

## IMPLEMENTATION OF WHISTLE- BLOWING LAWS IN INDIA: THE NEED OF THE HOUR?

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### I. ABSTRACT

*Corruption is something that deeply embedded within the roots our system and it is almost impossible to eliminate it. A matter of concern here, would be to protect the rights and interests of the public from the ever- increasing scams, unscrupulous and malicious activities. Whistleblowing is an act, where a person puts out to the public or recognised authority, any malpractice or gross corruption that takes place in an organization. This paper critically analyses the development of whistle blowing activities in India. It explains, with the help of case studies the situation of people who try to blow the whistle on scams. It examines the void in law for whistleblowing, and stresses on the need to implement a concrete legislation regarding the same. Further, the paper studies different legislations and protection policies regarding whistle blowing in different countries. The paper elucidates on the provisions of Companies Act, 2013 and Securities and Exchange Board of India Act (SEBI) and explains how important it is to have an efficiently functioning whistle blower mechanism in the companies to protect corporate governance and good conduct. It critically analyses the Whistle Blower Protection Act 2014, the loopholes that are at the disadvantage of the whistle blowers and suggests few changes that can be brought in to their benefit.*

**KEYWORDS:** Companies Act 2013, Corruption, Legislation, Policy, SEBI, Whistle Blowing.

### II. INTRODUCTION

The concept of whistle blowing, can be traced back to the 17<sup>th</sup> Century on a world- wide perspective. In India however, this concept came into the limelight when Mr. Satyendra Dubey was shot dead in the year 2003 for blowing whistle on the Golden Quadrilateral project<sup>1601</sup>. India having the largest number of listed companies in the world, it is important

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that we encourage whistle blowing practices in corporations so as to maintain transparency and promote corporate governance.<sup>1602</sup> The presence of whistle blowers in the society, is a remarkable proof of the existence of people seeking truth in a country that is rooted in corrupt activities; and it is therefore important that such people are protected. Whistle blowing can be defined as an act of exposing the illegitimate, illegal or fraudulent activities that are prevalent in the organization.<sup>1603</sup> Such disclosure is made by the employees of the organisation either former or current.<sup>1604</sup>

The main obstacle for whistle blowers in India, is the lack of a bona fide statute protecting them. The occurrence of several cases such as the Shanmugam Manjunath case, Satish Shetty case and the Amit Jethwa's case prove that the whistle-blowers' lives are at risk, and are desperately in the need of protection by law.

Therefore, there were several attempts made in order to encompass a concrete law for the protection of whistle blowers. An act protecting the rights of the whistle blowers was recommended in the 179<sup>th</sup> Law Commission report by Mr. N. Vittal<sup>1605</sup>, and later the Veerapa Moily Commission on Administrative reforms II which pressed upon the importance of a legal framework for whistle blowers, in order to protect them and encourage them to disclose information related to corruption or unethical activities<sup>1606</sup>.

In 2004 the National Democratic Alliance Government had ordered an interim arrangement to protect whistle blowers until the law governing the same was legislated<sup>1607</sup>. Also, the ministry of personnel, public grievances and pensions passed a resolution permitting the Central Vigilance Commission to act on the complaints of whistle blowers<sup>1608</sup>. N.R.

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<sup>1601</sup>Arjumand Bano and Dr. Sanjay Bajjal, 'Whistle Blowing in India- Introspection' (2015) 3 International Journal of Engineering Technology, Management and Applied Sciences <<http://www.ijetmas.com/admin/resources/project/paper/f201503031425430684.pdf>> accessed 18<sup>th</sup> April 2020. '(Arjumand Bano and Dr. Sanjay Bajjal, 2015)'.

<sup>1602</sup>Dr. Vijay Kumar Singh, 'Whistle Blowers Policy Challenges and Solutions for India with Special Reference to Corporate Governance' (2013) 3(2) GNLU Journal of Law <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1351124](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1351124)> accessed 15 April 2020. '(Dr. Vijay Kumar Singh, 2013)'.

<sup>1603</sup>Arjumand Bano and Dr. Sanjay Bajjal, 2015 (n 1).

<sup>1604</sup>Indu, 'Whistle Blowing Is it so Hard in India' (2016) 2(12) <[https://ijaems.com/upload\\_images/issue\\_files/43%20IJAEMS-DEC-2017-67-Whistle%20Blowing%20Is%20it%20So%20Hard%20in%20India.pdf](https://ijaems.com/upload_images/issue_files/43%20IJAEMS-DEC-2017-67-Whistle%20Blowing%20Is%20it%20So%20Hard%20in%20India.pdf)> accessed on 16<sup>th</sup> April 2020.

<sup>1605</sup>179th Law Commission Report (*Law Commission of India*) <<http://lawcommissionofindia.nic.in/reports/179rpt1.pdf>> accessed 16 April 2020.

<sup>1606</sup>ibid.

<sup>1607</sup>V. Venkatesan, 'Defending the Whistle-Blower', *Frontline* (New Delhi, 18 June 2004). <<https://frontline.thehindu.com/the-nation/article30222971.ece>> accessed on 17 April 2020.

<sup>1608</sup>ibid.

Narayanamurthy Committee recommended the implementation of an internal whistle blower's policy that can be accessed by the audit committee. It emphasised on informing improper or fraudulent practices of the employees or directors by any personnel to the audit committee<sup>1609</sup>.

Finally, the Whistle Blower Protection Act 2014 was passed in both houses of the parliament and it aimed to establish a mechanism in order to register any complaints of misuse of power or corruption.<sup>1610</sup> Though the act was passed and notified by the centre, it needed changes regarding the disclosures coming under the purview of national security<sup>1611</sup>. The Whistle Blowers Protection (Amendment) Bill, 2015 was then passed by the Lok Sabha, but could not clear the Rajya Sabha before the 2019 general elections<sup>1612</sup> and is yet to be made into a law, even to this date.

