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# THE COLOSSUS OF CORRUPTION AND THE FUTILE QUEST FOR ACCOUNTABILITY: INDIA'S WHISTLEBLOWER PROTECTION LAW IN LIMBO

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Dr. Sandli Brice, Advocate, Himachal Pradesh High Court, Ravenswood, Shimla,  
Himachal Pradesh (India)

## ABSTRACT

Corruption, a pervasive malaise, has crippled India's socioeconomic development. To combat this, the Whistleblower Protection Act was enacted in 2014. However, the Act's implementation remains a distant dream for many. From the tragic demise of *Satyendra Dubey* to the more recent challenges faced by Air Asia pilot *Gaurav Taneja*, the history of whistleblowing in India is marked by a disturbing pattern of retaliation. These cases underscore the urgent need for effective whistle-blower protection. This study underscores the significance of whistleblowers as catalysts for change, exposing the systemic flaws that impede their efficacy. It analyzes the Act's provisions, strengths, and weaknesses, highlighting the need for robust implementation mechanisms. This study further explores the socio-economic implications of corruption and the role of whistleblowers in mitigating its adverse effects. Through comparative analysis this study identifies critical gaps in the Act and proposes recommendations for strengthening its efficacy. The study concludes by emphasizing the urgent need for comprehensive reforms to empower whistleblowers and foster a culture of accountability and transparency. Key challenges faced by whistle-blowers due to the non-implementation of the Act, such as fear of retaliation, lack of protection, and inadequate support mechanisms, are highlighted, underscoring the imperative for immediate action.

**Keywords:** accountability, corruption, whistleblower, retaliation, socio-economic, transparency.

“Power tends to corrupt, and absolute power corrupts absolutely.” - Lord Acton<sup>1</sup>

## 1. Introduction

Corruption in India is a phantom, a ghost that haunts every corner of the country.<sup>2</sup> Its presence is so pervasive and normalized<sup>3</sup> that it has become as invisible as the air we breathe, yet as suffocating as thick fog. Imagine a silent thief that pilfers 1.5% of India's GDP growth each year.<sup>4</sup> This is not a hypothetical villain but the harsh reality of corruption. This insidious force cripples the nation's economic potential and weakens its social fabric. The World Economic Forum paints a bleaker global picture, estimating the cost of corruption to be at least 5% of the global GDP<sup>5</sup>, translating to a staggering \$3.6 trillion per year.<sup>6</sup> Corruption acts as India's kryptonite, stealing billions from the public purse, weakening vital infrastructure, and eroding trust in institutions. The United Nations identifies corruption as an invisible villain that blocks the path to a better world. This villain stands in the way of achieving the 2030 Sustainable Development Goals (SDGs), a roadmap for eliminating poverty, hunger, and lack of education, well-being, and infrastructure.<sup>7</sup> As, *António Guterres* aptly said corruption is “*an assault on the values of the United Nations.*”<sup>8</sup> Corruption has woven itself into the fabric of Indian society, tainting everything from daily interactions to government halls. Transparency International's 2023 Corruption Perceptions Index paints a grim picture, ranking India 93<sup>rd</sup> out of 180 countries in terms of corruption.<sup>9</sup> India faces a notably higher level of corruption than the global average.<sup>10</sup> This widespread issue required urgent attention. Corruption is like a disease<sup>11</sup> that

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<sup>1</sup>BRIAN MARTIN, *INFORMATION LIBERATION CHALLENGING THE CORRUPTIONS OF INFORMATION POWER 1* (Freedom Press 1998).

<sup>2</sup>KAMALA PRASAD, *INDIAN ADMINISTRATION: POLITICS, POLICIES AND PROSPECTS* 301-337 (Dorling Kindersley 2006).

<sup>3</sup>A. Gentleman, *Thin Ray of Light Shines on Dark Ocean of Graft*, INT'L HERALD TRIB., Jan. 18, 2008, at 2.

<sup>4</sup>Chetan Chauhan, *Graft costing India 1.5% of GDP growth each year*, HINDUSTAN TIMES (Nov. 20, 2011), <https://www.hindustantimes.com/india/graft-costing-india-1-5-of-gdp-growth-each-year/story-oTFOCirIFSUKbtMWqvPmIM.html>

<sup>5</sup>U.N., *Meetings Coverage and Press Releases*, 8346<sup>th</sup> Meeting (Sept. 10, 2018), <https://press.un.org/en/2018/sc13493.doc.htm>

<sup>6</sup>World Economic Forum, *Corruption is costing the global economy \$3.6 trillion dollars every year* (Dec. 13, 2018), <https://www.weforum.org/stories/2018/12/the-global-economy-loses-3-6-trillion-to-corruption-each-year-says-u-n/>

<sup>7</sup>U.N. OFFICE ON DRUGS AND CRIME, *Corruption: An Impediment to Development* (2009), [https://www.unodc.org/southasia/en/topics/frontpage/2009/countering\\_corruption.html](https://www.unodc.org/southasia/en/topics/frontpage/2009/countering_corruption.html)

<sup>8</sup>U.N. SECRETARY GENERAL, *Message on International Anti-Corruption Day* (Dec. 9, 2018), <https://news.un.org/en/story/2018/12/1027971#:~:text=Secretary%2DGeneral%20Ant%C3%B3nio%20Guterres%20deemed,is%20marked%20each%209%20December.>

<sup>9</sup>TRANSPARENCY INT'L, *Corruption Perceptions Index* (2023), <https://www.transparency.org/en/countries/india>

<sup>10</sup>Jon S. T. Quah, *Curbing corruption in India: an impossible dream?*, 16(3) ASIAN J. POL. SCI. 240-259 (2008).

<sup>11</sup>State of M.P. v Ram Singh, AIR 2000 SC 870.

spreads in various ways. Bribery, embezzlement, money laundering, tax evasion, and nepotism are just some of the ways corruption occurs. Corruption is a major roadblock to progress and good governance in India. To truly fight corruption, we need to give ordinary people the power to stand up against it.<sup>12</sup> Past laws only focused on punishing corrupt officials<sup>13</sup>, but corruption is a bigger problem than simply breaking rules. This violates people's rights. To fix this, we need to completely change how our government works and encourage people to work together to demand better policies. Unlike regular crimes, corruption requires a completely new approach. India grapples with the problem of corruption. It looms large, casting a long and dark shadow over the nation's progress. However, within this gloom, a flicker of hope emerges in the form of whistleblower protection laws. Like a lone beacon in a tempestuous sea, whistleblowers can pierce the veil of secrecy and expose the underbelly of corruption. Corruption thrives under secrecy. Only those directly involved usually know about it. People on the inside are best placed to spot current and future corruption in the organisation. By reporting these, whistle-blowers break the cycle of silence and help create a more open and honest environment.<sup>14</sup> By shielding individuals who expose wrongdoing, they create a safe space for citizens to speak the truth to power. This not only fosters a culture of transparency and accountability but also empowers the public to be vigilant custodians of their interests. While challenges persist, such as fear of retaliation and a lack of stringent enforcement, the potential of whistleblower protection in curbing corruption cannot be overstated. This is a critical step towards building a corruption-free India.

