REGULATORY SYMBOLISM: A CRITICAL RE-ASSESSMENT OF CORPORATE WHISTLEBLOWER PROTECTION UNDER THE COMPANIES ACT, 2013 AND SEBI REGULATIONS

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ABSTRACT

Whistleblowers occupy an irreplaceable position in the architecture of corporate accountability: they alone possess access to information that lies beyond the reach of external auditors, credit rating agencies and market regulators. India's principal response to this reality the vigil mechanism under Section 177 of the Companies Act, 2013, read with Regulation 22 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, and the informant framework under the SEBI (Prohibition of Insider Trading) Regulations, 2015 has now been in operation for over a decade. This article undertakes a doctrinal and comparative examination of that framework and argues that it amounts to what may be termed 'regulatory symbolism': a formal acknowledgment of the need for whistleblower protection that is not accompanied by the substantive rights, remedies and institutional architecture necessary to make protection meaningful. Using an eight-element normative benchmark derived from agency theory, public interest theory and comparative practice, the article identifies six interlocking failures in the Indian regime an undefined and narrow personal scope, toothless anti-retaliation provisions, a structurally conflicted internal reporting channel, weak enforcement, the complete absence of financial incentives, and an unaddressed vulnerability to strategic litigation through the criminal defamation provisions of the Indian Penal Code. Drawing on the experience of the United States, the United Kingdom, the European Union and Australia, the article proposes a standalone Corporate Whistleblower Protection Act anchored by an Independent Whistleblower Protection Authority, a mandatory percentage-based award mechanism, tiered reporting channels, reversal of the burden of proof in retaliation claims, and as the single most urgent reform statutory civil and criminal immunity for protected disclosures. The article concludes that continued reliance on the Audit Committee-centred vigil mechanism is neither doctrinally defensible nor institutionally sustainable for an economy of India's scale and market depth.

Keywords: Whistleblower Protection; Companies Act, 2013; Vigil Mechanism; SEBI; Corporate Governance; Regulatory Symbolism

I. INTRODUCTION

Corporate fraud rarely announces itself. It is discovered when it is discovered at all either years after the event, through the diligence of an external auditor or forensic investigator, or, far more often, through the disclosure of an insider willing to bear a disproportionate personal cost to reveal what regulators cannot see from outside the organisation.[1] The Satyam Computer Services scandal, in which accounting misstatements amounting to over seven thousand crore rupees went undetected by the company's statutory auditor for close to a decade, and the collapse of Infrastructure Leasing & Financial Services Ltd. in 2018, which concealed a systemic liquidity crisis from regulators and shareholders alike, are frequently cited as India's own Enron moments.[2] In both instances, the information required to prevent or at least mitigate the resulting loss to shareholders existed within the organisation well before the crisis became public. In neither instance did a whistleblower come forward in time.

This is not a coincidence of individual conscience; it is, this article argues, a predictable consequence of legal design. India's corporate whistleblower regime is built around Section 177(9) and (10) of the Companies Act, 2013, which obliges listed companies (and a defined class of others) to establish a 'vigil mechanism' through which directors and employees may report 'genuine concerns', together with parallel provisions in Regulation 22 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, and since 2019 an informant reward scheme under the SEBI (Prohibition of Insider Trading) Regulations, 2015.[3] On paper, each of these instruments recognises the value of whistleblowing to corporate governance. In practice, none of them defines who a whistleblower is, none of them attaches a criminal or civil consequence to retaliation, and the primary recipient of complaints the company's own Audit Committee is frequently constituted by the very promoter group whose conduct is most likely to be the subject of a genuine disclosure.

This article contends that these are not isolated drafting infelicities but symptoms of a single underlying problem: India's legislature has approached whistleblower protection as a governance procedure to be certified rather than a right to be vindicated. The result is a

[1] See generally Marcia P. Miceli & Janet P. Near, Organizational Dissidence: The Case of Whistle-Blowing, 4 J. Bus. Ethics 1 (1985).
[2] Serious Fraud Investigation Office, Investigation Report in the Matter of Satyam Computer Services Ltd. (2009) (India); Nat'l Co. Law Tribunal, Infrastructure Leasing & Financial Services Ltd. Proceedings (2018) (India).
[3] Companies Act, No. 18 of 2013, § 177 (India); SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 22; SEBI (Prohibition of Insider Trading) Regulations, 2015 (as amended 2019).

framework that satisfies the formal requirement of 'having a policy' while leaving the substantive incentive structure facing a potential discloser essentially unchanged from what it would be in the complete absence of legislation. This article terms this phenomenon regulatory symbolism the production of law that discharges an obligation of legislative visibility without discharging the underlying obligation of protection.

