disclosure the requirements of the public interest and also covers the provisions of this act. Public officials and non-governmental organizations may reveal information in the public interest in front of the competent authorities, even in cases where the Official Secrets Act, 1923 (19 of 1923) has strict guidelines. Any and all disclosures made in compliance with this law will be considered public interest disclosures. In addition, the disclosure must be made truly, and the individual making it must personally attest to the fact that he believes the information he has shared and the accusations it makes are mostly true. If the competent authority determines it is appropriate, it may also call the person supplying the information. The disclosure must be made in accordance with the protocol stated with all supporting paperwork.

One of the drawbacks of the Whistleblowing Protection Act of 2014 is that it fails to provide a process for the complainant to follow in order to challenge an order issued by the relevant authorities. In 2015 it was proposed to make it essential for the whistleblower or complainant to disclose their identity. This meant that anonymous complaints would not be accepted under this Act. It is clear that the freedom to information act of 2005's section 8(1) serves as the foundation for the proposed modification.

### **III. MAJOR PITFALLS OF WHISTLEBLOWING POLICY**

A strong corporate governance framework cannot be achieved by the nation establishing a large number of regulators, leaving out a specific industry, and making it optional for that industry to accept the framework. The law's scope and ambit must be clear in order for it to be effective. In India, there is a remarkable stage of development for the legislative framework that includes the whistleblower policy. Although laws have been enacted with the wellbeing of the general people in mind, their pace of growth has rendered them insufficient. The foundation of the

whistleblower policy's implementation is trust. Businesses ought to foster an atmosphere where employees feel free to voice their concerns to the relevant authorities about any form of misconduct. There are several challenges, including mistrust, the ignorance of the whistleblowers, and incorrect.

<sup>9</sup>The Whistleblower Protection Act is only applicable to companies that are listed on the stock exchanges. The further amendment that was proposed and passed by the parliament further mandates the whistleblower to reveal their identity. This would leave the whistleblower venerable to while the Centers informed the Whistleblowing Protection Act, 2014 it subsequently requested some amendments to the Whistle Blowing protection Act that was passed in the Lok Sabha to protect against the leaks that may have repercussions for national security<sup>10</sup>.

#### **IV. LEGISLATIVE FRAMEWORK SUPPLEMENTING THE WHISTLEBLOWING POLICY IN UNITED STATES OF AMERICA**

The United States of America was the first country to adopt and recognize the concept of whistleblowing in the world. In the year 1863, the United States of America becomes the first country to pass the legislation was named as United States False Claims Act, 1863. The U.S has one of the inclusive legislations that offer protection to the whistleblowers some of the legislations are:

- The Sarbanes Oxley Act, 2002
- Occupational Safety and Health Act 1970
- Wall Street Reform and Consumer Protection Act 2010.

The securities exchange commission in U.S has also taken steps to encourage the employees to inform the regulator of the wrongdoing that a company may be indulging in it. The regulator in furtherance also promotes the practice of full disclosures and transparency.

##### **(A) Incidents of corporate frauds in India**

**In Infosys scandal** the chairman of the company on the 21<sup>st</sup> October 2019 revealed that the audit committee after a thorough investigation did not find nay merit to the allegation that was leveled against the CEO Salil Parekh and the CEO Nilanjan Roy. Chairman Nandan Nilekani in a press release said that the company upon receiving the complainants from a group of employees who call themselves as the “Ethical Employees” levied charges against both the

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<sup>9</sup> <https://blog.ipleaders.in/role-of-whistleblowers-in-corporate-governance-concept-of-whistleblowing-in-india/>

<sup>10</sup> Rachit Garg, ‘Role of whistle-blowers in corporate governance [www.blog-ipleaders.in/2022/01.in](http://www.blog-ipleaders.in/2022/01.in)

employees who having indulged in financial impropriety and using unethical methods to increase the profits of the company. The chairman in his statement further mentioned upon the complaint the audit committee along with an independent legal counsel conducted an investigation 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 were without merit.

**In 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 the seniors and the top-level management about the suspicious manufacturing practice that were under taken by the company. Dinesh Thakur successfully provided the U.S regulators authorities with evidence and proved that Ranbaxy had indulged in the malpractices such as falsifying drug data and was also guilty of violating good management practices. Dinesh Thakur exposes the malpractices that were carried by Ranbaxy also provided the authorities and the regulators had engaged in manufacturing and distribution of adulterated drugs.<sup>11</sup> All this happened because he took the protection from U.S whistle-blowers program. But not everyone is fortunate and privileged. 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.

