
SAFEGUARDING THE TRUTH: A COMPREHENSIVE NOTE ON WHISTLEBLOWER PROTECTION

BY JANIT DHAWAN¹

I. Introduction

1.1 Who Is a Whistle Blower –

Whistle Blower' means "one who reveals wrongdoing within an organisation to the public or those in positions of authority."² Whistleblowing is the audacious act of exposing any information or activity within a private, public, or government organisation deemed illegal, unethical, or incorrect. This encompasses a vast spectrum of misconduct, ranging from corruption and fraud to abuse of power and other forms of malfeasance. This person who blows the whistle becomes subject to reprisal from the person against whom the whistle is blown in one way or the other. The whistleblower policy aims at protecting such individuals from retaliation.

Whistleblowers are derived from the practice of English bobbies (police officers), who blow their whistles when they notice the commission of a crime. The whistle would alert both law enforcement officers and the public of danger. One famous whistleblower was Jeffrey Wigand, who exposed the Big Tobacco scandal, revealing that executives of the companies knew that cigarettes were addictive and approved the addition of carcinogenic ingredients to cigarettes.

1.2 Whistle Blowers in Indian Context³

India's 'whistleblower' has been defined as any individual making a public interest disclosure. "Public interest disclosure" means specific disclosure by an individual involving illegality, criminality, breach of law, miscarriage of justice, danger to public health and safety and damage to the environment and includes an attempt to cover up such malpractices in any governmental establishment, public or private enterprise.

¹ The author is a law student at Symbiosis Law School, Pune.

² Whistle Blowers Policy Challenges and Solutions for India with Special Reference to Corporate Governance (2013) 3 GJLDP (October) 5

³ Whistle Blowers Policy Challenges and Solutions for India with Special Reference to Corporate Governance (2013) 3 GJLDP (October) 5.

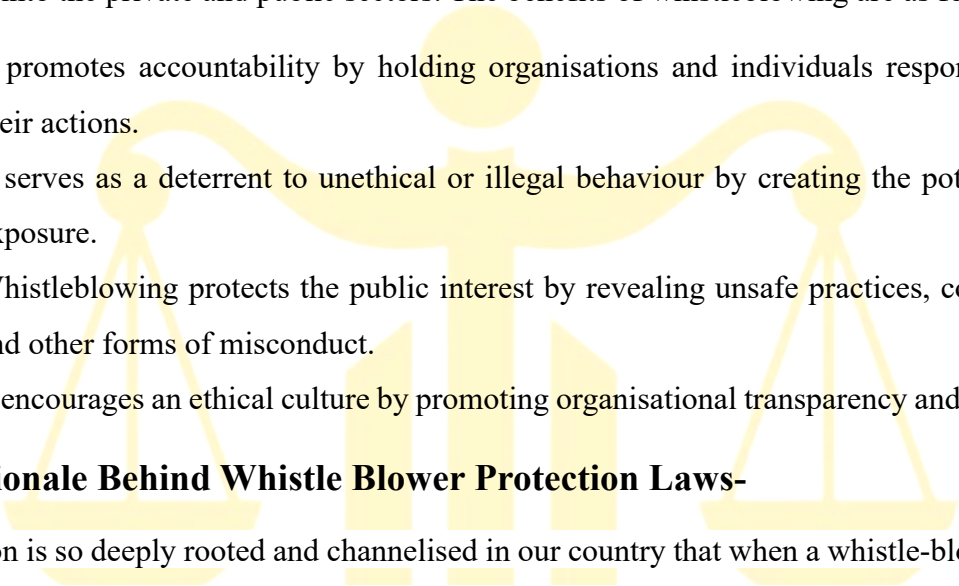
1.3 Difference Between Whistle Blowers and Informants-

The Most crucial distinction is the liability of the person disclosing the information. Informants are often involved in some unethical enterprise and are using the disclosure of information to reduce their liability, either voluntarily or due to coercion.

II. Importance of Whistle Blower Protection

2.1 Benefits of Whistle Blowing –

Whistleblowing is crucial in India, especially since corruption is rampant in our country and has crept into the private and public sectors. The benefits of whistleblowing are as follows:

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- I. It promotes accountability by holding organisations and individuals responsible for their actions.
 - II. It serves as a deterrent to unethical or illegal behaviour by creating the potential for exposure.
 - III. Whistleblowing protects the public interest by revealing unsafe practices, corruption, and other forms of misconduct.
 - IV. It encourages an ethical culture by promoting organisational transparency and integrity.

2.2 Rationale Behind Whistle Blower Protection Laws-

Corruption is so deeply rooted and channelised in our country that when a whistle-blower tries to raise his voice against corrupt practices from within the system, his voice is scuttled, and he is made to suffer because of his audacity for his outburst. The instances of a whistleblower being fired, demoted, harassed or punished in other ways while the organisation denies, ignores or quietly buries a disclosure are abundant.