The article proceeds in six further parts. Part II situates the study within the existing literature on Indian corporate whistleblower law. Part III develops a theoretical and normative framework, drawing on agency theory, public interest theory and regulatory capture theory, from which an eight-element benchmark for evaluating whistleblower regimes is derived. Part IV sets out the doctrinal content of the Indian framework as it currently stands. Part V applies the normative benchmark to identify six structural failures in that framework. Part VI compares the Indian position with the whistleblower regimes of the United States, the United Kingdom, the European Union and Australia. Part VII sets out a reform proposal anchored by a standalone Corporate Whistleblower Protection Act and Part VIII concludes.

II. REVIEW OF LITERATURE

The theoretical study of whistleblowing owes its foundations to the organisational-behaviour scholarship of Near and Miceli, whose account of whistleblowing as a rational decision made under conditions of severe personal risk continues to inform almost all subsequent legal analysis of the subject.[4] Building on this, Dworkin and Baucus demonstrated empirically that internal reporting channels, however well-subscribed for minor matters, tend to fail precisely in cases of serious misconduct the cases in which the organisational actors implicated in the wrongdoing are best placed to suppress or discredit the complaint.[5] This finding is of direct relevance to any assessment of a regime, such as India's, that relies almost exclusively on an internal channel.

Indian corporate governance scholarship has, by contrast, engaged only glancingly with whistleblowing as a discrete legal problem. Varottil's influential work on independent directors and audit committees demonstrates that concentrated promoter ownership the dominant ownership structure among Indian listed companies systematically compromises the

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[4] Miceli & Near, supra note 1; Janet P. Near & Marcia P. Miceli, Whistle-Blowing: Myth and Reality, 22 J. Mgmt. 507 (1996).

[5] Terry Morehead Dworkin & Melissa S. Baucus, Internal vs. External Whistleblowers: A Comparison of Whistleblowing Processes, 17 J. Bus. Ethics 1281 (1998).

independence that board-level governance mechanisms are assumed to possess, a finding later corroborated empirically by Sarkar and Sarkar's study of interlocking board appointments.[6] Neither study, however, addresses whistleblower protection as such; both are more properly read as establishing the structural precondition audit committee capture that grounds the case against the vigil mechanism developed in Part V.

Comparative scholarship on whistleblowing is considerably more developed. Moberly's empirical analysis of the Sarbanes-Oxley Act's whistleblower provisions demonstrated that procedural exhaustion requirements alone can suppress a whistleblower regime's practical efficacy even where its substantive scope is broad, a finding that anticipates the argument, developed in Part VI, that the design of remedies matters as much as their formal existence. [7] Callus and Lewis's study of the United Kingdom's Public Interest Disclosure Act, 1998, and Vandekerckhove and Tsahuridu's analysis of the European Union's mandatory dual-channel model provide the comparative material drawn upon in Part VI.[8]

The specific claim advanced in this article that the Companies Act/SEBI framework constitutes regulatory symbolism has not, to this author's knowledge, previously been advanced in the Indian legal literature in these terms, although the underlying institutional critique builds on, and is indebted to, the definitional and structural gaps identified by Srikrishna and Sengupta in their comparison of the Whistle Blowers Protection Act, 2014 and the corporate governance regime, and on Goswami's empirical study of the gap between complaints filed with SEBI and enforcement action actually taken.[9] This article seeks to synthesise these separate strands organisational theory, Indian corporate governance scholarship, and comparative whistleblower law into a single normative assessment of the Indian regime.

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[6] Umakanth Varottil, Evolution and Effectiveness of Independent Directors in Indian Corporate Governance, 6 Hastings Bus. L.J. 281 (2010); Jayati Sarkar & Subrata Sarkar, Corporate Governance in India (2012).

[7] Richard E. Moberly, Sarbanes-Oxley's Whistleblower Provisions: Ten Years Later, 64 S.C. L. Rev. 1 (2012).

[8] Angela Callus & David Lewis, The Public Interest Disclosure Act 1998, 29 Indus. L.J. 189 (2000); Wim Vandekerckhove & Evangelia Tsahuridu, Risky Rescues and the Duty to Blow the Whistle, 97 J. Bus. Ethics 365 (2010).

[9] B.N. Srikrishna & A. Sengupta, Whistleblower Protection in India: Public and Private Sector Divergence, 10 Indian J.L. & Tech. 45 (2018); Om Goswami, SEBI Enforcement: Patterns and Gaps, 15 Nat'l L. Sch. India Rev. 78 (2020).

