

“Protection of Whistle Blower- Justice to Victim?”

**Tarun Sharma
UPES, Dehradun*

***Aparna S. Narayan
UPES, Dehradun*

INTRODUCTION

Corruption is a very wide and never ending phenomenon, as it was said by Aristotle that “**Men always want something more and more and never contended until they get to infinity**”. Constitution of India provides duty to public towards public. Nonetheless, the constitutional principles do not depict the reality. The public officials are defying their constitutional duties by doing rampant corruption. Judiciary is also in this trap that questions the right to get justice and leads the victimization of whistleblower in various forms.

A whistleblower is a person who exposes illegal activities and their secretive information that is unethical or not correct within a private or public organization. Whistleblowers are those persons who demonstrate exemplary courage, at tremendous risk to their life and reputation, to stop wrongdoings.

Protection of whistle blowing is still a work-in-progress in India. The data suggests that this is reluctance to report wrongdoing within the organizations or communities primarily stems from a fear of retribution. This concern is not entirely off the mark, especially within the public sector. There were some brave souls have unearthed corruption and fraud in the top echelons of power. Many whistleblowers have been intimidated, harassed and even murdered because of their disclosure of corrupt information.¹

WHISTLEBLOWER PROTECTION IN INDIA-BACKGROUND

A bill for protection of Whistleblowers was first initiated in 1993. In December 2001, Law Commission recommended that in order to eliminate corruption, a law to protect whistleblowers was essential and submitted its report on ‘Public Interest Disclosure Bill’ along with the draft bill. In January 2003, the draft of Public Interest Disclosure (Protection of Informers) Bill, 2002 was circulated. The murder of Satyendra Dubey in 2003 for exposing corruption in NHAI and the subsequent public and media outrage led to the demand for the enactment of a whistleblower’s bill. Following the event, in 2004, the Supreme Court directed that machinery be put in place for acting on complaints from whistleblowers till a law is enacted.² Government of India notified a resolution to enable Central Vigilance Commission to receive complaints of corruption for Central Authorities in May 2004. Right to Information Act was notified in

¹ K. Veeraswami v. Union of India, (1991) 3 SCC 655.

² Public Interest Disclosure Act Guide, 1998 CHAPTER 23 <http://www.legislation.gov.uk/ukpga/1998/23/section/1>, 27 December 2012.

October, 2005. In 2006, The Public Services Bill 2006 stated that within six months of the commencement of the act, the government must put into place mechanisms to provide protection to whistleblowers. In 2007, the report of the Second Administrative Reforms Commission also recommended that a specific law be enacted to protect whistleblowers. India is also a signatory to the UN Convention against Corruption since 2005, which enjoins states to facilitate reporting of corruption by public officials and provide protection against retaliation for witnesses and experts. In August, 2010 Union Minister of State for Personnel, Public Grievances and Pensions introduced the Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010, or the Whistle-blower Bill, in the Lok Sabha. Since 2010, at least 12 RTI activists have been murdered for seeking information to “promote transparency and accountability in the working of every public authority” of India. Ms. Shehla Masood, a prominent woman RTI activist of Bhopal, Madhya Pradesh was murdered in August 2011. The Bill was passed in Lok Sabha in December, 2011 along with proposed amendments. Most recent is murder of Premnath Jha, who was shot dead in Virar area of Mumbai in February, 2012. His life was the price for seeking details regarding construction projects in Vasai-Virar area. He reportedly exposed several cases of corruptions and received threats on regular basis. IPS officer Narendra Kumar was ran over by a tractor loaded with illegally mined stones in Banmore district, Madhya Pradesh in 2012, for his efforts to stop mining mafia. Owing to the incident, Anna Hazare also called for a ‘dharna’ on Jantar-Mantar on 25th March, 2012 demanding for enactment of a strong whistleblower’s protection law.³

WHISTLE BLOWER PROTECTION ACT 2014

Whistleblower Protection Act provides a mechanism to investigate alleged corruption and misuse of power by public officials and protects the persons (whistleblowers) who expose the corrupt activities. The Act defines “Public Interest Disclosure” which means any disclosure by a public servant or any other person including any non-governmental organization before the competent authority. The disclosure under this Act shall be treated as public interest disclosure for the purposes of this Act which will be made before the competent authority and that particular complaint shall be received by such authority as may be specified by regulations made by the competent authority. The name of the act makes it clear that the purpose of this Act is to provide protection of the persons who make public interest disclosure from victimization or harassment. If any person is victimized or likely to be victimized because he/she made disclosure or assisted in any inquiry than that person may file an application before the competent authority seeking redress in the matter, and such authority shall action as required and may give suitable directions to the concerned public official, as the case may be to protect the person from being a victim.⁴ The corporate sector of India also has its own set of rules for governing whistle blowing.

