



## ARMOURING THE WHISTLEBLOWERS WHISTLE

A L N Srinivasa Rao\* Raghava Uriti\*\*

\*Associate Professor, Management Studies, MVGR College of Engineering, Vizianagaram.

\*\* Student, Management Studies, MVGR College of Engineering, Vizianagaram.

### Abstract

“Whistle Blowing” has gaining importance and some facts have also been brought out by the activists. Unfortunately, internal whistle blowers are facing victimization, retaliation from the colleagues and officers. The reason is that maintenance of office secrets under code of conduct or some other reasons which may affect the person who committed the misconduct. In some cases, some whistle blowers had renounced their lives for the cause. This shows, how much, the whistle blowing activity is dangerous to the whistle blowers? Unless, there is awareness about the activity and protection to the crusaders as is being followed in Korean model, it is difficult to expect more from the whistle blowers. In this study, I suggest framing laws strengthening the existing laws to protect the whistle blowers and suitably rewarded in the case of proven cases, as being in the Korean Model.

**Key Words:** Whistleblowing, Whistle blower, Whistleblowing Barriers, Whistleblowing Agreements, Whistleblowers Laws.

### Introduction

'Whistle Blowing' is a matter of importance not only in the context of organizations public or private but also public as well. 'Whistle blowing' is basically alerting the persons (both artificial person and individuals) who are concerned to it, about the misconduct that occurred in the organization. As already said there are some matters pertaining to the general public also which may endanger the lives have to be altered in the interest of society. whistle blowing can be done both by the persons internally associated with the organization in any manner or externally, by the persons(external) who know the facts along with the evidences in the hand. Generally, internal whistle blowing is reported to the officers concerned and external whistle blowing will be reported to the Media for the general public.

### Evolution of Word "Whistleblower"

History witnesses that there have always been informers who reveal inside information to others. Ancient Greeks talked about whistleblowing centuries before. Lykourgos, the Athenian orator, in his speech against Leokratis said: neither laws nor judges can bring any results, unless someone denounces the wrongdoers.

Even in Ancient India, the concept of a Whistleblower was in existence, Kautilya proposed- “Any informant (súchaka) who supplies information about embezzlement just under perpetration shall, if he succeeds in proving it, get as reward one-sixth of the amount in question; if he happens to be a government servant (bhritaka), he shall get for the same act one-twelfth of the amount.”

U.S civil activist Ralph Nader coined this phrase ‘whistleblowers’ in the early 1970s to avoid the negative connotations found in other words such as “informers” and “snitches”. Also, the term ‘whistleblower’ was first discussed by Doggett, J., in the case of Winters v. Houston Chronicle Publishing Company<sup>20</sup>; the word “whistleblower” is derived from the practice of English bobbies (the British Police), who would blow their whistles when they noticed the commission of a crime. The whistle would alert both law enforcement officers and the general public of danger.

### Definition of Whistleblowing

'Whistle Blowing' is nothing but making noise to alert the concerned about misconduct. This conducts in the nature of violation of rules/regulations, using corrupt means etc., otherwise a wrong doing.

Experts opined that whistle blowing is a disclosure of a member to the persons connected to it or organization that may effect by the wrong doing.

The term Whistleblowing probably arises by analogy with the referee or umpire who draws public attention to a foul in a game by blowing of the whistle which would alert both the law enforcement officers and the general public of danger.

**US academics Marcia P. Miceli and Janet P. Near** set the academic standard for whistleblowing in 1982 when they called it “the disclosure of organizational members (former or current) of the illegal, immoral or illegitimate practices under the control of their employers to persons or organizations that may be able to effect action.”



**Australian academic Peter Jubb** defines it as being necessarily a public action.

Whistleblowing is a deliberate non-obligatory act of disclosure, which gets onto public record and is made by a person who has or had privileged access to data or information of an organization, about nontrivial illegality or other wrongdoing whether actual, suspected or anticipated which implicates and is under the control of that organization, to an external entity having potential to rectify the wrongdoing.