III. CONCEPTUAL AND THEORETICAL FRAMEWORK

A. Defining the Whistleblower

Any assessment of a legal regime's adequacy presupposes a definition of the persons and disclosures it is meant to protect. The most widely accepted definition, offered by Near and Miceli, treats whistleblowing as the disclosure by an organisational insider of an illegal, immoral or illegitimate practice to a person or body capable of effecting change. [10] Two distinctions drawn from this literature matter for legal design. First is the distinction between internal whistleblowing (disclosure through channels internal to the organisation) and external whistleblowing (disclosure to a regulator, law-enforcement authority or, exceptionally, the media); most mature regimes protect the former unconditionally and the latter conditionally.[11]

Second is the distinction between a 'good faith' standard, which examines the discloser's motive, and a 'reasonable belief' standard, which examines only the objective plausibility of the information disclosed; the latter is now widely regarded as doctrinally superior because it protects an honest but mistaken disclosure without inquiring into the discloser's state of mind.[12] As Part IV shows, Indian law adopts neither distinction with any precision.

B. Theoretical Justifications

Three theoretical frameworks justify legal protection for whistleblowers. The first, agency theory, treats the modern corporation as a nexus of contracts between shareholder-principals and manager-agents in which the agents possess a systematic informational advantage over the principals.[13] Whistleblowing is, on this account, a mechanism for correcting that informational asymmetry at comparatively low social cost. A legal regime that fails to protect this transfer imposes, in effect, an artificial tax on exactly the information flow that governance structures are meant to encourage.

The second, public interest theory, extends the agency-theoretic account to explain why protection should not be confined to the employer-employee relationship: because the social

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[10] Miceli & Near, supra note 1.
[11] Dworkin & Baucus, supra note 5.
[12] Public Interest Disclosure Act 1998, c. 23 (UK); Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019, 2019 O.J. (L 305) 17.
[13] Michael C. Jensen & William H. Meckling, Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure, 3 J. Fin. Econ. 305 (1976).

value generated by a disclosure of corporate wrongdoing accrues to shareholders, employees, creditors and the investing public generally, the theory supplies an independent justification for financial incentive schemes and for extending protection beyond formally employed persons.[14] The third, regulatory capture theory, developed by Stigler and refined by Laffont and Tirole, holds that a regulatory body may over time come to serve the interests of the industry it regulates rather than the public interest that justified its creation.[15] This theory bears directly on institutional design: if the principal securities regulator is itself vulnerable to capture, then routing whistleblower complaints exclusively through that regulator or, worse, through an internal committee appointed by the very promoters whose conduct may be at issue reproduces, at a smaller scale, the very failure the theory describes. This is the theoretical foundation for the argument, developed in Part VII, that whistleblower complaints require an institutionally independent recipient.

C. A Normative Benchmark

Drawing on these three frameworks together with comparative practice, this article evaluates the Indian regime against eight criteria that recur, in one form or another, across the mature whistleblower-protection statutes examined in Part VI: (i) a broad personal scope extending beyond current employees to auditors, contractors, shareholders and former employees; (ii) a broad subject-matter scope covering financial and environmental malpractice on a reasonable suspicion standard; (iii) dual internal/external reporting channels with equal legal protection; (iv) meaningful anti-retaliation remedies including reinstatement and uncapped compensation; (v) confidentiality and, where necessary, anonymity; (vi) an institutionally independent recipient body; (vii) positive financial incentives calibrated to the scale of the sanction obtained; and (viii) protection against retaliatory civil and criminal litigation.[16] Part V applies this benchmark to the Indian framework described immediately below.

[14] Terry Morehead Dworkin & Richard E. Callahan, Employee Disclosures to the Media: When Is a "Whistleblower" Protected?, 18 Vill. L. Rev. 1 (1982).

[15] George J. Stigler, The Theory of Economic Regulation, 2 Bell J. Econ. & Mgmt. Sci. 3 (1971); Jean-Jacques Laffont & Jean Tirole, The Politics of Government Decision-Making: A Theory of Regulatory Capture, 106 Q.J. Econ. 1089 (1991).

[16] This eight-element framework synthesises the theoretical accounts at supra notes 13–15 with the comparative regimes examined in Part VI infra.