Therefore, as of today, there is no concrete law governing whistle blowing activities. However, the Companies Act 2013 and the Securities and Exchange Board of India Act 1992 provide for certain regulations with respect to the same.

### III. STUDY ON WHISTLE BLOWING CASES IN THE COUNTRY

The case of Mr. Satyendra Dubey has to be one of the landmark cases that stirred a discussion across the country for the protection of whistle blowers.<sup>1613</sup> In the year 2003 Mr. Satyendra Dubey had blown the whistle on prevalent corruption and widespread irregularities in the National Highways Authority of India (NHAI)<sup>1614</sup>. The officials were a part of the Golden Quadrilateral (GQ) Project, which was an initiative undertaken by the then Prime Minister

<sup>1609</sup>Rabindra Nath Sinha, 'Narayana Murthy panel report on corporate governance — Is whistle blower policy practical?', *The Hindu* (India, 16 December 2003). <<http://www.hinduonnet.com/businessline/2003/04/08/stories/2003040802200400.htm>> accessed 16 April 2020

<sup>1610</sup>'The Whistle Blower Protection Bill, 2011' (*PRS Legislative Research*) <<https://www.prsindia.org/billtrack/the-public-interest-disclosure-and-protection-of-persons-making-the-disclosures-bill-2010-1252>> accessed 16 April 2020.

<sup>1611</sup>'Where the Law on Whistle Blowers in India' *Economic Times* (India, 26 October 2019) <<https://economictimes.indiatimes.com/news/company/corporate-trends/where-the-law-stands-on-whistleblowers-in-india/indias-whistleblower-law-not-operational-yet/slideshow/71770810.cms>> accessed 17 April 2020.

<sup>1612</sup> *ibid.*

<sup>1613</sup>S. Srividya and Stalin Shelly, 'Whistle blowing protection- a watch dog for the organisation'(2012 )1(10) *International Journal of Social Science an Interdisciplinary Research* <<http://indianresearchjournals.com/pdf/IJSSIR/2012/October/17.pdf>> accessed on 15<sup>th</sup> April 2020. '(S. Srividya and Stalin Shelly, 2012)'.  
<sup>1614</sup>Shubha Ganal, 'Analytical study of Legal Framework Protecting Whistle Blowers in SAARC Nations' 4(1) *International Journal of Law and Legal Jurisdiction Studies* <[http://ijlljs.in/wp-content/uploads/2017/02/RESEARCH\\_PAPER.pdf](http://ijlljs.in/wp-content/uploads/2017/02/RESEARCH_PAPER.pdf)> accessed on 15<sup>th</sup> April 2020.

Mr. Atal Bihari Vajpayee in order to establish faster road transport networks between major cities and ports<sup>1615</sup>. Mr. Satyendra Dubey, a civil engineer was the deputy general manager of NHAI<sup>1616</sup>, the agency that was responsible for implementing GQ project. It had come to the notice of Mr. Dubey, that there were several criminal activities that were being conceived on the project, such as fudging of detailed reports, forging the documents<sup>1617</sup> etc., he also found that Larsen and Turbo<sup>1618</sup>, the firm that was contracted for the project, had subcontracted the work to small low- technology groups that were controlled by the local Mafia<sup>1619</sup>. He wrote a letter to the Prime Minister's office, reporting the poor implementations of contracts and financial discrepancies in the project<sup>1620</sup>. He had also requested for his identity to be concealed in the letter.<sup>1621</sup> He then started getting death notes and no action was taken against any person, even after his letter to the PMO<sup>1622</sup>. Finally, on 27<sup>th</sup> November, 2003, Mr. Dubey was shot dead by unidentified gunmen<sup>1623</sup>. The accused in this case were Mantu Kaur, Pinku Ravidas and Udai Kumar<sup>1624</sup> who were charged with the crimes of 'robbery and murder'<sup>1625</sup>. One of the major cases which once again demonstrated the importance of protecting whistle blowers was that of Mr. Shanmugam Manjunath. He worked for Indian Oil Corporation as a sales officer<sup>1626</sup>. During his course of work, he ordered the shutdown of two filling stations at

<sup>1615</sup>Indu, 'Whistle Blowing Is it so Hard in India' (2016) 2(12) <[https://ijaems.com/upload\\_images/issue\\_files/43%20IJAEMS-DEC-2017-67-Whistle%20Blowing%20Is%20it%20So%20Hard%20in%20India.pdf](https://ijaems.com/upload_images/issue_files/43%20IJAEMS-DEC-2017-67-Whistle%20Blowing%20Is%20it%20So%20Hard%20in%20India.pdf)> accessed on 16<sup>th</sup> April 2020. '(Indu, 2016)'.

<sup>1616</sup>Poonam and Arushi Malhotra, 'Whistle Blowing in India' (2014) 5(4) International Journal of Research in Commerce and Management, <[ijrcm-1-IJRCM-1\\_vol-5\\_2014\\_issue-04-art-08%20\(1\).pdf](http://ijrcm-1-IJRCM-1_vol-5_2014_issue-04-art-08%20(1).pdf)> accessed 17<sup>th</sup> April 2020. '(Poonam and Arushi Malhotra, 2014)'.

<sup>1617</sup>Nimisha Bhargava and Dr. Mani Madala, 'Overview of Whistleblowing: Indian Perspective' (2015) 4(2) International Journal of Innovative Research in Science, Engineering and Technology. <[https://www.researchgate.net/publication/328448658\\_An\\_Overview\\_of\\_Whistleblowing\\_Indian\\_Perspective](https://www.researchgate.net/publication/328448658_An_Overview_of_Whistleblowing_Indian_Perspective)> accessed 17<sup>th</sup> April 2020. '(Nimisha Bhargava and Dr. Mani Madala, 2015)'.

