ACCLAIMS

Volume 31, March 2024 ISSN 2581-5504

# "Legislative Framework Providing for Whistleblowing Mechanism in India"

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## ABSTRACT

Whistleblowing, an integral part of Corporate Governance in exposing corruption, frauds, and other wrongdoings has emerged as an effective mechanism of spotting questionable practices of corporations. Whistleblowing is one of the leading systems which are important for implementing improved and effective corporate governance in any organization or institution. It advances good corporate governance, which is crucial to a corporation's development and growth. Whistleblower policy has been recognized as one of the elemental components of corporate governance. Since whistleblowing boosts good corporate governance, it is desirable that a clear and precise definition and procedure of whistleblowing be established in every corporation's whistleblower policy. The legal framework encompassing whistleblowing is at an exceptionally developing stage in India.

This research paper studies about the overview of the legal framework and regulations protecting Whistleblowers in India

## INTRODUCTION

The legislative framework in India about the protection of a whistleblower is still in a nascent stage as compared to the legislative framework adopted by countries like the United Kingdom and the United States of America. The legal framework in India pertaining to whistleblowing, protection of whistleblowers and its enforcement has largely been geared towards listed companies. The Companies Act, 2013[1] provides for a '*vigil mechanism*' for directors and employees of listed companies and other companies prescribed therein[2], to seek recourse for the reporting of malfeasance and prevent victimisation.

Amidst increasing cases of unlawful practices being exposed by employees in listed companies, the status of whistleblowing policies in unlisted, private companies, has become all the more pertinent to address. For private companies, the whistleblowing regime remains mostly policy-driven. This regime is supplemented by the Companies (Auditor's Report) Order, 2020, which facilitates enhanced financial transparency in the running and day-to-day affairs of a company, by virtue of increased cooperation with auditors, with an emphasis on whistle-blower complaints and their disposal in particular. The implementation of the same by private companies remains largely inconsistent.

[1] Section 177 of the Companies Act, 2013

[2] Companies accepting deposits from the public, companies that have borrowed money from banks and public financial institutions in excess of fifty crore rupees (Section 177(9), Companies Act, 2013)

Various Committee reports on corporate governance in regards whistleblowing have been published. The following are the reports for the same:

a. Recommendations of the Confederation of Indian Industry (CII)
b. Kumara Mangalam Birla Committee Report on Corporate Governance
c. Naresh Chandra Committee on Corporate Audit and Governance
d. Narayanamurthy (SEBI) committee on Corporate Governance
e. J. J. Irani Committee on Corporate Governance

Several pieces of legislation lay down provisions governing the process of whistleblowing and granting protection to the whistleblower. The following are the laws:

a. The Whistleblowing Protection Act, 2014.
b. The Companies Act, 2013
c. The Securities and Exchange Board of India Act, 1992
d. The Competition Act 2002
e. The Limited Liability Partnership Act, 2008
f. Companies (Auditor's Report) Order 2020 [CARO 2020]
g. Serious Fraud Investigation Office (SFIO)

## COMMITTEE REPORTS ON CORPORATE GOVERNANCE VIS-À-VIS WHISTLEBLOWING

- **Recommendations of the Confederation of Indian Industry (CII)**

Confederation of Indian Industry (CII), India's largest industry and business association, took a special initiative to develop and promote a code of corporate governance for Indian companies. CII set up a National Task Force under the Chairmanship of Mr. Rahul Bajaj, Past President, CII and Chairman & Managing Director, Bajaj Auto Ltd. and others.[3] After wide deliberations, task force prepared a draft of Code on 1997 and final Code titled, 'Desirable Corporate Governance: A code' on 1998. This was the first code which formulated various standards of corporate governance, especially for listed companies.[4] This code focused on five broad areas involving the board of directors; Disclosure; capital market issues, creditor's rights and financial institutions and nominee directors. Though the code of corporate governance was well appreciated but as this code was voluntary in nature, hence, couldn't make much difference for those companies with transgression. Thus, it was felt that under the Indian conditions a statutory rather than a voluntary code would be far more purposive and meaningful.[5]

[3] Other members from industry, the legal professionals, media and academia
[4] Jayati Sarkar and Subrata Sarkar, Corporate Governance in India, (New Delhi, SAGE Publications, India Pvt. Ltd, 2012).
[5] Report of the Kumar Mangalam Birla Committee on Corporate Governance, p. 3 *available at*: http://www.nfcg.in/UserFiles/kumarmbirla1999.pdf, *visited on* 29.02.2024.