³ Supreme Court Advocates on Record Association v. Union of India (1990) 2 SCR 433.

⁴National WhistleBlowers Centre, http://www.whistleblower.org/index.php?option=com_content, 27 December 2012.

Corporate whistleblowers are protected under the **Companies Act** and the whistleblower policy lay down by the **SEBI**. Under this policy, the company is required to have a vigil mechanism. Companies also need to provide safeguards against victimization of persons using the mechanism.⁵

TYPES OF WHISTLEBLOWERS

Internal

The whistleblower reports the corrupt activities to the official at higher position in the organization known as internal whistleblower. The usual subjects of internal whistle blowing are disloyalty, improper conduct, indiscipline, insubordination, disobedience etc.

External

The whistleblower reports the wrongdoings to the people outside the organization like media, public interest groups or enforcement agencies it is called external whistle blowing.

Alumini

When any former employee of the organization does whistle blowing then it is called alumini whistle blowing.

Open

When the identity of the whistleblower is revealed then it is known as open whistle bowing.

Personal

It is connected to only one person where the organizational wrongdoings are to harm one person only; disclosing such wrong doing it is called personal whistle blowing.

Impersonal

In this type of whistle blowing the wrongdoing is to harm other. It is impersonal in nature.

Government

In this the disclosure of a wrongdoing or any unethical practices is against the officials of the government.

Corporate

When a disclosure is made about the wrongdoing in a business corporation, it is called corporate whistle blowing.⁶

5 NAGARAJAN VITTAL, 'Corruption and the State: India, Technology, and Transparency' Harvard International Review, Vol. 23, No. 3 (2001), pp. 20-25 Harvard International Review.

6 Ibid.

HOW SAFE ARE WHISTLEBLOWERS UNDER INDIAN LAW

Whistleblowers are protected under the Whistle Blower Protection Act 2014. The Act has strict norms to protect their identity and also prevent their victimization. For instance during the pendency of a probe into allegations, an organization cannot initiate proceedings against a whistleblower. The same provisions were adopted in the Companies Act, which applies to listed companies, and are a part of the Securities and Exchange Board of India's governance norms.⁷

Notwithstanding having these legal strides in Indian legal system, there is a widely held perception that the current laws lack sufficient teeth to encourage whistleblowers to report wrongdoings freely. There are many instances when whistleblowers lack complete control when it comes to keeping his or her identity anonymous. It is worth noting that under the whistle blower protection Act, it is the CVC that has the discretion to decide that the identity of the whistleblower should be disclosed or not. There are compelling reasons against such disclosure under which the CVC is obliged not to disclose the identity. It is quite strange that the CVC vested this discretionary power rather than the complainant or the whistleblower that should logically have this discretion.

Further neither the Companies Act 2013 nor the listing Agreement prescribes that the identity of the whistleblower should be kept confidential. It is the biggest lacuna in the Indian Legal system with respect to the protection of whistleblowers nevertheless the lack of anonymity has turned fatal for some whistleblowers.

When it is ruled in a 2013 case that is Manjeet Singh Khera vs. State of Maharashtra⁸ investigated by the Anti-Corruption Bureau (ACB) of the State of Maharashtra that for a fair trial it is not essential to reveal the identity of the whistleblower it was said that:

“Situations are many where certain persons do not want to disclose the identity as well as the information/complaint passed on by them to the ACB. If the names of the persons, as well as the copy of the complaint sent by them are disclosed, that may cause embarrassment to them and sometimes threat to their lives.”⁹

7 Amrita Johri, Anjali Bharadwaj 'The Lokpal Act of 2014: An Assessment' EPW.

8 (2013) 9 SCC 276.

