

Whistle Blowing Policy in India – Challenges and Suggested Reforms

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Abstract: The term ‘whistle blowing’ is the act of an employee/individual of disclosing what he/she believes to be unethical/illegal or deviating from the set of rules to a higher authority(internal whistle blowing) or to an external authority or public(external whistle blowing). Whistle Blowing is prevalent in both Public and Private sectors. The Individuals who expose information regarding such fraud or corruption are called ‘whistle blowers’. The motive and objective of whistle blowing is to safeguard the interest of general public.

This paper is a doctrinal research on the key legislations which give protection to whistle blowers in India. Provisions in the Companies Act, 2013, SEBI’s circular on Corporate Governance and the Whistle Blowers Protection Bill, 2011. This paper critically analysis the lacunae of the 2011 Bill which awaits enforcement. It recommends the provisions that can be added to make it more effective. These recommendations are an embodiment of the policies on whistle blower’s protection, in other countries.

Courageous citizens who have tried to expose the dark ways in which the Government works, series of corruptions and scams that take place through the networking of caliginous bureaucrats have been threatened, harassed and some even murdered. Facts of such incidents have also been discussed in this paper. Therefore, arises, the urgent need to improve the legislation which provides protection to such brave souls and this paper makes a reminiscent and suggestive attempt of the same.

Keywords: Protection of Whistle Blowers, Whistle Blowers Protection Bill, Legal Perspective, Challenges, Recommendations

MEANING

The etymological origins of ‘whistle blowing’ are obscure, but even without knowing the pedigree of the term, a vivid picture can be clearly derived from the worlds themselves .i.e. a police officer shrilling on a whistle when he or she catches a crime in progress. Whistle blowing means to call attention to a wrongdoing that is occurring within an organization. It includes, reporting wrongdoing or violation of legal provisions to the proper authorities, refusing to participate in the wrongdoing, testifying in a legal proceeding or leaking the evidence in media.

A whistle blower is a person who reports the wrongdoing or misconduct of an organization. There are two types of whistleblowing, internal and external. When the whistle blower reports misconduct to another person or authority within the organization, it is called ‘internal whistle blowing’ whereas when the whistle blower reports misconduct to a person or authority outside the organization, it is called ‘external whistle blowing’.

Miceli and Near define whistleblowing as the ‘disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organizations (internal or external) that may be able to take action to stop the wrongdoing.’¹

ETHICS AND WHISTLEBLOWING

Whistle blowing and ethics go concomitantly, as it represents a person’s understanding, at a deep level, that an action the organization is taking is harmful and that it might interfere with the people’s right or detracts from the common good. Whistle blowing call upon the virtues, especially courage.

Whistle blowing is an emotionally charged issue, opponents argue that whistle blowing can have negative repercussions on employee morale, loyalty and trust, that in turn can effect an organization’s efficiency and productivity.

However, proponents argue that the positive outcomes stemming from the encouragement and protection of whistleblowing for both public and private organizations far outweigh any negative consequences that may occur as a result.

Whistleblowing is subjective in nature and therefore needs to be analysed from the interests of the potential whistle blower. Two parties can assess the same situation regarding a potential whistle blowing context and come to polar opposite conclusions about whether there is a need for the employee to blow the whistle on the alleged activities.

¹Marcia P. Miceli & Janet P. Near. ‘*Blowing the Whistle*’, pg. 45, Lexington Books, 1992.

Therefore, it is the position of this author, that ethics need to be encouraged in organizations for immoral, unethical and illegitimate activities never lead to the betterment of society in general. Proponents argue that whistleblowing leads to the constructive renewal of organizations and therefore should be encouraged.

SIGNIFICANCE

It is extremely difficult to accurately estimate the level of wrongdoing and whistleblowing within any organization.² The world is continuously changing and organizations and authorities have taken on a Machiavellian attitude to have an edge others to have an edge in this era of competitiveness. Machiavellian attitude means where the ends are all that are important and the means are irrelevant, it denied the relevance of morality in organizational affairs, it holds that craft and deceit are justified in pursuing and maintaining power.³ The message, this attitude sends to an employee is that “reaching the objectives is what matters, and how you get there does not matter”.⁴ Issue of ethics, morality and legality emerge from such attitude of organizations and authorities. People are forced to merge with such attitude because of the fear of losing their jobs, victimisation and their exclusion. Therefore, the need of strict and pragmatic laws and policies that will protect the individual and the existence of such laws are imperative.