- **Kumara Mangalam Birla Committee Report on Corporate Governance**

To fill in the space left over by the earlier code and to promote and raise the standards of Corporate Governance, SEBI appointed the Committee on Corporate Governance on May 7, 1999 under the Chairmanship of Shri Kumar Mangala Birla, member, SEBI Board.[6] The primary focus of the Committee was to view corporate governance from the perspective of the investors and shareholders and to prepare a Code to suit the Indian corporate environment, as corporate governance frameworks are not exportable. The committee in its report emphasized on three key aspects of corporate governance, namely; accountability, transparency and equality of treatment for all stakeholders.

This committee also made mandatory and non-mandatory recommendations.[7] The mandatory recommendations include: the constitution of Audit committee and remuneration committee in all listed companies, appointment of one or more independent directors in them, recognition of the leadership role of the chairman of a company, enforcement of accounting standards, the obligation to make more disclosures in annual financial reports, effective use of the power and influence of institutional shareholders, and so on. The committee also recommended a few provisions, which are not mandatory.[8] Based on the recommendations of this committee, the SEBI Board in its meeting held on January 25, 2000 decided to incorporate the recommendations and thus made an amendment to the listing agreement and thereby inserted a new clause, namely clause 49, to the listing agreement.[9] New Clause 49 of the Listing agreement was decided to implement in phases between 2000 and 2003.[10] The reforms applied first to newly listed and large companies, then to smaller companies and eventually to the vast majority of listed companies.[11]

- **Naresh Chandra Committee on Corporate Audit and Governance**

The year 2002 was quite shocking for the global corporate sector, as Enron scam in U.S. revealed the intricacies involved in the then existing code of corporate governance and demanded for immediate re-examining of the corporate governance code the U.S. and other countries as well. Alarmed by the devastating conditions in the U.S., Ministry of Corporate Affairs (MCA) in India formed the Naresh Chandra Committee. The committee submitted its report in December 2002. It made recommendations in two key aspects of corporate

[6] *Id*, p. 4.
[7] *Id*.
[8] Corporate Governance, (New Delhi, CCH Kluwer (India) Pvt. Ltd,), p. 17
[9] https://www.sebi.gov.in/legal/circulars/feb-2000/corporate-governance17930.html.visited on 29.02.2024
[10] *Id*.
[11] Afra Afsharipour, A Brief Overview of Corporate Governance Reforms in India (April 2011). Conference Board Director Notes No. DN-020; UC Davis Legal Studies Research Paper No. 258. *available at* SSRN: https://ssrn.com/abstract=1729422, *visited on* 29.02.2024

governance: financial and non-financial disclosures; and independent auditing and board oversight of management.[12] These recommendations didn't yield any results in the form of legislative reforms.

- **Narayanamurthy (SEBI) committee on Corporate Governance**

Meanwhile, another committee was appointed by SEBI in 2002, while the same issue was still being discussed by the Naresh Chandra Committee. This committee was constituted under the Chairmanship of Shri N. R. Narayana Murthy, Chairman and Chief Mentor of Infosys Technologies Limited. The Committee comprised members from various walks of public and professional life. This included captains of industry, academicians, public accountants and people from the financial press and industry forums. This committee evaluated the adequacy of existing Clause 49 of Listing Agreement in reference to Sarbanes Oxley Act, in the U.S. Further, the Committees also intend to ensure the transparency and integrity of India's stock markets by way of ensuring compliance with Corporate Governance codes, in substance and not merely in form.[13] This committee recommends the strengthening the responsibilities of audit committees; improving the quality of financial disclosures, including those related to related party transactions and proceeds from initial public offerings; requiring corporate executive boards to assess and disclose business risks in the annual reports of companies; introducing responsibilities on boards to adopt formal codes of conduct; the position of nominee directors; and stockholder approval and improved disclosures relating to compensation paid to non-executive directors.[14] Consequently, SEBI considering the recommendations of this committee, made an amendment to Clause 49 of Listing agreement in 2004. Though the implementation of these changes was quite challenging and time consuming but it turned out to be effective corporate governance standards of those periods.