<sup>1618</sup>Poonam and Arushi Malhotra, 2014 (n 16).

<sup>1619</sup>Dr. Devkumar Jacob, 'Collateral Damage: An urgent Need for Legal Apparatus for Protection of Whistle Blowers' (2014) 19(4) IOSR Journal of Humanities and Social Sciences <<http://iosrjournals.org/iosr-jhss/papers/Vol19-issue4/Version-7/A019470109.pdf>> accessed 16<sup>th</sup> April 2020.

<sup>1620</sup>Nimisha Bhargava and Dr. Mani Madala, 2015 (n 17).

<sup>1621</sup>ibid.

<sup>1622</sup>S. Srividya and Stalin Shelly, 2012. (n 13).

<sup>1623</sup>'Three get life in Satyendra Dubey's case' *The Hindu* (India, 16 December 2016).

<<https://www.thehindu.com/news/national/Three-get-life-in-Satyendra-Dubey-murder-case/article16625349.ece>> accessed 15 April 2020.

<sup>1624</sup>ibid.

<sup>1625</sup>ibid.

<sup>1626</sup>Dr. Santanu Kumar Das, 'Whistleblowing: A Step to Strengthen the Corporate Governance' (2016) 1(1) International Journal of Management and Social Science Research Review. <<http://ijmsrr.com/downloads/280120168.pdf>> accessed 15 April 2020.



Lakhimpur Kheri for three months<sup>1627</sup>, as he sealed those pumps for selling adulterated fuel<sup>1628</sup>. After three months of shut down, the pumps started operating again and Mr. Manjunath decided to raid those places without any intimation on 19th November 2005.<sup>1629</sup>

Aftermath of this decision however resulted in his death. He was shot to death, with six bullets in his body near Gola Gokarannath in Lakhimpur Kheri<sup>1630</sup>. His body was found in the back seat of his own car, which was driven by two workers of the pumps<sup>1631</sup>. Both the workers were arrested and the main accused Pawan Kumar Mittal along with five others, were taken into custody on 23rd November 2005<sup>1632</sup>.

Amit Jethwa's case also provides an insight about how whistle blowers lives are always at a threat. Mr. Amit Jetha, was an environmentalist and a social worker, who was actively working in Gir forest, Gujarat. Since 2008 he had keen interest towards mining activities and had requested six times under the Right to Information (RTI), for information on mining activities operating in the protected area of Gir Forest<sup>1633</sup>. Afterwards in 2010, he filed a Public Interest Litigation concerning illegal mining in the protected areas in the Gujarat High Court and one of the respondents in this case was MP Dinu Solanki<sup>1634</sup>.

In the mid of June 2010, police and the geology department conducted raids in the Gir forest area, where they found mining equipment and seized it<sup>1635</sup>. However, the seized mining equipment was later stolen again; and Mr. Dinu Solanki was issued a show cause notice for imposing a penalty. However, that was not taken seriously he appealed for the matter to be investigated by the ombudsman<sup>1636</sup>.

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<sup>1627</sup>ibid.

<sup>1628</sup>ibid.

<sup>1629</sup>Hari Narayan, 'The extraordinary tale of an ordinary man' *The Hindu* (India, 5 January 2013). <<https://www.thehindu.com/features/magazine/The-extraordinary-tale-of-an-ordinary-man/article12291362.ece>> '(Hari Narayan, 2013)'.

<sup>1630</sup>ibid.

<sup>1631</sup>Indu, 2016 (n 15).

<sup>1632</sup>ibid.

<sup>1633</sup>Mahesh Langa, 'Six others also found guilty in the 2010 murder of Amit Jethwa, who was opposing illegal mining in Gir Forest' *The Hindu* (Ahmedabad, 6 July 2019) <<https://www.thehindu.com/news/national/rti-activist-amit-jethwa-murder-gujarat-court-convicts-former-bjp-mp-dinu-solanki/article28305433.ece>> '(Mahesh Langa, 2019)'.

<sup>1634</sup>ibid.

<sup>1635</sup>R. Sukumar, 'BJP MP Dinu Bogha Solanki questioned by CBI in connection with RTI activist Amit Jethwa murder' *The Economic Times* (New Delhi, 6 November 2013). <<https://economictimes.indiatimes.com/news/politics-and-nation/bjp-mp-dinu-bogha-solanki-questioned-by-cbi-in-connection-with-rti-activist-amit-jethwa-murder/articleshow/25269024.cms>>.

<sup>1636</sup>ibid.

On 20th July 2010, Jethwa was shot by two assailants near the Gujarat High Court. A police car that was outside the court heard the bullet sound, but could not get hold of the assailants<sup>1637</sup>. Other cases such as RTI activist Satish Shetty's case<sup>1638</sup>, Major General VK Singh's case<sup>1639</sup> and Shehla Masood's case<sup>1640</sup>, illustrate that blowing the whistle on the misdeeds of an organization, is like welcoming a threat to one's lives.

The way Satish Shetty exposed the illegal land-dealings initiated by the Ideal Road Builders Group (IRB)<sup>1641</sup> and was murdered for that; and VK Singh and Shehla Masood lost their lives for exposing the truth, prove that there is an acute need for implementation of whistle blowing laws.

#### IV. LAWS REGULATING WHISTLE BLOWING ACTIVITIES IN INDIA.

##### A. Companies Act 2013

According to Section 177(9)<sup>1642</sup> of the Companies Act 2013, it is mandatory for each and every listed company that borrows money from banks and other public financial institutions and has money deposited by the public that exceeds fifty crores to incorporate whistle blowing policies or a vigil mechanism<sup>1643</sup>. It is a pathway for the directors and the employees of the company to report any fraudulent act or unethical behaviour on the part of the members; and helps in securing the companies' code of conduct<sup>1644</sup>.