CASES

Here are a list of cases of people who had to go through unimaginable trauma because they blew the whistle;

Stayendra Dubey

Satyendra Dubey, a project engineer of the National Highway Authority of India (NHAI) and become a Project Director for the “Aurangabad – Barachatti” section of NH2 (The Grand Trunk Road). This highway was a part of the Golden Quadrilateral Corridor Project.

When Satyendra Dubey joined in he saw many irregularities in the financial department and these were some serious irregularities. He got the contractor of the project to suspend his three engineers. He exposed the scam. He even made the contractor to rebuild the Six Kilometer road. This scam getting reviled and roads getting rebuild were proving to be huge loss for the Road Contract Mafia. After few weeks, he was transferred to Gaya. Even at Gaya he found many irregularities and large scale scam and use of worst quality material. He understood that the scam is not limited to one place and there are many big people including politicians are involved. As he dug deep he found that the whole system was behind the scam.

He then wrote a letter to the then Prime Minister Atal Bihari Vajpayee detailing the financial and contractual irregularities in the project. While the letter was not signed, he attached a separate bio data so that the matter would be taken more seriously. Dubey, specifically requested that his identity be kept a secret and despite the letter’s sensitive content, accusing some of his superiors, the letters along with the bio data was forwarded immediately to the Ministry of Road Transport and Highways. Dubey had also sent the letter to the Chairman. Soon Dubey received a reprimand, as the vigilance office of NHAI officially cautioned Dubey for the impropriety of writing a letter directly to the Prime Minister.

After all this Satyendra Dubey, was under constant threats and feared for his death. After exposing the scam, he became the target of all the local road mafia and big politicians. On 27th November, 2003, he was returning from a wedding in Varanasi, he called his driver to be at station at 3 am in the morning. He reached the station but since his driver wasn’t there, he took an auto rickshaw. After a few hours he was found dead by the side of the road. He was failed by the Government, because he stood up courageously against the unscrupulous ministers.

Manjunath Shanmugam

Manjunath Shanmugam was a sales officer of Indian Oil Corporation. He uncovered selling of adulterated fuel taking place in two petrol pumps at Lakhimpur Khiri, Uttar Pradesh- a hotbed of petroleum adulteration and ordered them sealed. But, to his surprise dealers had started dealing again and he conducted a surprise raid and was shot dead.⁵

Lalit Mehta

A civil engineer by qualification, Lalit Mehta was 36 when he blew the whistle off widespread corruption in NREGA scheme in Palamu. He was going to undertake social audit of NAREGA scheme under

² Brian K. Burton & Janet P. Near, “*Estimating the incidence of Wrongdoing and Whistle Blowing: Results of a study Using Randomized Response Techniques.*” Journal of Business Ethics, vol. 14, no. 1, pg. 19 (1995),

³ Niccolo Machiavelli, ‘*The Prince*’ pg. 10, Hackett Publishing Company Inc. ,1995.

⁴ Kenneth Labich, ‘*The New Crisis in Business Ethics*’ Fortune, p. 167, April 20, 1992.

⁵ <https://www.thehindu.com/features/magazine/The-extraordinary-tale-of-an-ordinary-man/article12291362.ece> “The extraordinary tale of an ordinary man”, The Hindu, last visited 31/1/2019

the supervision of economist Jean Dreze's and it was proving to be the final nail in the coffin of the contractor lobby. But before that he was shot dead.

The Chhatarpur Police found his body at Kandagahati in Chhatarpur on 15th May 2015. His mutilated body and a belt around his neck suggested that he was strangled and his face was sashed to deform it beyond recognition.⁶

Following are a compiled list of cases of whist blowers and what they have had to go through⁷ :-