- **J. J. Irani Committee on Corporate Governance & Companies Amendment Act**

The voyage of having good corporate governance code did not end on revising the clause 49 of Listing Agreement instead took a new dimension when Ministry of Corporate Affairs appointed J.J. Irani Committee on 2nd December, 2004 under the chairmanship of Dr. J. J. Irani, Director, Tata Sons. The major task of this committee was to advise the Government on the proposed revisions to the Companies Act, 1956 so as to bring in a simplified compact law that will be able to address the changes taking place in the national and international

[12] Santosh Pandey & Kshama V. Kaushik, Study on the State of Corporate Governance in India, p.11, *available at*: http://www.iica.in/images/Evolution_of_Corporate_Governance_in_India.pdf, visited on 03.03.2024.
[13] Madhav Godbole, "Corporate Governance: Myth and Reality", Economic and Political Weekly, Vol. 37, No. 30 (Jul. 27 - Aug. 2, 2002) p. 3094, *available at*: http://www.jstor.org/stable/4412405, *visited on* 03.03.2024
[14] https://archive.india.gov.in/business/corporate_governance/narayana_murthy.php *visited on* 03.03.2024.

 ISSN 2581-5504

scenario.[15] The Companies Act, 1956 which was enacted to streamline the corporate entities underwent as many as 24 amendments so as to keep pace with the growing corporate sector and Indian Economy[16]. But the increased corporate misdeeds and delinquent behaviour in the light of the corporate reforms necessitated a comprehensive review of the Companies Act, 1956, as reform and updation of the basic legal framework for corporate entities is essential to enable sustainable economic reform.[17] However, unsuccessful attempts were made in 1993 and 1997 to replace the present Act with a new law. Companies (Amendment) Bill, 2003; containing important provisions relating to corporate governance was also introduced, the consideration of which has been held back in anticipation of the comprehensive review of the Company Law. While piecemeal reform continued through amendments. But it was not yet been possible to bring about comprehensive, new legislation to replace the existing Act.[18] Thus the task was given to J. J. Irani Committee, the recommendation of which led to the formulation of Companies Bill, 2008. The Bill seeks to replace the Companies Act, 1956. According to the J.J. Irani Report, the Bill proposed to change the existing legal regime in a number of ways.

The Bill was introduced on 23rd October, 2008 in the Lok Sabha and the Companies (Amendment) Bill, 2003, pending in the Rajya Sabha, was withdrawn on the same day. Due to the dissolution of 14th Lok Sabha, the Companies Bill, 2008 lapsed. The Government then reintroduced the Companies Bill, 2009 in the Lok Sabha on 3rd August, 2009 without any change despite the Satyam scandal.[19] The Bill was then referred to the parliamentary standing committee on finance for examination and report.[20] On the recommendations of the standing committee, Companies Bill 2011 was prepared and introduced before Lok Sabha on 14th December, 2011 which was then referred to the parliamentary standing committee on finance to review the new provisions included in the bill. On 26th January 2012 the committee submitted its report. Incorporating those changes, finally, Companies Bill was passed by both the houses in 2013. With the presidential assent, the Companies Act 2013 has come back, amongst others, with stringent corporate governance standards.

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[15] Dr. J. J. Irani Committee Report on Company Law, p.3, available at http://reports.mca.gov.in/ Reports/23-Irani%20committee%20report%20 of%20the%20expert%20 committee%20on% 20Company % 20law, 2005.pdf *visited on* 05.03.2024.

[16] Major amendments to the Act were made through the Companies (Amendment) Act, 1988 after considering the recommendations of the Sachar Committee. and then again in 1998, 2000 and finally in 2002 through the Companies (Second Amendment) Act 2002, consequent to the report of the Eradi Committee.

[17] Madhav Godbole, *supra* note 80.

[18]*Id.*

[19] Standing Committee of Finance on The Companies Bill, 2009, *available at*: http://www.prsindia.Org /uploads/media/Companies%20Bill%202009.pdf *visited on* 05.03.2024.

[20] Standing Committee of Finance on The Companies Bill 2011, p.7, *available at*: http://www.manupatra com/manufeed/contents/PDF/634805401996915975.pdf, *visited on* 05.03.2024.