Whistleblowers face a lot of repercussions for their actions of whistleblowing. They lose their jobs or are ostracised for their activities. Some are charged with crimes for violating laws or employment agreements. In extreme cases, even they face physical danger to the extent of losing their life. A condition that can encourage corruption is the absence of mechanisms by which instances of fraud and malpractice can be brought to light by a public-spirited person without risking their interest or safety. Such a person, a 'whistle-blower,' needs institutional protection against victimisation by the target of their action, hence providing a safe environment that encourages whistle-blowing practice.

III. Evolution of Whistleblower protection regime in India –

3.1 Brief History

The introduction of a law to protect the rights of whistle-blowers in India was first initiated by Mr N. Vittal, then Chief Vigilance Commissioner of India. The demand to enact national legislation for the protection of whistle-blowers became even more substantial due to public outcry and media pressure after the murder of Satyendra Dubey (who had exposed the NHAI corruption). Satyendra Dubey, an Indian Engineering Service officer, exposed corruption in the Golden Quadrilateral highway project by writing to the PMO in 2002, requesting anonymity. Tragically, his identity was revealed, and he was murdered in 2003. His sacrifice sparked nationwide outrage, highlighting the dangers faced by whistleblowers and the need for their protection. Following many more incidents of murder and assault of whistle-blowers in India, the then Union Minister of State for Personnel, Public Grievances and Pensions, Prithviraj Chavan, introduced The Whistleblower Protection Bill in 2010, which received the assent of the Rajya Sabha in 2014. The Lok Sabha passed the Whistleblowers Protection (Amendment) Bill, 2015, which has been pending for consideration before the Rajya Sabha. Although the Whistle Blowers Protection Act (WPA) of 2014 received the president's assent, it has still not been enforced.

3.2 Detailed history of evolution

3.2.1 179 Law Commission Report –

In August 1999, Mr N. Vittal requested the Law Commission to draft a Bill encouraging the disclosure of corrupt practices on the part of public functionaries and protecting honest persons from such disclosures. The 179th Law Commission headed by B.P. Jeevan Reddy Law Commission considered it necessary to recommend some measures to check this evil by preparing a report on 'The Public Interest Disclosure and Protection of Informers.' The Commission recommended having Legislation in India titled "The Public Interest Disclosure (Protection of Informers) Bill, 2002" to encourage disclosure of information regarding corruption or maladministration by public servants and to protect such complainants.

3.2.2 Direction of Hon'ble Supreme Court – Satyendra Dubey Case-

Pending the enforcement of the Whistleblowers Protection Act in April 2004, due to the mounting pressures after the Satyendra Dubey Episode and under pressure from the orders of the Supreme Court Bench comprising Justices Ruma Pal and P.V. Reddy, which heard the public interest litigation on the Dubey murder case, the National Democratic Alliance government announced an interim arrangement to protect whistle-blowers, pending the enactment of a law⁴.

3.2.3 Govt Resolution On 2004-

The Ministry of Personnel, Public Grievances and Pensions notified a resolution, empowering the Central Vigilance Commissioner (CVC) to act on the complaints of whistle-blowers and to protect them⁵. However, this resolution applied only to employees of the Central Government and did not provide any protection to potential whistleblowers working in the State Governments or the private sector⁶.

3.2.4 Whistle Blower Protection Act –

Later, on 26 August 2010, the Ministry of State Personnel, Public Grievances and Pensions introduced the Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010 in the Lok Sabha. This Bill was passed in Lok Sabha on 27 December 2011 with proposed amendments. This Bill was passed by the Rajya Sabha in 2014.⁶⁴ The Bill received the assent of the President of India on 9 May 2014 and came into the statute book as the Whistle Blowers Protection Act, 2014, but has not yet come into force. Before this law could test the waters, the Lok Sabha passed the Whistleblowers Protection (Amendment) Bill, 2015, which is currently pending consideration before the Rajya Sabha.⁷

3.3 Salient Features Of The WPA Act -

- Attempts or acts of corruption as defined by the Prevention of Corruption Act, 1988
- Wilful misuse of power or discretion that results in an apparent loss to the Government or an unjust benefit to the public servant or someone else.