IV. THE STATUTORY FRAMEWORK IN INDIA

A. The Companies Act, 2013 Section 177

Section 177(9) of the Companies Act, 2013 requires 'every listed company and such other class or classes of companies, as may be prescribed' to 'establish a vigil mechanism for directors and employees to report genuine concerns.'[17] Rule 7(1) of the Companies (Meetings of Board and its Powers) Rules, 2014 narrows the class of companies so obliged to listed companies, companies accepting public deposits, and companies that have borrowed more than fifty crore rupees from banks or public financial institutions a threshold that excludes the overwhelming majority of India's active companies, most of which are unlisted private entities, from any statutory whistleblowing obligation whatsoever.[18]

Three doctrinal features of Section 177(9) merit emphasis. First, its personal scope is confined to 'directors and employees', a formulation that on its face excludes statutory and internal auditors, contractors and consultants, former employees, and shareholders precisely the categories of person most likely to possess early or otherwise inaccessible information about financial misconduct.[19] Second, its subject-matter scope is confined to 'genuine concerns', a phrase left undefined in the Act, the Rules, or any SEBI circular. Third, Section 177(10) requires 'adequate safeguards against victimization' without specifying what constitutes an adequate safeguard, without prescribing any remedy for its breach, and critically without attaching any criminal or civil penalty to an employer who retaliates against a discloser.[20] Rule 7(3) compounds this by empowering the Audit Committee itself to take unspecified 'action' against a complainant found, on the Audit Committee's own assessment, to have made 'repeated frivolous complaints' a provision that hands the very body against whom a complaint may be directed the power to characterise that complaint as frivolous.[21]

B. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Regulation 22 of the LODR Regulations imposes a substantially similar obligation on listed companies, adding a requirement that the Audit Committee review the functioning of the

[17] Companies Act, No. 18 of 2013, § 177(9) (India).
[18] Companies (Meetings of Board and its Powers) Rules, 2014, r. 7(1).
[19] Companies Act, No. 18 of 2013, § 177(9) (India).
[20] Id. § 177(10).
[21] Companies (Meetings of Board and its Powers) Rules, 2014, r. 7(3).

whistleblower mechanism annually under Schedule II, Part C.[22] This oversight requirement is confined to the fact of an annual review; it does not require public disclosure of the number of complaints received, investigated, or substantiated, so that the practical efficacy of any individual company's mechanism remains, from an external vantage point, entirely opaque.

C. The SEBI Office of Informant Protection and PIT Regulations

A more significant institutional innovation arrived in July 2019 with SEBI's creation of the Office of Informant Protection ('OIP') under the SEBI (Prohibition of Insider Trading) Regulations, 2015, as amended.[23] The OIP represented the first genuinely external reporting channel in the Indian corporate whistleblowing landscape: informants may lodge information anonymously or confidentially through a dedicated portal, and for the first time in Indian regulatory history a successful disclosure may attract a monetary reward of up to one crore rupees.[24] The OIP's jurisdiction is, however, confined to violations of SEBI's insider-trading regulations; financial statement fraud, related-party transaction abuse, and bribery that does not independently constitute securities fraud fall outside its remit and must, if reported at all, be routed through the same conflicted internal vigil mechanism described above.

D. The Whistle Blowers Protection Act, 2014

The Whistle Blowers Protection Act, 2014 offers an instructive point of comparison precisely because it was enacted by the same Parliament and, unlike the corporate regime, applies an external-authority model: disclosures are made to the Central or State Vigilance Commission rather than to an internal body, and Sections 16 and 17 impose criminal penalties of up to two and three years' imprisonment respectively for victimisation of a complainant and for unauthorised disclosure of a complainant's identity.[25] Because the Act's coverage is confined to public servants under the Prevention of Corruption Act, 1988, it has no direct application to the private corporate sector; it is used in this article purely as an internal Indian comparator establishing that Parliament has, in a cognate context, already legislated the criminal-deterrent and external-authority features conspicuously absent from the Companies Act regime.[26]

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[22] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 22(1), sch. II, pt. C.
[23] SEBI, Press Release: Informant Mechanism under Insider Trading Regulations (2019).
[24] SEBI (Prohibition of Insider Trading) Regulations, 2015, ch. IIIA (as amended 2019).
[25] Whistle Blowers Protection Act, No. 17 of 2014, §§ 3, 16, 17 (India).
[26] Id. § 2 (read with Prevention of Corruption Act, 1988).

E. Synthesis

Taken together, these four instruments recognise, at a formal level, that whistleblower protection is a legitimate object of corporate law. None of them, however, defines the beneficiary of that protection with precision; none attaches a criminal consequence to retaliation in the corporate sector; and only one the PIT Regulations informant scheme, whose jurisdiction is narrowly confined to insider trading offers a genuinely independent external channel or any financial incentive. It is against this doctrinal backdrop that Part V applies the eight-element benchmark developed in Part III.