## EXISTING FRAMEWORK FOR WHISTLEBLOWER PROTECTION

### The Whistleblowing Protection Act, 2014:

Shri N. Vittal, the then Central Vigilance Commissioner (CVC), addressed a letter to the Law Commission of India on the 24th of August 1999 requesting the Law Commission of India to formulate a bill to protect the identities of whistleblowers. He highlighted the principle of zero tolerance that needed to be adopted not only from the public but also from the government officials. In pursuance of this letter the Law Commission of India in its 179th report formulated the 'Public Interest Disclosure (Protection of Informers) Bill 2002, while referring to the provisions laid down by the UK Public Interest Disclosure Act, 1998, the Australian Public Interest Disclosure Act, 1994, the New Zealand Protected Disclosures Act, 2000 and the US (Federal) Whistle Blower's Protection Act, 1989.

The government finally in the light of the murder of Satyendra Dubey introduced the "Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010" which was passed by the Lok Sabha in December 2011 and was also renamed as the Whistleblower Protection Bill, the Rajya Sabha after a lot of deliberation finally approved the bill on 21st February 2014, the bill received the president assent on the 9th of May 2014 yet the Act is not enforced. An Amendment to Act was introduced in the Lok Shaba in the year 2015 through "The Whistleblowers Protection (Amendment) Bill, 2015."

The intention of the parliament while formulating this legislation was to set up an efficacious and efficient mechanism to protect the identity of the whistleblower along with setting up an efficient mechanism to receive complainants. The scope of the Act is only limited to the public sector thus excluding the private sector. The Act lays down to safeguard the identity of the whistleblower thus safeguarding them from any kind of victimization or harassment, thus encouraging employees to raise their concerns against any kind of wronging, fraud, or corruption. The Act requires that disclosure shall be made in writing or by electronic means in the prescribed format along with the supporting evidence. The Act further provides time duration of 7 years to report any wrongdoing from the date of occurrence of the instance.

One of the most significant elements of this provision is that, no action shall be taken on the public interest disclosure by the competent authority if the disclosure does not mention the identity of the complainant or public servant making the disclosure. The identity of the complainant will not be revealed without their written consent.

Section 11 of the Act provides a layout for safeguard against victimization of the complainant. It is the duty of the Central Government to ensure that no citizen or public servant who has made disclosure under the Act is victimized by the initiation of any proceedings. If the witness or other persons associated with the case under this Act need protection, the Competent Authority shall issue appropriate directions to the concerned authorities who shall take necessary steps to protect such complainant, public servant or concerned persons.

Despite the passing of the Whistle Blowers Protection Act, 2014, by both Houses of Parliament, the Whistle Blowers Protection Act, 2014 has yet not been notified. The Act provided for the legislative intent to provide a legal mechanism for the reporting of illegal, unethical and illegitimate practices by members of an organization. However, the scope of the Act is limited to public servants and public sector undertakings. The Act provides for the whistleblower to disclose his/her identity, however, such a requirement at time may create discomfort for such whistleblower, as such persons usually prefer to remain anonymous in order to protect themselves against any discrimination at their respective workplace or any adverse actions that may be taken against them, due to them reporting any malafide actions.

**The Companies Act, 2013:**

Section 177(9) of Companies Act, 2013 provides that all public listed companies have to mandatorily establish a vigilant mechanism for employees and senior executives. Further it has been made mandatory to establish a policy for whistleblowing with clear and adequate safeguards against victimisation of whistleblowers. This Section when read along with the Regulation 7 of the Companies (Meetings of Board and its Powers) Rules, 2014, makes it compulsory for all the public listed companies to set 'vigil mechanism', thus enabling all the directors and employees to elevate their concerns to the competent authorities.

Clause 10 mandates the vigil mechanism to take all reasonable steps to protect the complainant or the whistleblower from any kind of harassment or victimization, the clause further lays down the procedure for any complainant who wishes to raise their concerns directly before the chairperson of the Audit Committee in exceptional cases. The Act further mandates all the listed companies to publish an updated report of any such mechanism as adopted by them on their official website.

Section 177 (9) of Companies Act, 2013 says that all public companies have to mandatory follow the vigilant mechanism to establish a whistle blowing policy: -

1. The violations should be channelized and addressed to the management.
2. From the entry-level employee to the director level – each one of them is allowed to address any issue or illegal practice in the organisation.
3. As soon as the issue is directed the management should take direct action.
4. Zero harassment should be ensured to the whistle blowers.
5. Confidentiality should be maintained at every level

Section 208 of the Companies Act, 2013 provides that an inspector to be appointed other than the registrar to look into the records. If further required they need to provide the government with all the relevant documents and also provide them with any suggestions that they may have to pertain to the investigation.