S.No	YEAR	NAME OF THE WHISTLE BLOWER	CONCERN OF THE WHISTLE BLOWER	SUFFERING CAUSED TO THEM
1	2003	Satyendra Dubay (project director at NHAI, anonymous letter to PMO)	·Spotted huge irregularities in handling of GQ project ·Bid rigging – forgery of documents to win the bid of the contract.	·Shot dead in Gaya.
2	2007	Salim Baig (practioner of Ayurvedic medicine in Moradabad)	·Fake encounters by police. ·Stolen fuel ·Faulty roadworks and dangerously derelict railway bridges. ·Controversial government recruitments.	·Penalty – 500\$ ·Harassment ·Revival of cases against him ·Arrested to humiliate. ·Dispensary was shut
3	2007	Saseendran (written to CM)	·Exposed rampant corruption in loss making companies ·Alleged that managing director was leaking vital company information outside	·Forced to withdraw his initial allegations ·Death during the investigation process.
4	2008	Lalit Mehta(Indian RTI activist)	·Exposed corruption in NREGA (Palamu)	·Brutally killed
5	2008	Lalit Kumar Mehta (activist)	·Exposed corruption against local jobs-for-work scheme	·Murdered
6	2010	Satish Shetty (RTI activist, Pune)	·Exposed land scandals	·Killed by unidentified men while on a morning walk.
7	2010	Amit Jethwa (Environmentalist , Gujarat, Gir forest)	·Revealed illegal mining in the protected forest	·Shot dead ·His relative was arrested.
8	2016	Hemant Gawande	·Red flagged the land grabbing by the senior Maharashtra minister , E K Nathkhadse	·Khadsepressurised police to register a case against Hemant. ·Harassment ·Case yet to be resolved.
9	2009-present	Dr. Anand Rai (Indore based Medical officer)	Widespread rackets in recruitment and professional courses entrance test conducted by the M.P Professional examination board.	·Threatening calls ·Contract killers were hired to kill him ·He was transferred from Indore to Dhar district. ·Police demanded Rs 50,000 per month for police protection
10	2013	Ashish Chaturvedi (Gwalior based social Activist)	Lack of quality doctors in hospitals	·Suffered 3 attacks on his life including an abduction bid. ·Threatened 10 times ·Police refused to provide him with

⁶<https://www.downtoearth.org.in/coverage/nrega-activists-who-paid-with-their-lives-lalit-mehta-jharkhand-4727>
“NREGA activist who paid with their lives Lalit Mehta (Jharkhand)”, DownToEarth, Last updated, last visited 31/1/2019

⁷<http://ajmjournal.com/HTMLPaper.aspx?Journal=Asian%20Journal%20of%20Management;PID=2017-8-3-43>
“Whistle Blowing: Facing Challenges in India” - Shivangi Dhawan and Anupreet Kaur Mokha, Volume No. 8, Issue No. 3, Year 2017, ISSN Online: 2321-5763

				adequate protection and asked him to pay Rs 50,000 for protection or remain at home.
11	2014	Prashant Pandey (Former IT consultant, MP)	Widespread rackets in recruitment and professional courses entrance test conducted by the M.P Professional examination board.	<ul style="list-style-type: none"> ·Threatened to register 40 cases against him ·FIR against him ·His family was harassed Police detained his wife and seized Rs 9.96 lakhs cash from her ashawala money.

All of this exhibits, that the world is full of dark and unscrupulous people in power that can go to any extent to silent the courageous patriots who have the nerve to blow the whistle of all corrupt scandals and scams. All the previous case studies show that these whistle blowers have had to face gruesome retaliations from the people against whom they raise a voice. We as a nation need to work on our policies which protect the whistle blowers from such severe retaliations. The current Whistleblower's Protection Act, 2014 has some provisions to safeguard interests of such whistle blowers but they are not adequate.

Even the Whistle Blowers Protection (Amendment) Bill,2015 dilutes the substance of the current Act. The WhistleBlower's Protection (Amendment) Bill,2015 was introduced and passed by Lok Sabha on 13th May, 2015. The Bill has been transmitted to the Rajya Sabha and is presently pending there.⁸

This paper aims to look at the problem of protection of whistleblowers and what provisions can be laid down in the statute to protect their rights. Various countries have legislations and policies that protect the rights of whistleblowers, this paper aims to give suitable suggestions and recommendations of such policies and whether India can adopt such modifies legislations from other countries.

Whistle Blowing in the Private Sector

Whistle blowers in the private sector are individuals who expose information of wrongdoing or fraud in any corporate sector to the senior management of that particular company or media or any outside authority. When the misconduct or malpractice exposed is in the organization, it is known as whist blowing in the Private Sector.

The Companies Act, 2013 and Whistle Blowing Policy

The Companies Act, 2013 incorporates several provisions to eliminate fraud and corruption in an organization. It works towards establishment of an effective corporate vigilance mechanism to eliminate various scandals and loop holes and stricter compliance than its' old 1956 Act.

