

Whistle Blowing: Is it So Hard in India

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Abstract— Whistle blowing assumes an essential part in any association's corporate administration system as it engages representatives to follow up on occurrences of offense and keeps up moral condition in the working environment, while ensuring benefits and notoriety of the association. Whistle blowing is the divulgence of data about saw wrongdoing in an association, to people or elements. The fundamental point of Whistle blowing is to secure general society intrigue and it can be accomplished by advising individuals or associations that are in a position to forestall damage, to research or to make a move against the individuals who are in charge of wrongdoing. However, is whistle blowing moral? The demonstration of whistle blowing can bring about an irreconcilable situation between the individual, hierarchical and societal circles. Quite a bit of this contention emerges from the setting that how one perspectives an informant – as somebody who is sharing learning of unfortunate behavior for the advantage of others or, then again somebody who is acting "unfaithful" to their association. This paper investigates how whistle blowing helps in uncovering the illicit or deceptive works on occurring in the association and in this manner keeping the authoritative morals notwithstanding that it additionally tosses light on current situation, laws and difficulties for whistle blowing in India.

Keywords— Corporate Governance, Organizational Ethics, Whistle Blowing.

I. INTRODUCTION

In India the idea of a Whistleblower had appeared amid the Kautilya administration, who had the strategy that - "Any witness who supplies data about extortion and on the off chance that he/she prevails with regards to demonstrating it, will get the reward of one-sixth of the sum being referred to; or if the source is an administration worker, he/she might get one-twelfth of the sum for a similar demonstration." The term shriek passing up 'Ralph Nadar', a US metro extremist, in mid 1970's. As indicated by the definitions given by different creators shriek blowing is-Sekhar (2002) characterizes whistleblowing as an endeavor by a representative or a previous worker of an association to unveil what he announces to not be right doing in or by that

association. Koehn (2003) shriek blowing happens when a worker illuminates the general population of improper exercises going ahead inside the association. Boatright (2003) whistleblowing is the arrival of data by a part or previous individual from an association this is proof of illicit and additionally indecent lead in the association that is not in the general population intrigue. Shriek blowing is not the equivalent word of grievance (or making the protest), for the most part shriek blowing issues includes hazard to others (open, clients or bosses) and shriek blower is a witness who reveals the touchy data, and is not required to demonstrate the case while grievance or grumbling includes individual issues like rupture of work rights, being inadequately treated and so forth. These issues ought to be dealt with under the grievance technique and the complainant needs to demonstrate the case It is ordered into two classes i.e.- interior or outside where Internal shriek blowing intends to report the higher expert about the wrongdoing or dishonest exercises, while outside shriek blowing alludes to educating media and society about such unlawful exercises. A senior expert Mr. Ketan Kothari who is related with Thakker and Thakker in Mumbai trusts that in the wake of finding to exploitative, unethical or illicit exercises inside their association a representative's regular responses fall into three classifications. In the first place classification comprises of those workers who blow the shriek; second are the individuals who close their eyes and wind up noticeably impartial and the third classification comprises of those representatives who take an interest and backings shriek blowers (first classification). As indicated by Kothari, a large portion of the general population in India fall into the second classification, while just a couple are hazard seeking after and pick first or the third alternatives. Around the world in the vast majority of the nations, it had been seen that the law don't secure these shriek blowers. Along these lines the primary issue and center of the paper is, regardless of whether one ought to or ought not blow the shriek? Or, then again one ought to spare the general public or spare his/her own particular occupation?