⁴ Whistle Blowers Policy Challenges and Solutions for India with Special Reference to Corporate Governance (2013) 3 GJLDP (October) 5

⁵ < <https://cvc.gov.in/files/pidpi-pdf/PID%2000001.pdf> >

⁶ Whistleblower Policy : is India in “Tune” With the World? By Sujoy Chatterjee* and Alok Chaturvedi (2013) 4.1 GNLU L. Rev. 119

⁷ Whistle Blowers Protection Law in India: Challenges Ahead by Manoj Kumar- 13 RMLNLJ (2021) 120. (SCC Article)

- Attempt or acts of criminal offences committed by a public servant reported in writing through email or an electronic message.
- Prohibition of anonymous complaints.
- The Act provides a clear direction to handle complaints about corruption or the intentional misuse of power by public servants. The law ensures whistleblower and their families do not receive unfair treatment or are harmed for making the complaint.
- The law allows anyone, including public servants, to report misconduct or corruption to an appropriate authority.
- The whistleblower must identify themselves, as the law does not accept anonymous complaints.
- The Act does not apply to the Special Protection Group personnel and officers constituted under the Special Protection Group Act, 1988.
- If someone disagrees with the decision made by the authority, they have the right to appeal to the High Court within 60 days.
- Suppose someone reveals the whistleblower's identity by mistake or with any bad intention. In that case, s/he can be imprisoned for up to 3 years and fined up to Rs 50,000.
- If someone makes a disclosure knowing it's false, s/he can be imprisoned for up to 2 years and a fine of up to Rs 30,000.
- The authority in charge must prepare an annual report on its work and submit it to the Government. This report is then presented to Parliament or the State Legislature.

3.4 Features Of The Act Longer Version⁸ (Note: Act Has Not Been Enforced Yet)⁹

The Whistle Blowers Protection Act of 2014 aims to establish a system where government servants can report and investigate complaints about corruption, abuse of power, or misuse of discretion. It provides protection against victimisation for whistleblowers, including public servants, private individuals, and NGOs. However, it excludes Special Protection Group (SPG) forces established under the SPG Act, 1988.

⁸ Whistle Blowers Protection Law in India: Challenges Ahead by *Manoj Kumar*¹³ RMLNLUJ (2021) 120

⁹ Manupatra has also flagged that the act has not been enforced yet

3.4.1 Filing Complaints

Who can file: Any person, including public servants or NGOs.

Where to file: Central Vigilance Commission (CVC) for Central Government-related complaints and State Vigilance Commissions for State Government-related complaints.

Nature of complaints: These must be public interest disclosures made in good faith, including a declaration of reasonable belief in the allegations.

Modes of submission: Complaints can be made online, offline, or via written complaints or electronic messages.

Identity requirements: Complaints without revealing the complainant's identity or with false identities are not actionable.

3.4.2 Investigation Process (Chapter III)

Verification: The Competent Authority verifies the source of disclosure and ensures the complainant's identity remains confidential unless already disclosed.

Investigation:

- A discreet inquiry is conducted to assess the allegations.²
- Heads of concerned departments may be asked for explanations without revealing the complainant's identity unless prior written consent is obtained.
- If such complainant refuses to disclose his identity to the Head of the Department or Authority concerned, then the Competent Authority can provide only documentary evidence supporting his complaint. The identity of the complainant or public servant shall not be disclosed to the public either directly or indirectly by such Head of the Department or Authority.

Recommendations: If allegations are substantiated, the Competent Authority can recommend:

- Disciplinary or criminal action.
- Measures to redress losses caused by misconduct.
- Corrective actions.

Closure of cases: Cases can be closed if allegations are frivolous or lack grounds for action. Complainants are allowed a hearing before closure.

The Competent Authority will have to inform the complainant or public servant regarding the actions taken by the authority and the conclusion on the disclosures made by them. However, if the Competent Authority concludes enquiring that the case should be closed, the Competent Authority, on the wish of the complainant, must afford a reasonable opportunity to be heard by the complainant before closing the case.

3.4.3 Powers Of The Competent Authority (Chapter IV)

Inquiry Powers: The Competent Authority has civil court powers, including summoning witnesses, examining evidence, and seeking assistance from police.

Exemptions:

Certain cases are exempted from inquiry-

- Matters already decided by courts or tribunals.
- Cases older than seven years.
- Issues relating to national sovereignty, friendly relations with foreign states, public order, defamation, contempt of court, incitement to an offence, decency or morality have been expressly exempted from inquiry by the Competent Authorities.

3.4.4 Protection of Whistleblowers (Chapter V)

Anti-victimization measures:

- Complainants cannot be victimised for making disclosures.
- Competent Authorities can direct public authorities to protect complainants from harm.

The burden of proof: Lies on public authorities to prove non-victimization.

Safety provisions: Directions for safety and confidentiality may be issued.

A penalty extending up to thirty thousand rupees may be imposed on the public officer who makes a wilful default in compliance with the directions issued by the Competent Authority. The Competent Authority, in all cases where the safety and security of the complainant or witnesses are in danger, can issue appropriate directions to the government authorities, including police, to take necessary steps for the safety and security of such persons. The Competent Authority shall make all endeavours to hide the complainant's identity and documentary evidence received except by court order. The Competent Authority, based on

disclosures made by the Complainant, is also empowered to make interim orders to stop any corrupt practices immediately.