Section 210 of the Companies Act, 2013 provides for the intervention of the Central Government to investigate the allegations/ suggestions by Inspector. Section 210 of the Act, lays down the procedure that needs to follow by the registrar or the inspector while investigating the affairs of a company. It empowers the central government to order an investigation on the receipt of such recommendations from Registrar or Inspector or in public interest or on intimation of a special resolution passed by company to be investigated.

**The Securities and Exchange Board of India Act, 1992:**

The Securities and Exchange Board of India ('SEBI') amended the principles of corporate governance incorporated in the standard Listing Agreement vide its circular dated August 26, 2003. Clause 49 of its Listing Agreement mentioned the formation of whistleblower policy for companies. However, it was not mandatory to put a policy in place, but still numerous companies have adopted it whole-heartedly since it improves the compliance and governance standards. It is necessary to disclose adaption of such policy and number of events reported under such policy along with the number of cases resolved or pending.

Further, SEBI has ever since replaced the Listing Agreement and notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 wherein it made it mandatory under Regulation 22 for listed companies to have a whistleblower mechanism for their employees and directors. It stated that the listed entity was to formulate a vigil mechanism for directors and employees to report genuine concerns. It further provided that the vigil mechanism would provide for adequate safeguards against victimization of directors or employees or anyone who avails the vigil mechanism. Additionally, the vigil mechanism so formulated was also to provide direct access to the chairperson of the audit committee in certain circumstances.

**The Competition Act, 2002:**

Many organizations working for the promotion of competition worldwide have emphasized the disadvantages of cartels. Such conglomerations control competition in the open market. This is done through many mechanisms like fixing high prices for the products sold by the participants of the cartel, particularly when the products are uniquely available with the participants only. This raising of prices above the competitive levels leaves no choice with the consumers, forcing them to buy the product at that fixed price, distorting 'allocated efficiency'.[21]This limiting of the competition artificially not only prevents innovation and efficient production, but also promotes poor quality, since the companies no longer thrive to produce the best goods. This ultimately leads to the decrease in consumer welfare.The participation in the formation of such cartels is punishable with a fine of three times a company's profit or 10% of its turnover, whichever is higher.[22] However it is very difficult to

[21] XXXII EU Report on Competition Policy, *available at* http://ec.europa.eu/competition/publications/annual_report/2002/en.pdf,*visited on* 20.02.2024.
[22] Guide for investment in India 23, *available*

gather proof for the existence of cartels. Taking note of this, various economies like UK, US, Singapore etc., had been tackling this problem by awarding people who disclose the existence of such trusts and help the investigation agencies.

The Competition Act, 2002 however had no such concrete provision until 2009 and it was realized that the lack of lesser penalty provisions for whistleblowers was a grave deficiency in the Act.[23] Thus, the *Competition Commission of India (Lesser Penalty) Regulations, 2009* was drafted by the Indian Antitrust organization, by virtue of the power vested in it by Section 46[24] and Section 64[25] of the 2002 Act. Section 46 provided that the CCI should devise regulations to afflict lesser punishment on the people who give a 'full', 'vital' and 'true' disclosure of the information related to cartelization. Section 64 gave the CCI authority to make rules and regulations. The regulation was to serve the purpose of not only detecting cartels, but also of reducing the cost of the investigation. It was supposed to act as a watchdog to deter firms from entering into such competition abuses, by creating a fear of the traitor in the cartel among its members.[26]

The provision is efficiently drafted. It gives up to 100% immunity from penalty imposed by the CCI in case "the applicant is the first to make a vital disclosure by submitting evidence of a cartel, enabling the Commission to form a prima-facie opinion regarding the existence of a cartel which is alleged to have violated Section 3 of the Act and the Commission did not, at the time of application, have sufficient evidence to form such an opinion."[27]

The Competition Commission of India (Lesser Penalty) Regulations, 2009 incentivises whistleblowers to come forth and disclose vital information, in the hope of being imposed by a lesser penalty (which again, depends upon the quality and time of disclosure). However, there is little to no incentive for a third-party whistle-blower informant.

