



IS WHISTLE BLOWING MORALLY JUSTIFIED?

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Abstract

Whistle blower protection rights are designed to encourage employees to halt, report or testify about employer acts that are illegal or unhealthy, without fear of employer retaliation. If employers retaliate despite the fact that it is illegal, whistle blower protection provisions provide avenues of relief for victims. Many State and Federal laws have whistle blower protection provisions. Whistle blowing has gained significance in India due to the large public uproar in recent years. In India, there is only one law which has been recently passed in the year 2014 in Rajya Sabha. The Government of India has been considering adopting a whistle blower protection law for several years. A whistle blower's courage makes an invaluable contribution to the society. He/she has a clear conscience and does not think twice before making his or her findings public in the interest of greater good. They help in unearthing various irregularities. Satyendra Dubey was not protected by the government authorities. This cost him his life.

Keywords: *Whistle blower, Whistle Blower Protection Act, Anti-corruption, Corporate Governance.*

Introduction

Whistle blowing is the act of drawing public attention, or the attention of an authority figure, to perceived wrongdoing, misconduct, unethical activity within public, private or third-sector organisations. Corruption, fraud, bullying, health and safety violation, cover-ups and discrimination are common activities highlighted by whistle blowers. Whistle blowers often face reprisals from their employer, who may suffer reputational damage as a result of the whistle being blown, or from colleagues who may have been involved in the illicit activities. In some cases, reprisals become so severe that they turn into persecution. In some cases, reprisals come from legal channels, particularly if the whistle has been blown for illegitimate reasons. Protection of whistle blowers is an important focus for the legal system, as is incentivizing whistle blowing when there are many reasons stopping employees from doing so. All employers should adopt a whistleblowing policy that encourages employees to draw attention to wrongdoing or risky behaviour. In the case of legal action being taken against a company as a result of internal wrongdoing, having and promoting a strong whistleblowing policy may act in part as a legal defence.

Whistle blower - A whistle blower is anyone who has and reports insider knowledge of illegal activities occurring in an organization. Whistle blowers can be employees, suppliers, contractors, clients, or any individual who becomes aware of illegal business activities. Whistle blower, an individual who, without authorization, reveals private or classified information about an organization, usually related to wrongdoing or misconduct. Whistle blowers generally state that such actions are motivated by a commitment to the public interest. Although the term was first used to refer to public servants who made known governmental mismanagement, waste, or corruption, it now covers the activity of any employee or officer of a public or private organization who alerts a wider group to setbacks to their interests as a result of waste, corruption, fraud, or profit seeking. Eaton and Akers (2007) say whistle blowing in its simplest form involves the act of reporting wrongdoing within an organization to internal and/ or external parties. According to Daft (2006) "Whistle blowing is the employee's disclosure of illegal, immoral, or illegitimate practices on the employer's part". Camerer (2001) defines whistle blowing in its most general form as involving calling public attention to wrongful acts, typically in order to avert harm.



Similarly, Judy Nadler and MiriamSchulman¹² defines, “whistle blowing means calling attention to wrongdoing that is occurring within an organization”.

Characteristics/ Features of Whistle Blowing

a) Whistle-blowing is not the same as complaint - Complaining is not same as blowing the whistle. In most instance complaints involve personal subject matter of the complainant than with others or public interest. Whereas the whistle blowing is concerned with subject matter affecting public interest. Complaints from service users, relatives or representatives would not be classed as whistle blowing. These would need to be raised using the service’s complaints procedure. Employees those who have complaints regarding pay, hours and general grievances would need to raise their complaints using their organizations grievance procedure.

b) It is not a witness of a crime - Witness of crime is not considered as whistle blowing. The general criminal and civil proceedings and lawsuits include witness of a crime for investigation, purpose. But whistle blower is not mere witness, but much more than witnesser. Whistle blower may be witness or may not be witness of crime, but having enough information about that crime.

c) It is non-public information - Information about a company that is not known by the public is known as non-public information. Therefore, the matter involved in whistle blowing is considered as non-public information.

d) Substantial importance - matter of whistle blowing must have substantial importance. The substantial importance is concerned with having or involved worth material facts and figures, the costs of damage/ loss to the public. There cannot be simple matter involved in whistle blowing which causes no harm to public and less or no loss to anyone.