The Whistleblower Protection Act, 2014<sup>15</sup> is a pivotal piece of legislation in India's fight against corruption. The Indian government has yet to officially implement the Whistleblower Protection Act, even though it was passed in 2014. It establishes a clear channel for individuals, including public servants, to report wrongdoing by exposing allegations of corruption or misuse of power. This empowers citizens to become active participants in ensuring accountability and transparency in the government. However, the Act operates as a double-edged sword. While it provides safeguards against whistleblower victimization<sup>16</sup>, it mandates that complainants reveal their identities.<sup>17</sup> This requirement creates a dilemma for complainants. Can individuals

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<sup>12</sup> *Id.* at 662.

<sup>13</sup> See, UPENDRA BAXI, LIBERTY AND CORRUPTION 53-65 (Eastern Book Company 1989).

<sup>14</sup> TRANSPARENCY INTERNATIONAL, *Whistleblowing: An effective tool in the fight against corruption* (2010), [https://images.transparencycdn.org/images/2010\\_1\\_PP\\_Whistleblowing\\_EN.pdf](https://images.transparencycdn.org/images/2010_1_PP_Whistleblowing_EN.pdf)

<sup>15</sup> The Whistle Blowers Protection Act, 2014, No. 17, Acts of Parliament, 2014 (India).

<sup>16</sup> *Ibid.*, § 11.

<sup>17</sup> *Ibid.*, § 13.

truly be courageous if their identities expose them to potential repercussions? Additionally, the 2015 amendment proposing restrictions on whistleblowers revealing classified documents<sup>18</sup>, even for corruption disclosures, raises concerns. This amendment creates a potential loophole that may hinder the Act's effectiveness. Act's power lies in its ability to incentivize whistleblowing. The annual report requirement ensures transparency and fosters public trust in the system. However, the limitations and proposed amendments threaten to dilute the Act's effectiveness. The question remains unanswered: will the WPA truly empower whistleblowers, or will it remain a symbolic gesture eclipsed by secrecy and fear?

## 2. India's Silent Predator: Unmasking the Hydra-Headed Monster Crippling Progress.

Corruption today is like a hydra-headed monster; you cut off one head, and another one quickly takes its place. This creates an endless cycle, making corruption seem eternal and unbreakable.<sup>19</sup> In the story of Ravana, the demon king of Lanka with ten heads, there was a clear end to his life: when he is struck by an arrow in the navel. However, the modern-day Ravana of corruption in India is far more complex. It has no limits and stretches endlessly like the universe.<sup>20</sup> Corruption is a dangerous disease that harms society in many ways. It weakens democracy, breaks the law, violates human rights, and ruins the economy of the country. It also worsens the quality of life for everyone and helps organised groups and terrorists grow stronger.<sup>21</sup> At its core, the term corruption is derived from the Latin word '*corruptio*' which means moral decay, wicked behaviour, putridity or rottenness." The concept of corruption can apply to society as a whole or refer to specific actions by individuals. According to *Johnston's* 'classical' perspective, "corruption describes a society or a state that has lapsed from a standard of goodness."<sup>22</sup>

Corruption in India is not a contemporary malady but a chronic ailment, with its roots delving deep into the chronicles of history. From the Vedic era, where the *Rigveda* echoes with tales of extortion, to the *Gupta period*, as chronicled in the *Jatakas* (400-300 BC), the specter of corrupt officials plundering public coffers is a recurring issue. The malignancy deepened over centuries, with the *Mahabharata* (200 BC-AD 200) painting a vivid picture of corrupt

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<sup>18</sup> The Whistle Blowers Protection (Amendment) Bill, 2015, § 8(1), Bill No. 154 of 2015).

<sup>19</sup> Vibhuti Singh Shekhawat, *Corruption in India : An Exercise in Perpetuity* 66(2) IND. POL. SCI. J. 396 (2005).  
<sup>20</sup> *Id* at 397.

<sup>21</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME, *United Nations Convention against Corruption* (2004), [https://www.unodc.org/documents/brussels/UN\\_Convention\\_Against\\_Corruption.pdf](https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf)

<sup>22</sup> Michael Johnston, *The Search for Definitions: The Vitality of Politics and the Issue of Corruption*, 48(149) INT'L SOC. SCI. J. 321-335 (1996).

administrators preying on the public.<sup>23</sup> Moreover, Vishnu and Manu (200 BC), revered lawgivers, advocated for the complete dispossession of corrupt officials, a draconian measure reflecting the gravity of the problem. Even the hallowed halls of justice were not immune, with the *Sukraneeti* and the *Jataka* recounting a bench of judges so thoroughly compromised as to be a mockery of the legal system. *Kalhana* pulls no punches in his scathing indictment of corrupt administrators in the *Rajatarangini* (1200 AD), likening them to ‘sons of slaves’ who despoiled the land and ruined the king’s legitimacy.<sup>24</sup> *C. J. Friedrich* argues that some say corruption is an inherent issue in all governmental systems.<sup>25</sup> In contemporary times ‘corruption’ is defined by the World Bank, as “*Use of public office for private profit.*”<sup>26</sup> Corruption occurs when public officials prioritize personal gain, such as money or status, over their official responsibilities. This includes actions that benefit themselves, their family, or a close group and breaches rules against using their position for private advantage.<sup>27</sup> *Webster’s Dictionary* defines corruption as “inducement (as of a public official) by means of improper considerations (as bribery) to commit a violation of duty.”<sup>28</sup> A bribe is a payment or gift given to someone in a position of power to influence their actions. It is like trying to buy their honesty. Bribery and corruption often go hand-in-hand, but they are not always the same. If someone accepts a bribe, they are corrupt. However, you do not have to take bribes to be corrupt.<sup>29</sup> Someone can be corrupt in other ways, such as by abusing their power for personal gain, even without taking money. Corruption includes nepotism and misappropriation.<sup>30</sup> In both situations, someone is getting something they should not because they are misusing their power in a wrong way. Corruption is more than just accepting bribes. It occurs when people in power misuse their positions to gain personal benefits. These benefits do not always have to be monetary. They can be favours, power, or anything that helps them personally. Even the *report of the committee on prevention of corruption* also known as *Santhanam Committee Report* has defined corruption as “In its widest connotation, corruption includes improper and selfish exercise of power and influence attached to a public office or to the special position one

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<sup>23</sup> See generally, S. S. GILL, *THE PATHOLOGY OF CORRUPTION* (Harper Collins Publishers 1998).

<sup>24</sup> *Ibid.*

<sup>25</sup> CARL JOACHIM FRIEDRICH, *MAN AND HIS GOVERNMENT* 167 (McGraw-Hill Book Company, Inc. 1963).

<sup>26</sup> INTERNATIONAL MONETARY FUND, *Corruption around the world: Causes, Consequences, Scope and Cures* (1998), <https://www.imf.org/external/pubs/ft/wp/wp9863.pdf>

<sup>27</sup> EDWARD C. BANFIELD, *POLITICAL INFLUENCE* 315 (The Free Press of Glencoe, 1961).

<sup>28</sup> *Corruption*, WEBSTER’S NEW INTERNATIONAL DICTIONARY (1961).

<sup>29</sup> *Ibid.*, (2<sup>nd</sup> edn., 1958).

