
PROTECTION OF WHISTLEBLOWER IN CORPORATE MISCONDUCT: A STUDY IN INDIAN LEGAL FRAMEWORK

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1.1 Introduction

The word "whistleblower" is believed to have come from the English police's practice of blowing a whistle to notify other law enforcement personnel and the public when they witnessed a crime being committed. New names are being used and older, more neutral terms are being revived in an attempt to counteract some of the negative connotations associated with whistleblowing, when it is not clearly separated from informing, breaking ranks, or being disloyal. Here are a few instances of terminology that have been adopted or are in use in the aforementioned countries:

Whistleblowers are referred to as informers rather than whistleblowers in India because there is no official title for them. The phrase that is currently in use in other nations was recently adopted. Whistleblowers and informers have the same meaning. The Whistleblower Protection Act of 2014 is the only law that offers protection to informants and whistleblowers. Corruption is a covert activity that only a small number of individuals are aware of—mainly those involved in it. Because of this, there are comparatively few individuals who are aware of wrongdoings, and even fewer of these individuals disclose wrongdoings. As a result, it is exceedingly challenging to find the corrupt conduct. Informers and whistleblowers are valuable resources in the fight against corruption and other criminal conduct. Before beginning any investigations or prosecutions, there must be evidence of crime or corruption. The only thing that can change in a culture rife with corruption is the effective punishment of the corrupt.

1.2 The Relevance of Whistle Blowers and Informers Protecting Legislation

An informant or volunteer who reports unlawful behaviour must be sufficiently protected to feel secure enough to come forward with the information. Enabling laws are necessary to establish a culture of honesty and compliance. Whistleblowing is considered a useful strategy for combating corruption, fraud, and mismanagement by several international treaties

pertaining to corruption.¹ Most of the globe, including India, has disjointed and insufficiently enforced legal requirements. This is corroborated by the whistleblowers' murders. Following his revelation of "financial irregularities in the Golden Quadrilateral highway construction project in Bihar," Satyendra Dubey was killed in 2003. Similarly, in 2010, Satish Shetty met his demise after filing a police complaint claiming that "an infrastructure company had connived with government officials to purchase land in villages along the Pune-Mumbai Motorway." Such killings may have been prevented if there had been strict legislation. Following the passage of the Whistleblower Protection Act of 2014, protection is now granted just in cases where the disclosure is not included by the exempted list. Whistleblower protection is granted by laws only in exceptional circumstances and subject to certain restrictions. Many rules are solely applicable to the public sector or are not designed to specifically address the concerns of whistleblowers. Only individuals who are specifically mentioned in the statutes are afforded limited protection; those who do not fit inside the legislation's reach are not covered by it. Whistleblowers and informants should be adequately compensated in addition to receiving protection.

1.3 Term "Corruption"

To safeguard the public interest and eradicate the negative impacts of corruption, fraud, unlawful activity, and poor management from the nation, these vices must be exposed. When they come out to report wrongdoing, whistleblowers typically run a significant personal risk. Acknowledging wrongdoing is not a novel concept; it has existed since humankind has collaborated. A person reveals a conduct in order to stop it when they disapprove of it and think it is against the interests of the public.

Whistleblowers are crucial in uncovering wrongdoings that are typically carried out in secret and in reducing instances of workplace abuse. When they see dishonest behaviour, individuals are afraid to speak up. This is due to their concern about potential retaliation for reporting corrupt activities, which might include intimidation or even a threat to their lives. There is a need for institutional and legal protection for whistle-blowers since they may fear reprisals from those who expose them. One of the main obstacles to fighting corruption is the absence of legal protection or people's reluctance to speak out about corrupt activities out of concern

¹ Relevant conventions include the UN Convention against Corruption, Article 33, the Council of Europe (CoE) Civil Law Convention on Corruption article 9 (adopted 1999), and CoE Criminal Law Convention (article 22)

that doing so may put them in danger².

