
WHISTLEBLOWING AS A CRIME OR DUTY: A JURISPRUDENTIAL DILEMMA

Raunak Singh, Symbiosis Law School, Hyderabad

ABSTRACT

This article examines the complex legal and moral dimensions of whistleblowing, exploring whether the act should be classified as a criminal offence or a moral duty. Whistleblowers often act in the spirit of loyalty to uphold democratic values and public interest, but as a result, they frequently face harsh consequences ranging from job loss and social isolation to legal prosecution and even death. Through a jurisprudential perspective, the paper highlights the conflict using the theories of Natural Law and Rawlsian justice to question whether obedience to law should always supersede ethical obligations.

The article includes a comparative legal analysis of whistleblower protection frameworks in countries like India, the United Kingdom, and the United States, while it is also critiqued for its limited scope and lack of enforcement. Landmark case studies such as those of Satyendra Dubey, Shanmugam Manjunath, Edward Snowden, and Chelsea Manning highlight the real-world consequences of exposing wrongdoing.

The article concludes by advocating for stronger, uniform, and more humane legal safeguards that should be implemented at the global level, asserting that protecting whistleblowers is not merely a legal formality but a democratic and ethical necessity.

Understanding the Concept and Evolution of Whistleblowing

The term ‘whistleblowing’ gained popularity in the 1950s, symbolizing the act of sounding an alarm, much like a referee or police officer, to call attention to wrongdoing. Initially, the term was used in a limited sense under consumer protection, but now it broadly applies to exposing corruption, fraud, and misuse of authority.¹

Whistleblowing can be explained as the voluntary disclosure of wrongful acts of other members within an organization, such as fraud, corruption, threats to public health or safety, by individuals who are part of that organization. There exist two main modes through which whistleblowers can report: Internal whistleblowing, which includes reporting to supervisors or internal compliance channels, and External whistleblowing, which includes reporting to regulators, media, or public forums.

According to the 2009 summary provided by the *U4 Anti-Corruption Resource Centre*², there exist various definitions of whistleblowers, but have four key characteristics that are common to all³:

- “It typically refers to wrongdoings connected to the workplace.
- It can involve a breach of the law, unethical practices, corruption, health/safety violations, and in some cases, maladministration.
- Wrongdoings are usually reported internally or externally.
- As opposed to personal grievance, there is often a public interest dimension.”

The Bloody Price of Bravery

History can be traced back to witness various incidents around the world where whistleblowers suffered grave consequences for their courageous act, among many of them, a few left a

¹ Emanuela Ceva & Michele Bocchiola, *Is Whistleblowing a Duty?* (Polity Press 2019)

² Hannes Hechler, *UNCAC in a Nutshell: A Quick Guide to the United Nations Convention Against Corruption for Embassy and Donor Agency Staff*, U4 ANTI-CORRUPTION RESOURCE CENTRE (Apr. 2013), <https://www.u4.no/publications/uncac-in-a-nutshell-a-quick-guide-to-the-united-nations-convention-against-corruption-for-embassy-and-donor-agency-staff.pdf>.

³ Ruggiero Scaturro, *Defining Whistleblowing*, IACA Research Paper Series No.5 (2018), https://www.iaca.int/images/Research/Research_paper_05_Ruggiero_Scaturro_final.pdf.

remarkable effect; in the case of **Satender Kumar Antil v. Central Bureau of Investigation & Ors**, Satyendra Dubey, an engineer working with the National Highways Authority of India was tragically murdered in 2003 after he reported a serious corruption taking place by certain members Golden Quadrilateral highway project. Although he sent his complaint confidentially to the Prime Minister's Office, his identity was exposed, and his death triggered widespread anger, which eventually led to the drafting of India's Whistleblowers Protection Act, 2014.⁴

In **State of Uttar Pradesh v. Suresh Kumar Agarwal & Others**, Shanmugam Manjunath, a sales officer at Indian Oil Corporation and an alumnus of IIM Lucknow, was killed in 2005 after he sealed a petrol pump for selling adulterated fuel. He was abducted and later shot to death. The Allahabad High Court sentenced the criminals involved, including the petrol pump owner, to life imprisonment. His death became a symbol of the high cost of integrity in public service.

Mr. S. Murdoch v. Cornwall Air Ambulance Trust⁵ is a landmark case of the UK; Steve Murdoch, a former Chief Operating Officer at Cornwall Air Ambulance Trust, reported that his successor had provided misleading information on his resume. Instead of acting on his disclosure, the organization started discriminating against Murdoch and excluded him from taking part in the decision-making processes of the company. He ultimately resigned. The Employment Tribunal ruled in his favour, recognizing his treatment as constructive unfair dismissal under the *Employment Rights Act 1996*.