3.4.5 Offenses And Penalties (Chapter VI)

Penalties for non-compliance:

- Delay in reports or false/misleading reports can attract fines up to ₹50,000.
- Officers responsible for violations within departments or companies may face penalties unless they prove due diligence.

Disclosure violations:

- Disclosing a complainant's identity negligently or maliciously may result in up to 3 years of imprisonment and a ₹50,000 fine.
- False or frivolous complaints can attract up to 2 years of imprisonment or a ₹30,000 fine.

Appeals: Penalties can be appealed in the High Court within 60 days (extendable for valid reasons).

3.5 2015 Amendment To WPA

A disclosure is prohibited if it contains information related to:

- i. The sovereignty, strategic, scientific or economic interests of India, or the incitement of an offence;
- ii. Records of deliberations of the Council of Ministers;
- iii. That which is forbidden to be published by a court or if it may result in contempt of court;
- iv. A breach of privilege of legislatures;
- v. Commercial confidence, trade secrets, intellectual property (if it harms a third party);
- vi. That relayed in a fiduciary capacity;
- vii. That received from a foreign government;
- viii. That which could endanger a person's safety etc.;
- ix. That which would impede an investigation, etc.;
- x. Personal matters or invasion of privacy.

However, if information related to (ii), (v), (vi), and (x) is available under the Right to Information Act, 2005, then it can be disclosed under the Bill.

Essentially, the RTI grounds of non-disclosure have been imposed on the whistleblower.

3.6 Issues with This Amendment

The Statement of Objects and Reasons of the 2015 Bill states that the prohibited categories have been modelled on the 10 categories of information that cannot be revealed under the Right to Information (RTI) Act, 2005. However, this comparison may not be appropriate. The RTI Act aims to make information with public authorities accessible to all citizens to promote transparency and accountability. There may be circumstances where it may not be desirable for public institutions to reveal all types of information to citizens.

In contrast, the Whistleblowers Act provides for corruption-related information to be given by an individual to a Competent Authority. The Competent Authority, in all cases, is a high-level Constitutional or statutory authority. This information is not made public, and the inquiry into the allegation must be discreet, with the identity of the complainant, public servant, and related documents kept secret.

IV. Process of Whistle Blower Complaints

4.1 Guidelines For Lodging PIDPI Complaints

The PIDPI complaint should be in a closed/ secured envelope and addressed to the Secretary of the Central Vigilance Commission. The envelope should be inscribed with "Complaint under the Public Interest Disclosure" or "PIDPI."

The PIDPI complainant should give their name and address at the beginning or end of the complaint or an attached letter. The name and address should NOT be mentioned on the envelope.

Only complaints about employees of the Central Government or any corporation established by or under any Central Act, Government companies, societies or local authorities owned or controlled by the Central Government fall under the jurisdiction of the Commission. Personnel employed by the State Governments and activities of the State Governments or its Corporations, etc., will not come under the purview of the Commission.

Complaints should be sent via post only. Complaints received through emails, Complaint Management Portal or any other electronic medium will not be entertained.

To protect the person's identity, the Commission will not issue any acknowledgement, and the whistle-blowers are advised not to enter into any further correspondence with the Commission in their interest. The Commission assures that subject to the facts of the case being verifiable, it will take the necessary action, as provided under the Government of India Resolution mentioned above.

The complaints should have a vigilance angle and should not be for grievance redressal

PIDPI complaints should not include details that identify the complainant. If the inclusion of such information is unavoidable, then a typical complaint may be lodged in the CVC portal

4.2 CVC Manual Instructions

Suppose a complainant, exposing a corruption case, wants his identity to be kept secret. In that case, they should complain about the Public Interest Disclosure and Protection of Informers Resolution (PIDPIR), known as the Blower Provision. The commission is mandated to maintain the secrecy of the complainant's identity and protect the complainant against any physical threat, harassment or victimisation.

In respect of those complaints which are considered fit for processing under PIDPI Resolution, a letter is sent to the complainant to obtain (a) confirmation as to whether they have made the complaint or not and (b) a certificate that that they have not made similar/identical allegation of corruption/misuse of office to any other authorities to qualify as a Whistle Blower complainant.

The prescribed time limit for receiving the confirmation and the certificate from the Complainant is 30 days from receipt of the Commission's letter by the Complainant. In case of no response within the prescribed time limit, a reminder is issued, giving an additional two weeks to the complainant to send confirmation and the certificate to the Commission. If there is still no response from the complainant, the complaint is sent to the Branch concerned of the Commission for necessary action under the Complaint Handling Policy of the Commission.