1.3.1 Phenomenon of Corruption

There are numerous conventions, such as the United Nations Convention against Corruption from 2003 and the Council of Europe Civil Law Convention on Corruption from 1999, to help understand this phenomenon and find ways to stop this threat. Corruption is a common occurrence in all societal strata and exists in all nations. The Latin words "com," which means "with together," and "rumpere," which means "to break" or "demolish" someone's credibility and good name among others, are the sources of the English term "corruption." "Corruption" undermines our credibility³. The word "corruption" has a strong connection to dishonesty or unreliability. It also has something to do with dishonest, immoral, and unreliable behaviour. The term "corruption" has never been universally agreed upon. Since corruption may take many different forms, it is challenging to give a precise definition of the term. "A vision or destruction of integrity in discharge of public duties by bribery or favour," according to the Oxford Dictionary, is what corruption is defined as. The term "corruption" has no agreed-upon meaning. However, it may be said that several international organisations have embraced the most useful definition such as Transparency International⁴ and Asian Development Bank⁵ is the "misuse of public office for private profit or political gain" as it covers all types of corruption/corrupt practices and abuses of public office.

1.3.2 Meaning of Corruption

Since there is no single, accepted definition of corruption, definitions of the term vary from nation to nation. Some international organisations, like the World Bank, call it "the abuse of public office for private gain."⁶It often entails accepting gifts or any other type of advantage in exchange for carrying out or refraining from carrying out any conduct that would otherwise be in breach of the responsibilities assigned to the position.

² [https://www.transparency.org/news/pressrelease/corruption perception index 2017](https://www.transparency.org/news/pressrelease/corruption%20perception%20index%202017) shows high corruption burden in more than two thirds of country 21 february 2018 accessed on 2 march 2020

³ <https://www.vocabulary.com/dictionary/corruption> Accessed on 2 march 2020 at 05:10 pm IST

⁴ <https://www.adb.org/documents/anticorruption-policy> Accessed on 2 march 2020 at 05:25 pm IST

⁵ <https://www.transparency.org/what-is-corruption> Accessed on 2 march 2020 at 05:20 pm IST

⁶ Published by Transparency International World Bank in Financial Times March 16, 2020.

Corruption is defined as "illegality; a vicious and fraudulent intention to evade the prohibitions of the law"

According to **Black's Law Dictionary**- The conduct of an official or fiduciary who, in violation of duty and other people's rights, fraudulently and unfairly utilises his station or character to get a gain for himself or another person

According to Oxford Dictionary – “Dishonest or fraudulent conduct by those in power, typically involving bribery.”

The Webster's Dictionary defines corruption as “inducement to wrong by improper or unlawful means as bribery and dishonest or illegal behaviour especially by powerful people (such as government officials or police officers.”

In ***Bishambhar Lal v/s State of Punjab***⁷, corruption is the criminal misconduct of a public servant who uses corrupt or illegal methods to carry out his duties by abusing his authority as a public servant with the regressive intention of obtaining anything of great value or financial advantage for himself or for any other person.

Political scientist Mark Philip distinguished three general definitions of corruption: market-centered, public interest-centered, and public office-centered⁸.

i. Public office was the focal point of A behaviour that deviates from an official's official public duty for personal gain is called corruption. An illustration of a definition centred on public offices is given by J.S. Nye: Corruption is defined as activity that departs from the official responsibilities of a public position in order to further one's own financial standing (personal, close family, private clique) or to circumvent laws prohibiting the use of particular forms of private influence.

This covers actions like bribery, which is the use of money to influence the opinion of someone in a position of trust; nepotism, which is the giving of favours based on a relationship rather than merit; and misappropriation, which is the unlawful taking of public funds for personal gain.⁹

⁷ AIR 1966 Punj.17

⁸ Mark Philip, “Defining Political Corruption” political studies, Vol.45 No.3, special issue 1997

⁹ J.S. Nye, Political Corruption: a Cost Benefit analysis in A.J. Heidenheimer, M. Johnston and V.le Vine(ed.), Political: A hand book, 1989 P.966 as referred in “The Asia Foundation Working Paper Series, 1998 P.10

ii. Interest-centered corruption in public office centres on actions that negatively affect the general welfare of the people. "Whenever a power holder, who is charged with doing certain things, is by monetary or other rewards not legally provided for, induced to take actions which favour whoever provides for the rewards and thereby does damage to the public and its interest," according to Carl Friedrich, such behaviour is said to exist." Market-centered corruption suggests that people or organisations can use economic methods to exert influence over the bureaucracy's decisions. For a public worker who views his office as a business, then, the office becomes the unit of maximisation.¹⁰

1.3.3 Corruption in India

Many references of presence of corruption are found in the ancient history, which proves its presence since ages. The observations of the author of the Arthashastra¹¹, Kautilya are relevant even today. According to him:

‘it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue,’ so it is impossible for a government servant not to eat up at least a bit of the king’s revenue.