V. CRITICAL EVALUATION: SIX STRUCTURAL FAILURES

A. Definitional Failure

The absence of a statutory definition of 'whistleblower' is, this article argues, the most consequential of the six failures because it is upstream of all the others. Because Section 177(9) speaks only of a 'vigil mechanism' for 'genuine concerns' reported by 'directors and employees', Indian law has no rights-bearing category comparable to the 'protected disclosure' of the United Kingdom's Public Interest Disclosure Act or the 'reporting person' of the European Union Directive.[27] The consequence is not merely definitional untidiness. It means that a potential discloser cannot know in advance whether a given disclosure will be treated as a 'genuine concern' attracting protection or, under Rule 7(3), as a 'frivolous complaint' attracting sanction and that the body empowered to make that characterisation is frequently the Audit Committee against whose oversight, or against whose promoter-nominated members, the complaint may itself be directed. The exclusion of statutory auditors from the protected class is particularly striking given that it was precisely the failure of Satyam's external auditor to flag a decade-long accounting fraud that made that scandal possible.[28]

B. Weak Anti-Retaliation Mechanisms

Section 177(10)'s requirement of 'adequate safeguards against victimization' is not accompanied by any specified remedy, any defined standard of adequacy, or any penalty for non-compliance.[29] This stands in sharp contrast to the position in the United Kingdom, where

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[27] Public Interest Disclosure Act 1998, c. 23, §§ 43A–43L (UK); Directive (EU) 2019/1937, supra note 12, art. 4.
[28] Serious Fraud Investigation Office, supra note 2.
[29] Companies Act, No. 18 of 2013, § 177(10) (India).

a worker subjected to a detriment for making a protected disclosure may bring a claim before an Employment Tribunal an independent adjudicatory body with compulsory jurisdiction and recover uncapped compensation, and where dismissal in retaliation for a protected disclosure is automatically unfair regardless of length of service.[30] The Companies Act contains no equivalent right of reinstatement, no cap-free compensation regime, and most significantly no criminal penalty for an employer who retaliates. It is difficult to reconcile this omission with the fact that the very same Parliament, at around the time the Companies Act, 2013 came into force, enacted the Whistle Blowers Protection Act, 2014, which imposes a two-year custodial sentence for victimisation of a public-sector whistleblower.[31] No principled distinction between public-sector and corporate whistleblowing justifies protecting the former with the threat of imprisonment while leaving the latter to an unenforceable exhortation against 'victimization'.

C. Structural Conflicts of Interest

The designation of the Audit Committee as both the internal governance organ responsible for financial oversight and the primary in most companies, the sole recipient of whistleblower complaints creates an institutional conflict that is most acute in precisely the cases where whistleblower protection matters most: allegations implicating senior management or the promoter group itself.[32] Because Audit Committee members are nominated by a board that is, in the concentrated-ownership structure typical of Indian listed companies, itself substantially controlled by the promoter family, the 'independence' of the Committee from the subject-matter of a complaint against that family is frequently, on Sarkar and Sarkar's empirical finding, illusory rather than actual.[33] Rule 7(3)'s power to act against complainants found to have made 'frivolous' complaints a characterisation made by the same conflicted body compounds rather than mitigates this structural weakness.

D. Enforcement Deficiency

Even where the formal architecture exists, its practical enforcement has been thin. SEBI's own annual reports indicate that the number of enforcement actions traceable to informant tips

[30] Employment Rights Act 1996, c. 18, §§ 47B, 103A (UK).
[31] Whistle Blowers Protection Act, No. 17 of 2014, § 16 (India).
[32] Umakanth Varottil, The Watchdog That Did Not Bark: Audit Committees and Corporate Fraud in India, 20 J. Corp. L. Stud. 123 (2019).
[33] Jayati Sarkar & Subrata Sarkar, supra note 6.

received under the PIT Regulations regime since 2019 remains modest relative to the volume of information the scheme was designed to elicit, a pattern consistent with Goswami's broader empirical finding of a substantial attrition rate between complaints filed with SEBI and enforcement action actually taken.[34] Compounding this opacity, companies are required to disclose the mere existence of a vigil mechanism on their websites and in the Board's Report but are under no obligation to disclose the number of complaints received, investigated, or substantiated meaning that from an external vantage point it remains impossible to distinguish a company with a functioning mechanism from one that has merely satisfied a paper compliance requirement.[35]