II. IMPORTANCE OF WHISTLE BLOWERS

"Similarly as character matters in individuals, it is important in association" says Justin Schultz, a corporate clinician in Denver. Today in our quick paced world each association needs to be in front of another and needs to acquire snappier benefits for which they receive shameless or deceptive practices that prompts crumbling corporate administration and hierarchical esteems. Organizations like Satyam PCs administrations Ltd., Bernie Madoff (embarrassment of 2008), Enron, Parmalat and so forth have caved in light of the fact that they had received degenerate practices. In such circumstances these shriek blowers has been seen as the valuable specialist co-ops as they acquire light the unlawful and untrustworthy works on occurring in the association like in WorldCom bookkeeping embarrassment if Cynthia Cooper had not been talked up, than the deceptive practices would have proceeded and it might bring about much more harm than the outrage, till the time it is presented to people in general .It was additionally expressed in one article of Fortune magazine that-" If Cynthia Cooper had been a decent officer, the entire unimaginable chaos may have been covered perpetually" Another unmistakable case on shriek blower part is of Dinesh Thakur who joined Ranbaxy as executive and was in charge of blowing the top on "false, invented, and deceitful explanations" made by Ranbaxy to medication controllers bringing about substandard and unapproved drugs. Subsequently the Food and Drug Administration (FDA) has expanded the quantity of auditors dispensed to India from four in 2009 to almost 15 at present. Shriek passing up administration itself on the grounds that the nature of "genuineness" brings finish commitment of workers in accomplishing the association's central goal and achievement. Hence by empowering the shriek blowing society in the association the administration not just advances straightforward structure, successful correspondence in the association however it likewise expands the representative's responsibility and duty towards the association. Notwithstanding that it additionally makes the general population trust in the work that association performs.

THE PRESENT SITUATION OF WHISTLE BLOWING IN INDIA

Controls in India don't order organizations to set up shriek blowing system and give security to shriek blowers who bring their voice up in great confidence. Despite the fact that SEBI in its roundabout presented the idea of Whistle Blower Policy under Part IV of Clause 49 of Listing Agreement on 26 August, 2003 that each recorded

organization ought to plan an approach that enables workers to report about dishonest practices to administration with no dread of suspension or conservation. The updated Clause 49 which appeared on 29th October, 2004, joins "Shriek Blower Policy" under non obligatory segment. In certainty, Satyam had a shriek blowing approach since 2005. But it is simply after its sudden trick that stirred The Ministry of Corporate undertakings to set up new standards and approaches and to attempt measures to conceal the escape clauses to avert future corporate cheats. The Limited Liability Partnership Act, 2008 has too fused arrangements to secure the interests of shriek blowers to guarantee that no foul play ought to be finished with them yet as indicated by a current survey of shriek blowing occurrences in India demonstrates that among the informants, 62% lost their occupations, 18% felt that they were bugged or exchanged, and 11% had their work duties or compensations decreased and remaining 9% lost their lives. In this way life is not the luxurious situation for the shriek blowers. It requires gigantic bravery and conviction as a general rule there is no insurance accessible for informants after they uncover the Cretans so they should depend to a great extent upon the goodwill of the group or a few NGOs.

III. SOME DEMORALIZING CASES OF WHISTLE BLOWERS IN INDIA

SATYENDRA DUBEY

Talking about whistle blowing in the Indian context the first case that comes into the mind is that of NHAI engineer Satyendra Dubey. He was one of those rare young men who were uncomplicatedly honest. A 31 year old civil engineer graduate, from IIT, Kanpur was working as Deputy General Manager for Centre's National Highway Authority of India. On August 2003 he was transferred to Gaya as project manager to supervise the Prime Minister's dream project in the Koderma division in Jharkhand as a part of the Golden Quadrilateral project This project aimed to connect many of the country's major cities by four-lane highways with total length of 14,000 km. There he discovered high level corruption and mismanagement regarding subcontracting and quality control. He saw that the contracted firm, Larsen and Toubro, had been subcontracting the actual work to smaller low-technology groups, controlled by the local mafia. Dubey wrote a letter to the Prime Minister, Atal Bihari Vajpayee, detailing him about the financial and contractual misdeeds in the project. In spite of his request that his identity must be kept secret his letter was sent to the Ministry of Road Transport and Highways. On November

27, Dubey was shot dead by unidentified assailants in Gaya when he was returning from a wedding from Varanasi.

SHANMUGAM MANJUNATH

Another glaring example of the apathy faced by the whistle blowers in India is that of the Indian Oil engineer Shanmugam Manjunath. He was the marketing manager of Indian Oil Corporation (IOC) who was murdered for blowing the whistle on a scheme to sell impure gasoline. An MBA from Indian Institute of Management, Lucknow, Manjunath worked for IOC in Lucknow. While there, he had ordered two petrol pumps at Lakhimpur Kheri to be sealed for selling adulterated fuel for three months. On November 19, 2005, Manjunath was found dead in the backseat of his own car, his body riddled with at least six bullets.