<sup>30</sup> *Ibid.*

occupies in public life.”<sup>31</sup> The word “corruption” is often used in many different contexts. It can refer to things such as decay, impurity, dishonesty, fraud, and vice. While it has various dictionary meanings, today it is mostly linked to someone in a public role failing to carry out their responsibilities properly. The perception of corruption in India is often influenced by cultural norms. What may be considered blatant misconduct in other societies is regarded as a familial duty by many Indians. The expectation to prioritize the needs of one’s extended family often clashes with the principles of impartiality in public service. This nuanced understanding of corruption is vividly captured in the words of a fictional Delhi businessman:

*“Bribery and corruption! These were foreign words, it seemed to him, and the ideas behind them were also foreign. Here in India, he thought, people did not know such words. Giving presents and gratuities to government officers was an indispensable courtesy and a respectable, civilised way of carrying on business.”*<sup>32</sup>

A variety of code words mask corruption in India, including ‘*jugaad*’, a term connoting resourceful improvisation but also frequently associated with exploiting informal connections for personal gain.<sup>33</sup> Corruption has evolved from a small-scale issue to a widespread, large-scale problem in recent years. The amounts involved in scandals are now unimaginable, and the ways in which bribes are taken have become more sophisticated. Corruption now touches almost every sector, including traditionally trusted fields such as healthcare and education. From doctors selling organs to seats in medical and engineering colleges being bought, as seen in the NEET UG scam<sup>34</sup>, corruption has deeply infiltrated these areas of society. In extreme cases, it can even lead to crimes such as murder, blackmail, and kidnapping. What used to be done “under the table” is now done openly, as those involved in corruption have adapted to the times. Businesses have devised creative ways to pay bribes, and experts skilfully turn black money into white. Corruption has become a serious challenge, affecting people at all levels of society, from peons to governors, students to teachers, and doctors to patients.<sup>35</sup> Despite recent

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<sup>31</sup> GOVERNMENT OF INDIA, REPORT OF THE COMMITTEE ON PREVENTION OF CORRUPTION (1964).

<sup>32</sup> R. PRAWER JHABVALA, THE NATURE OF PASSION 56 (Norton, 1956).

<sup>33</sup> Beatrice Jauregui, *Provisional agency in India: Jugaad and legitimization of corruption*, 41(1) AM. ETHNOL. 76 (2014).

<sup>34</sup> Amit Bhelari, CBI files second charge sheet in NEET UG 2024 paper leak case against six accused, THE HINDU (Sept. 20, 2024), <https://www.thehindu.com/news/national/cbi-files-second-chargesheet-in-neet-ug-2024-paper-leak-case-against-six-accused/article68663363.ece>

<sup>35</sup> Sabyasachi Aorindama Nayak & Sudhira Chandra Jena, *Changing Dimension of Corruption In India*, 76(3) IND. POL. SCI. J. 414 (2015).

anti-corruption movements and various initiatives, people continue to accept and offer bribes without hesitation. Unfortunately, this has become a grim reality and part of everyday life. Although we have agencies such as the Central Vigilance Commission, the CBI, and Lok Ayukta, along with rules, audits, and media oversight, these efforts seem ineffective.<sup>36</sup> Even under significant pressure from civil society, corruption continues to thrive in many sectors. At times, even the mass media, which is supposed to expose corruption, finds itself entangled in it. Unfortunately, India has the worst problem with bribery in Asia. Almost 39% of people said they had to pay bribes. Even worse, 46% of people need to use personal connections to get things done with the government.<sup>37</sup> In India, despite the existence of numerous anti-corruption laws, the problem remains deeply entrenched. The infamous 2G spectrum scam<sup>38</sup>, Bihar fodder scam<sup>39</sup>, Bofors scandal,<sup>40</sup> Satyam scam,<sup>41</sup> Coal Allocation scam,<sup>42</sup> and Commonwealth Games scam<sup>43</sup> are just a few stark examples of the widespread grip of corruption on the nation. Corruption has taken a heavy toll on India's economic well-being, impacting both the public and private sectors. This diverts resources from productive activities, leading to reduced growth. Studies suggest that corruption can reduce GDP growth by 1.5%, hindering wealth creation and development opportunities.<sup>44</sup> Economist *Mauro* sounded the alarm in a groundbreaking study, arguing that corruption acts as a poison pill for investment. This lack of trust discourages domestic and foreign investment as investors seek stable and transparent environments, ultimately hindering long-term economic growth.<sup>45</sup> This translates to lower capital inflow, hindering job creation and infrastructure development.<sup>46</sup> When corruption runs rampant, it becomes an unspoken rule. People began to view it as the only way to get things

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<sup>36</sup> *Ibid.*

<sup>37</sup> TRANSPARENCY INTERNATIONAL, *Global Corruption Barometer (GCB) Asia 2020*, [https://images.transparencycdn.org/images/GCB\\_Asia\\_2020\\_Report\\_Web\\_final.pdf](https://images.transparencycdn.org/images/GCB_Asia_2020_Report_Web_final.pdf)

<sup>38</sup> What was the 2G spectrum scam? 10 things to know, INDIA TODAY (Dec. 21, 2017), <https://www.indiatoday.in/fyi/story/what-is-2g-scam-in-india-2g-scam-verdict-upa-a-raja-cbi-judge-op-saini-verdict-things-to-know-1113444-2017-12-21>.

<sup>39</sup> Amit Bhelari, Bihar fodder scam: CBI Court sends 36 accused to prison, THE HINDU (Sept. 02, 2023), <https://www.thehindu.com/news/national/bihar-fodder-scam-cbi-court-sends-36-accused-to-prison/article67259957.ece>

<sup>40</sup> What is the Bofors scam case?, THE INDIAN EXPRESS (Feb. 03, 2018), <https://indianexpress.com/article/india/what-is-the-bofors-scandal-case-why-is-it-being-opened-now-4823576/>

<sup>41</sup> See generally, Rajshree Sharma, Shivani Gupta et. al., *Satyam Computer Scam – Pre and Post Diagnosis*, 4(9) INTL. J. MKTG. & FIN. MGMT. 53-68 (2016).

<sup>42</sup> What's the coal scam about?, THE HINDU (Nov. 16, 2021), <https://www.thehindu.com/news/national/What%E2%80%99s-the-coal-scam-about/article60327596.ece>

<sup>43</sup> Commonwealth Games Scam, THE TIMES OF INDIA (Feb. 07, 2020), <https://timesofindia.indiatimes.com/miscellaneous/commonwealth-games-scam/articleshow/56032112.cms>

<sup>44</sup> CHETAN CHAUHAN, *supra* note 4.

<sup>45</sup> See generally, Paolo Mauro, *Corruption and Growth*, 110(3) Q. J. ECO. 681, 681-712 (1995).