Another landmark case that took place in the US was **United States v. Edward J. Snowden**.⁶ Edward Snowden, a former contractor for the U.S. National Security Agency, leaked confidential documents in 2013 that exposed global surveillance practices. He was charged under the *Espionage Act* and later fled to Russia to avoid prosecution. Although he was considered a fugitive by the U.S. government, many civil rights advocates regard him as an unsung hero who acted in defence of privacy and democratic transparency.

⁴ Satender Kumar Antil v. Cent. Bureau of Investigation, (2022) 10 S.C.C. 51 (India).

⁵ *Mr. S. Murdoch v. Cornwall Air Ambulance Trust*, Case No. 1404697/2021, Emp. Trib. (Eng.) (Feb. 22, 2024), <https://www.gov.uk/employment-tribunal-decisions/mr-s-murdoch-v-cornwall-air-ambulance-trust-1404697-slash-2021>.

⁶ U.S. Dep't of Justice, Office of Pub. Affairs, *United States Obtains Final Judgment and Permanent Injunction Against Edward Snowden* (Oct. 1, 2020), <https://www.justice.gov/opa/pr/united-states-obtains-final-judgment-and-permanent-injunction-against-edward-snowden>.

In *United States v. Bradley Edward Manning*, Chelsea Manning, a former U.S. Army intelligence analyst, released a large collection of classified military and diplomatic documents to WikiLeaks, which exposed the civilian deaths and controversial war conduct. She was convicted under the *Espionage Act* and sentenced to 35 years of imprisonment, though her sentence was later reduced. Her actions sparked worldwide discussions about how much secrecy is acceptable and whether it is right to break the rules to reveal the truth.⁷

Conflict of Law and Morality

The above-presented cases clearly give a full picture of the jurisprudential dilemma in question. The acts of loyalty to the public and driven by a moral spirit have often come at a high cost to them; many lost their lives while others have faced character assassination, loss of livelihood, and have been left to live a miserable life. This raises a troubling question: has society reached a point where good deeds and the courage to protect others from harm are no longer valued? Instead of being rewarded and honoured for their risk-taking efforts, they are being treated as criminals in the eyes of the law.

Currently, the world is witnessing an alarming rise in complex and heinous crimes that neither society nor lawmakers would have imagined. The real criminals continue to find legal loopholes to escape easily. But those who exposed the systematic problems are left to bear the burden of stigma and legal persecution. Although many nations have made whistleblower protection laws but their actual and complete application remains largely ineffective.

A whistleblower might technically violate the law, but they do so for the greater good by upholding the higher ideals of justice, accountability, and democratic governance. Thus, the question remains: when should moral courage outweigh legal obedience?

According to “*Natural Law theory*”, a higher universal moral order that is above any human-made laws. It says, if a statute stands silent in the face of corruption, injustice, or widespread harm, the individual is not only justified but has a moral obligation to disobey the law in favour of the greater good.⁸

⁷ United States v. Manning, Docket No. ARMY 20130739, 78 M.J. 501 (Army Ct. Crim. App. May 31, 2018).

⁸ Ronald A. Dworkin, “‘Natural’ Law Revisited,” 34 U. Fla. L. Rev. 165 (1982).

Another scholar, John Rawls, in his work “*Theory of Justice as Fairness*”, supports civil disobedience and action for saving when institutions fail to uphold justice merely in the name of law. Rawls regards a just society as one in which the most vulnerable are protected and liberty is meaningful. When whistleblowers expose the threats to democracy, human rights, or public safety, then in Rawlsian terms, they are acting in support of the “common good” and protecting fairness where established systems have failed to do so.⁹

Are safeguards enough?

This dilemma becomes more urgent to be addressed when we look at and analyse different legal frameworks globally that claim to protect whistleblowers but still fail in execution. The conflict between ethical obligations and legal frameworks has forced numerous countries to enact specific whistleblower protection laws. However, these laws differ widely in scope, strength, enforceability, and underlying philosophy.

For the protection of whistleblowers, India has enacted the *Whistleblowers Protection Act, 2014*, which provides provisions for reporting crimes of corruption and misuse of power only by the public servants. The act made it compulsory to reveal the identity while reporting the crime, even though it promises to protect whistleblowers and maintain confidentiality, for example by imposing penalties that include up to three years of imprisonment or a ₹50,000 fine for disclosing a complainant’s identity which still makes it ineffective if proper and adequate mechanisms in application are not followed. Also, the time period for filing a complaint has been extended only up to seven years, and no rewards or incentives are mentioned for their risk-taking actions.¹⁰

Although the corporate or private sector claims that *Section 177 of the Companies Act, 2013*¹¹ mandates them to set up their own vigilance system, in implementation, it's actually weak, possibly due to a lack of assigned funds and high expenses, making it a futile provision.