4.3 CBI Manual (Relevant Provisions)

Any complaint from the Central Vigilance Commission for enquiry under section 8 of the CVC Act should be examined on priority. In case the CVC has already made a preliminary study of the complaint and has asked the CBI to investigate, there is ordinarily no need to re-verify the complaint. Preliminary verification should be limited to the instances worth verification and where exceptional circumstances exist, or the CVC has just forwarded the complaint without

verification. In such cases, permission from the Competent Authority should be obtained as soon as possible and, in no case, later than seven days after receipt of the complaint by the Head of the Branch. The relevant facts and circumstances should be reported to the CVC as soon as possible so that the latter can decide whether an open enquiry is to be made. Suppose the CVC requests CBI merely for a report on the complaint. In that case, a preliminary report, without any detailed verification, may be sent to the Commission while mentioning in the forwarding letter that no detailed verification has been carried out.

- A. While registering a case (RC/PE) on a reference received from CVC, the name of the CVC officer forwarding the letter or complaint shall not be mentioned in the column of Complainant. Instead, the original complainant's name, if mentioned in the complaint or if identifiable from the reference so received, must be mentioned as the complainant. However, it may be noted in the body of the FIR/PERR that the complaint was received from CVC.
- B. **If the reference is received under 'Whistle Blower Resolution' or as source information from CVC, the complaint should be attributed to 'suo motu' or 'source information.'**
- C. If such a reference is received directly by the Branch, Range or the Zonal office of CBI, a copy should be sent to the Policy Division along with the action taken report for centralised compilation and obtaining approval of DCBI.

4.4 Anonymity Of The Complainant

4.4.1 Case Law On Anonymity To Be Maintained By CBI

Mr Avinash Kumar vs Gncd- (Central Information Commission)

Facts- Dr Avinash Kumar, on 1.8.2013, made a written complaint to the Secretary of Central Vigilance Commission, New Delhi, alleging corruption against the CMO, NSFG and Chairman Medical Board, stating that for three years, he was indulged in corrupt activity. Still, no action has been taken despite several complaints coming from people in general.

Held-

In August 2013, a Supreme Court bench of Justices K S Radhakrishnan and Arjan Kumar Sikri ruled that the whistleblower's identity can never be revealed to the

accused facing prosecution under the Prevention of Corruption Act. Another central principle in this case was that non-disclosure of the complaint's identity would not affect a fair trial.

Section 8(1)(g) of the RTI Act also exempts disclosure that would endanger the life or physical safety of any person or identity, the source of information, or assistance given in confidence for law enforcement or security purposes.

On 20.11.2014, the Hon'ble Supreme Court recalled its order dated 15 September 2014 relating to IA 73 of 2014. The order dated 15 September 2014 demanded that the petitioners, in a matter about the corruption scandals being investigated by the Central Bureau of Investigation (CBI), Disclose the name of the whistleblower who supplied the contents of the guest entry register maintained at the residence of the CBI Director. Some apprehensions were expressed about the order to disclose the whistleblower's name as that would cause serious physical risk to the whistleblower. The order dated 20 November came as a relief to an anonymous whistle-blower. Though it was not specifically permitted anonymous whistleblowing, it can also be perceived as an indication from the apex court that the disclosure of the identify of a whistleblower is relatively not important if the information about an offence or wrongdoing, he/she supplies is credible enough to proceed with for further action. .

Manoj H.Mishra vs Union of India & Ors on 9 April 2013(case cited in the aforementioned case)

'..one of the basic requirements of a person being accepted as a whistleblower is that his primary motive for the activity should be to further the public good. In other words, the activity has to be undertaken in the public interest. In other words, the activity has to be undertaken in the public interest, exposing the illegal activities of a public organisation or authority. In our opinion, the appellant's conduct does not fall within the high moral or ethical standard that would be required of a Bonafide "whistleblower."

4.4.2 Cases Which Confer Anonymity Of The Witness

A.K. Roy v. Union of India- the Supreme Court held that "the disclosure of the identity of the informant may abort the very process of preventive detention because no one will be willing to come forward to give information of any prejudicial activity if his identity is going to be disclosed, which may have to be done under the stress of cross-examination."

V. Critiques of WPA

- i. No provision of protection of corporate whistleblowers.
- ii. Anonymous complaints or disclosures regarding corruption or abuse of powers cannot be filed under the WPA, 2014. Section 4(6) expressly says that the Competent Authority will take no action in a public interest disclosure where the complainant's identity is not disclosed.
- iii. The Bill requires the CVC or similar competent authorities in the States to investigate confidential disclosures to keep the identity of the whistleblower secret. However, a proviso to this sub-section permits the CVC and similar competent authorities to reveal the whistleblower's identity to the Department Head while seeking comments or explanations during an inquiry. The Head of the Department is barred from disclosing the whistleblower's identity to anybody else. This provision alone defeats the very purpose of the law. The central philosophy of whistleblower legislation is to protect the identity of the person making the public interest disclosure so that they may not be targeted or victimised by the Head of the Department or any other colleague or any person with a vested interest in keeping the lid on wrongdoing shut tight.