The definition of corruption is interpreted by the apex court as follows:

“Corruption connotes allowing decisions and actions of a person to be influenced not by rights or wrongs of accused, but by the prospective of monetary gains or other selfish considerations.¹²”

Corruption is widespread in India. India has been ranked 78th out of 180 countries in Transparency International’s 2018¹³ corruption perception index¹⁴. Indian bureaucracy and politics are profoundly ingrained with corruption. Since corruption impedes the accomplishment of the nation's economic development objectives, it is a major economic problem. In addition to seriously endangering national security, it devastates the environment and encourages inefficient capital utilisation, which further distorts markets. It increases the impoverishment of the disadvantaged and weaker segments of the economy. Corruption is

¹⁰ Naphaniel Leff, “Economic Development through Corruption” in Heidenheimer, id at 389.

¹¹ Kautilya Arthshastra “chapter VII, book no.2, Tr. And Ed, shamsatry R-mysore 1929, p.29

¹² State of AP v/s V. Vasudeva (2004) 9 SCC 319-323, para 3

¹³ <https://www.transparency.org/cpi2018> Accessed on 28 February 2020 at 4.11 pm IST

¹⁴ CPI

usually concealed, and locating it is a challenging task. Regarding the challenges in identifying corruption

Kautilya observes:

“just as a fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servant employed in the government works cannot be found out taking money.¹⁵”

The historical viewpoint on corruption has been pointed out by the Supreme Court of India in, *State of M.P. vs. Ram Singh*¹⁶ as:

It was discovered that the circumstances of the First and Second World Wars had significantly enhanced the threat of corruption. In the early days, corruption was thought to be limited to the bureaucracy, which was able to handle various forms of state affluence such as grants, contracts, and licences. Since public employees had to get rid of a lot of government surplus stores, corruption possibilities persisted even after the war. The scarcity of various goods brought about by the wars required the implementation of extensive post-war reconstruction schemes that involved the disbursement of enormous sums of money under the control of public servants, giving them broad discretion and ultimately drawing them in with the glittering shine of property and wealth. The Prevention of Corruption Act, 1947 was created and has been revised periodically, the Court said, in order to combine and alter the laws pertaining to prevention of corruption and matters linked thereto. A new Act was created in 1988, the Act of 1988, to address the conditions, exigencies, and deficiencies that were seen in the working and implementation of the 1947 Act¹⁷.” The Supreme Court also said in the same judgement that corruption is referred to be a plague since it is not only contagious but also spreads like wildfire in a jungle if left unchecked. Its virus is like HIV in that it causes AIDS and is incurable. Another name for it is "royal thievery." Exposure to a communicable sickness of this magnitude is likely to cause the socio-political system to collapse under its own weight. Corruption is antithetical to democracy and social order; it is directed and intended specifically against the people. It devastates cultural heritage and has an impact on the economy. If not dealt with right

¹⁵ R. Shamasastri, Kautilya Arthashastra, 2005, p. 130

¹⁶ 2000 (5)SCC 88

¹⁷ Ibid.

away, it might lead to instability and upend the socio-economic-political structure of an otherwise prosperous, prosperous, dynamic country.

1.3.4 Anti Corruption Laws in India

There are laws which can penalize the Public servants in India for corruption. The punishments are provided under the following legislations:

1. The Indian Penal Code, 1860
2. The Prevention of Corruption Act, 1988
3. The Benami Transactions (Prohibition) Act, 1988 prohibits benami transactions.
4. The Prevention of Money Laundering Act, 2002

Indian Penal Code, 1860:

- i. The IPC defines “public servant” as a government employee, officers in the military, navy or air force; police, judges, officers of Court of Justice, and any local authority established by a central or state Act.
- ii. Section 169¹⁸ is related to a public servant who unlawfully buys or bids for property. The public servant shall be punished with imprisonment of up to two years or with fine or both. It also provides confiscation of the property purchased.
- iii. Section 409 is related to criminal breach of trust by a public servant. The public servant under this section shall be punished with life imprisonment or with imprisonment of up to 10 years and a fine.