Under the act, the directors or employees of a company can email their complaints or concerns to the email id provided in the whistle blowers policy and the company is bound to take appropriate measures to incorporate the same<sup>1645</sup>. No anonymous complaints will be taken into consideration. The provision also states that the vigil mechanism of the company

<sup>1637</sup> Mahesh Langa, 2019, (n 33).

<sup>1638</sup> Shoumith Banerjee, 'CBI files closure report after seven years' *The Hindu* (Mumbai, 18 April 2018) <<https://www.thehindu.com/news/national/other-states/satish-shetty-murder-cbi-files-closure-report-after-7-years/article23590596.ece>> accessed 14 April 2020.

<sup>1639</sup> J.N Jayashree 'Maj Gen VK Singh's fight against corruption in RAW' (*Wikidot*) <<http://fightcorruption.wikidot.com/vksingh>> accessed 13 April 2020

<sup>1640</sup> Hemender Sharma, *Shehla Masood: The Murder That Shook the Nation* (1st edn, Harper Collins Publishers India 2019).

<sup>1641</sup> Hari Narayan, 2013, (n 29).

<sup>1642</sup> Companies Act 2013, S 177(9).

Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed.

<sup>1643</sup> *ibid*.

<sup>1644</sup> Shivam Goel, 'Protection of Whistle blowers in India: Corporate Perspective' (2014) Academia Education <[https://www.academia.edu/6174619/Protection\\_of\\_Whistle\\_Blowers\\_in\\_India-Shivam\\_Goel\\_NUJS](https://www.academia.edu/6174619/Protection_of_Whistle_Blowers_in_India-Shivam_Goel_NUJS)> accessed 15 April 2020.

<sup>1645</sup> *ibid*.

will safeguard the whistle blowers against any victimisation by the directors or employees. Further, there is also a provision that appropriate action will be taken against the director or employee who has repeatedly filed frivolous complaints<sup>1646</sup>.

Infosys Limited incorporated such policies in their company and received a few complaints by whistle blowers alleging fraudulent activities by the top management and unethical work conduct of the CEO<sup>1647</sup>. The employee who had filed the complaint belonged to the financial department; the investigation was done according to norms of the company policy and it was declared that there were no fraudulent acts prevalent in the company<sup>1648</sup>.

### *B. Securities and Exchange Board of India (SEBI) Act 1992*

Clause 49(IV)<sup>1649</sup> of the SEBI guidelines deals with the Whistle blower Policy. It states that employees or directors who want to complain about any fraudulent act or unethical behaviour can approach the audit committee after informing their supervisors<sup>1650</sup>. It also states that every company should provide correct information regarding whistle blowing policies to all the employees and directors in circulars and meetings; and that it is also important to protect the whistle blowers from termination and other prejudicial discrimination<sup>1651</sup>. It also states that the company affirmation should be included in the annual reports of the company.

<sup>1646</sup>ibid.

<sup>1647</sup>Infosys faces another whistle blower complaint, CEO accused of misdeeds' *The Economic Times* (Bengaluru, 12 November 2019).

<<https://economictimes.indiatimes.com/markets/stocks/news/another-whistleblower-guns-at-infosys-ceo-salil-parekh/articleshow/72021969.cms>> accessed 15 April 2020.

<sup>1648</sup>ibid.

<sup>1649</sup>Securities and Exchange Board of India Act 1992, Clause 49(IV).

Whistle Blower Policy (A) Internal Policy on access to Audit Committees:

- i. Personnel who observe an unethical or improper practice (not necessarily a violation of law) shall be able to approach the audit committee without necessarily informing their supervisors.
- ii. Companies shall take measures to ensure that this right of access is communicated to all employees through means of internal circulars, etc. The employment and other personnel policies of the company shall contain provisions protecting "whistle blowers" from unfair termination and other unfair prejudicial employment practices.
- iii. Company shall annually affirm that it has not denied any personnel access to the audit committee of the company (in respect of matters involving alleged misconduct) and that it has provided protection to "whistle blowers" from unfair termination and other unfair or prejudicial employment practices.
- iv. Such affirmation shall form a part of the Board report on Corporate Governance that is required to be prepared and submitted together with the annual report.
- v. The appointment, removal and terms of remuneration of the chief internal auditor shall be subject to review by the Audit Committee.

<sup>1650</sup>ibid.

<sup>1651</sup>Dr. Singam Sunitha, 'A Study on Whistle Blowing Mechanism in Corporate India' (2013) *IOSR Journal of Business and Management*

<<http://www.iosrjournals.org/iosr-jbm/papers/Conf.17037-2017/Volume-8/4.%2023-30.pdf>> accessed 15 April 2020.

According to the clause all the companies should constitute a whistle blower committee to investigate the complaints. The act also mentions that the whistle blowers should be protected from any form of threat<sup>1652</sup>. Further, the clause states that the details of the whistle blower should be confidential until the investigation is completed. This vigilance mechanism of the companies is important to inculcate the good faith and good conduct of the company<sup>1653</sup>.

### *C. Whistle Blower Protection Act 2014*

The whistle Blowers act aims to establish a mechanism in order to receive complaints relating to any allegation of misuse of power or corruption. It aims to conduct an inquiry into such complaints and to provide safeguards to the person making such complaint; it also aims to prevent them from any kind of victimisation.<sup>1654</sup> The provisions of Whistle Blower Protection Act 2014, herein after referred to as the Act are only limited to public companies, as private companies do not come under its purview. As per Sec. 4 of the Act any person may make a disclosure in the interest of the public in front of any competent authority<sup>1655</sup> either in writing or by an electronic mail.<sup>1656</sup> However such information should not prejudicially affect the integrity and sovereignty of the country, or should not include anything that comes under the purview of the official Secrets Act, 1923.<sup>1657</sup> It is also a requirement that the complaint is filed before the competent authority within seven years from the date of the alleged crime, and if the time exceeds seven years, then the competent authority shall not investigate in to the matter<sup>1658</sup>

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<sup>1652</sup>ibid.