**The International Labour organization** defines it as “The reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employers.”

**Guy Dehn from the UK’s Public Concern at Work and Richard Calland of the South African Open Democracy Advice Centre**, describe it as, "The options available to an employee to raise concerns about workplace wrongdoing.

### Why Whistleblowing Is Necessary?

Even though whistle blowing not new to us, it is gaining importance, as some whistle blowers alerted the society about the wrong doings done in certain organizations. It has been not limited to organizations particularly. It can be extended to service organizations like hospital, Medicare, agriculture, markets etc., Whistle blowers have role to play in all areas to bring out unethical/immoral/unconstitutional activities.

By whistleblowing, they are helping the society to make good but at the same time they are being subjected victimization by the organization and inviting enmity from their colleagues.

### Types of Whistleblowers

Some persons shall not be calm, if a wrong thing is noticed by them. They are for arranging correcting steps. They volunteer for blow the whistle.

Some persons know the wrong. But, may not blow the whistle, as it may not personally put into loss or his friend/Colleague may effect or may observe silence under the mask of maintaining confidentiality under official secrecy rules.

Some other persons may blow the whistle, if the wrong hits him or he may be at loss due to that wrong doing.

Whistleblowers shall note that before blowing the Whistle:

- They should have the information in complete shape on hand.
- If people alerts, the correct wrong shall be benefitted to the society or organization as the case may be.
- Whistle shall not be blown on imaginary or rumors.
- Before placing the matter in front of the media, it is necessary to think about pros & cons. However, if the matter spreads through media action will be quick.

### Literature Review

Mr.Shivam Goel has identified 5 mechanisms for effective whistle blowing viz.

- Independence of Board
- Role of Auditors (Internal and Statutory) and Audit Committee
- Whistle Blowing
- Shareholder Activism
- Fast Track Redressal Forums and Independent complaint mechanisms.

Further, he opined that SFIO (Serious Fraud Investigation Officer) has to be given more teeth to bite and he also emphasized the need of RTI act 2005 to be used for whistle blowing.

According to Mr.SPNSinha , he cited some examples where 4th estate(media) has played vital role I in bringing about certain scams namely Bofors gun deal and tehka(Stamps scandal) thus media itself proved as a visit whistle blower.

Mr.Nam-JooLee, has studied korean model where the government is protecting whistle blowers by providing security and cash incentives in case of proven cases.



According to Mr. Chris Wheeler, in drafting whistleblower protection legislation, the aim should be to encourage and facilitate the making of disclosures. Each of the provisions of such legislation should therefore be designed with one or more of the following objectives in mind

- To protect whistleblowers;
- To ensure that disclosures are properly dealt with; and
- To facilitate the making of disclosures.

Looking at the first prerequisite for disclosures, appropriate statutory protections for whistleblowers should include

- Protection from exposure of identity (i.e., confidentiality and secrecy);
- protection from detrimental/reprisal action (e.g., obligations on employers/chief executive officers (CEOs) to protect whistleblowers; a right to complain to an independent external body; criminal and disciplinary sanctions for detrimental action; injunctions; relocation of whistleblowers and/or witness protection);
- protection from liability (e.g., from any criminal or civil liability arising out of the disclosure); and
- Redress for detriment or reprisal (e.g., damages in tort or compensation).

David Banisar, cited certain examples where whistle blowing has saved certain lives of the people.

In China, Dr. Jiang Yanyong revealed the extent of the spread of the SARS virus and potentially saved millions of lives by alerting the public.

Allan Cutler, a Canadian bureaucrat, disclosed suspicions of fraud that led to the revealing of millions of misspent public funds in a sponsorship scandal, leading to the defeat of the Liberal party in the 2006 elections.