9 Reports of Times of India 'Death toll of RTI activists goes up to 56' available at < <https://timesofindia.indiatimes.com/india/Death-toll-of-RTI-activists-goes-up-to-56/articleshow/54947268.cms> > last accessed 19th April, 2020.

Private Sector

The legal framework does not include private sector¹⁰ whistle blowing. Though the Companies Act provides provisions concerning vigil mechanism does cover private entities as well. It can be said that the thrust of the current legal framework is on exposing misdeeds in the public sector. Even before the Companies Act 2013, the leading private sector players in India had followed the policies encouraging whistle blowing amongst their personnel including robust mechanism to prevent retaliation against whistleblowers.

Constitution of India:

The landmark ruling it was found that individual privacy is a fundamental right under the Constitution of India that should not depend on the discretion of any official authority for the suitability of the investigation. The fundamental right provides additional ammunition for the whistleblower community in their constant endeavor to safeguard their rights

Amendment bill of 2015 in WBPA:

A bill was introduced in 2015 to amend the Whistleblower Protection Act 2014 that seeks to keep disclosure concerning issues of national importance outside the ambit of WBPA. For instance, the bill seeks to prohibit disclosures that impact the security, sovereignty, and integrity of India, the scientific or economic interests of the country, friendly relations with foreign states, cabinet proceedings, and any disclosures specifically prohibited by law or that would endanger a person's life.¹¹

LACUNAS IN THE 2014 ACT:

The law is facing considerable criticism because it covers only government sector and encompasses only those who are working for the government of India.

The law has neither provisions to encourage whistle blowing that are financial incentives nor deals with corporate whistleblowers. Its jurisdiction does not extend to private sector that was a strange omission after the fraud at Satyam.¹²

The Act does not provide a penalty for attacking a complainant. Also there is no punishment for revealing the identity of whistleblower.

10 Why the Whistleblower Law does not extend to the Private Sector”, 17 August 2013, < http://www.firstpost.com/india/why-the-whistleblower-law-doesnt-extend-to-the-private-sector-1040889.html?utm_source=ref_article > last accessed 19th April, 2020.

11 Aruna Roy, Shanker Singh and Nikhil Dey ‘Making Truth Powerful’ India International Centre Quarterly, Vol. 33, No. 2 (AUTUMN 2006), pp. 97-107.

12 Satyam had a Whistleblower Policy since 2005, The Financial Express, New Delhi, 29 March, 2009, < <http://www.financialexpress.com/news/satyam-had-a-whistleblower-policy-since-2005/440221/2> > last accessed 19th April, 2020.

The provisions of this Act do not define the term victimization that lacks the attention towards the victimization of whistleblower.

The right to appeal is not provided under this Act to the complainant in case the person is not satisfied by any order of the competent authority.

Actions cannot be taken on anonymous complaints under this Act.

The act does not specifically provide a procedure for inquiring into complaints about acts of corruption, willful abuse of power or willful misuse of discretion or offences committed by members of the lower judiciary.

The Act provides penalty for frivolous disclosures that will discourage the persons reporting corruption. Also what is 'frivolous disclosure' has not been defined in the Act.

There is policy of rewarding whistleblower for assisting to stop corrupt activities.

There are no separate provisions for safety of women whistleblowers as they will be more vulnerable to harassment.

Period of limitation for filing a complaint is inadequate for cases involving gross negligence pertaining to public interest, safety and health.

In reality the Act only assist detecting corruption, ensuring better information flow and paving the way for successful prosecution of corrupt individuals through clear and protected processes.¹³

CASES OF VICTIMIZATION:

An Indian Engineering service officer, Satyendra Dubey was serving as a project director for the national Highway Authority of India. He had a responsibility for managing Grand Trunk Road, a section of National Highway II, which was part of the ambitious Golden Quadrilateral project initiated by then- Prime Minister Atal Bihari Vajpayee. The purpose of the project is to connect many of India's major cities by four-lane limited access highways at an overall cost of over US\$10 billion.¹⁴

As a project director, Satyendra Dubey exposed serious financial irregularities by one of the contractors. He was murdered on November 27, 2003, while returning home in a rickshaw after attending a wedding. While a documented reason of his death gone wrong that was an attempted robbery, it was widely speculated that the murder was carried out by killers hired by the powers connected to the contractor.