M N VIJAY KUMAR

M N Vijaykumar is an IAS officer in the southern state of Karnataka. He has a penchant for disciplining colleagues who supplement their modest salaries with bribes, kickbacks and garden-variety pilferage. He exposed serious corrupt practices at high levels. His wife, J N Jayashree, set up a website detailing her husband's efforts to fight corruption, and to safeguard her husband's life.

LALIT KUMAR MEHTA

An activist in Jharkhand was murdered May 2008. He had exposed corruption in the local jobs-for-work scheme.

KAMESHWAR YADAV

He was gunned down by unknown persons in Jharkhand in June 2008. He had used the right to information law to expose a nexus between officers, politicians, contractors and middlemen in siphoning off government funds meant for irrigation work.

VENKATESH

A right to information activist from southern Karnataka state, whose questions had exposed encroachments on government land, was murdered on 12 April 2009. A local criminal leader was arrested in connection with the killing.

SATISH SHETTY

A right to information activist from the western city of Pune was killed by unidentified men while on a morning walk on 13 January 2010. His questions had exposed land scandals in the area.

SHASHIDHAR MISHRA

An activist from Begusarai in the eastern state of Bihar, was shot dead by unknown men while he was returning home on 14 February 2010. He had exposed alleged scams in welfare schemes in village councils.

VITTHAL GITE

An activist from the western state of Maharashtra was murdered on 18 April 2010, after exposing alleged irregularities in a village school.

AMIT JETHWA

An environmentalist working in Gujarat's Fir forest was shot dead on 20 July 2010. His applications had revealed illegal mining in the protected forest.

RAMDAS PATIL GHADGAONKAR

A milk seller from Maharashtra was murdered on 27 August 2010. He was using the right to information law to unearth information about illegal dredging of sand from the Godavari River.

IV. LEGAL FRAMEWORK OF WHISTLE BLOWING IN INDIA

The Whistleblower Protection Bill was passed by Lok Sabha on December 27, 2011 and in Rajya Sabha on February 21, 2014 in order to provide protection to whistleblowers against retaliation and businesses from false or malicious complaints. The major highlights of the Bill are as follows:

1. Whistleblowers can make complaints about corruption, willful misuse of power by any person including a public servant and attempts to commit offences recognized under law by any public servant.
2. According to the act the Central Vigilance Commission (CVC) will receive complaints and assess public disclosure requests.
3. A complaint will not be inquired, if it does not contain the name of the public servant against whom the complaint is been made or if the identity of the public servant or the complainant is found to be incorrect or false.
4. The Competent Authority will not reveal the identity of whistle blower and violation of the same will be penalized with imprisonment up to 3 years and a fine up to Rs.50, 000.
5. The competent authority has the power to set up its own inquiring staff or can use the services of any other legal authority (Central Bureau of

- Investigation, police etc.) to investigate into complaints it receives.
6. The public official has to generate proof, that any action taken against a whistleblower was not retaliatory. The CVC also has the power to order that whistleblowers who suffered employment retaliation be restored to their prior position.
 7. In case, if a company is found guilty of committing the offence then every person in charge of conducting the business of the company will be liable for prosecution and punishment till they prove their innocence
 8. If an offence is committed by anybody in a department then its Head will be considered as guilty and will be liable for prosecution and punishment till he/she proves that the offence was committed without his/her knowledge.
 9. If the competent authority forwards any recommendation to the public authority then the public authority must comply with it within three months otherwise record the reasons for not doing so.
 10. During the investigation process, if any public authority or official do not cooperate or refuse to provide reports when required, then competent authority will impose the penalty of Rs 50,000 on him/her.
 11. While investigation process, the competent authority has the power of a civil court and all proceedings brought before it, will be deemed to be judicial proceedings.
 12. Bill also seeks to protect the honest government officials and puts penalty on those who file false complaints with Imprisonment up to 2 years and fine up to Rs.30, 000.