<sup>46</sup> See, Sergey Anokhin & William S. Schulze, *Entrepreneurship, innovation, and corruption*, 24(5) J. BUS. VENTUR. 465, 465-476 (2009).

done. They might know that it is wrong, but the pressure to conform is immense. It is as if everyone is trapped in a muddy swamp, and trying to stay clean alone seems pointless.<sup>47</sup>

### 3. The Birth of a Watchdog: A Chronicle of Whistleblower Protection Legislation

Whistle-blowing, once a clandestine act has evolved into a global phenomenon. It is more than just exposing wrongdoing; it is a defiant stand for truth. These courageous individuals are modern-day watchdogs who shed light on the discrepancies between a nation's ideals and its grim reality. They dare to expose the secrets that the powerful would prefer to bury.<sup>48</sup> The term "whistleblower" is not a recent invention. Its roots can be traced back to the United Kingdom and the iconic "English bobbies" (police constables). *Justice Doggett*, in the case of *Winters v. Houston Chronicle Pub. Co.*<sup>49</sup> first formally discussed the concept, recognising the role of these officers who used their whistles to alert the public and authorities about criminal activity. However, the story goes deeper. At its core, whistle-blowing has always been about safeguarding the public good. It is the act of exposing wrongdoing, illegal activity, or crime to the public and relevant authorities. It is a call to action, a way to ensure public safety and hold wrongdoers accountable.

The Oxford English Dictionary offers a circular definition that mirrors the elusive nature of the concept. A whistleblower is one who "blows the whistle" on a person or activity, especially from within an organization."<sup>50</sup> The Cambridge Dictionary adopts a more direct approach, framing the whistleblowers as internal informants who specifically target illegal activities within organizations. A whistleblower is "a person who tells someone in authority about something they believe to be illegal that is happening, especially in a government department or a company."<sup>51</sup> Further, *Near and Miceli* offered a formal definition of 'whistle-blowing' in 1985, as "disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action."<sup>52</sup> Whistle-blowers are unsung heroes in the global fight against

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<sup>47</sup> Heather Marquette & Caryn Peiffer, *Corruption and collective action*, DLP RESEARCH PAPER (Jan. 2015), <https://www.u4.no/publications/corruption-and-collective-action.pdf>

<sup>48</sup> ALLISON STANGER, *WHISTLEBLOWERS: HONESTY IN AMERICA FROM WASHINGTON TO TRUMP 5* (Yale University Press 2019).

<sup>49</sup> 795 S.W.2d 723 (Tex. 1990).

<sup>50</sup> ALLISON STANGER, *supra* note 48, at 2.

<sup>51</sup> *Ibid.*

<sup>52</sup> J.P. Near & M.P. Miceli, *Organizational Dissidence: The Case of Whistle-Blowing*, 4 J. BUS. ETHICS. 1, 1-16 (1985).

corruption, organized crime, and environmental devastation. Their courage in exposing wrongdoing has not gone unnoticed by the public. In 2003, the United Nations formally recognized the vital role of whistleblowers by adopting a Convention against Corruption<sup>53</sup>. This landmark agreement ratified by a vast majority of 137 nations, enshrined whistleblower protection as an international legal right. The global push for whistleblower protection has gained significant momentum since then. International bodies, such as the African Union and the Organization of American States Inter-American Convention against Corruption, have recognized the importance of safeguarding whistle-blowers by incorporating their protection into regional anti-corruption conventions. Moreover, influential global forums, such as the Group of Twenty (G20), Organization for Economic Cooperation and Development (OECD), and Asia-Pacific Economic Cooperation (APEC), have championed the cause, driving efforts to establish universal whistleblower protections and best practices.<sup>54</sup> A growing number of nations have recognized the importance of safeguarding whistleblowers, with at least 59 countries enacting specific protective measures. While this global trend is encouraging, many of these laws fall short of their intended purpose because of inadequate safeguards and insufficient incentives. Without robust support, whistle-blowers remain vulnerable, which hinders the effectiveness of these critical protections.<sup>55</sup>

### 3.1. Safeguarding the Watchdog: The Rationale for Whistleblower Protection

The scourge of intentional wrongdoing is global in nature. Brave whistle-blowers everywhere have chosen principles over peril, often paying a heavy price for exposing the truth as retaliation is a common threat to their lives.<sup>56</sup> As the OECD highlighted in a 2016 report, shielding these courageous individuals is crucial for safeguarding public interest.<sup>57</sup> However, whistleblower protection exhibits significant global variation. In Asian countries such as Japan<sup>58</sup> and South Korea<sup>59</sup>, these safeguards are extended to both public and private sector workers. In India, these safeguards were limited to public sector employees of the central

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<sup>53</sup> UNITED NATIONS CONVENTION AGAINST CORRUPTION (2003),

[https://www.unodc.org/documents/brussels/UN\\_Convention\\_Against\\_Corruption.pdf](https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf)

<sup>54</sup> NATIONAL WHISTLEBLOWER CENTER, *Whistleblower laws around the world*, <https://www.whistleblowers.org/whistleblower-laws-around-the-world/>

<sup>55</sup> *Ibid.*

<sup>56</sup> Lynn H. Clements, *Whistleblowing: Who, What, When, Where, Why & How?*, 6 J. FORENSIC ACCT. RES. 151 (2005), file:///C:/Users/acer/Downloads/Whistleblowingwhowhatwhenwherewhyhow.pdf

<sup>57</sup> ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, ANTI-CORRUPTION AND INTEGRITY (2016) <https://www.oecd.org/en/topics/policy-issues/anti-corruption-and-integrity.html>

<sup>58</sup> Whistleblower Protection Act, 2004, Act No. 122, Acts of Parliament, 2004 (India).

<sup>59</sup> Public Interest Whistleblower Protection Act, 2011, Act No. 14830, Acts of Parliament, 2011(India).

government under the Central Vigilance Commission Act.<sup>60</sup> Furthermore, the Limited Liability Partnership Act<sup>61</sup> marked a step forward in recognizing the importance of whistleblower protection, although its scope remains limited. Nevertheless, a groundbreaking step towards corporate transparency came with the *Narayan Murthy Committee's* recommendation for mandatory whistleblower policies. This landmark report urged companies to establish channels for employees to report wrongdoing directly to audit committees, bypassing the chain of command.<sup>62</sup> While the subsequent incorporation of whistleblower policies into the listing agreement<sup>63</sup> was a positive development, it is important to note that policy creation remains optional for companies<sup>64</sup>, leaving a significant gap in protection for whistleblowers.

The tragic story of *Satyendra Dubey*, an engineer who paid the ultimate price for exposing corruption in the Golden Quadrilateral Project, serves as a stark reminder of the dangers whistleblowers face in India.<sup>65</sup> In the wake of his murder, a writ petition filed in his case prompted the Supreme Court to take critical action. In the absence of a clear law, the Supreme Court intervened and issued guidelines directing the government to safeguard whistleblowers. This was a pivotal moment that marked the recognition of the need for protection. Subsequently, a resolution passed in 2004, designating the Central Vigilance Commission (CVC) as the agency to receive whistleblower complaints.<sup>66</sup> While the Supreme Court's intervention and the CVC's role deserve recognition, they highlight the shortcomings of relying solely on guidelines and existing institutions to combat corruption. The lack of a dedicated whistleblower protection law in India creates a sense of uncertainty and inconsistency. The fight for whistleblower protection in India has been long and arduous. The Right to Information Act, 2005, provided an initial weapon for activists, followed by the Draft Public Services Bill, 2006, mandating whistleblower protection within six months. The Second Administrative Reforms Commission (2007) echoed this call, and India ratified the UN Convention against Corruption (2011), emphasizing witness protection. Despite these steps, violence against whistle-blowers continues. Finally, in 2010, the Public Interest Disclosure Bill was introduced,

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<sup>60</sup> The Central Vigilance Commission Act, 2003, § 8, No. 45, Acts of Parliament, 2003 (India).