Judicial precedents have still tried to expand protection. In *Common Cause v. Union of India* (2015)¹², the court held that the disclosure made in public interest, even if it violates the *Official*

⁹ Brian Barry, *Theories of Justice: A Treatise on Social Justice* vol 1 (Univ. of Cal. Press 1989).

¹⁰ Asmita Phukan, *The Whistle Blowers Protection Act, 2014: A Critical Analysis*, 5 IND. J.L. & LEGAL RES. 3634 (2023), <https://www.ijllr.com/post/the-whistle-blowers-protection-act-2014-a-critical-analysis>.

¹¹ Companies Act, 2013, No. 18 of 2013, Acts of Parliament, § 1 (India) (amended 2023), gov't of India, Ministry of Corporate Affairs, <https://www.mca.gov.in/content/dam/mca/pdf/CompaniesAct2013.pdf>.

¹² *Common Cause (A Regd. Soc.) v. Union of India*, (2015) 6 S.C.C. 332; AIR 2015 S.C. 2286 (India).

Secrets Act, was not said to be violative unless made with a malicious intent. Similarly, **Manoj H. Mishra v. Union of India** (2013)¹³ stated good faith as a key aspect if the disclosure is made in the interest of the public, and should not be treated as a crime.

Now, when we look at the UK's *Public Interest Disclosure Act, 1998 (PIDA)*, which serves as the primary law enacted for the protection of whistleblowers. It safeguards employees from being discriminated against or fired when they expose wrongdoings in the public interest. The Act lays out all criminal offences, which include violations of safety, health, and environmental damage. It provides only for internal disclosure, but still, external disclosure can be made only on the ground of failure of the internal mechanism or in extremely serious cases.¹⁴

The *Financial Times* is a renowned British daily newspaper that is a well-known platform that shares economic and business news. In one of its articles, it claims that growing reliance can be seen on PIDA, with a 92% increase in cases taken up by tribunals related to public disclosure by Whistleblowers.¹⁵ The landmark case of Steve Murdoch, which ruled in favour of the whistleblower, was a remarkable beginning of whistleblower protection laws.

While analysing the US's laws that have been enacted for the protection of whistleblowers, we can see the multiplicity of statutes and legal frameworks. There is not one single document of laws for whistleblower protection spread among many acts.

*False Claims Act (1863)*¹⁶, empowers whistleblowers to file a case against anyone who is defrauding the government by misusing their funds, and it is assumed that the case is filed on behalf of the government by the whistleblower (*qui tam*), and if he wins, then 15-30% of the funds are given to the whistleblower as a reward.

The *Whistleblower Protection Act (1989)* protects federal employees who report misuse of power by the government.¹⁷

¹³ Manoj H. Mishra v. Union of India, AIR 2013 S.C. 2809 (India).

¹⁴ David B. Lewis, *The Public Interest Disclosure Act 1998*, 27 Indus. L.J. 325 (1998), <https://doi.org/10.1093/ilj/27.4.325>.

¹⁵ *Whistleblowing Cases on the Rise in U.K.'s Employment Tribunal System*, 2024 WLNR 20240729130 (Fin. Times July 29, 2024).

¹⁶ V.R. Park, *The False Claims Act, Qui Tam Relators, and the Government: Which Is the Real Party to the Action*, 41 STAN. L. REV. 489 (1989).

¹⁷ L. Paige Whitaker, *The Whistleblower Protection Act: An Overview*, CRS Report RL33918 (Mar. 12, 2007).

Further, *the Dodd-Frank Act (2010)* offers whistleblowers a reward of around 10-30% for exposing misconduct in the financial sector.¹⁸

The judiciary has also taken considerable steps to expand the ambit of protection. In the case of *Huffman v. Office of Personnel Management (2021)*¹⁹, the court held that a Whistleblower's disclosure made outside official channels, like the media, is still protected under the *Whistleblower Protection Act (1989)*.

W. De Maria, who is a prominent scholar, founder of the Queensland Whistleblower Action Group, and a principal researcher in the Queensland Whistleblower Study, in one of his critical reviews, talks about Australia's and New Zealand's whistleblower laws, which lack real implementation and remain merely in words. He highlights the futility of laws enacted in such a way that violates whistleblowers' freedom by putting restrictions on disclosures, which have to be first approved by authorities in the name of "good-faith", sometimes even censored, and limiting only to disclosures of the public sector and excluding the private sector.²⁰

A Global Comparison

While examining the laws of individual jurisdiction, it becomes essential to see the bigger picture, like the views of a global organization. The OECD's 2017 report on G20 whistleblower laws shows that implementation, enforceability, scope, and incentive mechanisms of many countries differ from each other and lack uniformity. India has scored below average in this report due to its applicability only in the public sector and not in the private sector. Further, this report states that the judiciary and courts around the world have sought to support and expand the protection laws of whistleblowers.²¹

Building a Stronger Shield

Through examination, a wider picture of the law on whistleblowers' protection is at different stages of evolution throughout the world and lacks uniformity. Many countries have these laws, but merely in symbolic form and lack real implementation. But beyond all of these debates, a

¹⁸ Catherine Moore, *The Effect of the Dodd-Frank Act on Arbitration Agreements: A Proposal for Consumer Choice*, 12 Pepp. Disp. Resol. L.J. 103, 103 (2012), <https://digitalcommons.pepperdine.edu/drlj/vol12/iss3/4>.