**The Limited Liability Partnership Act, 2008:**

Section 31 of the Limited Liability Partnership Act, 2008 seeks to provide that the Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of an LLP in case such partner or employee has provided useful information during investigation of such LLP for finding out the offence. The clause further seeks to provide that no such partner or employee shall be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated merely because of his providing information to the Court or Tribunal.

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*at* http://www.ficci.com/spdocument/20302/Guide_For_Investment_in_India.pdf, *visited on* 20.02.2024.

[23] Akash Choubey and Saurabh Mishra, *Competition Law: Glancing Back, Looking Ahead*, Penn Library Web Journal 17 (2004).

[24] S. 46, The Competition Act, 2002.

[25] S. 64, The Competition Act, 2002.

[26] Steffen Brenner, *An empirical study of the European corporate leniency program*, 27 (6) International Journal of Industrial Organization 639–645 (2009), *available at* http://www.sciencedirect.com/science/article/pii/S0167718709000290, *visited on* 20.02.2024.

[27] Section 4(a), The Lesser (Penalty) Regulations, 2009.

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The purpose of Section 31 is to create a mechanism whereby the frauds committed by an LLP may be detected at the least cost to the Government and to the society. For this the Limited Liability Partnership Act, 2008 introduces the concept of a "whistleblower".

The provision under Section 31 of the Limited Liability Partnership Act, 2008 provides that a whistleblower who could be a partner or an employee of the company can be benefitted from waiving off/ reduction of his penalty if he-

(a) provides useful information (what information could be 'useful' is left to the discretion of the court or Tribunal) during investigation of LLP or

(b) provides an information whether or not during investigation, which leads to conviction of LLP or its partner or employee.

Thus a person can blow whistle (or provide information to the Government) regarding wrongs committed or being committed by an LLP/partner/employee at any time during investigation or otherwise. The motivation to a whistleblower is waiver/reduction of penalty against him in case of his involvement. Hence the provision is particularly meant for the person who is party to fraud.

It is very important to protect a whistleblower's interest from the wrath of the persons against whom the whistle is blown because such persons are generally in power, i.e., persons having control of the affairs of the organization. Section 31 (2) of the Limited Liability Partnership Act, 2008 provides that no partner or employee of any limited liability partnership may be discharged, demoted, suspended, threatened, harassed or in any other manner be discriminated against the terms and conditions of his limited liability partnership or employment merely because of his providing information or causing information to be provided pursuant to sub-section 31(1) of the Limited Liability Partnership Act, 2008.

**Companies (Auditor's Report) Order 2020 [CARO 2020]:**

Companies Auditor's Report Order 2020 brings more enhanced reporting disclosures which will provide more accurate insights to the business with completeness and accuracy providing the stakeholders knowledge about operational and financial position of the company. Such enhanced disclosures will provide foreshadow about corporate failures before the actual collapse. Onus of comprehensive disclosure lies on both the auditor and the auditee concurrently. The new reporting order comes with total 21 Clauses as against the 16 clauses of CARO 2016, where 10 new clauses are added, 7 clauses of CARO 2016 are modified and 4 are retained in CARO 2020.

The ministry of corporate affairs to strengthen the practice of corporate governance among the Indian Companies issued an order making it mandatory for all the listed companies to reveal all the whistleblower complaints to the auditor and the same shall be mentioned in the report published by the auditor. Reporting requirement related to fraud has been changed to fraud

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by the company or any fraud on the company i.e., to include all types of fraud not only of its employees and officers.

Auditor now has to report on whistleblower complaints received during the year. Auditor has to identify if the entity has setup any whistleblowing or similar department to receive and resolve complaints, list of all such instances needs to be obtained, the effects and concerns of such complaints needs to be examined as they will help to go over a fine-tooth comb over governance and fraud issues in the company.[28] CARO 2020 vocalises a thorough disclosure mechanism which paves way to enhance the overall quality of the audit and reporting, putting onus on the auditee also to share all information with the auditors and users of financial statements, the benefit of it will surely outweigh the additional duties.

**Serious Fraud Investigation Officer (SFIO):**

The rising number of white-collar crimes necessitated harsh fines, exemplary punishments, and strong law enforcement. The Satyam scandal, Sahara scam, 2G spectrum scam, and many others are examples of corporate scams that are still pending in various courts around the country or are being investigated by multiple organizations. The Indian government established a Committee on Corporate Governance, which is chaired by Shri Naresh Chandra, former Cabinet Secretary which was designated as the Naresh Chandra Committee, and suggested the establishment of a Corporate Serious Fraud Office which took the form of serious fraud investigation office as we know it today.