¹³ Ibid.

¹⁴ National Conference of State Legislatures, [http://www.ncsl.org/issuesresearch/labor/state-whistleblower laws.aspx](http://www.ncsl.org/issuesresearch/labor/state-whistleblower%20laws.aspx), 30 December 2012.

A sales officer in the Indian Oil Corporation, Manjunath Shanmugam, while working for the company, he was found that there were two petrol pumps, selling adulterated fuel and ordered them closed. When he came to know that the two petrol pumps were still operating, he conducted a surprise raid in November 2005. During the inspection, he was shot dead. There was a trust named Manjunath Shanmugam was established to improve governance in Indian public life.

The most recent example of the victimization of whistleblowers is the series of suspicious deaths in the wake of the infamous Vyapam disclosures has put the spotlight once again on the dangers facing whistleblowers in India. The Vyapam disclosures pertained to the manipulation in the selection process for government colleges and jobs conducted by the Madhya Pradesh Professional Examination Board (MPPEB) Known by its Hindi Acronym, Vyapam. Dr. Anand Rai, an ophthalmologist in Indore in the India State of Madhya Pradesh (MP), is the brave heart responsible for exposing Vyapam.

When Dr. Anand Rai was a medical student in 2003, Rai was privy to a disturbing pattern of students from affluent and politically influential families sailing through competitive exams without putting in the mandatory attendance in college. Though concerned at the time, he chose not to pursue the matter any further. However, his subsequent investigations revealed an unholy nexus between politicians, senior bureaucrats, doctors, and businessman who contrived to let undeserving candidates clear entrance tests in exchange for bribes.¹⁵

The scam got murkier with the series of unnatural deaths following the disclosures. According to a report by the leading Indian newspaper, The Times of India, a special investigation team appointed in 2013 by the MP government has unearthed about 32 deaths, all under mysterious circumstances, of people between 25 to 30 years old. Some estimates put the death toll at 40. Among the deceased were the son of the MP governor, a television journalist, the dean of a government run medical college, a police constable, and several students who gained admission after allegedly gaming the system.

The majority of the deceased was reportedly either involved in or benefited from the scam except the intrepid TV journalist who was pursuing a few leads at the time of his death. The cause of at least some of the deaths raised eyebrows. There is still no clarity on how such large-scale deaths occurred almost in succession.

The Central Bureau of Investigation, India's premier investigation agency, has filed charge sheets against 490 people allegedly involved in the scam. Hopefully, the truth will emerge sooner. Meanwhile, Rai continues to dodge the curveballs thrown at him by the establishment understandably cross with his revelations. Does this mean that the whistleblowers exist in this Country without any protection when question comes to secure their life? Or the surviving of

15 Berry, B. (2004). Organizational culture: A framework and strategies for facilitating employee whistleblowing. *Employee Responsibilities and Rights Journal*, 16(1), 1–11.

Anand rai leads towards a new era that the legal system is efficient to protect whistleblower but the majority death shows the inefficiency of legal system.¹⁶

Abhishek Mishra an employee in the Indian arm of a European construction company called MW High Tech Projects India, raised voice against his former employer. Mishra said that he came across violations in the way provident fund, employees' state insurance scheme and other statutory benefits were being handled. When he raised the issues internally, he was offered all kinds of deals to not pursue them, but ultimately he was removed from his job. This led Mishra to take up his battle with the company at different levels including the Hyderabad Provident fund Commissioner, the Union Labour Ministry as well as the Central Vigilance Commission and the Prime Minister's office.¹⁷

On September 17, 2018, Abhishek Mishra was driving from Udaipur to Gurgaon along with his parents. A long trail truck driving on the opposite lane veered across and hit his car head on. Abhishek Mishra's parents were hospitalized. The car took a month and half of repair work. Mishra believes that this was no ordinary accident. He think this was an attempt on his life that is the consequence of him turning a whistleblower against his former employer in 2016. This was also not the first rough experience for Mishra. He recalled how in 2016 in Hyderabad, some toughies had turned up as he went about grocery shopping, and advised him the city.¹⁸

Pushback and career-damaging consequences are not uncommon for whistleblower and Mishra's case was after the enactment of Whistle Blower Protection Act 2014 that proves that how much whistleblower are insecure in the country even after having the legislation. If that construes a victory, also giving him hope for justice for families of affected workmen, he said it had left him a broken heart. The biggest problem is the life of a person who has raised ethics issues with the top management of a company is finding future employment. Mishra himself survives doing odd assignments and projects. Finding another job becomes tough as background checks usually go back to the former employer.