E. Absence of Positive Incentives

Where the PIT Regulations informant scheme does offer a financial reward, that reward is capped at one crore rupees, is discretionary in amount, and is confined to insider-trading disclosures a strikingly narrow analogue to the United States Securities and Exchange Commission's Dodd-Frank programme, under which the SEC has, as of its most recent report to Congress, disbursed more than four billion dollars to whistleblowers whose original information led to enforcement actions recovering over five billion dollars in sanctions, with individual awards running as high as two hundred million dollars.[36] The scale differential is not merely a matter of currency conversion: it reflects a difference in design philosophy between a scheme that treats the whistleblower reward as a marginal discretionary grant and one that treats it as a mandatory, percentage-based share of recovered sanctions calibrated to generate a genuinely rational incentive to disclose.

F. The Unaddressed SLAPP Problem

The final, and in this article's assessment the most acute, failure is the complete absence of any protection against strategic litigation. Sections 499 and 500 of the Indian Penal Code retain criminal defamation as a cognizable offence, meaning that a complaint by an aggrieved promoter or manager can, independently of its ultimate merit, expose a discloser to the possibility of arrest.[37] Neither the Companies Act nor the LODR Regulations grants any immunity civil or criminal to a person who makes a disclosure through the vigil mechanism

[34] SEBI, Annual Report 2022–23 (2023); Om Goswami, supra note 9.
[35] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, sch. II, pt. C.
[36] U.S. Sec. & Exch. Comm'n, Annual Report to Congress: Whistleblower Program (2023).
[37] Indian Penal Code, No. 45 of 1860, §§ 499–500 (India).

or the OIP. A compliance officer who is aware that truthful disclosure may nonetheless expose them to a criminal defamation complaint funded by a well-resourced promoter group faces a rational disincentive to disclose that operates independently of the substantive merits of Sections 177(9) and (10) considered in isolation. This is the gap that the Australian Corporations Act's civil-immunity provision, discussed in Part VI, was specifically designed to close, and its absence in Indian law is, this article argues, the single most consequential of the six failures identified here because it operates as a standing threat that no amount of internal-mechanism reform can neutralise.

G. Synthesis: Regulatory Symbolism

These six failures are not merely cumulative; they are mutually reinforcing. A compliance officer who discovers evidence of related-party transaction abuse in a promoter-controlled company must simultaneously contend with uncertainty over whether the disclosure counts as a ‘genuine concern’, the knowledge that the recipient body may itself be compromised, the absence of any guaranteed remedy if retaliation follows, the absence of any financial inducement to offset the personal risk, and the live possibility of a criminal defamation complaint. Each individual failure might, in isolation, be dismissed as a fixable drafting gap. Considered together, they describe a regime that discharges the formal legislative obligation to ‘have a vigil mechanism’ while leaving the underlying incentive structure facing a rational discloser essentially unaltered from the position that would obtain in the complete absence of legislation the condition this article terms regulatory symbolism.

VI. COMPARATIVE PERSPECTIVES

A. United States: The Incentive-Based Model

The United States offers the most developed comparative model, built in two stages. The Sarbanes-Oxley Act, 2002, enacted in the aftermath of the Enron and WorldCom collapses, made retaliation against a whistleblower who reports securities or wire fraud both a ground for civil claims for reinstatement, back pay and attorney's fees, and, under Section 1107, a federal criminal offence punishable by up to ten years' imprisonment.[38] Empirical research subsequently showed that SOX's mandatory administrative-exhaustion requirement produced poor success rates in practice, prompting Congress to adopt a fundamentally different design

[38] Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, §§ 806, 1107, 116 Stat. 745.

in the Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010.[39] Section 922 of Dodd-Frank amended the Securities Exchange Act of 1934 to require the SEC to make a mandatory award of ten to thirty percent of monetary sanctions exceeding one million dollars where the sanction results from a whistleblower's original information, administered by a dedicated SEC Office of the Whistleblower.[40] The empirical results of this design shift are striking: over four billion dollars disbursed to whistleblowers as of the SEC's most recent report to Congress, underpinning enforcement actions recovering upward of five billion dollars.[41] The central lesson for Indian reform is that a mandatory, percentage-based reward rather than a discretionary, capped one is the only empirically validated mechanism for converting whistleblowing from an act of altruistic self-sacrifice into a rational economic decision.

