

## **Whistle Blowing Mechanism- A Move towards Better Corporate Governance**

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### **1. Introduction**

“Whistleblowers protection is a policy that all government leaders support in public but few in power tolerate in private” –

**Thomas. M. Devine**<sup>i</sup>**Whistleblowing law** is related to Wrongful Termination law and includes the statutes that protect employees from being terminated or otherwise discriminated against in retaliation for exposing suspected dishonest or illegal activities or wrong doings that violate the public trust, occurring in their place of employment. Although the term “whistleblower” is generally associated with government workers who report government fraud, these laws actually offer protection to employees of public or private companies, as well as government agencies. Some of these statutes also make provisions for monetary awards for employees who expose an employer who is guilty of these types of violations.<sup>ii</sup>

### **2. Relevance of the Study-**

Whistleblowing Mechanism- a move towards better Corporate Governance will help to understand the model and framework of Whistleblowing in India with the objective of protection of the whistleblowing and ensuring better corporate governance. Thus the study involves lessons from UK, USA and India in context of Whistleblowing.

### **3. Objectives of the Study**

The study on "Whistleblowing Mechanism- a move towards better Corporate Governance" is done with basic objectives as here under:

- To understand the evolution and concept of whistleblowing.
- To compare the mechanism across different Countries.
- To highlight the provisions of acts in India to prevent whistleblowing.

- To understand the importance of whistleblowing for a good corporate governance

#### **4. Research Methodology**

The research is based on the information collected from various secondary sources. Articles published in leading journals, newspapers, and websites have been referred to in conducting the study.

#### **5. Conceptual Framework**

In order to understand the concept whistle blowing, the term Corporate Governance needs to be understood. Corporate governance means a system by which companies are managed and controlled. ( “Sir Adrian Cadbury”)<sup>iii</sup> For a good governance it is really important to report anything wrong happening in a company, institution or an economy. In the words of “Near and Miceli, 1985” whistleblowing is defined as disclosure by organisation members (former or current) of illegal, immoral or illegitimate practices under the control of their employees, to persons or organisations that may be able to effect action.<sup>iv</sup>

There are two types of whistleblower: the internal whistleblower and the external whistleblower. An internal whistleblower reports the misconduct to another person working within the place of business, such as another employee or a superior. An external whistleblower, however, reports the misconduct to an outside agency, such as the media, a lawyer, law enforcement or special protective agencies.<sup>v</sup> External whistleblowers have less tenure with the organization, greater evidence of wrongdoing, and they tend to be more effective in changing organizational practices. External whistleblowers also experience more extensive retaliation than internal whistleblowers, and patterns of retaliation by management against the whistleblower vary depending on whether the whistleblower reports internally or externally. (Dworkin, Baucus, 1998)<sup>vi</sup>

The act of whistleblowing is not meant to cause harm to the organization, rather, it is to facilitate the exposure of committing questionable acts by a party that may harm the interests of the organization and such an act is also against the values of the organization (Miceli and Near, 1988).

#### **6. Victimisation & Retaliation**

The people in a country feels not to come forth and report wrongful actions against higher authority. They fear being victimised. Legal provisions in any county must ensure that no person or a public servant who has made a disclosure is victimised by initiation of any proceedings or otherwise merely on the ground that such person or a public servant had made a disclosure. (Whistle Blowing Protection Bill, 2010)

The employees’ fear of retaliation in form of retrenchment from job, demotion in the career, prosecuted due to the disclosure of sensitive and confidential information.

Also this can be in form of cutting salary or benefits, transferring the whistleblower to a dead-end job or office, harassing or isolating him or her, often in an effort to get the whistleblower to leave employment voluntarily, taking other punitive action<sup>vii</sup>

They may be threatened mentally, physically and in other forms, forced to work extra and exposed to coercion. Hence it is strongly required that the whistle blowing policy should be made an integral part of the corporate policy. An ombudsman should be assigned responsibility to overlook the cases of wrong doing in a company. There should be various mechanisms to report and coordination of the entire process. The whistle blowers should be encouraged and their confidence should be enhanced so that they are in a position to report if anything unethical happens. Protection should be provided to the bona fide whistle blowers. The system should discourage malicious whistle blowers, who report anything against the company to tamper their reputation. (PwC Belgium 2011).