Sherron Watkins of Enron internally raised the alarm over problems with the financial situation in the company that eventually led to the arrest and conviction of its CEO and other top officials.

A 2002 KPMG report on fraud in Australia and New Zealand found 25 percent of fraud was reported by employees.<sup>12</sup> A 2005 study from KPMG in Africa found that 44 percent of fraud was revealed by information received from whistleblowers.

He identified following barriers for whistle blowing

1. Fear of Retaliation
2. Legal Liability
  - a. Duty of loyalty and confidentiality
  - b. Secrets Acts
  - c. Libel
  - d. Other laws
3. Cultural Barriers

He quoted certain international Agreements on whistle blowing.

- *United Nations Convention against Corruption (2005)*
- *UN Special Rapporteur on Freedom of Opinion and Expression*
- Inter-American Convention against Corruption
- Council of Europe Conventions
- The African Union Convention on Corruption
- The Southern African Development Community (SADC) Protocol
- Anti-Corruption Initiative for Asia-Pacific
- The Organization for Economic Cooperation and Development (OECD)

He felt that disclosure shall be made in

- Good faith
- Internal disclosures
- Hot lines d. external disclosures (external bodies) shall help for whistle blowing.

He highlighted the importance of media in whistle blowing and felt need for protection of whistle blowers over sight and enforcement by the following ways.

- a) Independent bodies
- b) Ombudsman



- c) Sectorial bodies
- d) Courts and Tribunals.
- e) Special Issues - Rewards and National Security.

### Some Well-Known Whistle Blowers in India

1. **SatyendraDubey (1973–2003):-** He was an Indian Engineering Service (IES) officer posted as Project Director in the National Highways Authority of India (N.H.A.I) at Koderma.
2. **ShanmugamManjunath (1978 – 2005):-** He was a manager at Indian Oil Corporation (IOC) posted LakhimpurKheri in Uttar Pradesh. Manjunath was murdered for sealing a corrupt petrol station which was selling adulterated fuel.
3. **Narendra Kumar (1979–2012):** Narendra Kumar was an Indian Police Service (I.P.S) officer from 2009 batch and he was posted in Morena district of Indian state of Madhya Pradesh.
4. **Lalit Mehta (1972–2008):** Lalit Mehta was a Right to Information (R.T.I) activist who had exposed ongoing scams in National Rural Employment Guarantee Act in Palamau District of Jharkhand. Lalit Mehta was an engineer turned social activist.
5. **SP Mahantesh:** He was serving as a Deputy Director of Cooperative Audit in Karnataka. Through his investigation he found that there were several irregularities in land acquisition, layout formation and allotment of sites and it involved many officials and politicians.
6. **AmitJethwa (1975 – 2010):** He was an Indian environmentalist and social worker and he worked actively in the Gir Forest area near Junagadh, Gujarat.
7. **SatishShetty (1970 – 2010):** Satish was an Indian social activist and he was noted for exposing many land scams in Indian state of Maharashtra.
8. **Rinku Singh Rahi:** He was Provincial Civil services (PCS) civil servant and he was fighting against corruption in sponsored welfare schemes in Uttar Pradesh (UP).
9. **YashwantSonawane:** He was posted as Additional District Collector of Malegaon (Maharashtra).
10. **D. K Ravi (1979 – 2015):** DoddakoppaluKariyappa Ravi commonly known as D. K. Ravi was an Indian Administrative Service officer of Karnataka cadre from the 2009 batch.

### Safety to the Lives of Whistle Blowers

As seen from the crusaders who have renunciate their lives for the cause, tells the public about the safety of lives of those valiant people. It is the necessity of the hour to protect them in the interest of society. But, unfortunately, in the organizations, instead of appreciating their work, they are facing retaliation, victimization. In present days, RTI act, 2005 is most useful in getting information for the cause.