Sarvesh Mathur, the former chief financial officer of PWC India, also did not find a job after he raised issues within the consultancy in 2011 about how funds were brought into India from PWC's global organization. Mathur says he first forced to resign from PWC, and then was sacked with retrospective effect, two months after he had ceased to be an employee of the company. At this point Mathur complained about violation of Foreign Exchange Management Act by PWC with the authorities.

16 Dozier, J. B., & Miceli, M. P. (1985). Potential predictors of whistleblowing. A prosocial behavior perspective. *Academy of Management Review*, 10(4), 823–836.

¹⁷ Hamilton. J. (1991), "Blowing the Whistle Without Paying the Piper", *Business Week*, 2 February 2013.

18 FASTERLING, B., & LEWIS, D. (2014). Leaks, legislation and freedom of speech: How can the law effectively promote public-interest whistleblowing? *International Labour Review*, 153(1), 71–92.

Mathur says that he understands why a person, who has been terminated, does not find another job easily. The person becomes an untouchable and if that person was on the other side of the table, my attitude would have been the same. No one wants to take a risk and hire a person whose services have been terminated, although wrongfully.¹⁹

The well known case has been that of Rajan Nair, 52 the former head of Security at Mondelez India. In 2010 allegations surfaced about how the company used improper practices to build a second a unit in Baddi without permissions in place to take the advantage of a tax benefit scheme. An investigation by EY identified malpractices in 2011. Nair says that after he sensed a lack of traction from the top management to report this non-compliance issue, he reached out to the Securities and Exchange Commission (SEC) and Department of Justice in the US and Central Vigilance Commission (CVC) and Directorate General of Central Excise Intelligence in India. The Central Excise Commissioner asked Cadbury to pay 342 crore as taxes along with a penalty of 231 crore.

Nair faced the job problem full on after he quit Cadbury in 2013. He said he was one of the top guys in fraud risk, Security & Compliance. Bur after this, my career of 20 years went out of the window.” He says prospective employers came up with different excuses to refuse him a job.

Rajat, other, lesser-known whistleblowers have similar tales to narrate, who worked as a regional head for a Thrissur-based private sector bank in Thiruvananthapuram. After raising issues with unethical practices by one of the directors of the bank, Rajat was transferred to Vijayawada. Rajat wrote letters to the bank’s audit committee and the Reserve Bank of India. Even though he found a sympathetic ear in the bank’s chairman, the director, whom Rajat had named, launched a probe against him. The sympathetic chairman, before his retirement, managed to end all probes against Rajat but also advised him to leave the bank. After quitting, no one was ready to hire him. It took him almost a year to find a job with a lower profile at a small non-banking finance company.

If we take the example of 40-year old hotelier Sumit Yardi, whose career as a young brand manager at the Indian arm of a British multinational was cut short a decade back when he questioned practices by the chief executive officer. While his own boss was sympathetic, the CEO turned vindictive after he was forced to apologies after a probe by the headquarters. At the age of 30, a bachelor and with no family to support, he could quit his job, move to Goa and become an hotelier.²⁰

Founder trustee of Investor Protection Council Arvind Gupta, himself an active investor whistleblower, feels such strategies are not helpful. Gupta wrote to ICICI Bank’s board about the

¹⁹ Ibid.