<sup>61</sup> Limited Liability Partnership Act, 2008, § 31, No. 6 of Parliament, 2009 (India).

<sup>62</sup> SEBI, COMMITTEE ON CORPORATE GOVERNANCE (2003), [https://www.sebi.gov.in/sebi\\_data/commondocs/corpgov\\_p.pdf](https://www.sebi.gov.in/sebi_data/commondocs/corpgov_p.pdf)

<sup>63</sup> The Listing Agreement, Cl. 49.

<sup>64</sup> *Ibid.*

<sup>65</sup> Monjorika Bose, The sound of the whistle blowin' in the wind, THE HINDU (July 21, 2023), <https://www.thehindu.com/opinion/open-page/the-sound-of-the-whistle-blowin-in-the-wind/article67107228.ece>

<sup>66</sup> GOVERNMENT OF INDIA, Resolution No. 89 (Apr. 21, 2004), [https://dopt.gov.in/sites/default/files/whistleblow\\_0.pdf](https://dopt.gov.in/sites/default/files/whistleblow_0.pdf)

followed by the enactment of the Whistle Blower Protection Act in 2014. However, the fight is not over. An amended Whistle Blower Protection Bill was introduced in 2015. However, it awaits approval in the Rajya Sabha, highlighting the ongoing struggle to ensure a safe space for those who dare to speak out against corruption.

### 3.2 Safeguarding the Informant: Key Provisions of the Whistleblower Protection Act, 2014

The Whistleblower Protection Act, 2014, was a beacon of hope in India's battle against corruption. It established a system for reporting wrongdoing by public servants and promised safeguards for those who were brave enough to speak up.<sup>67</sup> However, a closer look reveals a complex interplay of strengths and weaknesses that leaves us questioning its true effectiveness. The Act opens its doors to any individual, including public servants, who witness corruption, misuse of power, or criminal offenses. This inclusivity is a positive step, empowering citizens to actively participate in safeguarding public trust. However, a critical hurdle emerges because the Act mandates that whistleblowers reveal their identities. This requirement creates a chilling effect as the specter of retaliation looms large. Can whistle-blowers truly be courageous when their identities expose them to potential career repercussions, harassment, or even violence? *Satyendra Dube's* tragic story, where a whistleblower exposing corruption silenced forever, serves as a stark reminder.<sup>68</sup> Can whistle-blowers be truly protected if their identities are known?

The Act is a comprehensive legislative framework designed to safeguard individuals who expose corruption or wrongdoing within government or public organizations. The Act is divided into seven chapters, encompassing 31 sections, and supersedes the previous Government of India resolution on the matter. The Act's preliminary chapter establishes its scope and its limitations. Notably, it excludes Armed Forces from its purview. Section 3 introduces key definitions, such as "complainant" and "disclosure." A complainant is any individual who alleges wrongdoing, while a disclosure pertains to an attempt or actual commission of an offense under the Prevention of Corruption Act.<sup>69</sup> Section 4 forms the heart

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<sup>67</sup> The Whistle Blowers Protection Act, 2014, Act No. 17, Acts of Parliament, 2014 (India).

<sup>68</sup> Yash Raj & Atanu Banerjee, *India's Whistle Blower Protection Act: A beacon of hope or a work in progress?* (July 11, 2024) <https://www.livelaw.in/lawschool/articles/whistle-blower-protection-act-satyendra-dubey-263016>

<sup>69</sup> The Prevention of Corruption Act, 1988, Act No. 49, Acts of Parliament, 1988 (India).

of the Act, outlining the requirements for public-interest disclosures.<sup>70</sup> It prioritizes the Official Secrets Act and emphasizes national security concerns. However, it also allows for disclosures to “competent authorities” when made in good faith, based on substantially true information, and communicated through appropriate channels. The Act meticulously defines various “Competent Authorities” to receive complaints, ensuring that reports reach the appropriate hands.<sup>71</sup> For instance, the Prime Minister is the designated authority for allegations against Union Ministers.<sup>72</sup> The Act provides safeguards for complainants who make false disclosures. The investigative process is outlined in Sections 5 and 7, granting competent authorities the power to conduct inquiries and exercise authority similar to that of civil courts. Additionally, the Act allows a maximum of seven years to file a complaint, offering a reasonable timeframe for individuals to gather evidence and overcome their fear.<sup>73</sup> Furthermore, recognizing whistleblower’s vulnerability, the Act offers safeguards against victimization.<sup>74</sup> However, the definitions of “victimization”, “retaliation” remain unclear, leaving room for interpretation.<sup>75</sup> Further provisions in sections 12 to 14 address witness protection, confidentiality of complaints, and the power of competent authorities to issue interim orders. The Act establishes a robust penalty framework for non-compliance. It penalizes the submission of incomplete and misleading reports.<sup>76</sup> Section 16, often considered the Act’s soul, imposes strict penalties for revealing a complainant’s identity.<sup>77</sup> Other offenses, including false and frivolous disclosures and departmental culpability, are addressed, with punishments determined by the commission. Sections 19 and 20 pertain to corporate offenses<sup>78</sup> and appeals to the High Court<sup>79</sup>, respectively. To streamline the process, the Act restricts the jurisdiction of civil courts over matters covered by the Act.<sup>80</sup> In essence, the Whistleblowers Protection Act provides a comprehensive mechanism for individuals to expose corruption and wrongdoing while ensuring their safety and the integrity of investigative processes. The Act’s balance between protecting the public interest and maintaining confidentiality is crucial to its effectiveness.

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<sup>70</sup> The Whistle Blowers Protection Act, 2014, § 4, Act No. 17, Acts of Parliament, 2014(India).

<sup>71</sup> *Ibid*, § 3.

<sup>72</sup> *Ibid*.

<sup>73</sup> *Ibid*, § 6(3).

<sup>74</sup> *Ibid*, § 11.

<sup>75</sup> Devika Rana, Zoomed Out | Whistle Blowers Protection Act, 2014 — here’s why it appears to be a cracked foundation CNBC (Oct. 12, 2023), <https://www.cnbcv18.com/views/whistleblower-protection-act-2014-heres-why-it-appears-to-be-a-cracked-foundation-18028651.htm>

<sup>76</sup> *Ibid*, § 15.

<sup>77</sup> *Ibid*, § 16.

<sup>78</sup> *Ibid*, § 19.

<sup>79</sup> *Ibid*, § 20.

<sup>80</sup> *Ibid*, § 21.