## **7. Legislations Across Countries**

**UK-** the **United Kingdom** is one of the first European states to legislate on the protection of "whistle-blowers". The Public Interest Disclosure Act 1998 was enacted to protect workers from suffering a detriment, or being dismissed by their employers for raising concerns about serious misconduct or malpractice that threatens the public interest.<sup>viii</sup> The PIDA gives protection against victimisation or dismissal to "whistle-blowers", covering both private and public sector employees, voluntary sector employees, as well as other workers including agency staff, home workers, trainees, contractors and all professionals in the National Health Service (NHS), who raise concerns about serious fraud or malpractice at their work place, provided they have acted in a responsible way in dealing with the concerns, that they make the disclosure in good faith, that they reasonably believe the information to be substantially true and provided they do not act for personal gain.<sup>ix</sup>

**US-**U.S has a lot of provisions for federal employees. There are different Acts enacted at different levels which tries to protect the employees from illegal actions of the companies and rewarding whistleblowers at the same time. Some of these acts are- The False Claim Act ,IRS Whistleblower Informant Award, The Occupational Safety and Health Act, State Whistleblower Law ,Sarbanes Oxley Act, Whistle Blower Protection Act. The Corporate and Criminal Fraud Accountability Act of 2002, better known as the Sarbanes-Oxley Act, provides protection to the Employees of Publicly Traded Companies.(section 806)<sup>x</sup> The Whistleblower Protection Act of 1989 is a United States federal law that protects federal whistleblowers, or persons who work for the government who report agency misconduct.<sup>xi</sup>

**INDIA-**At present India does not have any law to protect whistleblowers, though a bill for the purpose has been made. It still has to be passed to give it a status of an Act. The killing of whistle blowers Manjunath Shanmugam and Satyendra Dubey and many Right to Information activists by anti-socialist and vested interests has drawn the attention of the government to draft the Bill.The Public Interest Disclosure (Protection

of Informers) Bill, 2010 has been prepared by the department of personnel and training (DoPT). As per the draft law, any person can make a complaint of corruption or disclosure against any central government employee or central government-backed institution to the CVC. In 2011 the Whistle Blower protection Bill 2011 has been prepared which is applicable to Federal / government employees.

*LISTED COMPANIES*-The Whistle Blower Policy encourages employees to report questionable accounting matters and enables the whistle blower to approach the committee if any unjust happens in the companies they are a part of. In this context SEBI vide its circular dated 26th August, 2003 introduced the concept of Whistle Blower Policy under Part IV of Clause 49 of Listing Agreement it stipulated that every listed company should formulate a policy that allows employees to report unethical and improper practices against those occupying the higher positions in their companies without any fear of suspension or retrenchment. The revised Clause 49 which came into existence vide circular dated 29th October, 2004, incorporates "Whistle Blower Policy" under non mandatory section. Further, a company's personnel policy should provide a mechanism to protect whistle blowers from "unfair termination and other unfair prejudicial employment practices". It is mandatory for the company to have adequate measures to ensure that right of access is communicated to all employees through internal circulars, memo etc.<sup>xii</sup>

## 8. Whistle Blower Protection Limitations

The provisions of whistle blowing vary from country to country. Even policy differs in public and private institutions, listed and unlisted companies.

However certain reasons as to why people feel reluctant to blow the whistle may be due to fear that they might be thrown out of the company. They have a fear of retaliation and prosecution. They feel that disclosing the issues about company outside, is a breach of loyalty and confidentiality. In several instances, the lack of a transparent, open and constructive culture causes non-reporting. Top and line management often are not open for discussion and are unwilling to listen to bona fide whistleblowers who act in the best interest of their institutions. (PwC Belgium 2011)<sup>xiii</sup>

## 9. Conclusions

It is really important for a society to eradicate unlawful, unethical practices so make the social and economic system sound. Whistleblower law provide us with the guidelines and the procedure to report such issues against any company or institution. Clear understanding of the law is necessary in order to have a uniform policy to protect the whistle blowers. In India the status of this level of protection is just confined to the listed companies. That too it is a part of non-mandatory requirement of clause 49 of the listing agreement.

Since all the companies listed with stock exchange in India has to comply with only the mandatory requirements of clause 49, and the whistleblowing clause features

in the non-mandatory requirement, it is not compulsory for the companies to have a whistle blowing mechanism. Yet we see most of the top companies do have this provision. The annual reports of companies show that to have the ethical governance in their company they employ such policies that gives an opportunity to the employees to report. On the part of the government, the Whistle Blower Protection Bill has also not been passed and it is necessary to pass such bill across legislations to give an economy a better picture.

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