e) Desired changes - The whistle blower is expecting to stop some activity which causes harm and loss to public and society. Therefore, there are some desired changes involved by doing so.

f) Voluntary way - Whistle blowing is purely a voluntary act of a person and also a group. There is no external force to make an act of whistle blowing, rather its internal force to do so.

g) Moral protest – Moral issues are concerned with the principles or rules of right conduct or the distinction between right and wrong; ethical. The moral protest is fighting against the immoral/ unethical issues. Therefore, whistle blowing is considered as moral protest.

h) Public interest disclosure - A public interest disclosure²⁰ is made when a person discloses to proper authority information that tends to show past, present or proposed future improper conduct by a public body in the exercise of its functions.

Objectives & Research Methodology

The justifiability of a whistle blowing act revolves around issues such as manner of the disclosure, the reasons for it, and the motives that lie behind it. Extreme positions are that, whistle blowing is always justifiable and that it is never justifiable. The present study is an attempt to conclude the reasons for the justification of the whistle blowers’ act of disclosing the information. The study is based purely on the secondary data as available in books, acts, magazines, newspaper articles, research journals available online and from various websites in order to achieve its objectives.



Prominent Whistle Blowing Cases in India

- October 2013 - India's largest IT Company, Infosys make a settlement of \$35 million with US authorities for visa fraud. Jack Palmer (former employee of Infosys) informed the US authorities about company's involvement in flouting US visa rules to facilitate visits of its Indian employee.
- January 2013 - Nisha Yadav, won Godfrey Phillip Bravery Award for revealing child abuse racket at "Suparaana Ka Aangan" (NGO-orphanage).
- May 2013 - Dinesh Thakur, expose irregularities in Ranbaxy Laboratories. The company was involved in falsification of certification documents and he informed to drug controllers around the world.
- May 2012 -SP Mahantesh, Deputy Director of Audit wing in Karnataka Government (State Co-operative Department), exposed irregularities in different Co-op Societies.
- October 2012 - Vijay Pandhare expose irregularities in Maharashtra Irrigation Department.
- March 2009 - Manoranjan Kumar worked in Ministry of Shipping and he exposed irregularities at Kandla Port.
- August 2009 - Kunal Sinha expose in Advance Medicare Research Institute for negligent treatment.
- November 2003 - Satyendra Nath Dubey, he was an engineer at National Highway Authority of India and he exposed irregularities in Golden Quadrilateral project and involvement of his department officials. He was murdered by road construction mafia.

Aspects Of Whistle Blowing - Positive and Negative

Positive Aspects:

The whistle blowing act has some positive aspects. These positive aspects reflect the benefits, advantages, significance, importance and good side of whistle blowing. The following factors explain about the positive aspects of whistle blowing.

- a) Whistle blowing is an anti-corruption tool: It minimizes fraud and misconduct can be corrected.
- b) It ensures effective system of internal control: Whistle blowing can play an essential role as a preventive and detective control, if the organization explicitly incorporates reporting mechanisms that disclose incidents of wrongdoing into its internal control structure.
- c) It is a good corporate governance practice: The organization promotes transparent structure and effective, clear communication among all levels of employees. This can protect organizational clients. Organizations contain many stakeholders such as shareholders, directors, managers, employees, vendors; consumers. Each of these groups has a vested interest in the health and long-term success of the corporation. Each group seeks to secure its own success through the activity of the corporation. Each group seeks to do this in a fair and equitable way. The only stakeholders that really know what is happening within a corporation are the employees. So, it is in the hands of the employees to protect the interest of various stakeholders. Whistle blowing gives all stakeholders, but most importantly employees, the opportunity to keep the corporation ethical and also to keep fellow employees honest. The end of the evil practices in the organization is possible by the effective whistle blowing. If no one questions the bad behaviour, it will continue and as a result cause even more damage to the organization itself and public.



d) It is a risk management strategy: It's better to hear the wrongful act at its initial stage, so the solution could be found at the earliest in preventing further damage to the organization in long run.