Section 177(9) of the Companies Act,2013 and Rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014 require every listed company, companies which accept deposits from the public and companies which have borrowed money from the banks and public financial institutions in excess of Rs. 50 crores (Rupees Fifty Crores) have to establish a vigil mechanism for Directors and Employees to report their concerns about any unethical behaviour.

The Sections 206 to 229 of the Companies Act, 2013 have incorporated detailed provision, which is relating to the inspection, investigation and inquiry, Under 208 of the Companies Act, 2013 there will be appointment of an Inspector who is different from the Registrar to inspect records. The Inspector has power to recommend and conduct investigation in matters as required. Under Section 211 there is establishment of Serious Fraud Investigation Office, a statutory body which has power to investigate in matters of frauds relating to a company.

There is also responsibility on the Auditors to act as whist blowers and they have to report directly to the Central Government, if they have any reason to believe of any fraud or malpractice.

SEBI and the Whistle Blowing Policy

The Securities and Exchange Board of India on circular in 2003 amended its principle n corporate governance, which is given in the standard listing agreement. The Annexure I-D or clause 49 of the listing agreement states that the Company will have mechanism for employees to report to the management about any concerns or unethical behaviour, any suspected fraud or violation of any code of conduct. Many companies now have started adopting the practice of whist blowing policies.

⁸<http://pib.nic.in/newsite/PrintRelease.aspx?relid=181386> -As per the information provided by the Union Minister of State (Independent Charge) Development of North Easter Region (DoNER), MoS PMO, Personnel, Public Grievances and Pensions, Atomic Energy and Space, Dr. Jitendra Singh in written reply to a question in Rajya Sabha on 2nd August 2018. (last visited on 31/1/2019)

Following are examples of some companies that have adopted whistle blowing policies:

- HCL:

Has adopted a whistle bower policy to provide suitable ways to its employees, clients, auditors, contractors, regulatory agencies and other third parties to bring to the notice of the top management any issues which are observed to be violating or conflicting the core business practices of the corporation. The employees are motivated to raise their voice through whistle blowing. All the cases are directly reported to the CEO.

- HERITAGE FOOD (INDIA) LTD:

Has adopted a whistle bower policy in which employees are expected to disclose in good faith any unethical or immoral activities or any wrong doing to the Head of department, managing director or audit committee as the case may be in writing. In this, whistle bower is only need to demonstrate to the audit committee and he is not expected to investigate into the matter.

- TATA MOTOR:

In this, Tata employees are allowed to make a protected disclosure under their whistleblower policy in which they report about the wrongdoing to the chairperson of the audit committee or the board of directors and such disclosure is forwarded when there is a reasonable evidence of the misconduct along with a covering letter that may bear the identity of the whistleblower.

- NATIONAL PAYMENTS CORPORATION OF INDIA:

The NPCI has a dedicated whist blowing policy with an Audit Committee, Ombudsperson, Investigation Team and a Whistle Officer. It provides information of all its reporting mechanism and investigation on its website and complaints can be received by electronic messages also.⁹

WHISTLE BLOWING (PROTECTION) ACT, 2014

Whistle Blowers Protection Act, 2014, is an act passed by the Parliament of India which provides a mechanism for the investigation of misuse of power by public servants and alleged corruption. It has provisions which protect whistle blowers rights. It establishes a mechanism to receive complaints relating to the disclosure on any allegations of corruption or wilful misuse of power or wilful misuse of discretion against any public servant and to inquire or cause an injury into such disclosure and to provide any adequate safeguards against victimisation of any person making such complaint.

Historical Background of the Act¹⁰

In 1993, a bill for the protection of Whistle blowers was firstly initiated by Mr. N. Vittal (the then Chief Vigilance Commissioner). In December 2001, Law Commission of India recommended that in order to curb to corruption in India, a law relating to the protection of whistle blowers was essential and submitted its report to Mr. Arun Jaitley (the then Minister of Law, Justice and Public Affairs) with a draft of the bill. In January 2003 the draft bill of 'Public Interest Disclosure (Protection of Informers) Bill, 2002 was circulated. In 2003, the murder of 'Satyendra Dubey' who was a Project Director who exposed the corruption practices in NHAI led to subsequent public and media outrage which further led to the strong demand for a legislation which protected the rights of the whist blowers. In 2004, the Supreme Court of India directed that a machinery to be put in place for acting on the complaints received by whistle blowers till a law is enacted.