VI. Other Acts with Whistleblower Provisions

6.1 The Companies Act, 2013

The Companies Act, 2013, under Section 177,³ makes it compulsory for the companies-

1. who are listed,
2. or companies who accept deposits from the public or
3. who has borrowed an amount from banks/financial institutions which exceeds Rs. 50 crores must have a mechanism in place to take note of whistleblowing concerns.

This provision of the Companies Act, 2013⁴, when read with Rule 7(4) of the Companies (Meetings of Board and its Powers) Rules, 2014, points out that the promoted mechanism would only protect the employees against being victimised. The biggest obstacle in implementing this law is the sheer absence of the meaning of "vigil mechanism," as mentioned in the Companies Act 2013. The mechanism which seems to be the subject of this legislation

is left to the company's discretion, affecting the overall quality of implementing this law. While there are provisions to protect the employees from any victimisation in the form of removal or unfairness, the protection provided under this act becomes unreliable due to the unclear subject of the promised security.

6.2 SEBI (LODR) Regulation, 2015

SEBI LODR is consequential legislation in India aimed at increasing transparency in India's listed companies by promoting disclosures.

Regulation 4(2)(d)(iv) of SEBI (LODR), 2015⁶ makes it compulsory for the companies that are listed in India to have a mechanism in place that enables the Employees, stakeholders, and their representatives feel free to voice their concerns.

Under Regulation 30 of the SEBI (LODR), 2015⁷, the listed companies must disclose every critical piece of information to the Stock exchange as soon as possible.

The haziness of this law continues to grow dense when what information qualifies as essential or not is again left at the company's discretion, and no clear guidelines are given by the SEBI.

6.3 The Income Tax Informants Reward Scheme, 2018

The Income Tax Informants Reward Scheme, 2018, introduced by the Central Board of Direct Taxes (CBDT), allows individuals to receive rewards for providing specific information about tax evasion related to income and assets in India and abroad. Informants can earn up to ₹ five crores, with the scheme regulating the grant and payment of rewards for information that leads to the detection of substantial tax evasion. Only information submitted in the prescribed format (Annexure-A) qualifies for a reward, and government employees are excluded from eligibility. Information includes documents, emails, and other relevant materials but excludes submissions via non-official channels like social media or messaging apps. Substantial tax evasion is defined based on thresholds of ₹ one crore to ₹ five crores, depending on the investigation directorate involved. The scheme also ensures the confidentiality of the informant's identity and the information provided. Interim rewards of up to 3% or 1% are available based on the nature of the information, with final rewards capped at ₹ five crores. Additionally, foreign informants can participate, and the scheme outlines procedures for group informants, the handling of false information, and coordination with other reward schemes, such as the Benami Transactions Informants Reward Scheme, 2018.

VII. Whistleblower Provisions In Other Nations.

7.1 USA

The world's first whistleblower protection law was enacted in the United States as early as 1777.

7.1.1 The Whistleblower Protection Enhancement Act, 2012¹⁰

In 2012, the Whistleblower Protection Enhancement Act (WPEA) was introduced to protect federal employees who disclose evidence of waste, fraud, or abuse. WPEA, in essence, states that disclosure will not be negated because it was made to a person involved in the misconduct, so disclosed, and such person includes a supervisor. It is also not affected by the motive of the employee or the whistleblower, and it does not make any difference if the disclosure was made while the employee was not on duty or was made while he was in the normal course of employment, provided that the employee has to show that there has been a retaliation against him.

7.1.2 Sarbanes-Oxley Act, 2002¹¹

For the protection of whistleblowers, as in corporations, the Sarbanes-Oxley Act of 2002 is different from the other whistleblower laws enacted in comparison. Before this enactment, most concerns were related to the health and safety of people in the private sector. They did not deal with matters about shareholder fraud or corporate deviations as they were unrelated to the health or safety of the employees per se. As opposed to this, the concerns raised by government employees for wasteful usage of resources were addressed, such as financial frauds or such, which were a waste of government funds. The public interest in financial abuse in the government sector has always been clear because such abuse wastes taxpayer funds. However, the status changed after introducing the Sarbanes-Oxley Act of 2002.

In light of the corporate scams in the US in 2001, the US Government passed the Sarbanes-Oxley Act of 2002. The act encourages the disclosure of corporate fraud by protecting employees of publicly traded companies or their subsidiaries who report illegal activities.

¹⁰ Whistleblower Protection in India: Need for a Robust Framework *By Avinash Gautam** and *Sandeep Golani* (2020) PL June 68.

¹¹ Whistleblower Protection in India: Need for a Robust Framework *By Avinash Gautam** and *Sandeep Golani* (2020) PL June 68.

Notably, S. 806 of the Act authorises the US Department of Labor to protect whistleblower complaints against employers who retaliate and further authorises the Department of Justice to charge those responsible for the retaliation criminally. Under the section, an employee engages in protected whistleblower conduct by providing information they reasonably believe violates federal mail, wire, bank, or securities fraud federal law relating to fraud against shareholders or any rule or regulation of the Securities and Exchange Commission (SEC).