B. United Kingdom: The Employment-Protection Model

The United Kingdom's Public Interest Disclosure Act, 1998 takes a markedly different approach, offering no financial reward but instead building a comprehensive employment-law remedy around the concept of the 'protected disclosure' one made in the reasonable belief that it tends to show, among other things, the commission of an offence, a miscarriage of justice, or danger to health, safety or the environment.[42] PIDA's tiered structure protects internal disclosure absolutely, disclosure to a prescribed regulator conditionally on a reasonable belief that the matter falls within that regulator's remit, and wider (including media) disclosure only where internal or regulatory routes are shown to be unavailable or unsafe a graduated design that preserves the preference for internal resolution without abandoning the discloser who reasonably distrusts it.[43] Detriment suffered as a result of a protected disclosure is remediable before an Employment Tribunal with no cap on compensation, and dismissal in retaliation is automatically unfair irrespective of length of service; the Enterprise and Regulatory Reform Act 2013 extended employer liability to retaliation committed by co-workers.[44] The British experience demonstrates that a well-designed anti-retaliation remedy can function without any financial-incentive component at all.

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[39] Richard E. Moberly, supra note 7.
[40] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 922, 124 Stat. 1376 (2010) (codified at 15 U.S.C. § 78u-6).
[41] U.S. Sec. & Exch. Comm'n, supra note 36.
[42] Employment Rights Act 1996, c. 18, § 43B (UK).
[43] Public Interest Disclosure Act 1998, c. 23 (UK).
[44] Employment Rights Act 1996, c. 18, § 47B (UK); Enterprise and Regulatory Reform Act 2013, c. 24, § 19 (UK).

C. The European Union: Comprehensive Harmonisation

Directive (EU) 2019/1937 represents the most exhaustively codified contemporary statement of whistleblower-protection standards, the product of extended comparative and empirical study across the member states of the Union.[45] Its personal scope extends the term 'reporting person' to employees, the self-employed, shareholders, board members, volunteers, interns, and even associates of the reporting person exposed to reprisal by association a scope considerably broader than the 'directors and employees' formula of Section 177(9).[46] Article 21(5) reverses the burden of proof in a retaliation claim: once a claimant establishes that a qualifying disclosure was made and that a detriment followed, the burden shifts to the respondent to demonstrate that the detriment was unrelated to the disclosure a mechanism that directly addresses the evidentiary difficulty a discloser otherwise faces in proving causation against an employer able to cite pretextual reasons such as restructuring or poor performance.[47] Article 19's enumeration of prohibited retaliatory acts, and the mandatory duality of internal and external reporting channels under Articles 7 to 10, together supply a model of statutory precision largely absent from the Indian formula of 'adequate safeguards against victimization'.[48]

D. Australia: The Integrated Corporate-Law Model

Australia offers the comparator of most direct institutional relevance to India, sharing a Westminster parliamentary tradition and a preference for embedding whistleblower protection within the corporate-law statute itself rather than in freestanding legislation. The Corporations Act 2001 (Cth), as substantially strengthened by the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019, defines an 'eligible whistleblower' to include not only current officers and employees but former officers and employees, associates, and any person who supplies goods or services to the company directly addressing the exclusion of former employees and contractors that this article identifies as a weakness of Section 177(9).[49] Section 1317AA adopts a 'reasonable grounds to suspect' threshold, markedly lower than a 'reasonable belief' standard, on the rationale that requiring proof at the point of disclosure would itself

[45] Directive (EU) 2019/1937, supra note 12.
[46] Id. art. 4.
[47] Id. art. 21(5).
[48] Id. arts. 7–10, 19.
[49] Corporations Act 2001 (Cth) s 1317AA (Austl.); Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth) (Austl.).

deter legitimate but uncertain reports.[50] Most significantly for the purposes of this article, Section 1317AB confers outright civil immunity on a person making a protected disclosure: no action for defamation, breach of contract or breach of confidence may be maintained in respect of that disclosure, and Section 1317AJ additionally permits exemplary damages against a retaliating party.[51] This provision is, this article argues, the single most transferable element of the Australian model, because it addresses directly the SLAPP vulnerability identified in Part V.F as the most consequential of India's six structural failures.

E. Synthesis

No single comparator offers a template that can be transplanted wholesale. The American model demonstrates the power of mandatory financial incentives but depends on institutional capacity a dedicated Office of the Whistleblower that would need to be built in India largely from scratch. The British model demonstrates that a well-designed employment remedy can function without financial incentives at all. The European model offers unmatched definitional and procedural precision but was designed for transposition across twenty-seven jurisdictions with markedly stronger baseline labour-law enforcement infrastructure than India possesses. Australia offers the most institutionally proximate template a corporate-lawembedded regime combining broad personal scope, a low disclosure threshold, and civil immunity and is accordingly the primary source for the reform proposal set out in Part VII.