In May, 2004, the Government of India notifies resolution to enable Central Vigilance Commission to receive complaints of corruption for Central authorities. In October, 2005, the Right to Information Act was notified which served as an instrument of weapon for the whistle blowers and activists. In 2006, The Public Services Bill 2006 (Draft) stated that within 6 months of the commencement of the act, the Government of India must put a mechanism in place to provide protection to whistle blowers. In 2007, the report of the Second Administrative Reforms Commission also recommended that a specific law should be enacted to protect the rights of the whistle blowers.

India is also ratified the 'United Nations Convention against Corruption on 9th May 2011 and signed the same in 2005 which encourages states to facilitate reporting of corruption by public officials and provides protection against retaliation for witnesses and experts.

On 26th August 2010, the Union Minister of State Personnel, Public Grievances and Pensions Mr. Prithviraj Chauhan introduced the Public Interest Disclosure and Protection to Persons Making the Disclosure of the Bill, 2010 in the Lok Sabha.

Since then a lot of activists and whistle blowers have been murdered or conspired against because they raised a voice and refused to comply with the corrupted activities of unscrupulous people in power.

The Whist Blowers (Protection) Act was enacted on 9th May 2014 and the Whistle Blowers (Protection) Bill, 2015¹¹ which acts as an amended legislation of the same, was introduced by Lok Sabha on 11th May, 2005 and passed by Lok Sabha on 13th May 2015 but is still pending in the Rajya Sabha.

⁹<https://www.npci.org.in/whistle-blower-policy>

¹⁰ "Whistle Blower Protection in India" ISBN No: 978-81-928510-1-3

Framework of the Whistle Blower (Protection) Act, 2014

The current Whistle Blowers Protection Act, 2014 consists of 7 Chapters and 31 Sections which deal with provisions relating to the Public interest disclosure, powers and functions of competent authority, powers of the competent authority etc.

CHAPTER	SECTION(S)	PROVISION
1	1-3	Preliminary (Definitions)
2	4	Public Interest Disclosure
3	5-6	Inquiry in Relation to Public Interest Disclosure
4	7-10	Powers of the Competent Authority
5	11-14	Protection to the Persons making Disclosure
6	15-22	Offence and Penalties
7	23-31	Miscellaneous

Analysis of the Act

Section 2 of the Whistle blowers protection Act, 2014 clearly states that the armed forces of the Union are exempted from this particular Act and that this act will not apply to the Special Protection Group constituted under the Special Protection Group Act, 1988.

Section 3(b) of the Whistle blowers protection Act, 2014 defines “Competent Authority” and mentions the particular authority that is to be contacted in case of complaints.

- Complaint in relation to any Member of Union Council of Minister is to be sent to the Prime Minister of India.
- Complaint in relation to any Member of Parliament (Council of State) is to be directed to the Chairman of Rajya Sabha.
- Complaint in relation to Member of Parliament (House of people) is to be directed to the Speaker of Lok Sabha.
- Complaint in relation to Member of Council of Ministers is to be directed to the Chief Minister of State.
- Complaint in relation to Member of Legislative Council is to be directed to the Chairman of Legislative Council.
- Complaint in relation to Member of Legislative Assembly is to be directed to the Speaker of Legislative Assembly.
- Complaint in relation to any judge of District Court or liquidator or receiver or Commissioner or Arbitrator is to be directed to the Hon’ble High Court.
- Complaint in relation to any person in the service or pay of Central government is to be directed to Central Vigilance Commission.
- Complaint in relation any person /establishment in the service or pay of the State government is to be directed to the State Vigilance Commission.

Procedure

After the receipt of public interest disclosure is received by the Competent Authority, it then contacts the Complainant asking whether he was behind the Complaint, to verify the authenticity of the Complaint.

Competent Authority then asks the Complainant whether he wants to reveal his identity or not. The Authority then initiates a discreet inquiry to ascertain any basis for proceeding further to investigate disclosure. Then after the investigation, the Head of Department is contacted for comments and reports. If the Complainant does not want to reveal his name to the Head of Department, he shall provide all documentary evidence to the Competent Authority. If the Competent Authority after the investigation is of the opinion that:

- The facts and allegations contained in the disclosure are frivolous or vexatious, or,
- There are no sufficient grounds for proceeding with inquiry

It has the authority to close the matter, therewith.

