THE GROWING LEGAL FRAMEWORK AROUND CORPORATE WHISTLEBLOWING PROTECTIONS

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ABSTRACT

The importance of a whistleblower is something that should never be overlooked. Whistleblowing forms the basis of real change in a corporation's regulatory and compliance practice. This paper aims to explore the historical evolution of whistleblowing cases and the advent of protections that came up in different jurisdictions namely, the US, India, and the UK. Exploring legislative measures such as the Sarbanes-Oxley Act, Dodd-Frank Act, and the provisions of the Companies Act, 2013, the paper will look at the expanding legal landscape, evaluating the effectiveness while keeping in mind the pre-established safeguards present, judicial decisions and suggest potential reforms to strengthen protections around whistleblowing globally.

INTRODUCTION:

> *"The true test of a society's commitment to justice is not how it treats its most powerful members, but how it protects its whistleblowers."*[1]
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> — **Bradley Birkenfeld**, former UBS whistleblower.

Whistleblowing is an essential practice which plays a crucial role in exposing corporate wrongdoing, further accountability and transparency with an overall objective to protect the interests of the stakeholders, shareholders and society at large. Without whistleblowers, unethical behaviour would often go unreported, causing harm to a large extent. Strong whistleblowing safeguards are therefore necessitated to enable staff members to expose misconduct and maintain legal compliance. By looking three jurisdictions of the US, UK and India and their respective frameworks guiding whistleblowing protection, this paper examines the evolution of those frameworks and suggests reforms towards a more effective global protection mechanism.

LEGAL FRAMEWORK IN UNITED STATES:

US has played a leading role since early times in the development of whistleblower protections. It was due to two major legislations there, the Sarbanes-Oxley Act of 2002 and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 which have laid down the provisions pertaining to how whistleblowers are treated today. *Sarbanes-Oxley Act of 2002* (SOX) was enacted in response to major corporate scandals which were happening involving companies like Enron, Tyco International and WorldCom.[2] These scandals brought into light many loopholes in corporate governance. Section 806 of SOX is about *"protection for employees of publicly traded companies who provide evidence of fraud."*[3], which makes it illegal for publicly traded companies or their subsidiaries retaliate against the employee who reports any fraud. [4] Furthermore, SOX also allowed whistleblowers to directly file a complaint with the US Department of Labour and seek remedies like getting their job back, back pay or even

[1] Bradley C Birkenfeld, *Lucifer's Banker: The Untold Story of How I Destroyed Swiss Bank Secrecy* (Greenleaf Book Group Press 2016) 5.
[2] Carpenter Wellington PLLC, 'Sarbanes-Oxley Act, Enacted in Response to Financial Scandals' (Lexology, 18 December 2020) https://www.lexology.com/library/detail.aspx?g=d6578027-e9b3-4509-979b-411ed3e6cce6 accessed 26 April 2025.
[3] Sarbanes-Oxley Act of 2002, 18 USC § 1514A.
[4] US Securities and Exchange Commission, 'SEC Office of the Whistleblower Annual Report' (2023) <https://www.sec.gov/whistleblower\> accessed 27 April 2025.

compensation for any kind of emotional distress which was caused due to the actions of the company in response to whistleblowing. For instance, there was a former senior manager at Progenics Pharmaceuticals who was fired for revealing clinical trial fraud to corporate officials and so in accordance with Section 806 (c)(2) which lays down the types of compensatory damages to be provided by the company[5], he received $5 million in damages which included damages for emotional distress caused to him as well. **Post 2008 financial crisis, more whistleblower protections were put into place via the *Dodd-Frank Act of 2010* which was built keeping SOX as the foundation but simultaneously also improvised it. Under** Section 922 of this Act, SEC Whistleblower Program was set up which allowed the employees to take their complaint regarding company's misconduct to SEC directly. This act not only protected the whistleblowers but also incentivised them to take up a stand for what is right by stating under the same section that whosoever's "original information" regarding company's misconduct leads to some successful legal action exceeding $1 million then that whistleblower will be able to receive between 10%-30% of the money recovered.[6] Moreover, Section 922(h)(B) states that *"A whistleblower who alleges discharge or other discrimination by the employer may bring an action under this subsection in the appropriate district court of the United States for relief"*,[7] so the whistleblowers can directly sue the employer without first utilising administrative remedies, which would in turn deter the employers to retaliate against the individual. The case of *Digital Realty Trust, Inc. v. Somers (2018)* highlights how the US Supreme Court made clear that the anti-retaliation provisions of **Dodd-Frank Act apply only to the individuals who report the fraud to SEC instead of internally reporting it within the company.**[8] This decision shows how crucial it is to involve outside authorities to receive complete protection under this Act, this criterion also deters companies from doing any fraudulent activities out of fear of information being leaked outside or damage to the repute. Overall, the US whistleblowers protection system does give employees some courage to speak up because of the protection and financial rewards. However, it is not perfect as there are still concerns about it being applicable to just publicly traded companies, leaving employees of private companies with fewer protections, and confusion between which of the two above-mentioned Act to follow.

[5] Sarbanes-Oxley Act of 2002, 18 USC § 1514A(c)(2).
[6] Dodd-Frank Wall Street Reform and Consumer Protection Act 2010, 15 USC § 78u-6.
[7] Dodd-Frank Wall Street Reform and Consumer Protection Act 2010, 15 USC § 78u-6(h)(1)(B).
[8] *Digital Realty Trust, Inc v Somers* 138 S Ct 767 (2018).