<sup>1653</sup>ibid.

<sup>1654</sup>Whistle Blowers Protection Act 2014.

<sup>1655</sup>Whistle Blower Protection Act 2014, S. 4(2)

Any disclosure made under this Act shall be treated as public interest disclosure for the purposes of this Act and shall be made before the Competent Authority and the complaint making the disclosure shall, on behalf of the Competent Authority, be received by such authority as may be specified by regulations made by the Competent Authority.

<sup>1656</sup>Whistle Blowers Protection Act 2014. S. 3(G)(iii). '(WBPA, 2014)'

<sup>1657</sup>Whistle Blower Protection Act 2014, S. 7(4)

Subject to the provisions of section 8, no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to the Government or any public servant, whether imposed by the Official Secrets Act, 1923 (19 of 1923) or any other law for the time being in force, shall be claimed by any public servant in the proceedings before the Competent Authority or any person or agency authorised by it in writing and the Government or any public servant shall not be entitled in relation to any such inquiry, to any such privilege in respect of the production of document or the giving of evidence as is allowed by any enactment or by any rules made thereunder:

<sup>1658</sup>Whistle Blower Protection Act 2014, S. 6(3)

The Competent Authority shall not investigate, any disclosure involving an allegation, if the complaint is made after the expiry of seven years from the date on which the action complained against is alleged to have taken place.



The act defines the term ‘competent authority’; as it includes the Central Vigilance Commission; the Prime Minister when the complaint is in relation to the member of The Council of Ministers; the Chairman of the house if the member is a part of the house etc.,<sup>1659</sup> as defined under Sec. 3 of the Whistle Blower Protection Act 2014. The competent authority can inquire into the matter as filed by the whistle blower and has the same powers as that of a civil court as described under Sec. 7 of the Act.<sup>1660</sup> After receiving the complaint if the competent authority is of the opinion that there has been a wilful misuse of power on the part of the public officer then it can initiate proceedings against the public official or recommend for any corrective measure or take any other step as prescribed in Sec. 7(7)<sup>1661</sup> of the act. It can also set up its own staff such as the Police to inquire the matters.<sup>1662</sup>

An important requirement for filing a public interest disclosure under this act is to mention the identity of the whistle blower in the complaint, as no action can be taken by the competent authority unless the identity of the complainant is mentioned in the disclosure<sup>1663</sup>. The complainant is however protected by the act as it is required by the competent authority to not reveal the identity of the whistle blower and the information or documents furnished by

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<sup>1659</sup>Whistle Blower Protection Act 2014, S. 3

(a) “Central Vigilance Commission” means the Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003 (45 of 2003);

(b) “Competent Authority” means—

(i) in relation to a Member of the Union Council of Ministers, the Prime Minister;

(ii) in relation to a Member of Parliament, other than a Minister, the Chairman of the Council of States if such Member is a Member of the Council of States or the Speaker of the House of the People if such Member is a Member of the House of the People, as the case may be;

(iii) in relation to a Member of the Council of Ministers in a State or Union territory, the Chief Minister of the State or Union territory, as the case may be

<sup>1660</sup>Whistle Blower Protection Act 2014, S. 7(2)

For the purpose of any such inquiry (including the preliminary inquiry), the Competent Authority shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908(5 of 1908),

<sup>1661</sup>Whistle Blower Protection Act 2014, S. 7(7)

(7) After receipt of the comments or explanations or report referred to in sub-section (3), if the Competent Authority is of the opinion that such comments or explanations 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 any one or more of the following measures, namely:— (i) initiating proceedings against the concerned public servant; (ii) taking appropriate administrative steps for redressing the loss caused to the Government as a result of the corrupt practice or misuse of office or misuse of discretion, as the case may be; (iii) recommend to the appropriate authority or agency for initiation of criminal proceedings under the relevant laws for the time being in force, if so warranted by the facts and circumstances of the case; (iv) recommend for taking of corrective measures; (v) take any other measures not falling under clauses (i) to (iv) which may be necessary for the purpose of this Act.

<sup>1662</sup>Whistle Blower Protection Act 2014, S. 10.’(WBPA, 2014)’

<sup>1663</sup>Whistle Blower Protection Act 2014, S. 4 (6)

No action shall be taken on public interest disclosure by the Competent Authority if the disclosure does not indicate the identity of the complainant or public servant making public interest disclosure or the identity of the complainant or public servant is found incorrect or false.

him/ her; unless it becomes absolutely necessary on the part of the authority or by the order of the court<sup>1664</sup>. However, if any person negligently or with malice reveals the identity of the whistle-blower they shall be liable for imprisonment for up to three years and fine up to Rs. Fifty thousand<sup>1665</sup>

Whistle Blower Protection Act 2014 also ensures that the whistle blower is not subjected to any sort of discrimination on the grounds of the disclosure. On the happening of such event the whistle blower is empowered to file a complaint before the competent authority and it shall act accordingly<sup>1666</sup>. Any person who does not comply with the orders given by the authority shall be liable for a penalty that extends up to Rs. Thirty thousand<sup>1667</sup>.

The act also aims to punish those who file frivolous complaints, with mala fide intentions. Such persons are liable for imprisonment of up to two years and fine that may extend up to Rs. Thirty thousand.<sup>1668</sup>

## V. WHISTLE BLOWING PRACTICES IN OTHER COUNTRIES

### A. *United States of America*

Initially, the whistle blowers in the United States were supported by the False Claims Act 1963, which was framed to curb the fraudulent acts of the suppliers at the time of civil

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<sup>1664</sup>Whistle Blower Protection Act 2014, S. 13

Protection of identity of complainant.—The Competent Authority shall, notwithstanding any law for the time being in force, conceal, as required under this Act, the identity of the complainant and the documents or information furnished by him, for the purposes of enquiry under this Act, unless so decided otherwise by the Competent Authority itself or it became necessary to reveal or produce the same by virtue of the order of the court.