If the Competent Authority is of the opinion that:

- There is wilful misuse of power
- Wilful misuse of discretion

¹¹ As per Ministry of Personnel, Grievances and Pensions <http://www.prsindia.org/billtrack/the-whistle-blowers-protection-amendment-bill-2015-3784>

- Substantial allegations of corruption

It shall recommend to the public authority to take any of the following measures:

- Initiate proceedings against the concerned public servant
- Take appropriate administrative steps for redressing the loss caused to the Government as a result of the corrupt practices or misuse of office
- Recommend to appropriate authority to initiate criminal proceedings under the relevant laws
- Recommend to take corrective steps and measures

The Competent Authority after making an inquiry, inform the Complainant about the action taken on the complaint and the final outcome.

The Public Authority has the duty to take a decision on the recommendation of the Competent Authority within 3 months of the receipt of such recommendation. If the Public Authority does not agree with such recommendation, it shall record the reasons for such a disagreement.

Proposed Whistle Blowers Protection Bill, 2015

The Whistle Blowers Protection Bill of 2015 was introduced in Lok Sabha on 11th May 2015 and passed in the same on 13th May 2015 it is still pending in Rajya Sabha.¹² It amends the 2014 Act and prohibits reporting of corruption related disclosure if it falls under any 10 categories of information. These 10 prohibited categories are as follows:

1. The sovereignty, strategic, scientific or economic interests of India or the incitement of an offence.
2. Record or deliberations of the Council of Ministers.
3. Information which is forbidden to be published by a Court or if it may result in contempt of Court.
4. A breach of privilege of legislature.
5. Commercial confidence, trade secrets, intellectual property (if it harms a third party)
6. Information relayed in a fiduciary capacity.
7. Information received by a foreign government.
8. Information that would endanger a person's safety.
9. Information that would impede on investigation.
10. Personal matters or invasion of privacy.

However, if information is related to records or deliberations of Council of Ministers, commercial confidence, trade secrets, intellectual property, relayed in fiduciary capacity or personal matters under the Right to Information Act, 2005 then it can be disclosed under the Bill.

Analysis of the Whistle Blowers Protection Bill, 2015

The Whistle Blowers Protection bill, 2015 instead of empowering the whistle blowers is aimed to dilute the powers that are currently granted to them by the 2014 Act. It aims to prohibit 10 categories of information and implement Official Secrets Act, 1923 Act, also. This will weaken the extent of information that can be accessed by the whistle blower and will leave the authority to decide on the grounds of the matter.

The Bill has no provision to expand the rights of the Whistle Blowers which is a disappointment. The amendments are only focusing on the prohibitions and not safeguarding the virtue of the whistle blowers. Even after so many incidents where whistle blowers have faced with such grievous retaliations including death and murder, there are no provision which protect the physical safety of a whistle blower.

The procedure is made more complex and time consuming as the Competent Authority will now have to send the complaint to the authorised governmental authority to verify whether the complaint can be proceeding into an inquiry or not. The discretionary power of this other Authority not only makes the process more complex and time consuming but also reduced the power of the Competent Authority.

¹²<http://www.prsindia.org/billtrack/the-whistle-blowers-protection-amendment-bill-2015-3784>

Difference of the Whistle Blowers Protection Act, 2014 with the Whistle Blower's Protection Bill, 2015

PARAMETER	WHISTLE BLOWERS PROTECTION ACT, 2014	WHISTLE BLOWERS PROTECTION (AMENDMENT) BILL, 2015
Disclosure of information	Disclosures may be made on any act of corruption, abuse of power or discretion or criminal offence by the public servant. There are no such prohibitions.	A Disclosure related to the following information is prohibited: The sovereignty, strategic, scientific or economic interests of India or the incitement of an offence. Record or deliberations of the Council of Ministers. Information which is forbidden to be published by a Court or if it may result in contempt of Court. A breach of privilege of legislature. Commercial confidence, trade secrets, intellectual property (if it harms a third party) Information relayed in a fiduciary capacity. Information received by a foreign government. Information that would endanger a person's safety. Information that would impede on investigation. Personal matters or invasion of privacy
Applicability of the Official Secrets Act, 1923	Disclosures can be made under the Act even if they are prohibited under the Official Secrets Act, 1923	Disclosures cannot be made under the Bill, if it is prohibited under the official Secrets Act, 1923
Procedure to determined prohibited disclosures	Not applicable, as the 2014 Act does not prohibit any type of information from being disclosed.	Once a disclosure is made, the Competent Authority will refer it to a government authorised authority. The Government authorised authority will then take a final decision on whether the disclosure is prohibited or not.
Issues that may not be revealed during an inquiry of the whistle blowing complaint	Once a whistleblowing complaint is admitted and is being inquired into, no person is required to provide any information if it falls under the following 5 categories: Security of India Foreign relations Public order and morality Contempt of Court and Defamation, incitement of an offence. Cabinet proceedings	The five categories have been replaced by the above mentioned 10 categories.