The Prevention of Corruption Act, 1988

- i. This Act gives a broader definition of "public servant," encompassing not only the categories listed in the IPC but also office holders of cooperative societies that receive government funding, university staff, the Public Service Commission, and bank employees.

¹⁸ Indian Penal Code, 1860

According to the Supreme Court of India, bank workers, whether private or public, are also regarded as public servants for the purposes of the PCA¹⁹.

ii. Punishments provided under the Act:

Minimum punishment of six months and maximum punishment of five years and fine is provided, if a public servant takes gratification other than his legal remuneration in respect of an official act or to influence public servants. The Act also penalizes a public servant for taking gratification to influence the public by illegal means and for exercising his personal influence with a public servant. The Supreme Court of India has also observed that the quantum paid as gratification is immaterial and that conviction will depend upon the conduct of the aberrant official and proof established by the prosecution concerning the acceptance of such illegal gratification.²⁰

If a public servant accepts an expensive thing without making payment for it or paying insufficiently from a person with whom he is involved in a business transaction in his official capacity, he shall be penalized with minimum punishment of six months and maximum punishment of five years and fine.²¹

iii. It is necessary to obtain prior sanction from the central or state government in order to prosecute a public servant.

Recent legislative changes to the PCA in 2018 have targeted the people who give bribe by criminalising the act of giving or promising to provide a bribe to any person to induce or reward a public servant to improperly and dishonestly perform a public duty .

The Benami Transactions (Prohibition) Act, 1988

i. The Act prohibits any Benami Transaction (purchase of property in false name of another person who does not pay for the property) except when a person purchases property in his

¹⁹ CBI v Ramesh Gelli, 2013(3)SCC788

²⁰ AB Bhhaskara Rao v Inspector of Police CBI Vishakapatnam 2011(4)KLT(SN)35

²¹ The Prevention of Corruption Act, 1988 section 10. Punishment for abetment by public servant of offences defined in section 8 or 9 Whoever, being a public servant, in respect of whom either of the offences defined in section 8 or section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine

wife's or unmarried daughter's name.

ii. Any person who enters into a Benami Transaction shall be punishable with imprisonment of up to three years and/or a fine²².

iii. All properties that are held to be Benami can be acquired by a prescribed authority and no money shall be paid for such acquisition.

The Prevention of Money Laundering Act, 2002

i. According to the Act, money laundering is an infraction whenever a person engages in any activity linked to criminal profits and presents those proceeds as clean property, meaning they have nothing to do with wrongdoing. Any material items acquired by a person as a consequence of criminal conduct connected to specific acts enumerated in the Act's schedule are referred to as "proceeds of crime." Only those who have committed one of the specified offences may be prosecuted with money laundering.

ii. The penalty for committing the offence of money laundering is rigorous imprisonment for three to seven years and a fine of up to Rs 5 lakh²³. A person may spend up to ten years in jail if they are found guilty of a crime under the Narcotics, Drugs, and Psychotropic Substances Act of 1985.

iii. The central government-appointed Adjudicating Authority has the authority to determine whether any of the confiscated or attached property has been connected to money laundering. The Appellate Tribunal may hear appeals against the Adjudicating Authority's and any other authority's orders under the Act.

iv. Every banking firm, financial institution, and middleman is required to keep a record of all transactions of a certain kind and amount. It must also check and keep track of all of its clients' information and provide it to the appropriate authorities²⁴.

Corporate Liability for Corruption Offences

The Indian Supreme Court has upheld the notion of corporate criminal liability in the country

²² Section 3 prohibition of benami transaction, The Benami Transactions (Prohibition) Act, 1988

²³ Section 4 of Prevention of Money Laundering Act, 2002

²⁴ Section 3 & section 10 of Prevention of Money Laundering Act, 2002

and determined that mens rea can be attributed to businesses based on the idea of the company's "alter ego," or the managers' and directors' collective mindset, which represents the company's directing mind and will²⁵. According to this, determining whether a person's "degree or control is so forceful that the corporation may be said to think and act through the person and body of the person" is necessary in order to impute mens rea to an individual or group of individuals inside a company. Corporate responsibility is recognised under both the Foreign Contribution and Regulation Act of 2010 and the Protection of Corruption Act of 1988.