### 3.3. Present status of the legislation

The Whistleblower Protection (Amendment) Bill, introduced in 2015<sup>81</sup>, aimed to refine the original 2014 Act. However, the proposed amendments paint a complex and potentially contradictory picture of the law. The Bill passed by the Lok Sabha but awaiting Rajya Sabha approval introduces a significant restriction on the scope of permissible disclosures. This amendment seeks to introduce a plethora of exemptions under Section 4 by outlining *ten categories* of prohibited information. The amendment effectively creates a broad shield for the government to deflect potential whistle-blowing on matters deemed sensitive to national interest. These categories encompass a wide range of information, from national security and foreign relations to commercial confidence and personal data.<sup>82</sup> By expanding the ambit of information exempt from disclosure, the government effectively narrows the space in which the whistle-blowers can operate. The proposed amendment to Section 5, which empowers the competent authority to disregard disclosures involving information specified in the amended Section 4, further strengthens this approach. Furthermore, the proposed changes to Sections 4, 5, and 8 of the original Act raise concerns about the potential erosion of whistle-blower protections. Paradoxically, the Bill also includes a provision allowing the disclosure of certain information, such as that protected under the Right to Information Act, if it falls within the ambit of the Whistleblower Protection Act. This apparent contradiction highlights the potential for confusion and misuse.

### 4. The Global Landscape of Whistle-blowing: A Comparative Overview

The recognition of whistle-blowers as catalysts for change has prompted a global wave of legislative action. Countries worldwide, from the United States to Australia, have enacted laws to protect those who expose wrongdoing. However, the scope and strength of these protections vary significantly across countries. To identify potential gaps and opportunities for improvement in India's Whistleblower Protection Act, a comparative analysis of key legal systems in the United States, United Kingdom, Canada, and Australia, is essential. By examining the similarities and differences between these jurisdictions, we can identify areas where India's laws are lacking and where they can be strengthened.

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<sup>81</sup> The Whistle Blowers (Protection) Amendment Bill, 2015 was introduced in the Lok Sabha on 11 May 2015 and passed by the House on 13 May 2015. The Bill was taken up for consideration in the Rajya Sabha on 7 December 2015 and is pending therein.

<sup>82</sup> The Whistle Blowers Protection Act, 2014, § 4, Act No. 17, Acts of Parliament, 2014(India).

#### 4.1. United States of America (U.S.A.)

The United States is a global pioneer in safeguarding whistleblowers. Its robust legal framework, anchored by the Whistleblower Protection Act, 1989, the Sarbanes-Oxley Act, 2002, and the False Claims Act, 1863, offers comprehensive protection to individuals who expose corporate and governmental misconduct.

##### *Whistleblower Protection Act, 1989*

The United States was among the first nations to recognize the crucial role of whistleblowers in maintaining governmental integrity. The Whistleblower Protection Act, 1989, building upon the foundations laid by the Civil Service Reform Act, 1978, established a framework to protect employees who expose wrongdoing within federal agencies. The Act protects disclosures related to a broad spectrum of misconduct, including any “*violations of laws, rules or regulations, gross mismanagement, waste of funds, abuse of authority or danger to public health and safety.*”<sup>83</sup> By directing disclosures to the Office of Special Counsel or Inspector General, the Act aimed to create safe havens for whistleblowers. Furthermore, the provision of preferential treatment in employment was a significant step towards mitigating retaliation.<sup>84</sup> However, the requirement for employees to initially report wrongdoing internally before seeking external assistance undermines the Act’s effectiveness. This provision not only jeopardizes whistle-blower’s anonymity but also exposes them to potential retaliation from within the organization. Moreover, placing the burden of proof on whistle-blowers to sue for victimization creates an additional hurdle in their pursuit of justice.<sup>85</sup>

##### *Sarbanes-Oxley Act, 2002*

The Sarbanes-Oxley Act, 2002, a landmark piece of legislation, emerged in response to a wave of corporate scandals that rocked the United States. Its primary objective was to bolster corporate accountability and combat financial fraud.<sup>86</sup> However, its provisions include significant safeguards for whistleblowers. Unlike its predecessor, the Whistleblower Protection Act, 1989, the Sarbanes-Oxley Act, 2002 empowers employees to report fraudulent activities

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<sup>83</sup> 5 U.S.C §1213(a) (1) (B).

<sup>84</sup> 5 U.S.C § 3352(a) (3).

<sup>85</sup> Peter Bowden, *A Comparative Analysis of Whistleblower Protections*, 8(2) AUSTL. J. PROF. & APPLIED ETHICS 10 (2006).

<sup>86</sup> Sarbanes-Oxley Act, 2002, § 301(4).

directly to federal regulatory and law enforcement agencies without first notifying their employers. This direct access to authorities shields whistleblowers from potential retaliation and accelerates the investigative process. Moreover, the Act mandates that companies provide comprehensive protection for employees who disclose information about fraudulent activities. This includes prohibitions against discrimination and retaliation, ensuring a safer environment for those who dare speak out.<sup>87</sup> By granting anonymity and offering robust protections, the Sarbanes-Oxley Act set a global benchmark for whistleblower legislation. Its provisions have encouraged a culture of transparency and accountability in the corporate world, making it a powerful tool in the fight against financial fraud.

### ***The False Claims Act, 1863***

The False Claims Act, a relic of the American Civil War era, has emerged as a formidable weapon in the fight against healthcare fraud. Often referred to as the “Informer’s Act” or the “*Lincoln Law*,” it offers a unique and compelling incentive for whistleblowers to come forward, which is a substantial share (between 15% and 30%) of the government’s recovered funds.<sup>88</sup> This “*qui tam*” provision, where the whistleblower shares in the recovery, has proven to be a game-changer. By aligning the interests of whistle-blowers with those of the government, the Act incentivizes individuals to expose fraud, waste, and abuse.<sup>89</sup> The possibility of significant financial rewards has made the False Claims Act a powerful tool for combating corporate misconduct. Moreover, the Act’s provisions for anonymity and protection against retaliation have created a safer environment for whistleblowers. By shielding whistle-blowers from the potential consequences of their disclosures, the law encourages individuals to come forward without fear of reprisal.<sup>90</sup> The overwhelming success of the False Claims Act, with over 70% of claims initiated by whistleblowers, testifies to its effectiveness. It serves as a model for other nations seeking to create a robust whistleblower protection framework.<sup>91</sup>

## **4.2. United Kingdom (UK)**

The United Kingdom has been at the forefront of whistle-blower protection, with the enactment

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<sup>87</sup> *Ibid.*, § 806.

<sup>88</sup> The False Claims Act, 1863, § 3730(d)

<sup>89</sup> *Ibid.*, § 3730(c)(5)

<sup>90</sup> False Claims Amendments Act, 1986.

<sup>91</sup> Joel D. Hesch, *Breaking the siege: Restoring equity and statutory intent to the process of determining Qui Tam Relator awards under the False Claims Act*, 29 COOLEY L. REV. 217, 229 (2012).

of the *Public Interest Disclosure Act, 1998*. This legislation, which builds upon the foundation of the *Employment Rights Act, 1996*, offers a comprehensive framework for safeguarding individuals who expose wrongdoing. The Act defines a “*protected disclosure*” as “*information revealing criminal offenses, civil wrongdoing, miscarriages of justice, or threats to public health and safety.*”<sup>92</sup> Notably, it grants whistleblowers the flexibility to disclose information to a various entities, including employers, law enforcement, the media, and regulatory bodies.<sup>93</sup> This expansive approach empowers individuals to choose the most appropriate channels for their disclosures. A key strength of the UK’s legislation lies in its provision for anonymous disclosures which recognizes the importance of protecting whistleblowers from retaliation. Additionally, the Act empowers employment tribunals to award compensation, including reinstatement, to victims of retaliation.<sup>94</sup> In addition, victims can file a complaint under the *Public Interest Disclosure Act, 1998*, which specifically addresses issues related to whistleblowing.<sup>95</sup> Alternatively, they can utilize the *Employment Rights Act, 1996*, which offers broader protection against detrimental employment practices arising from any disclosure.<sup>96</sup> This robust protection mechanism has played a crucial role in deterring employers from taking adverse action against whistle-blowers.