The Serious Fraud Investigation Office (SFIO) is an Indian statutory corporate fraud investigation authority. Originally, it was established by a resolution passed by the Government of India on 2 July 2003, and it conducted investigations within the existing legal framework established by Sections 235 to 247 of the former Companies Act, 1956. Eventually, Section 211 of the Companies Act of 2013 provided legislative status to the Serious Fraud Investigation Office (SFIO). It is overseen largely by members from the Indian Administrative Service, Indian Police Service, Indian Corporate Law Service, Indian Revenue Service, and other central government agencies under the jurisdiction of the Ministry of Corporate Affairs, Government of India. The SFIO is a fraud investigation agency established under the Companies Act of 2013 which has the principal occupation of investigating severe, sophisticated frauds committed by persons and/or entities. It is a regulatory agency particularly tasked with resolving and prosecuting white-collar crimes. SFIO has its headquarters in New Delhi along with offices in Chennai, Hyderabad, Kolkata, and Mumbai.[29]

The SFIO's professionals are in charge of discovering and resolving crimes in collaboration with the Income Tax Department and the Central Bureau of Investigation. The Office was established in the backdrop of stock market scams that occurred from the 1990s to the 2000s, costing public and government money and resulting in the closure of numerous small and new

[28] https://ebizfiling.com/blog/caro-2020-applicability/, *visited on* 22.02.2024.
[29] https://cleartax.in/g/terms/sfio-serious-fraud-investigation-office, *visited on* 23.02.2024.

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enterprises. Non-banking financial companies also played a negligent role, which the SFIO helped to correct. To tackle such white-collar crimes, the Naresh Chandra Committee on Corporate Governance proposed that the Vajpayee government establish the SFIO.

SFIO is a multidisciplinary agency with professionals in forensic audits, technology and information technology, law and corporate law, taxation, capital markets, accounting, and other fields. The Director of the Office holds a position similar to that of a Joint Secretary to the Government of India. Even if there is no obvious fraud, the SFIO investigates if the Board is fair and whether minority shareholders are oppressed. It is important to note that SFIO cannot initiate a case on its own and only acts upon the orders given by the Central Government. The SFIO also has the authority to arrest people who are connected to or have participated in the fraud, albeit these powers are limited to the Director, Additional Director, and Assistant Director. The Satyam Scam and the Deccan Chronicle Holding Ltd (DCHL) are two of the most prominent cases handled by SFIO.[30]

Investigation into the affairs of a company is assigned to SFIO, where the Government is of the opinion that it is necessary to investigate the affairs of a company-

(a) on receipt of a report of the Registrar or inspector under section 208 of the Companies Act, 2013;

(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;

(c) in the public interest, or

(d) on request from any department of the Central Government or a State Government.

**CONCLUSION**

A strong whistleblowing framework helps a company to implement the practice of accountability efficiently, it could further encourage the employees to elevate their concerns to the concerned authorities and prevent any wrongdoing or malpractice, corruption, or fraud in the early stages thus maintaining their reputation.

Despite being considered as one of the best ways to ensure corporate governance, disclosure in India is still underdeveloped. This necessitates the formulation of a sentencing policy. In addition, there are no mandatory regulations for private companies. As a result, very few private companies have arbitrarily set up round-the-clock, and employees of private companies are excluded from the whistleblower policy and may be treated unfairly if they act as whistleblowers. A nation can’t accomplish a great corporate governance structure by setting

[30] https://blog.ipleaders.in/serious-fraud-investigation-office-sfio-investigation-report-and-its-evidentiary-value/#:~:text=The%20SFIO%20is%20a%20fraud,and%20prosecuting%20white%2Dcollar%20crimes, *visited on* 05.03.2024.

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up numerous regulators, and yet excluding a particular sector outside its amid and making it non-mandatory for them to adopt the framework. For any law to be effective, the scope and the ambit should be unambiguous. While it is a personal choice of the employees on their decision to blow the whistle against illegal activities taking place in companies, it is the duty of the Government to ensure a healthy and protective environment to encourage and allow them to do so. It would be interesting to see if we see a separate Whistle Blower Protection Act for the private sector.