²⁰ J. P. Near, and M. P. Miceli, “Whistle-Blowing: Myth and Reality” Journal of Management, vol. 22, no. 3, pp. 507-526, June 1996.

conflict of interest of its former managing director Chanda Kochhar, who allegedly granted loans to Videocon while her husband had business ties with that company. The Complaint Led To Kochhar's Termination In 2018.²¹

However, things can be very different under different laws and jurisdictions. Take the case of Dinesh Thakur, who took on Ranbaxy about its lax reporting regime with the US Food and Drug Administration back in 2004. Thakur, then a director at Ranbaxy India, used US laws and ended up getting paid ₹244 crore — his share of the fine that the company finally had to pay. He says he could not have done this in India.²²

Things are nowhere as different in India with respect to the victimization of whistleblowers. Whistleblowers are never able to fully depend on the state and government machinery to safeguard them. Look at the misery of the Vyapam whistleblowers in Madhya Pradesh or the 84 Right to Information activists who have been killed. Even when whistleblowers are senior government officers, consequences are not very different. One need not think beyond IAS officer Ashok Khemka, who has been transferred repeatedly for his tendency to expose graft, in whichever department he works in. Or take the case of Ramon Magsaysay award winner Sanjiv Chaturvedi, the former chief vigilance officer of All India Institute of Medical Sciences, who was left without an assignment after He Took on corruption at the premier hospital.

The recent incident of victimization of whistleblower we can see at the International level during the period of epidemic of 'Corona'. In china Li Wenliang a chinese doctor contracted the virus while working at Wuhan Central Hospital. He had sent out a warning to fellow medics on 30 December but police told him to stop "making false comments". There had been many contradictory reports about his death. The Chinese doctor was summoned to the public security bureau where he was told to sign a letter. In the letter he was accused of making false comments that is disturbing the social order. He was being investigated by police for spreading rumours. Journalists and doctors at the time of the death of Li, who do not want their names used, told the BBC and other media that government officials had intervened. Most of the corona virus patients killed have been over the age of 60 or have suffered from other medical conditions, according to China's health authorities. Dr. Li's medical history is not known. Some reports say that it was a deliberate attempt from the side of Chinese officials to kill the Dr. Li because he was spreading false information or disclosed the wrongdoing of China because if which the 'Virus' is spreading all over the world.

21 Howard, J., Johnston, A., Wech, B., & Stout, J. (2016). Aggression and bullying in the workplace: It's the position of the perpetrator that influences employees' reactions and sanctioning ratings. *Employee Responsibilities & Rights Journal*, 28(2), 79–100.

22 Dinesh Thakur: Meet the man who won Rs. 244 cr for blowing the whistle against Ranbaxy, ET Bureau, 15 May 2013, <http://articles.economictimes.indiatimes.com/2013-05-15/news/39282156_1_ranbaxy-drugs-rashmi-barbhaiya-largest-drug-maker> last accessed 19th April, 2020.

NORMS OF BLOWING WHISTLE AND ITS ADVERSE EFFECT ON WHISTLEBLOWERS

It is very important that the person who blowing whistle can do so knowing that you are protected from losing your job and/or being victimized as a result of what you have uncovered and made public.²³

A person as a whistleblower can be protected as a whistleblower from victimization if that person:

A worker:

- Reveals information of the right type by making a ‘qualifying disclosure’.
- Reveals the information to the right person, and it should be in the right way making it a ‘protected disclosure’

Qualifying disclosure

To be protected under the whistleblower Protection Act 2014, you need to make a qualifying disclosure. You need to reasonably believe that the disclosure is being made in the public interest and that malpractices in the workplace is happening, has happened or will happen.

The types of malpractices that are covered by the legislation:

- Criminal offences
- Failure to comply with a legal obligation
- Miscarriages of justice
- Threats to people's health and safety
- Damage to the environment

Protected disclosure

Qualifying disclosure is mandatory in good faith and it should be to the right person and in the right way or through procedure which your employer or any other authority in the organization is authorized. For a disclosure to a ‘prescribed person’ that needs to be protected, you must fulfill the following requirements²⁴:

- There should be a reasonable belief that the information is substantially true.

23 Avnesh Gupta ‘Sending Whistle-blowers to their deaths’ Economics & Political Weekly EPW March 21, 2015 vol I no 12.

24 Empowering the Watchdogs’ February 24, 2018 vol ii no 8 EPW Economics & Political Weekly.

- Reasonably believe that the person is making the disclosure to the right ‘prescribed person’.²⁵

Blowing the Whistle

If the whistle blower wants to complain about malpractices at work then the person should follow any procedure set down by your employer may be in the employer’s grievance procedure. If any person found any malpractice or wrongdoing in the workplace then the person should make the disclosure to the concerned employer or to a prescribed person so that the employer’s rights are protected.