¹⁹ *Huffman v. Office of Pers. Mgmt.*, 263 F.3d 1341 (Fed. Cir. 2001).

²⁰ William De Maria, *Whistleblowing*, 20 Alternative L.J. 270 (Dec. 1995).

²¹ OECD, *Committing to Effective Whistleblower Protection* (Paris: OECD Publishing 2016), <https://doi.org/10.1787/9789264252639-en>.

vital question exists: whether these protections are truly adequate and what reform India and other countries should take into consideration to achieve sufficiency and uniformity in laws for the protection of whistleblowers.

In India, the *Whistleblowers Protection Act, 2014*, is in reality a weak framework as it excludes the disclosures of the private sector, which is one of the main drawbacks, since acts of corruption and malpractice are not just limited to the public sector alone. Also, the act does not allow anonymous complaints, which prevents whistleblowers from speaking up due to fear; there are no financial incentives to encourage and reward such acts of bravery, and the few internal investigative authorities that exist often lack independence and sometimes give biased opinions. In order to overcome these issues, India should expand the Act to cover private sector employees and NGOs, introduce more secure provisions for anonymous reporting, and establish an independent authority with investigative powers. Financial rewards, legal aid, and public awareness initiatives should also be implemented to encourage whistleblowing and reduce the fear and stigma attached to it.

The UK's *Public Interest Disclosure Act (PIDA)* strongly safeguards employment but doesn't include incentives and material rewards. Although the law includes disclosures both internally and externally, it still remains less effective due to complex formalities and long tribunal proceedings, which discourage whistleblowers from coming forward due to time restrictions and a lack of knowledge of the legal know-how. Proposals to introduce incentives are still under debate, and critics fear that people might start taking advantage of it and report small or false issues, which might further lead to more troublesome situations and a burden on courts. The UK should include reforms like simplifying tribunal procedures and providing more legal support for whistleblowers. An adequate system of financial rewards could be introduced to give recognition for genuine disclosures while stopping all sorts of abuse. Further, the scope of protection can be expanded to include contract workers, volunteers, and so on. Also, specialized training should be provided to employers and tribunal members to handle whistleblower cases sensitively and effectively.

If we take a close look and try to compare the Whistleblower protection laws of other countries to those of the United States, we will be able to see that the United States has one of the most advanced laws in this area. The laws provided by them are not in one single document and are spread into various places, but serve the purpose of the enactment of the laws by providing

together gives a comprehensive and enough laws for the protection of whistleblowers like the *False Claims Act (FCA)*, whistleblower program under *Dodd-Frank Act* which also provide monetary incentives proportionally to their contributions. These provisions have led to positive results since they have given whistleblowers motivation to report the wrongful acts and have financial safeguards, even if they lose their means of livelihood. However, it still has the drawback of getting false reports to get money wrongfully. The U.S. should consider compiling its various statutes into a unified Whistleblower Protection Code, which provides easy access. It should take steps to enhance safeguards against malicious reporting, which should be penalized for wasting the time of the courts, provide for psychological support services, and increase public accessibility to whistleblower programs through activities like campaigns, particularly for marginalized communities.

On a global level, practices across the world show that an ideal system should be a mix of both monetary and non-monetary incentives, which should ensure that not just financial but mental support is also provided, and anonymously which makes sure that individual files complaint without any fear, and given strong validation protocols to prevent the misuse of the system.

Conclusion

The risks faced by whistleblowers across the globe are severe and life-threatening. It not only includes physical danger but also loss of employment, isolation, and legal consequences for violating the confidentiality of the laws. Moreover, even after making disclosures, whistleblowers undergo extensive legal investigation, which also causes them mental and emotional distress. They make disclosure not for personal gain, but to uphold truth when the system has failed to. They are not just reporter of crimes but real defenders of democracy, silent warriors of accountability, and the conscience that many institutions lack. Their bravery is worthy of rewards and not punishments.

Such a system will only let down the people who dare to speak the truth. The real question is not whether we have whistleblower laws, but whether we truly value the truth they bring forward.

If a society measures its strength by how it treats those who speak truth to power, then protecting whistleblowers isn't a legal formality, but it's a moral necessity. Until their courage is met with gratitude rather than grief, the justice we aspire for remains incomplete.