Negative Aspects:

The act of whistle blowing even has some negative aspects. These negative aspects reflect drawbacks, disadvantages, harms and bad/ugly side of whistle blowing. The following factors explain about the negative aspects of whistle blowing.

a) Employees take advantage of whistle blowing for personal benefit: An employee with greed can misuse the whistle blowing mechanism for personal benefit. The benefit may include personal grudge, power, position, and money.

b) Lack of support for whistle blowing: If the entire organization does not have positive attitude towards whistle blowing, then employees may fear speaking up. The lack of organization support for internal whistle blowing may result in external whistle blowing, causing serious damage to goodwill of the organization.

c) Stress, termination and mistrust: Whistle blowing causes stress, termination and mistrust on part of the employees. These results are retaliatory acts by their employers. The employers may retaliate against their employees for blowing the whistle causing them heightened stress and discomfort in job. In most cases the employers terminate their employees for the act of whistle blowing. It develops mistrust on employees about their organization. The added stress by whistle blowing act can cause several health problems and fractures in relationship. Ruined careers, stress-related illness, and even broken marriages are the impact of whistle blowing.

d) Disrupt the team spirit: Whistle blowing makes people suspicious of one another, which may disrupt the team spirit and co-operation within the companies. This affects the operations of company in long run. Whistle blowers suffer from emotional self-accusation. After knowing both positive and negative aspects of whistle blowing, one can say that positive outweighs negatives, if negatives treated effectively. Whistle blowing benefits, if there are clear procedures, actively and effectively maintained, reduce not only harassment and reliability liability but also the likelihood of punitive damages.

Legal Protection for Whistle Blowers in India

The Government of India has been considering adopting a whistle blower protection law for several years. In 2003, the Law Commission of India recommended the adoption of the Public Interest Disclosure (Protection of Informers) Act, 2002. In August 2010, the Public Interest Disclosure and Protection of Persons Making the Disclosures Bill, 2010 was introduced into the Lok Sabha, lower house of the Parliament of India. The Bill was approved by the cabinet in June, 2011. The Public Interest Disclosure and Protection of Persons Making the Disclosures Bill, 2010 was renamed as The Whistle Blowers' Protection Bill, 2011 by the Standing Committee on Personnel, Public Grievances, Law and Justice. The Whistle Blowers' Protection Bill, 2011 was passed by the Lok Sabha on 28 December 2011. and by the Rajya Sabha on 21 February 2014. The Whistle Blowers Protection Act, 2011 has received the Presidential assent on May 9, 2014 and the same has been subsequently published in the official gazette of the Government of India on May 9, 2014 by the Ministry of Law and Justice, Government of India.



Key Highlights of Whistle Blower Protection Act, 2014

President Pranab Mukherjee gave assent to the Whistle Blowers Protection Bill, 2011, which was passed by the Rajya Sabha in February. Following are some of its salient features.

1. Object and Purpose of the Act - It is an Act to establish a mechanism to receive complaints relating to disclosure on any allegation of corruption or wilful misuse of power or wilful misuse of discretion against any public servant and to inquire or cause an inquiry into such disclosure and to provide adequate safeguards against victimization of the person making such complaint and for matters connected therewith and incidental thereto.
2. "Disclosure" means a complaint relating to:
 - (i) Attempt to commit or commission of an offence under the Prevention of Corruption Act.
 - (ii) Wilful misuse of power or wilful misuse of discretion by virtue of which demonstrable loss is caused to the Government or demonstrable wrongful gain accrues to the public servant or to any third party.
 - (iii) Attempt to commit or commission of a criminal offence by a public servant.
3. The Identity of the Complainant must be included in the Complaint or the Disclosure.
4. The Competent Authority shall conceal the identity of the complainant unless the complainant himself has revealed his identity to any other office or authority while making public interest disclosure or in his complaint or otherwise.
5. However, the Competent Authority may, with the prior written consent of the complainant, reveal the identity of the complainant to such office or organization where it becomes necessary to do so. If the complainant does not agree to his name being revealed, in that case, the complainant shall provide all documentary evidence in support of his complaint to the Competent Authority.
6. After receipt of the report or comments relating to the complaint, if the Competent Authority is of the opinion that such comments or report reveals either wilful misuse of power or wilful misuse of discretion or substantiates allegations of corruption, it shall recommend to the public authority to take appropriate corrective measures such as initiating proceedings against the concerned public servant or other administrative and corrective steps. However, in case the public authority does not agree with the recommendation of the Competent Authority it shall record the reasons for such disagreement.
7. The Competent Authority cannot entertain any disclosure relating to any inquiry ordered under the Public Servants (Inquiries) Act, 1850 and Commissions of Inquiry Act, 1952.
8. The Time Limit for making any complaint or disclosure to the Competent Authority is seven years from the date on which the action complained against is alleged to have taken place.
9. While dealing with any such inquiry, the Competent Authority shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 in respect of matters like receiving evidence, issuing commissions, discovery and production of any document etc. Also, every proceeding before the Competent Authority shall be deemed to be a judicial proceeding under the Code of Criminal Procedure, 1973 and Indian Penal Code.
10. No obligation to maintain secrecy or other restrictions upon the disclosure of information shall be claimed by any Public Servant in the proceedings before the Competent Authority. However, all steps must be taken so as not to reveal or compromise the identity of the complainant.
11. But no person is required to furnish any information in the inquiry under this act if such information is likely to prejudicially affect the interest of the sovereignty and integrity of India, foreign relations, public order, decency or morality, proceedings of the Cabinet of the Union or the state.