Blowing the whistle for exceptional failure

If any whistleblower wants to blow the whistle on an exceptionally serious failure in a workplace then that person do not need to go through the normal channel and can publicly blow the whistle straight away. It must be a matter of fact that something is genuinely serious failure in the organization or in the society.

The conditions with respect to the blowing the whistle to others will not be applicable if the whistleblower:

- Reasonably believe that there are substantial grounds to believe.
- Do not act for personal gain.
- Act reasonably taking into account all the circumstances that are very important for blowing a whistle.

Adverse effect on whistleblowers

The norms and the procedure for blowing the whistle are subjective sometimes and follow the internal guidelines of an organization rather following the uniform legislation that makes the uniform legislation. Also the whistle blower protection Act does not cover all fields of whistle blowing and imposed certain restrictions that if a specific procedure is not followed then the whistle blower is will not get any protection under this Act that also reflects the poor implementation of the legislation because in practical life and specially in corruption cases it loses its purpose when the question comes to blow the whistle to stop the corruption.²⁶

25 Jos, P. H., Tompkins, M. E., & Hays, S. W. (1989). In praise of difficult people: A portrait of the committed whistleblower. *Public Administration Review*, 49(6), 552–561.

26 Einarsen, S. (1999). The nature and causes of bullying at work. *International Journal of Manpower*, 20(1/2), 16,27.

PERCEPTION OF PEOPLE WHO DEAL WITH WHISTLE-BLOWERS

A study shows that the act of blowing a whistle is in the public interest but the people take it according to their individual suitability that whether it will be harmful for them or gainful for them. Because of this orthodox mentality the protection of whistleblowers is still under the question.

On the other hand Lack of knowledge by the whistle-blower associated with unrealistic expectations, what to do, and what could be reported, to who the complaint reported is also sometimes lead to their victimization. In this context, several persons noted that whistle-blowers prefer not to use Human Resources. They want to report it confidentially on a one to one basis.

Many studies showed that a sympathetic understanding of the impact of the emotional upheaval that can be associated with whistle blowing. Many people acknowledged that many of the whistle-blowers are under considerable pressure, that the mere fact that they have observed or experienced the misconduct over a long period and are very nervous, very emotional. In short they do not want to disclose their identity even to that guy who has responsibility to protect whistleblowers. Whistle-blowers working in organizations that were clients of the independent hotline were able to use the independent hotline, often after informally reporting it internally. Whistle-blowers indicated that often they had deliberated for a long time about what to do. It was noted in many instances that the misconduct observed by the whistle-blowers may have been ongoing for some time, even years before a whistle-blower comes forward and reports it.²⁷

FAILURE OF GOVERNMENT TO OPERATIONALISE AND IMPLEMENT THE LAW

There is failure on the part of government to operationalise and implement the law has undermined the will of parliament to provide statutory protection to whistleblowers. As a consequence, killings of whistleblowers have continued unabated. In the last 5 years, scores of people have been killed and many more attacked and victimized for coming forward to report on corruption and wrongdoing. These people could have been afforded protection had the government implemented the law,” in 2018 alone, 18 people were killed for blowing the whistle on corruption on the basis of information accessed under the RTI Act,”. It was argued that instead of operationalising²⁸ the Whistle Blower Protection Act, an amendment bill was introduced in 2015 to dilute several key provisions of the law. The amendment bill was brought without any public debate or consultation on its contents. The text of the amendment bill was made public only when it was introduced in the Lok Sabha, where the bill was passed hurriedly, despite demands from several MPs to refer it to a deliberate committee. In Rajya Sabha, several MPs moved a proposal to have the bill referred to a select committee. However, this demand was

27Einarsen, K., Mykletun, R. J., Einarsen, S. V., Skogstad, A., & Salin, D. (2017). Ethical infrastructure and successful handling of workplace bullying. *Nordic Journal of Working Life Studies*, 7(1), 37–54.