MAJOR SHORTCOMINGS OF THE BILL

According to the views of various scholars and legal experts the current whistle blowing bill is “paper tiger” because of the following reasons:

1. The term Whistle blower, Frivolous disclosure’ ‘Victimization’ has not been defined in the bill.
2. The definition of ‘Disclosure’ is significantly constricted and does not include negligent acts and omissions of public servants.
3. The bill does not specify any penalty for victimization. In addition to that punishment for revealing the identity of whistleblower is insufficient.

4. Provisions made for protection of whistleblowers are inadequate. Besides, there is no separate provision for safety of women whistleblowers as they are more vulnerable to harassment.
5. The bill does not mention any penalty on anonymous complaints and disclosures.
6. There is a provision of penalty for frivolous disclosures which will discourage the persons from reporting against corruption.
7. Special Protection Group (SPG) and Private sector are not covered under the Bill. It is restricted only to the public servants or in works connected with the central government.
8. There is no provision of rewards for the whistleblowers.
9. The bill does not contain any mechanism for protecting the RTI users.
10. Period for filing a complaint increased from five to seven years though it is inadequate for cases involving gross negligence pertaining to public interest, safety and health.
11. Even it is not mention in the bill that what will happen to a case if the inquiry does not complete within the 3 months because such cases may lapse due to doctrine of laches.

V. THE FUTURE FOR WHISTLE BLOWING IN INDIA

There is a need of concrete, holistic approach which ensures that the whistleblower is not harmed by the wrongdoers he/she is targeting and would give more individuals the courage to report about the unethical practices they see. Following are some of the principles for whistle blowing legislation based on international best practice that should be considered while developing new legislation.

1. BROAD COVERAGE

The law should have a broad coverage. It should apply to public, private sector employees and also to national security cases.

2. PROTECTION AGAINST RETRIBUTION

The law should also have a broad definition of retribution that covers all types of job sanctions, harassment, loss of status or benefits and other detriments.

3. PROTECTION OF FREE SPEECH

The law should recognize that there is a significant importance of free speech whistle blowing. Public interest and harm tests should be applied to each release of any

information that could have been released under FOI cannot be sanctioned.

4. CONFIDENTIALITY

The law should allow for whistleblowers to request that their identity should remain confidential as far as possible. However, the body should make the person aware of the problems with confidentiality and also make clear that the protection is not absolute.

5. COMPENSATION

Compensation should be broadly defined to cover all losses which should also include loss for pain and suffering incurred because of the release and retaliation.

6. REWARDS

Whistleblowers should be rewarded for making disclosures in cases that result in important recovery of funds or discoveries of wrongdoing.

7. DISCLOSURE PROCEDURES

The law should set up straightforward procedures that easily allow whistle blowers to disclose about the wrongdoings outside the organization to legislators and the media in cases where it is likely that the internal procedure would be ineffective. There should be easy access to legal advice to facilitate disclosures and reduce misunderstandings.

8. NO ENDORSEMENTS FOR MISGUIDED OR FALSE REPORTING

The law should not impose penalties against whistle blowers who make false disclosures, only in case of deliberate falsehood, normal sanctions such as a loss of job should be sufficient.

9. EXTENSIVE TRAINING AND PUBLICATION

The government and non-government organizations should adopt policies to encourage disclosures as non-confrontational processes and this effort should be supervised by a high level manager. Even they should provide training to their employees.

10. REVIEWS AND DISCLOSURES

The law should make such provisions that every government and non-government organizations should be required to publish annual reports regarding the disclosures and outcomes etc during that period.

11. BUILDING A CULTURE OF TRUST AND OPENNESS

For effective implementation of whistleblowing policy, an organization must develop the culture of trust and openness that comes from the very top.

VI. CONCLUSION

Corporate whistleblowing, globally considered as one of the best tools to ensure good corporate governance, but it is still in its infancy in India. Many of the companies in India have a whistle-blowing policy in place but they use it as a “good to comply with” measure under Clause 49 recommendations. . Therefore with the growing number of scams related to corrupt practices in corporate there is a need for swift action from government in the form of stringent laws.

Although Whistle Blower Protections Bill is one such initiative in this direction which is also not free from its inherent faults. But again its success depends upon its effective implementation, which only the coming time will tell.

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