Further, through the amendment made by the Dodd-Frank Wall Street Reforms and Consumer Protection Act of 2010, a new section for whistleblower protection was added to the Securities Exchange Act of 1934. The relevant section, i.e. S. 21 of the Act, inter alia, provides for whistleblowers, Securities and Exchange Commission Investor Protection Fund, monetary sanctions, a mechanism for awards and the determination of the amount of such awards, representation and appeals procedure, modus operandi of investments and the related interest. Most importantly, the section elaborately mentions the protection of whistleblowers from retaliation by employers. No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower. Lastly, the most laudable provision in the section is confidentiality. The Commission and any officer or employee of the Commission shall not disclose any information provided by a whistleblower to the Commission which could reasonably be expected to reveal a whistleblower's identity except the necessary information to the US Government or for the public interest. Further, as per S. 294(d) of the Dodd-Frank Wall Street Reforms and Consumer Protection Act, 2010, the Commission has established a separate office to administer and enforce the provisions of S. 21-F of the Exchange Act. Such office is known as the Office of the Whistleblower (OWB). It is dedicated to the office's work, which includes, among other things, processing award claims, as well as two attorneys devoted to communications with the public.

7.1.3 False Claims Act ¹²

The United States False Claims Act equips the whistleblowers to receive 15-30% of the total amount, which is decided based on their involvement in the successful investigation of the cases involving fraud committed against the government. This Act has proved to be highly effective and positively impacted the country's whistleblowing scenario.

¹² The need for stringent whistleblower Protection Laws in India By Anushaka Sharma, 2.1 JCLJ (2021) 274.

The United States further offers a great sense of protection to whistleblowers against detrimental practices of bullying, demotions, harassment, etc., by putting in place bodies of great power and authority like the Office of the Special Counsel, which plays a huge role in aiding the whistleblowers and protecting them against any form of retaliation. They have a secure implementation and resolving system that allows employees to stay anonymous while disclosing.

7.2 South Africa¹³

South Africa is regularly considered a country with a broad-gauged whistleblower protection policy. It is often lauded for having protection policies for whistleblowers, irrespective of whether they are private or public employees.

7.2.1 The Protected Disclosures Act, 2017

it shields private and public employees from a safe disclosure and protects them from any detrimental aftermath of whistleblowing.

The primary focus of the PDA lies in protecting the whistleblower from the adversities that might lie ahead for him. Once a whistleblower is subjected to any injustice or detrimental treatment in terms of his employment, the rectifiers can range from availing the aid of the Labour Court or approaching the Commission for Conciliation, Mediation and Arbitration to even getting a transfer to another workplace with no loss in the quality of work and working conditions.

7.2.2 The Labour Relations Act, 1995

This Act has been put in place by the government of South Africa to offer another layer of protection to its whistleblowers under any form of retaliation that a whistleblower might face once he has blown the whistle on the relevant failure.

VIII. Comparative Analysis Of India And US ¹⁴

The laws in the United States of America on whistleblowers are all-encompassing and very stringent. There are different statutes in the USA which contain whistleblower provisions. They all aim to provide guidance and protection to whistleblowers so that they may come forward and report fraud being committed as envisaged under the Indian Act. However, there are some

¹³ The need for stringent whistle-blower Protection Laws in India By Anushaka Sharma, 2.1 JCLJ (2021) 274.

¹⁴ [Whistle Blowers Protection Act, 2014: A cracked foundation? - Whistleblowing - India](#)

features under the US laws which make them strongest in terms of whistleblower laws around the world:

8.1 Protection Of Whistleblowers Against Retaliation

Occupational Safety and Health Act, Taxpayer First Act, FDA Food Safety Modernization Act, Consumer Financial Protection Act, Seaman's Protection Act, Affordable Care Act, Consumer Product Safety Improvement Act, National Transit Systems Security Act, Federal Railroad Safety Act, Pipeline Safety Improvement Act, Sarbanes-Oxley Act, Energy Reorganization Act, Comprehensive Environmental Response, Compensation and Liability Act, Clean Air Act, Solid Waste Disposal Act and Toxic Substances Control Act among others, protect employees for reporting violations of various workplace safety and health, airline, commercial motor carrier, consumer product, environmental, financial reform, food safety, health insurance reform, motor vehicle safety, nuclear, pipeline, public transportation agency, railroad, maritime, securities, tax, antitrust, and anti-money laundering laws and for engaging in other related protected activities.

Under the law, retaliation occurs when an employer (through a manager, supervisor, or administrator) fires an employee or takes any adverse action against an employee for engaging in protected activity. An adverse action is any action which would dissuade a reasonable employee from raising a concern about a possible violation or engaging in other related protected activity. An adverse action can be as subtle as excluding employees from important meetings.