Challenges in the Current Whistle Blowers Protection Act, 2014

Loop Holes in the Current Act are as follows:

1. The Definition clause of the current Whistle Blowers Protection Act, 2014 is assailed on the fact that the definition clause does not define the terms 'Whistleblowing' and 'Victimisation', 'Retaliation' anywhere. Which is very rudimentary provision of any legislation and very basic in nature but is lacking. It fails to lack the term, and consequently no definition is provided. Lack of definition makes the act susceptible to manipulation.
2. The provided definition of 'Disclosure' is significantly constricted and does not include negligent acts and omissions of the Public Servants.
3. There is no provision where the Complainant can anonymously file a complaint and Section 4(6) of the Whistle Blowers Protection Act, 2014 states that no action will be taken by competent authority if the identity of the Complainant is not disclosed.
4. After so many cases where whistle blowers have been so barbarously retaliated with threats, attacks and even murders, there should have been a provision for anonymous Complaints because the problem of corruption is of far more paramount than that of frivolous complaints.
5. There is a provision in the 2014 Act, Section 17 which states that frivolous and false disclosures will be punishable by imprisonment for a term not exceeding 2 years and fine not exceeding thirty thousand rupees, this will discourage people from reporting any wrongdoing because the term 'frivolous' or 'false' has not been defined anywhere in the statute.
6. There is no provision for the personal safety of the whistle blowers, there have been end number of attacks and retaliations on whistle blowers. Whistle blowers are more vulnerable to physical attacks and there is no provision which penalises or punishes the attacker or any provision which ensures the safety of such whistle blowers.

SUGGESTED REFORMS FOR THE PROTECTION OF WHISTLE BLOWERS

In light of the above mentioned provisions, challenges or loopholes to the current provisions, the following are some suggestions to reform the Whistle Blowers Protection Act, 2014;

1. **EXTENT OF PROVISION-** Firstly, the extent of applicability of this act should not exempt the armed forces of the Union or the Special Protection Group but should be applicable to everyone, every public servant/ private employee.
2. **DEFINITION –** Secondly, for a legislation to work properly, it is very important that every term used in the statute should be defined properly, so that the interpreters do not face confusion and that the people who will gain protection from the legislation are duly and properly safeguarded. Following are some terms which need to be added in the current Act;
 - a. 'Mal-administration'

It is extremely necessary to add the meaning of 'mal-administration' in the Act of 2014. Mal-administration should also be made a ground of disclosure and the proposed definition¹³ is 'mal-administration' includes any action taken or purporting to have been taken or being taken or proposed to be taken in the exercise of administrative or statutory power or discretion, - (i) where such action is unreasonable, unjust, oppressive or improperly discriminatory; (ii) where there has been negligence or undue delay in taking such action; (iii) where there has been reckless, excessive or unauthorized use of power in taking such action; (iv) where such action amounts to breach of trust; (v) where such action involves the conduct of a public servant which would result in wastage of public funds or causes loss or prejudice to the State or is prejudicial to public funds or causes loss or prejudice to the State or is prejudicial to public interest in any manner; or (vi) where such action is outside the authority conferred by law or amounts to violations of systems or procedure.'
 - b. 'Victimisation'¹⁴

The 2014 Act intends to grant protection to whistle blowers, and the first retaliation they get is that they are victimised, therefore, it should be defined. Provisions of the US Whistle Blowers Act of 1989, define 'victimisation' as dismissal from service, withdrawal or dilution of powers or authority, reprimand etc. can be the subject matter of victimisation. Therefore, the suggested definition is;

¹³ Proposed by the 179th Law Commission Report, pg. 91

¹⁴ Proposed by the 179th Law Commission Report, pg. 95

“victimization” with all grammatical variations, shall include- (A) suspension pending inquiry, transfer, dilution or withdrawal of duties, powers and responsibilities, recording adverse entries in the service records, issue of memos, verbal abuse, all classes of major or minor punishment specified in the disciplinary rules, orders or regulations applicable to such public servant and such other type of harassment; (B) any of the acts referred to in sub-clause (A) whether committed by the person against whom a disclosure is made or by any other person or public authority at his instance.