LEGAL FRAMEWORK IN THE UK:

When looking at Whistleblowing as governed by the UK, we see it defined as when an employee divulges information that they reasonably believe demonstrates misconduct or that someone is concealing misconduct. Protections for whistleblowers were introduced though the *Public Interest Disclosure Act, 1998 (PIDA)*[9]. PIDA, an amendment to the Employment Rights Act. 1996, applies to workers dismissed or forced to resign from their employment due to the mistreatment. It, however, does no cover those individuals who are self-employed, trustees, volunteers, etc. A protected disclosure must be made by an individual in order to be protected under PIDA where they are required to disclose information that they "reasonably believe" demonstrates a type of legal misconduct. It is not necessary for the information to be true rather their belief that there was a legitimate cause for disclosing it must be present. The individual must reasonably believe that the issue is in public interest that impacts others and is not just a personal grievance that can be resolved in another manner. Lastly, the issue must be brought up in accordance with the law in force, either internally with their employer or through a third party such as an independent regulator. This act protects anyone who is considered a 'worker' under employment law where an individual may bring a claim of protection under PIDA from their first day of employment as under Day-One Rights. An employer cannot fire a whistleblower for making a protected disclosure or take any action that maybe detrimental such as demotion, harassment etc. If this is violated, the aggrieved employee can file a case with an employment tribunal to show that they have been treated unfairly due to their disclosing of information. We see the discussion on the topic of whistleblower protections in the case of *Chesterton Global Ltd v. Nurmohamed (2017)*[10] where the Court of Appeal examined whether Mr. Nurmohamed's termination by his employer Chesterton qualified as an unjust dismissal under whistleblower protection legislation. In the end, the Court decided that although while his statements related to the company's financial procedures, they were not in the public interest, therefore his dismissal was not necessarily unjust. The decision showcases how "public interest" should be interpreted in relation to whistleblower protection, highlighting the need for disclosures to address broader public issues rather than just an employee's private interests. Although PIDA offers a fundamental framework for whistleblower protection in the UK, it has numerous shortcomings. It does not require employer policies, excludes volunteers,

[9] Public Interest Disclosure Act 1988
[10] *Chesterton Global Ltd v. Nurmohamed* [2017] EWCA Civ 979

fails to prevent blacklisting and is out dated and complicated. Due to this issues, the UK is attempting to amend the law to strengthen its whistleblower protection system.

LEGAL FRAMEWORK IN INDIA:

While whistleblower protections in India are outlined by a number of laws, the primary legislation which aims at creating a system to handle complaints against public officials and protect whistleblowers from harm is the *Whistleblower Protection Act 2014*[11]. Despite having been passed ten years ago, it has not been implemented yet. The law only applied to the public sector and forbids anonymous complaints which raises questions about identity protection. When looking at the Companies Act 2013, it only focuses on public companies who must establish a vigil mechanism[12] and a whistleblower policy to report unethical behavior, fraud and breach of codes of conduct. It further mandates auditors to disclose any fraud that they may discover or risk severe consequences such as disqualification and criminal liability. There are currently no laws specifically addressing whistleblower protection that apply to workers of private, unincorporated businesses or unlisted corporations. Employers can either create and implement a whistleblower policy to encourage workers to come forward with information without fear of retaliation, discrimination, or other negative consequences. Therefore, the whistleblower policy for private organizations continues to be mostly policy-driven and optional. Although whistleblower protections have been attempted to be regulated by regulatory initiatives such as the amendments to the Prevention of Corruption Act, 1988[13]; the Companies (Auditor Report) Order 2020[14] etc, a significant gap still exists because employees of private, unlisted companies are left dependent on discretionary internal policies in the absence of dedicated safeguards.

CRITICAL EVALUATION:

After looking at the different whistleblower protection frameworks in the US, UK and India, we see that it has its various pros and cons. The Sarbanes-Oxley Act and the Dodd-Frank Act give the US robust safeguards, including financial incentives and anti-retaliation provisions, but they mostly restrict coverage to workers in publicly traded businesses, leaving people in

[11] Whistleblower Protection Act 2014
[12] Companies Act, 2013, s 177
[13] The Prevention of Corruption (Amendment) Act 2018 s 4(9)(1)
[14] MCA Order on Companies (Auditor's Report) Order 2020

the private sector at risk. On the UK's side, although PIDA protects disclosures made in the public interest and gives "Day-One" rights, it does not require businesses to set up whistleblowing programs and does not apply to volunteers, trustees, or independent contractors. In contrast, India has yet not put into effect that Whistleblower Protection Act 2014 despite its enactment. As a result, employees of private, unlisted organizations are left to rely on voluntary measures, as the Act's safeguards are primarily applicable to the public sector and listed corporations. There are still large gaps in all three jurisdictions, especially when it comes to psychological protection, anonymous reporting, and coverage of the private sector. Legal protections for private sector employees must be expanded, India must finally put into effect the Whistleblower Protection Act 2014 and strengthen its whistleblowing framework. Internal whistleblowers must be required in all organizations, and whistleblowers must have easier access to clearer channels to report misconduct without fear of reprisal.

CONCLUSION:

To promote accountability, transparency, and a culture where the truth is valued rather than suppressed, it is important that whistleblower protections be strengthened across all jurisdictions. After examining the three jurisdictions, it is made clear that immediate reforms are required to establish an effective global whistleblowing mechanism for the protection from and prevention of unethical conduct.