Employees can file a whistleblower complaint under the Occupational Safety and Health Act or other applicable acts. Unlike India, the person appointed to investigate the claims is a neutral party, not a related party to the complainant or respondent. If available, the investigator will investigate the crime, peruse the evidence, and provide its findings and information about the remedies. The parties also have a right to object to the conclusions and appeal the same with an administrative law judge.

India in comparison: Under the Act, the competent authority to whom any complaint on victimisation can be made is usually the senior official in the hierarchy. This makes it difficult for the informant to complain against retaliation or receive protection.

8.2 Protection Of Identity Of The Whistleblower

While the anonymity afforded to whistleblowers differs due to the applicable state and federal laws, most laws in the USA allow for the anonymity of whistleblower complaints. A whistleblower can provide his claims through an attorney, who shall submit all the relevant documents and proof provided by the whistleblower to the requisite authority for investigation while always keeping the whistleblower's identity anonymous.

False Claims Act allows for the whistleblower's identity to be anonymous during the first phase of the investigation while the government investigates. The IRS treats all information as confidential, with strict rules on who can deal with the information. The Motor Vehicles Safety Act allows for the filing of confidential claims.

India in comparison: The Act does not allow anonymous complaints to be submitted, and any anonymous complaints received are not investigated.

8.3 Independent Reporting Channel

All whistleblower complaints are supposed to be reported to an independent arbiter for investigation. There are separate offices established under different laws, with neutral investigators responsible for investigating any claims submitted to them by a whistleblower. They are specifically designed to receive and investigate whistleblower complaints.

India in comparison: Under the Act, any complaint by a whistleblower must be submitted to the Competent Authority as defined under the Act. The Competent authority differs about the person against whom any complaint is made. However, the Competent Authority under the Act is usually the senior official in the same hierarchy as the person against whom a complaint is being made. This negates the neutrality of the investigation, and the findings reached are usually biased.

8.4 Rewards Mechanism

Various US laws provide for reward systems payable to a whistleblower with valid complaints. The mechanism behind the same is unique as it considers the money the whistleblower helped save or recover for the authority by making such a complaint. It then rewards the whistleblower a certain percentage of that amount (which usually varies between 10-30 per cent under different acts). The False Claims Act requires a payment of 15 to 30 per cent of the

government's monetary sanctions collected if they assist with prosecuting fraud in connection with government contracting and other government programs. The Dodd-Frank Act allows payment ranging between 10 per cent to 30 per cent of the monetary sanctions collected if they assist with prosecuting securities and commodities fraud. The IRS whistleblower law requires payment of 15 to 30 per cent of monetary sanctions collected if they help prosecute tax fraud.

Unsurprisingly, this reward amount is not capped at any number. This has led to some whopping payouts being awarded to whistleblowers. The highest paid-out reward amounts to \$104 million to Bradley Birkenfeld, an international banker who blew the whistle on using undeclared Swiss bank accounts by US taxpayers to avoid paying taxes to the IRS. As a result of his disclosure, the treaty between the US and Switzerland was amended to turn over the names of the Americans holding offshore bank accounts.

India in comparison: The Act does not provide for any reward being granted to a whistleblower upon successful investigation of his claims. However, the Securities Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 provides for payment of rewards, at their sole discretion, where the reward is awarded at 10 per cent of the monetary sanctions. However, this reward is capped at Rs. 10 crores.

8.5 Penalties For False Information

With a generous rewards system prevalent in the US, the penalties against false information are as hefty. The False Claims Act provides a penalty of \$23,331 for each separate violation of law plus three times the amount of damages the government sustains. A single fraudulent scheme can involve thousands of such violations.

India in comparison: The Act provides for a punishment in the form of imprisonment of up to two years and a fine, which may extend to up to thirty thousand rupees.

IX. Conclusion

Like every other country, India is fighting its own battle against corruption and abuse. Corruption, like evil, is one of the most deep-settled evils of our society that has found a firm place for itself with time. While it is a collective job of the government of the country and its people to protect themselves and their fellow men from the seed of corruption and gradually throw it out of the system, it is often some set of people who take on greater responsibility than

the others to tackle a social evil. In the case of corruption and abuse, whistleblowers are our heroes who take it upon themselves to make a more vigorous attempt to throw away the seed of corruption in our systems. We should make the road easier for them, and a primary way to do that is through stronger legislation. As discussed in this article, the gap in clarity of legislation between India and other countries is noticeable. It makes one feel saddened by the actual state of whistleblowers in India. Without any explanation, the disparity between public and private employees is one of the most significant contributors to a thousand voices being shushed and the mistreatment of whistleblowers. India can take inspiration from the imperfect yet progression-oriented whistleblower legislation of the United States, the United Kingdom, and South Africa. Picking and imbibing the best provisions of law that India feels will bring in new hope should be encouraged.