3. **SAFEGUARDS AGAINST VICTIMISATION-** There should be relevant provisions which ensure that the Complainant can file an application if he is being victimised to the Competent Authority and after proving of the allegations of the Complainant, the Public Servant should be punished and deterred from retaliating.
4. **TRANSFER OF PUBLIC SERVANTS-** If the Complainant is being threatened and retaliated to an extent where it is threat on his life, there should be provision which enables the Competent Authority to transfer the Public servant.
5. **PROVISIONS FOR PROTECTION OF WITNESS AND WHISTLEBLOWERS-** The provision in US Whistle Blowers Act, 1989 state protection of the witnesses and others assisting the inquiry so that the person against whom complaints are made do not try to harass or retaliate and weaken the inquiry against him. It is therefore, extremely necessary to protect the whistle blower himself and witnesses. With so many incidents starting with ‘Satyendra Dubey’ there should be adequate protection for whistle blowers.
6. **PROVISION TO PASS INTERIM ORDERS-** Australia and United States of America in their statutes of 1994 and 1989 respectively, contain provision where the Competent Authority has the power to pass any interim orders, to prevent victimisation of the person making the disclosure.
7. **BURDEN OF PROOF-** In the United States of America, there is a deferral statute of 1989, which states that the burden of proving that the action or proceeding which is the subject matter of victimisation, shall be upon the public authority/servant against whom the allegations of victimisation are made.
In the United Kingdom, where the employee has taken action under Section 57 of the Employment Protection (Consolidation) Act, 1978, alleging unfair dismissal, burden of proof is on the employer. Therefore, based on the same lines as in USA and UK, the burden of proof on proving the allegations of victimisation should be on the public authority/servant against whom allegations are made.
8. **POWER TO ADJUDICATE-** The Competent Authority has the power to recommend if the allegations are proved to be correct after investigation. The Competent Authority should have the power to adjudicate based on the investigation and guiltiness of the allegations.
9. **ANONYMOUS COMPLAINTS-** The extent of danger, a Complainant has to suffer is immense, with such severe cases of whistle blowers, there should be provision where anonymous complaints should be allowed provided they have documentary evidence or strong evidence or witness in any form just to differentiate serious complaints from frivolous one’s. The Audit Commission in the United Kingdom interviewed the staff of National Health Service and found that about 1/3rd of the staff would take no action in the face of impropriety because of fears of losing their jobs. The Nolan Committee recommended nomination of an officer or member to receive complaints and the complainant should be guaranteed ‘anonymity’.¹⁵ Therefore, anonymity should be granted by the statute.
10. **STRICT PENALTIES(BOTH CRIMINAL AND CIVIL)-** Acts of harassment or victimisation or retaliations against a whistle blower should be criminal offences with substantial penalty and sentence.

CONCLUSION

Looking at the previous case list of people who blew the whistle on serious corruptions practices, some of them are dead, murdered brutally by the evil, unscrupulous and dark forces of administrative power and most people are in the constant fear of their lives. More than 70% of people are afraid to take a step towards blowing the whistle because they are afraid, of the people in power. This insecurity should be demolished, so that people

¹⁵ First Report of the Committee on Standards in Public Life, HMSO 1995 cm 2850 I-II

can freely stand up for the right. The main motive of Whistle Blowers Protection Act 2014 should be to protect the people who stand up against the corrupt public servants and authorities and this protection should include physical protection, mental protection and protection from any retaliation by the alleged public servant/authority.

This paper provides cases of the people who have lost their lives due to absence of such strong protective legislations and gives certain reforms that should be present in the Act.

The courageous need to be protected, and it is our duty as a citizen to demand for such a statute. Let the unfortunate deaths of Satyendra Dubey and many others make a significance, so that no other Whistle Blower has to go through the same brutality.

“Let the Rule of Law protect the people from Tyranny and Oppression”

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