**The Satyam computers** was one of the companies which had their whistleblowing policy since 2005 but was never implemented or was not followed in a correct way which led to big scam. It can be said that the metro man E. Sridharan was the first and original whistle-blower in the scam.<sup>12</sup> He suspected a big chief ad being the Delhi Metro Rail Corporation (DMRC) chief, he alerted the planning committee Deputy Montek Singh Ahluwalia and raised a red flag. After writing the letter to the planning committee how the Andhra Pradesh government is selling the family silver and this could lead to a very big political scandal. After Sridharan wrote the letter, he was charged with defamation by the Andhra Pradesh government. Later, after a huge loss, Ramalinga Raju, owner of the company surrendered himself.

## V. CONCLUSION: THE WAY AHEAD

Even after enacting various legislations, whistle-blowers in India are not safe or protected

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<sup>11</sup> Rahul Singh, A tribute to the whistleblower, risking job and even life, THE TRIBUNE, <https://www.tribuneindia.com/news/comment/a-tribute-to-the-whistleblower-risking-job-and-even-life> 21765

<sup>12</sup> Narendra Shah, Metro-man E. Sridharan was original whistle-blower of Satyam Scam, METRO RAIL NEWS, (12 April, 2015), <https://www.metrorailnews.in/metro-man-e-sridharan-was-original-whistle-blower-of-satyamscam/>

because of the corrupt system and the companies do not let them raise their voice and if any how they managed to blow the whistle they are executed or victimized. It's not easy to be a whistle-blower it takes guts to do so. They risk their job and even their life. They deserve to get protection in return but unfortunately India has become a home to victimization of whistle-blowers whether it is a government company or private company. Corporate governance is absolutely necessary for any company to operate, if a company has a strong corporate governance framework, then the company can conduct its operations with full transparency and can promote the policy of disclosures to strengthen their relationship with the stake holders and their employees. Having a good corporate governance will ensure a good stability growth for the company. A strong whistleblowing framework helps the company to implement the practice efficiently, it could further encourage the employees to elevate their concerns to the concerned authorities to prevent any wrongdoing, malpractice, corruption or fraud in the early stages thus maintaining their reputation. The world over the last couples of decades has witnessed scandals like the Harshad Mehta Scam, Satyam Computer Scam, Ranbaxy Scandal these scandals harm many people's lives, thus the company must protect ordinary people from being the victims of such scams.

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## VI. REFERENCES

### (A) Online journals/working papers

1. Agarwal Shyam., 'Whistle blowing Balancing on a Tight Rope' (2017) The Institute of Company Secretaries of India 1
2. Barman A, 'Whistle Blowing Exercise in Indian Corporation – Does it really Blow?' (2011) Social Science Research Network Electronic Journal 1
3. Chen L, 'A Review of Research on Whistle-Blowing' (2019) 9 American Journal of Industrial and Business Management, <<https://doi.org/10.4236/ajibm.2019.92019>>
4. Dr Singam Sunitha, 'A Study on Whistle-Blowing Mechanism In corporate India' (2017) *ISOR-JBM* 23
5. Lee, G, Fargher, N. 'Companies' Use of Whistle-Blowing to Detect Fraud: An Examination of Corporate Whistle-Blowing Policies' (2013) *J Bus Ethics* 114
6. Karn Marwaha, 'Corporate Governance and Whistle Blowing in India: Promises or Reality?' (2017) *59 Int'l JL & Mgmt.* 430
7. Nimisha Bhargava Dr Mani Mandala, 'An Overview of Whistleblowing -An Indian Perspective' (2015) *International Journal of Innovative Research in Science, Engineering and Technology* 334
8. Saluja Shefali, 'Whistle Blowing Corporate Frauds in India' (2020)
9. Rao Nagaraj K, "Analysis of Corporate Frauds in India from ethical perspective" (2015) *Twelve Aims International Conference on Management* 921
10. Rachit Garg, 'Role of whistle-blowers in corporate governance (Blog- ipleaders, [www.blog-ipleaders.in/2022/01.in](http://www.blog-ipleaders.in/2022/01.in))
11. Redeveloping Whistleblowing Policy in India: A fight for Better Corporate Governance, *International Journal of Law Management and Humanities*, (2020) Volume 4 Issue 1.

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