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# Safety of a Whistle-blower and How Faithful will be Heard: An Indian Perspective

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## ABSTRACT

*Yes, the world is a dangerous place equally because of people who know and do nothing. But there are certain people in the corporate society who catch the wrongdoings. The phenomenon is termed as "Whistle Blowing" in the corporate and public affairs so called "white collar society" There is a different perspective to Whistle*

*There is a different perspective to Whistle Blower or Whistle blowing, one may say that Whistle blowers are individuals who expose corruption and fraud in organizations by filing a law suit or a complaint with Government authorities that prompts a criminal investigation in to the organizations alleged behaviour or term them as negative words like informers" and "snitches"*

*Whistle Blowers can be an Employee who, perceiving an organizational practice that he believes to be illegal or unethical, or an attempt by an employee or a former employee of an organization to disclose what he proclaims to be wrong doing in or by that organization or is the one who releases the information of an organization which is the evidence of illegal and/or immoral conduct in the organization which is not in the public interest.*

## I. INTRODUCTION

*The world is a dangerous place, not because of those who do evil, but because of those who look on and do nothing- Albert Einstein*

Yes, the world is a dangerous place equally because of people who know and do nothing. But there are certain people in the corporate society who catch the wrongdoings. The phenomenon is termed as "Whistle Blowing" in the corporate and public affairs so called "white collar society" There is a different perspective to Whistle<sup>2</sup>

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<sup>2</sup> Name of Conference: International Conference on "Paradigm Shift in Taxation, Accounting, 23 |Page Finance and Insurance"

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## **II. THE HISTORY**

History has always witnessed a direct or indirect means for a whistle blowing techniques, who revealed the inside information to others. Ancient Greeks talked about whistle blowing centuries before. Even in Ancient India, the concept of a Whistleblower was in existence, it was proposed by the Kautilya that any informant (súchaka) who supplies information about embezzlement just under perpetration shall, if he succeeds in proving it, get as reward one-sixth of the amount in question; if he happens to be a government servant (bhritaka), he shall get for the same act one-twelfth of the amount.

## **III. INCEPTION IN INDIA**

The laying stone for Whistle-blower Protection Act 2011 was triggered by the disgraceful incidents of threatening, harassment and even murder of various whistle-blowers:

- An engineer, Satyendra Dubey, was murdered in November 2003; Dubey had blown the whistle in a corruption case in the National Highways Authority of India's Golden Quadrilateral project.
- In 2005, an Indian Oil Corporation officer, Shanmughan Manjunath, was murdered for sealing a petrol pump that was selling adulterated fuel.
- A Karnataka official SP Mahantesh, was working as Deputy Director of the audit wing in the state's Cooperative department and had reported irregularities in different societies involving some officials and political figures. He said to be a whistle-blower in controversial land allotments by societies was murdered in May 2012.
- Mahantesh a senior police officer alleged that Mayawati's government was corrupt and had embezzled large amounts of money. Shortly thereafter, he was sent to a psychiatric hospital.

This raised a question about the Protection of people who know and blew the wrong doings off the Governments. A demand from quarters came that a law should be framed to protect the whistle-blowers, to facilitate the disclosure of information and uncover corruption in government organisations.<sup>3</sup>

#### **IV. THE JOURNEY**

In March 2011, the Supreme Court refused to frame guidelines for protection of whistle blowers in the country, saying that it cannot make law. However, the court allowed the petitioners to approach the high court for protection of whistle-blowers in a specific case. In August 2013, a bench of Justices K S Radhakrishnan and Arjan Kumar Sikri ruled that identity of whistle-blower can never be revealed to the accused facing prosecution under Prevention of Corruption Act, 1988. In June 2011, a parliamentary panel recommended that ministers, the higher judiciary, security organisations, defence and intelligence forces and regulatory authorities be brought under the whistle-blowers' protection bill to check corruption and the wilful misuse of power. The bill was passed by the Lok Sabha on 27 December 2011. The Bill was and by the Rajya Sabha on 21 February 2014. The Bill received the President's assent on 9 May 2014.<sup>4</sup>

#### **V. THE AMENDMENT**

The Modi Government has proposed to amend the Whistle-blowers Protection Act, of 2011 (WBP Act) in the House of commons. Parliament passed the WBP law in February 2014 which was subsequently promulgated in May. The Government has not implemented this law which established a statutory mechanism for whistleblowing about cases of corruption, abuse of power or misuse of power or authority at our own discretion. The purpose is to cause undue losses to the public exchequer or undue gain to a third party or any offence recognized by law.

There are opinions that the law is used to weaken the law. The law stipulates that anyone, including government officials or non-governmental organizations, can provide relevant authorities with information of public interest. The provisions of the National Secrets Act of 1923. Article 8 of the law stipulates that certain matters will not be disclosed, such as information affecting India's sovereignty and integrity interests, national security, friendly relations with foreign countries, public order, decency or morality, or contempt of court,

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<sup>3</sup> Srividhya.S, Stalin C.Shelly (2009). Whistle Blowing Protection – A watch dog for the organization. *International Journal of social science and Interdisciplinary research* Vol.1,204-211.

<sup>4</sup> Samar Srivastava (2013). Why Whistle Blowing is so hard in India. A blog in Forbes India

defamation or incitement Crime-related-

- As it might involve the disclosure of proceedings of the Cabinet of the Union Government or any Committee of the Cabinet;
- As it might involve the disclosure of proceedings of the Cabinet of the State Government or any Committee of that Cabinet.

The revised law adds other reasons why information should not be disclosed, such as:

- Business trust, trade secret or intellectual property information, if such information is not disclosed to the plaintiff in accordance with the 2005 "Right to Information Law", it will adversely affect the competitive position of third parties;
- According to the "Right to Information Law of 2005", any information obtained by any person as a trustee or relationship has not been disclosed to the complainant;
- information that may endanger personal life or personal safety after being disclosed, or information that identifies the source of any information or assistance provided confidentially for security or law enforcement purposes;
- information, which would impede the process of investigation or apprehension or prosecution of offenders;
- personal information, the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of Anyone's privacy, if the information is not disclosed to the plaintiff in accordance with the 2005 Information Right Law.<sup>5</sup>

## VI. CONCLUSION

We need to protect the good people who look at the bad or evil and speak out. It should not be a situation in India where "A bad system will beat a good person every time"

whistle blowing is about reporting or publicizing wrongdoing. There may be a risk of retaliation, which could lead to loss of employment, relationship and mental wellbeing, but the consequences of not reporting can be very grave. Therefore, whistle blowing rules and regulations should be enforced in order to protect the welfare of whistle-blower, as well as encouraging whistle blowing culture in the workplace. This is to ensure that an organization is always free from any fraudulent and illegal act that may harm the organization and jeopardize the society.

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<sup>5</sup> Priyanka Biswas (2015). Role of Employees in Corporate Governance with reference to Whistle Blowing Policy. *Academike Lawctopus Law Journal and Knowledge centre*.

It has to be seen that the Act does not become a Paper tiger like the Benami Transactions (Prohibition) Act, 1988 and proper rules should be formulated and passed to give better effect and force to the Whistle-blowers Protection Act 2011.

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