<sup>1665</sup>Whistle Blower Protection Act 2014, S. 16

Penalty for revealing identity of complainant: Any person, who negligently or mala fidely reveals the identity of a complainant shall, without prejudice to the other provisions of this Act, be punishable with imprisonment for a term which may extend up to three years and also to fine which may extend up to fifty thousand rupees.

<sup>1666</sup>Whistle Blower Protection Act 2014, S. 11 (2)

If any person is being victimised or likely to be victimised on the ground that he had filed a complaint or made disclosure or rendered assistance in inquiry under this Act, he may file an application before the Competent Authority seeking redress in the matter, and such authority shall take such action, as deemed fit and may give suitable directions to the concerned public servant or the public authority, as the case may be, to protect such person from being victimised or avoid his victimisation.

<sup>1667</sup>Whistle Blower Protection Act 2014, S. 11(5)

Any person who wilfully does not comply with the direction of the Competent Authority under sub-section (2), shall be liable to a penalty which may extend up to thirty thousand rupees.

<sup>1668</sup>Whistle Blower Protection Act 2014, S. 17

Punishment for false or frivolous disclosure: Any person who makes any disclosure mala fidely and knowingly that it was incorrect or false or misleading shall be punishable with imprisonment for a term which may extend up to two years and also to fine which may extend up to thirty thousand rupees.

war<sup>1669</sup>. According to this act, if whistle blowers were able to prove with the disclosure that the federal government is suffering any damage or loss owing to the fraudulent acts, then the whistle blowers could receive thirty percent of the money recovered from the scam<sup>1670</sup>.

One of the first legal frameworks to protect whistle blowers and their rights was the Civil Services Reforms Act 1978 although, this act was not appealing to the bureaucrats and was not supported by federal officers<sup>1671</sup>.

Later on, the Federal Whistle blowers Protection Act 1989 came into existence. This act protected different sections and classes of people, it also applies to the employees and workers in the private sectors<sup>1672</sup>. The four focal points of the act are as follows

- 1) The act provides ultimate control to the whistle blowers in relation to their own case, it means that the whistle blowers will not be dependent on Special Counsel to litigate their case. They have power to litigate their own case as an Individual Right of Action before the Merit Systems Protection Board<sup>1673</sup>.
- 2) The act eliminates discretionary power of the Special Counsel and makes the Office of the Special Counsel an inactive part in the whole process<sup>1674</sup>.
- 3) The act broadened the protective measures of the whistle blowers and also created a virtual shield to protect them from other bureaucrats and officers<sup>1675</sup>.
- 4) It also created a realistic legal burden of proof to identify proper whistle blowers<sup>1676</sup>.

According to the act, the Special Counsel cannot disclose any information or details regarding the whistle blowers unless he/ she consents to it<sup>1677</sup>. This is because the whistle blowers are under constant danger. Also, twenty new amendments were added to strengthen the protection and benefit the whistle blowers<sup>1678</sup>. One of the amendments under the act states

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<sup>1669</sup>Jon O. Shimabukuro and L. Paige Whitaker, 'Whistle blower Protections Under Federal Law: An Overview' (2012) Congressional Research Service.  
<<https://fas.org/sgp/crs/misc/R42727.pdf> > accessed 14 April 2020. '(Jon O. Shimabukuro and L. Paige Whitaker, 2012)'.

<sup>1670</sup>ibid.

<sup>1671</sup>Thomas M. Devine, 'The Whistle blower Protection Act of 1989: Foundation for the Modern Law of Employment Dissent' (1999) Administrative Law Review 531. '(Thomas M. Devine, 1999)'.

<sup>1672</sup>ibid.

<sup>1673</sup>Jon O. Shimabukuro and L. Paige Whitaker, 2012, (n 69).

<sup>1674</sup>Thomas M. Devine, 1999, (n 71).

<sup>1675</sup>ibid.

<sup>1676</sup>ibid.

<sup>1677</sup>Thomas M. Devine, 1999, (n 71).

<sup>1678</sup>ibid.

that the medical expenses or any other consequential damage is to be paid by the state to the whistle blowers<sup>1679</sup>.

Sarbanes Oxley Act 2000, also contains few provisions dealing with whistle blowers and provides additional guidance to them. According to Section 806<sup>1680</sup> of the act, employees who report any fraudulent act of the publicly traded companies are protected. Also, the people who assist in the investigation related to revealing any fraud or scam are protected under this section. Section 1107<sup>1681</sup> of the act states that whistleblowing policies are also applied to private corporations and the act protects any employee or person who provides information related to violation of federal laws. Under this act a violator or an offender may be fined and imprisoned for up to 10 years.

## *B. United Kingdom*

Policies relating to whistle blowers are incorporated in the Public Interest Disclosure Act, 1998<sup>1682</sup> or the UK Act. This act covers all the employees in the private sector, public sector, or certain other areas such as the trainees, contractors, or people working in an agency etc<sup>1683</sup>. It states that people working in these areas are entitled to make any disclosure in the interest of the public<sup>1684</sup>. However, the army and police do not come under the purview of this act. Employees can claim compensation if they have been dismissed because of the disclosures, they are also protected against any detriment that may be caused to them.<sup>1685</sup> Workers who are not employees cannot claim for unfair dismissal but may claim compensation for being subjected to detrimental treatment.<sup>1686</sup>

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<sup>1679</sup> *ibid.*

<sup>1680</sup> Sarbanes Oxley Act 2000, S 806

Protection for employees of publicly traded companies who provide evidence of fraud.