### Are There Any Laws Protecting Whistle Blowers?

Realizing the importance of whistle blowers, a clause has been incorporated in the listing agreement, which is important to a company before listing with SEBI. This agreements between SEBI and the company which is proposed for listing. According to Cl.49 of listing agreement, a policy has to be adopted. The clause is only recommendatory.

However, Indian Parliament has passed an act for the protection of whistle blowers. now, another bill is placed before the parliament amending the existing Act to add more teeth to bite. RTI Act, 2005 is a boon to the crusaders, which is more helpful to get the information officially, before blowing the whistle.

Further, CVC has been made in charge to receive however; SIFO has to be given more teeth to be more functional. The CVC may order enquiry in the case of Government organizations only. He has no jurisdiction over private organizations.

### Conclusion

Above study revealed that whistle blowing is an important activity for the welfare of society in general organizations in particular. Welfare of the society is also depends on the persons who are volunteering to the whistle blowing against miss conduct and irregularity violation of rules and moral ethics .Even though there are some hurdles for free flow of whistle blowing traditional cultural and legal , the persons are contributing well for the benefit of the society . It is therefore necessary to the government to make loss for the protection of the whistle blowers and to attract more persons to be the whistle blowers. Similarly, the auditors of the organizations (both internal and external) compulsorily are to be a watch dog instead of working for salaries.



In order to strengthen the activity into a system the following suggestions are made

- Rules shall be relaxed to the extent of reviling the miss conducts, miss appropriations, and unethical, immoral, illegal, irresponsible activities when noticed by the employees to be brought to the notice of the officer concerned.
- There shall be a provision, in case top brass involved in such miss conducts it is necessary to which the facts has to be intimidated.
- There shall be an independent dept. to investigate into the matters as is in the case of information act. At present CVC's are looking after the investigations only limited to the government departments only the jurisdiction of the CVC has to be extended to the private organization also.
- The provision made in the clause 49 of listing agreement for this purpose is not sufficient. Hence necessary incorporation has to be made in the Indian companies act.
- The whistle blowers shall be protected from the from all nook and corners. The identity of the whistle blower shall not be reviled.
- In proven cases, the whistle blowers shall be given rewards and awards.
- In preparing an act for protection and inviting more whistle blowers, the government may adopt Korean model.

### **References**

1. Adishhalarankar, 2014 , Whistleblowers And Their Protection In India: An Overview ,<http://www.legalservicesindia.com/>
2. Banisar, David, Whistleblowing: International Standards and Developments (February 1, 2011). CORRUPTION AND TRANSPARENCY: DEBATING THE FRONTIERS BETWEEN STATE, MARKET AND SOCIETY, I. Sandoval, ed., World Bank-Institute for Social Research, UNAM, Washington, D.C., 2011. Available at SSRN: <http://ssrn.com/abstract=1753180>.
3. Chris Wheeler, 2003 Drafting and Implementing Whistleblower Protection Laws , 4th Regional Anti-Corruption Conference of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific , Kuala Lumpur, Malaysia 3–5 December 2003.
4. Goel, Shivam, Protection of Whistle-Blowers in India: A Corporate Perspective (August 25, 2014). Available at SSRN: <http://ssrn.com/abstract=2530397> or <http://dx.doi.org/10.2139/ssrn.2530397>.
5. <https://en.wikipedia.org/wiki/Whistleblower>.
6. Nam-Joo Lee, 2003 Korea's Whistleblower Protection and Reward System , 4th Regional Anti-Corruption Conference of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific ,Kuala Lumpur, Malaysia 3–5 December 2003.
7. Premlata , Anshika Agarwal , 2014 , "BLOWING THE FACTS" WHISTLE BLOWING POLICY IN INDIA , Research Directions Volume 1 , Issue 7 , ISSN:-2321-5488.
8. S. N. P. N. Sinha ,2003 The Scenario for Whistleblowers in India, 4th Regional Anti-Corruption Conference of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific , Kuala Lumpur, Malaysia 3–5 December 2003.