28 Shemin Joy, Why Whistleblowers Act not Operationalised, DHNS, February 22 2019.

ignored. The amendment bill proposed “removal of the clause which safeguards whistleblowers from prosecution under the Official Secrets Act (OSA) for disclosing information as part of their complaint.” Also it described that the “offences under the Official Secrets Act were made punishable by imprisonment of up to 14 years. Threat of such stringent action would deter even bona fide whistleblowers and defeat the very purpose of the law. The government has repeatedly cited the pendency of the proposed amendments as the reason for non-implementation of the Whistle Blower Act. But this cannot be a justification for not implementing the Act.²⁹

IMPROVEMENTS FOR PREVENTING VICTIMIZATION- WHAT WOULD HELP WHISTLE BLOWERS?

When asked for the advice from whistle-blowers to support them and prevent their victimization, a number of suggestions were made. One that the disclosure coordinator said that many complaints arrive by telephone and when he asks to have it put in writing with the ‘how and the why’, and are never heard from again. Many then just ‘evaporate’. He said that it is one thing to make verbal allegations but they need to be documented, but he needs facts and evidence of wrongdoing. Often when this disclosure coordinator made some initial enquiries he found there is no substance; and if the whistle-blower was not happy, he said they can take it further to the Ombudsman, the MPs or the Minister.³⁰

Another disclosure coordinator said that it is important for the whistle-blower that they keep a diary of the date and time of the events; documenting what is observed is essential so they have a record and by documenting the concerns, a pattern may emerge. Whistle-blowers were advised not to let the misconduct observed or experienced go on for too long but to report it promptly. The problem however as shown earlier, who do whistle-blowers report it too initially, could they risk being victimized if they don’t go to the ‘right’ person? If the employee is junior in the organization and they need the job, it can be particularly hard for them as they may have seen the impact of whistle-blower on others, although there is also the impact on the organization and colleagues if they do nothing.

Whistle-blowers must be vigilant, everyday they have to remain objective and not let the complaint consume them, they must remember the whole world is not corrupt. We must encourage whistle-blowers to think that. But it can be devastating to their whole lives. They must ask themselves, is it worth losing a family for or worse? Whistle-blowers must also not try and own the process and outcome of the investigation. They should be treated as normal witnesses as in a court. What happens to the perpetrators is not their concern. In this context he stressed that the whistle-blowers’ expectations need to be managed and make sure that the whistle-blower

29 Dworkin, T. M., & Baucus, M. S. (1998). Internal vs. external whistleblowers: A comparison of whistle-blowing processes. *Journal of Business Ethics*, 17(12), 1281–1298.

30 Báez-León, C., Moreno-Jiménez, B., Aguirre-Camacho, A., & Olmos, R. (2016). Factors influencing intention to help and helping behavior in witnesses of bullying in nursing settings. *Nursing Inquiry*, 23(4), 358–367.

remains objective. They must be constantly told that, they do not own the process. They have no role to play once the allegations are reported.³¹

CONCLUSION

Whistle blowing is the act of exposing a wrongdoing, typically a fraud or an illegality, in a government agency or a private enterprise. Whistleblowers are that rare breed of people who demonstrate exemplary courage, often at tremendous risk to their life and reputation, to unearth serious wrongdoings within their organizations and communities. Many recent corporate frauds would not have come to light without the disclosure from an insider whistleblower. Compared to the United States or the European Union, whistle blowing is still a work-in-progress in India. Available data suggests that this reluctance to report wrongdoing within organizations or communities primarily stems from a fear of retribution. The Indian ‘Criminal Justice System’ always thinks from the perspective of a perpetrator that a harsher punishment should be given to prevent the crime in future or for the deterrent effect or from the point of view of retribution but what about the ‘victim’ who has suffered or suffering the pain. In the case of whistle blower the system usually use them as a mean to approach to the perpetrator and ignores the risk to the life of whistle blower that leads to the victimization of whistle blower.

There were so many cases of victimization of whistle blowers in India. In many corruption cases where no protection was given to them and the only goal was to catch the perpetrator. Though now India has ‘Whistle blower Protection Act 2014’ but still there are many Scams in India where there were cases of murders and extortions like in the case of Vyapam Scam. The victimization of whistle blowers sometimes never comes in the eye of law though they play very important role. The ‘Legal System’ usually adhere the perpetrator and the primary victim but never entertain the intermediary victim that leads to the victimization of whistle blowers which ultimately raises the question against the ‘Criminal Justice System’,

31 Alford, C. F. (2001). Whistleblowers: Broken lives and organizational power. New York: Cornell University Press.