12. It shall be the responsibility of the Central Government to ensure that no person who has made a disclosure is victimised on the ground that such person had made a disclosure under this Act.
13. If any person is victimised or likely to be victimised on the above-mentioned ground, he may contact the Competent Authority and the Competent Authority may pass appropriate directions in this respect. The Competent Authority can even restore status quo ante ("the way things were before") with respect to the Public Servant who has made a disclosure. Also, the Competent Authority can pass directions to protect such complainant.
14. However, the Competent Authority can reveal the identity of the complainant in circumstances where it becomes inevitable or extremely necessary for the purposes of the enquiry.
15. Any person who negligently or mala-fidely reveals the identity of the complainant shall be punished with imprisonment up to three years and fine not exceeding fifty thousand rupees.
16. Similarly, any disclosure made mala-fidely and knowingly that it was false or misleading shall be punished with imprisonment up to two years and fine not exceeding thirty thousand rupees.
17. If an offence under this Act has been committed by any Head of the Department unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.
18. This Act extends to all the Companies as well. When any offence under this has been committed by a company, every person who at the time of the offence was responsible for the conduct of the business of the company shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.
19. The High Court shall be the appellate authority in this respect.
20. The Jurisdiction of the Civil Court is barred in respect of any matter which the Competent Authority is empowered to pursue.
21. No court can take cognizance of any offence under this Act save on a complaint made by the Competent Authority. No court inferior to that of a Chief Metropolitan Magistrate or a Child Judicial Magistrate shall try any offence under this act.
22. The Central Government and the State Government shall have the power to make the rules under this act, as the case may be.

Conclusion – When is Disclosure Justified

The justifiability of a Whistle Blowing Act revolves around issues such as manner of the disclosure, the reasons for it, and the motives that lie behind it. Extreme positions are that, whistle blowing is always justifiable and that it is never justifiable. In the former, sometimes associated with advocates of unlimited freedom of speech the argument depends on a narrow and positive understanding of whistle blowing. In the latter, sometimes associated with advocates of organisational confidentiality, the argument depends on a narrow and negative understanding of whistle blowing.

Whistle blowing is morally justified under the following conditions:

1. When whistle blowing is based on an appropriate motive or utmost good faith.
2. When the whistle blower has exhausted all internal channels.
3. When the whistle blower's belief regarding the inappropriate conduct is based on reasonable evidence.
4. When the whistle blower has carefully analysed the situation to determine the serious nature, the immediacy and the specificity of the violation.
5. When the whistle blower's action is commensurate with responsibility for avoiding and/or exposing moral violations.



6. When the whistle blower's action has some chance of exposing and/or avoiding the moral violation. Whistle blowing is a serious act and the whistle blower must be very careful in making charges. The charges cause pain to those against whom the allegation is made and may spoil their reputation until the allegation is proved false. There are risks and dangers to the whistle blower in the form of being killed, fired, demoted. The relations between the whistle blower and his/her colleagues/supervisor are likely to be strained.

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