2. Statement of Problem

The current study aims to concentrate on the concerns and challenges related to the management of the justice delivery system since there are insufficient legislative safeguards in place in the nation to protect informants and whistleblowers. Attempts have been undertaken to determine why and under what conditions a large number of individuals choose to keep silent rather than speak up, using the use of the doctrinal and case-study methods. What particular reasons do informants and whistleblowers choose to keep quiet? Do the current legal protections for informants and whistleblowers provide enough protection? In the study, these concerns have been systematically investigated. An attempt has been made to examine the current legal status in India regarding the protection of informers and whistleblowers in light of the worldwide measures for in India regarding the protection of informers and whistleblowers

3. Scope of Study

Because protecting informers and whistleblowers is such a complicated matter, it needs to be approached with great consideration, followed by careful preparation, careful discussion, and devoted execution. The study's scope is broad since there are several difficulties that need to be resolved. In a nutshell, the study's goal is to reduce the issue of informant and whistleblower protection to the greatest extent feasible. It is necessary to conduct a thorough investigation to determine the causes of informers' and whistleblowers' silence, the steps taken in this regard, the outcomes of those steps, and what more needs to be done to establish effective laws protecting informers and whistleblowers in India.

²⁵ Iridium India Limited v. Motorola Incorporated & Ors. AIR 2011 SC 20

4. Objectives of the Study

The current study's goal is to define and emphasise how vital it is to safeguard informants and whistleblowers in India in order to combat the threat of official corruption, poor management, and power abuse in both the public and private spheres.

1. Gaining fresh perspectives on whistleblower protection and comprehending the definition and essence of the phrase.
2. To draw attention to the necessity and importance of protecting whistleblowers in India.
3. To examine the issue from a global standpoint and see whether any foreign provisions may be incorporated into Indian law.
4. To ascertain and examine the challenges associated with integrating the Whistleblower Protection Programme into the Indian legal framework, as well as the ways in which it presents obstacles and potential solutions.
5. To research the variables that determine whether to protect whistleblowers.
6. To provide some workable recommendations for an efficient Whistleblowers Protection Act implementation in India based on the findings.

RESEARCH GAP

In this specific domain, Indian research is lacking. There have been few research conducted on whistleblowing in the Indian setting. Nevertheless, there hasn't been any research on the whistleblower policy in the Indian public sector. Surprisingly, there hasn't been much study done in this field on a global scale either. The goal of this study is to close as much of the gap as feasible. The goal of this study is to gain a knowledge of the current internal reporting process. This Research gap motivated the Researcher to undertake the present study titled 'PROTECTION OF WHISTLE BLOWER IN CORPORATE MISCONDUCT:A STUDY IN LEGAL FRAMEWORK.'

5. Research Hypothesis:

The following hypothesis would be examined in this study:

1. The study's underlying premise is that India's whistleblowers are not adequately protected by the laws as they are now.
2. It is necessary to update Indian legislation to ensure compliance with international legal frameworks.
3. Analysing the whistleblower laws of other nations would provide us with important knowledge for creating laws that would enable whistleblower protection.
4. The idea of protecting whistleblowers is still in its experimental stages, and the legislation is changing as well. India will provide new and uncharted aspects to the protection of whistleblowers. Novel approaches must be devised and implemented.

6. Conclusion

Over the past ten years, India's business sector has seen a number of positive improvements. Many contentious business scandals have consistently overshadowed this sector's progress. These controversies not only damage the company's brand but also jeopardise the interests of several stakeholders and investors. Controversial scandals such as the Satyam Computer, Kingfisher, and Enron Corporation scams have spawned a series of business collapses throughout time. Such a controversy made clear how important it is for the business to have sound corporate governance. One of the most notable drawbacks of India's whistleblower policy is that the Whistleblower Protection Act, 2014 disregarded both the law commission's recommendation in its 174th report and the second administrative reforms' recommendation in its fourth report, which was released in 2007. The fourth report stated that the Act did not apply to the private sector.

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