### 4.3. Canada

Canada has established a robust framework for safeguarding whistle-blowers through the *Public Servants Disclosure Protection Act, 2004*. This legislation empowers public servants to expose a wide range of wrongdoing, including “*violations of law, misuse of public funds, mismanagement, and threats to public health and safety.*”<sup>97</sup> A key feature of the Act is the flexibility it affords whistleblowers in choosing where to disclose information and to whom. Employees can report wrongdoing to their supervisors, the Public Sector Integrity Commissioner, the Auditor General, or even the public at large in cases involving parliamentary or legislative matters.<sup>98</sup> This multi-tiered approach ensures that whistle-blowers have multiple avenues for reporting and increases the likelihood of their disclosures being heard. Moreover,

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<sup>92</sup> *Public Interest Disclosure Act, 1998*, § 43B(1).

<sup>93</sup> *Ibid*, § 43C, 43D, 43E, 43F.

<sup>94</sup> *Ibid*, § 8.

<sup>95</sup> *Ibid*, § 2.

<sup>96</sup> *Employment Rights Act, 1996*, § 47B.

<sup>97</sup> *Public Servants Disclosure Protection Act, 2004*, § 8.

<sup>98</sup> *Ibid*, § 12, 13, 14, 16.

the Act provides comprehensive protection against retaliation, prohibiting employers from taking adverse employment actions against whistleblowers.<sup>99</sup>

#### 4.4. Australia

Australia's journey towards comprehensive whistleblower protection has been marked by gradual progress. Initially, the Public Service Act, 1999, provided safeguards for public servants who reported breaches of the code of conduct.<sup>100</sup> However, this protection was limited in scope and did not extend to disclosures beyond the public services. Recognising the need for a more robust framework, the Australian Parliament enacted the Public Interest Disclosure Act, 2013. This landmark legislation expanded the scope of protected disclosures to include a broader range of wrongdoing in public sector organizations. By establishing a clear mechanism for internal reporting and imposing strict penalties for retaliation, the Act aimed to create a safer environment for whistle-blowers.<sup>101</sup> A key feature of Australian legislation is its emphasis on confidentiality. The Act prohibits the disclosure of a whistle-blower's identity, safeguarding them from potential reprisal. Additionally, it provides civil and criminal penalties for those who retaliate against whistleblowers, underscoring the government's commitment to protecting those who expose wrongdoing.<sup>102</sup>

#### 5. A Fortress without walls: The absence of safety net

India's fight against corruption has a potential champion, the Whistle Blowers Protection Act, 2014. But can this legal framework truly be India's Kryptonite, a weakness for the pervasive monster of corruption? A closer look reveals a complex story filled with promise and peril. The Act aspires to create a safe haven for whistle-blowers, who expose wrongdoing at the risk of their careers and even their safety. It establishes a system for investigating public interest disclosures, particularly those related to corruption and abuse of power by public servants.<sup>103</sup> Confidentiality is paramount, with complaints directed to designated authorities who safeguard anonymity throughout the investigation. On paper, the Act fosters accountability and transparency in the public sector. However, is this reality? Despite its noble intentions, the Act's

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<sup>99</sup> *Ibid.*, § 19, 42.1

<sup>100</sup> Public Service Act, 1999, § 16.

<sup>101</sup> Public Interest Disclosure Act, 2013, Division 2, Part 2.

<sup>102</sup> *Ibid.*

<sup>103</sup> See, Don S. Lee, Annemarie S. Walter, et. al., *Anti-Corruption Policy and Whistle-Blowing Intentions: Quasi-Experimental Evidence from Meritocratic Civil Service Systems*, 55(6) ADMIN. & SOC'Y, 1194-1217 (2003).

impact is limited. Fear of retaliation, harassment, job loss, or worse, continues to deter many whistle-blowers. The annals of India's struggle against corruption are tragically etched with the names of those who dared to challenge the entrenched nexus of power and greed. *Satyendra Dubey*, a civil servant with a conscience, stands as an emblematic figure in this grim narrative of corruption. His exposure of a colossal scam within the Golden Quadrilateral project was met not with commendation but with a bullet.<sup>104</sup> Dubey's murder was a chilling message "*challenge the status quo at your peril.*" This pattern is depressingly familiar. *M. Shanmugan Manjunath*,<sup>105</sup> another conscientious public servant, met a similar fate while trying to uphold quality standards in the petroleum sector. His assassination underscores the vulnerability of those who dare to question the prevailing order. *Satish Shetty*, a social activist, was also drawn into this deadly game. His relentless pursuit of land scams in Maharashtra made him a thorn for powerful interests.<sup>106</sup> His untimely demise remains a haunting reminder of the risks inherent in exposing corruption. More recently, the case of *Gaurav Taneja*, an Air Asia pilot, highlighted the ongoing struggle. His exposure of alleged safety violations was met with termination rather than commendation.<sup>107</sup> This incident underscores the chilling effect that such actions can have on potential whistleblowers. These individuals are not mere statistics; they are symbols of a nation grappling with deep-rooted malaise. Their sacrifices serve as a stark indictment of a system that often rewards complicity over courage and loyalty over justice. Their stories are a call to action, demanding a fundamental shift in the way we approach corruption and protect those who fight it. Furthermore, the sluggish pace of investigations and lack of robust enforcement mechanisms significantly weaken the Act's effectiveness.<sup>108</sup>

At the heart of the WPA's shortcomings lies a gaping void that is the absence of clear definitions leaving room for interpretation<sup>109</sup> for core terms like "whistle-blowing," "victimization," and "retaliation." This foundational lapse renders the Act susceptible to manipulation and

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<sup>104</sup> Where the law stands on whistleblowers in India, THE ECONOMIC TIMES (Oct. 26, 2019), <https://economictimes.indiatimes.com/news/company/corporate-trends/where-the-law-stands-on-whistleblowers-in-india/infosys-episode/slideshow/71770940.cms>.

<sup>105</sup> Hari Narayan, The extraordinary tale of an ordinary man, THE HINDU (Oct. 18, 2016), <https://www.thehindu.com/features/magazine/The-extraordinary-tale-of-an-ordinary-man/article12291362.ece>.

<sup>106</sup> K Giriprakash, Why India's whistleblower protection programme is not as effective as that in the US, THE HINDU (Dec. 06, 2021), <https://www.thehindubusinessline.com/companies/why-indias-whistleblower-protection-programme-is-not-as-effective-as-that-in-the-us/article29794564.ece>.

<sup>107</sup> Air Asia terminates whistleblower pilot, THE HINDU (June 29, 2020) <https://www.thehindubusinessline.com/companies/airasia-terminates-whistleblower-pilot/article31947459.ece>.

<sup>108</sup> Shekar Babu & Raghuraman Murali, *An Analysis of Indian Companies on Whistle blowing*, 9<sup>th</sup> Annual International Conference on Industrial Engineering and Operations Management (March 5, 2019) <https://doi.org/10.46254/AN09.20190833>.