<sup>1681</sup> Sarbanes Oxley Act 2000, S 1107

Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

<sup>1682</sup> 'Whistle blowing guide' (*BDBF Hot topics*) <<https://www.bdbf.co.uk/hot-topics/whistleblowing>> accessed 15 April 2020.

<sup>1683</sup> *ibid.*

<sup>1684</sup> 'Whistle Blowing for employees' (*UK Govt*) <<https://www.gov.uk/whistleblowing>> accessed 15 April 2020

<sup>1685</sup> Erika Collins and Marjorie Culver, 'Rights and protection of whistle blowers' (*Thomas Reuters*) <[https://uk.practicallaw.thomsonreuters.com/2-203-2258?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/2-203-2258?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)>.

<sup>1686</sup> *ibid.*



The section also classifies the disclosures into three types<sup>1687</sup>, they are:

- i. Internal disclosure (Sec. 43-C)<sup>1688</sup>: this covers the disclosures made by the employee to the employer or any person responsible for the organization.
- ii. Regulatory Disclosure (Sec. 43- F)<sup>1689</sup>: Such a disclosure is made to any person who is so prescribed by the Secretary of the state. Such a person is not a member of the organization.
- iii. Wider Disclosure<sup>1690</sup>: Such a disclosure is made to a large number of audiences such as the media, police, members of the Parliament etc. The act also prescribes three steps that have to be satisfied in order to file a wide disclosure. First is that the employee must genuinely believe that filing a complaint under Sec. 43- C or 43- F can be detrimental on the person making the complaint, there is no person prescribed by the statute, to whom the act may be reported, if the employee has already filed a complaint under Sec. 43- C and Sec. 43- F and it went in vain.

### C. Australia

For the first time the requirement of the whistle blowers act was mentioned in the Fitzgerald Report in relation to investigation into public misfeasance in Queensland's and the Gibbs Committee also pointed out the need for a legal framework relating to the protection of the whistle blowers<sup>1691</sup>. In 1994, the Public Interest Disclosure Act was enacted to protect the interests and to provide a standard framework including rules and regulations to be followed

<sup>1687</sup>Kelly Bouloy, 'Public Interest Disclosure Act 1998: Nothing more than a cardboard shield'<sup>1</sup>(1) Manchester Student Law Review

<[https://hummedia.manchester.ac.uk/schools/law/main/research/MSLR\\_Vol1\\_1\(Bouloy\).pdf](https://hummedia.manchester.ac.uk/schools/law/main/research/MSLR_Vol1_1(Bouloy).pdf)>.

<sup>1688</sup>Public Interest Disclosure Act 1998, S 43 C

Disclosure to employer or another responsible person. (1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure in good faith— (a) to his employer, or (b) where the worker reasonably believes that the relevant failure relates solely or mainly to— (i) the conduct of a person other than his employer, or (ii) any other matter for which a person other than his employer has legal responsibility, to that other person.

<sup>1689</sup>Public Interest Disclosure Act 1998, S 43 F

Disclosure to prescribed person. (1) A qualifying disclosure is made in accordance with this section if the worker— (a) makes the disclosure in good faith to a person prescribed by an order made by the Secretary of State for the purposes of this section, and (b) reasonably believes— (i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and (ii) that the information disclosed, and any allegation contained in it, are substantially true.

<sup>1690</sup>'UK public interest Disclosure Act Guide' (2003)

<[http://www.drasmuszodis.lt/userfiles/UK\\_Public\\_Interest\\_Disclosure\\_Act\\_1998.pdf](http://www.drasmuszodis.lt/userfiles/UK_Public_Interest_Disclosure_Act_1998.pdf)>.

<sup>1691</sup>'Whistleblowing- Some relevant considerations' (2010) CPA Australia

<<https://www.cpaaustralia.com.au/-/media/corporate/allfiles/document/professional-resources/ethics/whistleblowing.pdf?la=en&rev=ec682a9ff1d242a3ac9e96208a33e30a>> accessed 15 April 2020.

by the whistle blowers<sup>1692</sup>. Under this act an employee is defined as an employee with the meaning of Public Sector Management Act 1994 and the authority is defined as the Chief Executive Officer or the Governing body.

The act provides a proper investigation process to be followed by the police officers when a complaint is given by a whistle blower; and it also gives power to the Ombudsman to exercise their power with reference to investigation<sup>1693</sup>. The act provides the definitions of disclosures and disclosable conduct, it also explains the role of the government in relation to the cases raised by the whistle blowers. It imposes fine and a year of imprisonment for false or misleading information provided by the wind blowers<sup>1694</sup>.

The Australian Government in the year 2019 added a new amendment to the whistle blower's legislation and enacted a new law for the whistle blowers to provide the right to give an anonymous report relating to fraudulent or unethical acts occurring in the Australian business corporations<sup>1695</sup>. The new act provides that each and every company of Australia must be having a whistle blowers policy and if the companies do not follow the rules and regulations the penalty might extend up to ten million dollars. According to this new policy only the current or former employees, contactors, employees of contractors, associates, trustees or relatives can be whistle blowers<sup>1696</sup>. It also protects the whistle blowers and how the investigation process is to be followed by the company and the government<sup>1697</sup>.

## VI. RECOMMENDATIONS

Corruption is something that is ingrained deeply in our system, and this can be curbed at least to some extent, when people come forward to report and blow the whistle on mala fide practises. As observed in the above- mentioned case studies, the consequences of blowing a whistle are not always in favour of the whistle blower. Such whistle blowers are often victimised for their activities and the introduction of Whistle Blower Protection Act of 2014

<sup>1692</sup> *ibid.*

<sup>1693</sup> Iheb Chalouat, Carlos Carrión-Crespo, Margherita Licata, 'Law and practice on protecting whistle-blowers in the public and financial services sectors' (2019).