<sup>109</sup> Devika Rana, *supra* note 75.

undermines its purpose. The constricted definition of “disclosure” further limits the scope of the Act, excluding negligent acts and omissions by public servants. Furthermore, what constitutes retaliation? Is demotion sufficient to trigger protection? The lack of a definitive answer creates anxiety among whistle-blowers, thereby weakening the Act’s effectiveness. The Act’s insistence on non-anonymous complaints<sup>110</sup> creates a chilling effect that discourages potential whistleblowers. In a country where whistleblowers have faced brutal reprisals, including murder, the requirement to reveal their identity is a significant deterrent. The Act’s failure to prioritize protection over punishment for frivolous complaints exacerbates this problem. The vague term “frivolous” leaves whistle-blowers vulnerable to spurious accusations and potential legal jeopardy.<sup>111</sup> Perhaps most alarmingly, this Act offers scant protection for whistle-blowers. The Act fails to provide concrete safeguards against harassment, intimidation, and physical harm. This oversight is a glaring omission, especially considering the documented cases of retaliation against those who dare to expose corruption. However, the Act is not without its victories. The exposure of irregularities in coal block allocation, for instance, led to investigations and public outcry. These cases demonstrate the Act’s potential to trigger reforms and ensure government accountability.<sup>112</sup>

## 6. Recommendations for strengthening India’s Whistleblower Protection Law

The Whistleblower Protection Act, 2014, while a commendable, falls short of its potential. To transform it into a robust shield for whistle-blowers and a potent weapon against corruption it is essential to draw inspiration from international best practices. Following are some critical recommendations:

1. Extend the Act’s protection to all individuals, including those in the armed forces and special-protection groups. No one should be immune to accountability.
2. Expand the Act’s lexicon by defining crucial terms like “maladministration,” “victimization,” and “retaliation.” This clarity is essential for effective implementation and protection. Go beyond the traditional understanding of “corruption” and “maladministration” to include environmental concerns, data privacy violations, and

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<sup>110</sup> The Whistle Blowers Protection Act, 2014, § 4(6), Act No. 17, Acts of Parliament, 2014(India).

<sup>111</sup> *Ibid*, § 17.

<sup>112</sup> Sarthak Yadav, *Environmental Whistleblowing In India: Existing Framework And Potential Considerations*, SLR (May, 06, 2022): <https://www.sociolegalreview.com/post/environmental-whistleblowing-in-india-existing-framework-and-potential-considerations>

corporate social responsibility failures. Address new-age challenges, such as cybercrime, artificial intelligence misuse, and public health crises.

3. To encourage reporting, the Act must provide stronger safeguards for anonymous whistle-blowers. Implementing secure reporting channels and advanced encryption technologies can help protect the identities of individuals who fear retaliation.
4. Stringent penalties should be imposed on employers or organizations that retaliate against whistleblowers, including monetary fines and imprisonment.
5. India should consider implementing a reward system for whistleblowers, similar to the United States' False Claims Act<sup>113</sup>. By offering substantial financial incentives, these laws have proven to be powerful deterrents to fraud and corruption. The Dodd-Frank Act<sup>114</sup>, which allows whistleblowers to claim up to 30% of penalties exceeding \$1 million, is a prime example of how rewards can incentivize such reporting.
6. Explore options for rewarding whistleblowers through accelerated career progression or recognition programs.
7. Streamlining the complaint-filing process can make it easier for individuals to report wrongdoing without fear of bureaucratic hurdles.
8. Creating independent oversight bodies dedicated to handling whistleblower complaints can enhance the credibility and effectiveness of protection mechanisms. These bodies should have the power to investigate allegations, protect whistle-blowers, and ensure the timely resolution of cases.
9. Grant Competent Authorities broader investigative powers, including the ability to summon witnesses, conduct searches, and seize evidence.
10. The Whistleblower Protection Act's limited scope to public servants, listed companies, and PSU's is a significant gap in the law. Given the prevalence of corporate misconduct, this exclusion leaves a vast majority of employees in the private sector vulnerable to such retaliation. To address this, the Act urgently requires amendment to encompass all

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<sup>113</sup> The False Claims Act, 1863.

<sup>114</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010, § 748.

organizations, public and private, fostering a culture of transparency and overall accountability.

11. Along with legal reforms, India should invest in creating a culture that values transparency and accountability. Educational campaigns, awareness programs, and ethical training can help change societal attitudes towards whistle-blowing and encourage a more open and honest environment.

## **7. Conclusion**

This study delves into the intricate and often paradoxical relationship between India's fight against corruption and the Whistleblower Protection Act of 2014. Although the Act represents a significant milestone, its effectiveness has been hampered by a complex interplay of factors. This analysis dissects the Act's strengths and weaknesses, highlighting the crucial role of whistleblowers and the challenges they face. The Act offers safeguards against whistleblower victimization. However, the mandatory disclosure of identities creates a dilemma. This transparency principle, intended to deter frivolous complaints, can inadvertently deter legitimate whistle-blowers from fearing retaliation. This chilling effect undermines the Act's core objective and begs the question: can true anonymity exist within a legal framework demanding identification? Furthermore, the proposed amendment restricting the exposure of classified information even in instances of corruption complicated matters and raises a critical question: is the Act being emasculated in the cradle? This raises concerns about the potential dilution of the Act's power and its ability to effectively combat deep-seated corruption. Beyond the legal intricacies lie the profound socio-economic implications of corruption. This pervasive "malaise," as aptly described, cripples India's development and economy. Billions in lost GDP growth paint a stark picture of the economic devastation that corruption causes. The erosion of trust in institutions and the weakening of vital infrastructure further highlight the multifaceted damage inflicted by the disaster. Corruption is a formidable roadblock to progress and good governance. Through a comparative analysis with other nations' whistleblower protection frameworks, this study identifies critical gaps in the Act. Drawing on successful models from other countries can inform the development of robust implementation mechanisms and enhanced protective measures. A comprehensive, multi-pronged approach is critical for tackling corruption at all levels of society. The urgent need for comprehensive reforms cannot be overstated. Empowering whistleblowers is essential for fostering a culture of accountability

and transparency. When effectively implemented, the Act has the potential to be a powerful tool for change. However, immediate action is required to address the challenges identified. Further, as voiced by Bess Myerson “*The accomplice to the crime of corruption is frequently our own indifference.*”<sup>115</sup> He underscored the crucial role of citizen engagement. Overcoming public apathy and cultivating a sense of collective responsibility are crucial. The fight against corruption in India is complex and ongoing battle. Despite its limitations, the Act represents a significant step forward. By learning from global best practices, enacting comprehensive reforms, and fostering a culture of civic engagement, the Act can become a beacon of hope, illuminating the path towards a more transparent and accountable India. However, without a concerted effort to address its shortcomings, the Act risks becoming a monument to unfulfilled promises, leaving India vulnerable to the predatory grip of corruption for years to come.

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<sup>115</sup>UNITED NATIONS OFFICE ON DRUGS AND CRIME, Corruption and Economic Crime Branch, <https://www.unodc.org/corruption/en/cosp/conference/session2-specialevents.html>