<[https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---sector/documents/publication/wcms\\_718048.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_718048.pdf)> accessed 16 April 2020.

<sup>1694</sup> *ibid.*

<sup>1695</sup> Murray Deakin, Maria Toma, 'Australia has a new Whistle blower Protection Regime. Are you prepared?' (2019) Legal Talk- Insight Regulatory

<<https://www.pwc.com.au/legal/regulatory/australia-has-a-new-whistleblower-protection-regime-22022019.pdf>> accessed 16 April 2020.

<sup>1696</sup> *ibid.*

<sup>1697</sup> *ibid.*

is the first step towards the protection of whistle blowers. The act (which is not yet enforced), however is not truly wholesome in protecting the rights of the whistle blowers. It is important that the statute is brought into force with necessary amendments in order to fill the shortcomings and provide proper guidance for the well- being of whistle blowers.

One of the major loopholes of the act is its limited scope, as it only deals with governmental organisations. The act must include non- governmental organisations as well, in order to cover a larger scope. Though whistle blowing practises are regulated by the SEBI regulations and Companies Act, 2013 for the public limited companies, it is necessary these companies come under the purview of Whistle blowers act.

Another important aspect that can be added to the Act is to provide rewards or any kind incentives to the whistle blower. A person who blows the whistle on scams deserves to be appreciated in monetary or other forms. In the United States' False Claims Act, there is a provision where, the government gives the whistle blower thirty percent of the amount recovered through whistle blowing<sup>1698</sup>. Such incentives will not only provide financial aid to the whistle blower, but also encourage the public to report fraudulent activities more often. In fact, SEBI had already incorporated such a practice when it announced monetary compensation for anyone who reported insider trading, in the year 2019.

The government can undertake the responsibility of protection of whistle blowers and if at all they are harmed by any means, the medical expenses can be borne by the government itself. According to the United States Whistle Blowers Act, all the medical expenses of the whistle blower during the investigation procedure and till the case is decided are borne by the government<sup>1699</sup>. It is vital for India, to inculcate such provisions for the benefit of whistle blowers.

As has been studied, in United Kingdom the whistle blowers are divided into different types. A similar approach may be followed in India as well; where those who register their complaints within the organisation are called internal whistle blowers, those who approach a regulatory authority, such as the CVC can be called regulatory whistle blowers and those who report the mala fide activities directly to a larger audience such as the police or media, can be called wide whistle blowers. This classification can make it easier to form a redressal mechanism, for the different types of whistle blowers.

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<sup>1698</sup>Jon O. Shimabukuro and L. Paige Whitaker, 2012, (n 69).

<sup>1699</sup>Dr. Vijay Kumar Singh, 2013, (n 2).

Protecting the evidence, is as important as protecting the whistle blowers to prove the case. The act already states that, whistle blowers must be protected against victimization, however it is important to provide physical protection for the whistle blowers, especially people blowing the whistle of huge scams by affluent and influential members. Such protection becomes all the more important when the whistle blower receives death threats for his actions.

The Act can also be amended in such a way as to allow anonymous complaints, with proven credibility. If any complaint has enough information to take action against the wrongdoer then the facet of it being anonymous should not come in the way of charging the guilty. Such a provision is especially important when the whistle blower is unable to reveal their identity but is keen on blowing the whistle.

The competent authority in case of a grievance is the Central Vigilance Commission for the centre and the state vigilance commission for the state as per Sec. 3<sup>1700</sup> of the act. Considering the vast number of cases of whistle blowers, powers of the authority can be distributed to more organizations so as to solve the grievances at a quicker pace and in a meticulous manner.

As per Sec. 6(3)<sup>1701</sup> of the act, the competent authority shall not investigate into any matter when the complaint is made after seven years of the occurrence of the act. This provision can be erased, as placing a time limit on the reporting of an act can only be a disadvantage to the whistle blower. It can easily be termed as a technical error by businesses and organisations and can be used in a mala-fide manner, in order to avoid punishment.

There is also a provision in Sec. 13<sup>1702</sup> of the act which states that the competent authority can reveal the identity of the complainant if decided so by the authority itself or is made necessary by the order of the court. However, it is important that the whistle blower is informed about such revelation of identity and if he/she does not consent to it then such revelation shall be stopped even if it is given by an order of the court. Revealing the identity of the whistle blower even when he/ she requested it to be anonymous will jeopardise the entire purpose of the act.

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<sup>1700</sup>Whistle Blower Protection Act 2014, S 3(a)

“Central Vigilance Commission” means the Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003.

<sup>1701</sup>WBPA, 2014, (n 56).

<sup>1702</sup> WBPA, 2014, (n 62).



## VII. CONCLUSION

In light of the above-mentioned discussions and arguments it can be observed that the passing of a legislation on whistle blowing is being pushed away further. It can also be observed that several committees such as the N. Vittal Committee were formed, that suggested the formulation of a legislation for whistle blowers but the recommendations were to no avail. The Whistle Blowing Act was passed in 2014 but did not come into force owing to the amendments to be made. It can be concluded that now is the time when we need to have a fixed legislation in order to govern the protection of whistle blowers. However, it has to be made sure that the law to be implemented is fool proof and is not tainted by provisions that prove to be more disadvantageous than advantageous to the whistle blowers. Laws have to be made to help the whistle blowers so that people are incentivised to come forward to blow whistles on scams. The Right to Information Act 2005 plays a huge role in whistle blowing as the common man can get information about the transactions of an organisation thus resulting in transparency. The SEBI regulations and the Company Act are efficient in some ways to benefit the whistle blowers but they are also flawed because of their limited scope and lack of a redressal mechanism. As studied in the case studies lives of whistle blowers are at a constant risk and this can be changed only with the bringing in of a law.