VII. TOWARDS REFORM: A PROPOSED FRAMEWORK

A. The Case for Standalone Legislation

This article proposes that India's fragmented whistleblower regime presently distributed across the Companies Act, the LODR Regulations and the PIT Regulations be consolidated into a standalone Corporate Whistleblower Protection Act ('CWPA'). Three considerations support this over the alternative of incremental amendment. First, consolidation resolves the present incoherence of having three separate instruments define overlapping but non-identical obligations. Second, a standalone Act permits the creation of a genuinely independent adjudicatory and reward-disbursing authority without the institutional awkwardness of housing that authority within the Companies Act framework. Third, a standalone statute allows

[50] Corporations Act 2001 (Cth) s 1317AA(5) (Austl.).
[51] Id. ss 1317AB, 1317AJ.

Parliament to draw directly on the criminal-penalty and external-authority architecture it has already legislated, in the cognate public-sector context, through the Whistle Blowers Protection Act, 2014.[52] Parliament's competence to enact such legislation is not in serious doubt: Entries 43 and 44 of the Union List confer exclusive legislative competence over incorporated trading, banking, insurance and financial corporations, within which a statute regulating corporate accountability and governance squarely falls.[53]

B. Definitional Reform

The CWPA should define 'whistleblower' to include current and former employees, directors, officers, statutory and internal auditors, contractors, consultants and shareholders, adopting the Australian and European Union model of extending personal scope beyond the strict employment relationship.[54] 'Protected disclosure' should be defined by reference to a reasonable-suspicion standard deliberately set below the reasonable-belief threshold used in the United Kingdom covering contraventions of company and securities law, financial misstatement, related-party transaction abuse, bribery, and threats to public health, safety or the environment, following the Australian formulation.[55]

C. An Independent Whistleblower Protection Authority

The CWPA should establish an Independent Whistleblower Protection Authority ('IWPA'), chaired by a retired High Court judge and appointed by a collegium comprising the Chief Justice of the relevant High Court, the Comptroller and Auditor General, and the SEBI Chairperson, precisely in order to insulate its composition from both political-executive and regulated-industry influence a structural response to the regulatory-capture concern developed in Part III.B.[56] The IWPA should receive disclosures through a secure and, where necessary, anonymous channel; assess their credibility; refer substantiated matters to SEBI, the Serious Fraud Investigation Office or the Enforcement Directorate as appropriate; and adjudicate retaliation complaints with power to order interim relief, reinstatement and compensation. Funding the IWPA through a statutory levy on penalties recovered by SEBI and allied enforcement bodies on the model already used to fund the Competition Commission of India

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[52] Whistle Blowers Protection Act, No. 17 of 2014 (India).
[53] India Const. sch. VII, list I, entries 43–44.
[54] Directive (EU) 2019/1937, supra note 12, art. 4; Corporations Act 2001 (Cth) s 1317AA (Austl.).
[55] Corporations Act 2001 (Cth) s 1317AA(5) (Austl.).
[56] See discussion of regulatory capture theory, supra note 15 and accompanying text.

would render the Authority self-financing and insulate its budget from the ordinary appropriations process.[57]

D. A Mandatory Financial Award Mechanism

Following the Dodd-Frank model but calibrated to the Indian context, the CWPA should provide for a mandatory award of ten to thirty percent of sanctions exceeding one crore rupees where those sanctions result from information originally supplied by a whistleblower, funded from the statutory levy described above.[58] The mandatory character of the award rather than the discretionary structure of the existing PIT Regulations scheme is critical: the expected value calculation a potential discloser must make before coming forward depends as much on the certainty of a reward as on its magnitude.

E. Tiered Reporting Channels

Adapting the United Kingdom's PIDA structure, the CWPA should protect internal disclosure (to the vigil mechanism or a designated Whistleblower Officer) unconditionally; protect disclosure to the IWPA, SEBI or other regulators unconditionally and without any requirement to exhaust internal channels first, directly resolving the structural-conflict problem identified in Part V.C; and protect wider (including public) disclosure where the discloser reasonably believes internal or regulatory reporting would be suppressed, or where the matter is of exceptional urgency.[59]

F. Robust Anti-Retaliation Provisions

The CWPA should adopt an exhaustive, European Union-style enumeration of prohibited retaliatory acts, reverse the burden of proof once a discloser establishes a qualifying disclosure followed by a detriment, provide for interim and final reinstatement, remove any statutory cap on compensation, and closing the gap left open since the Companies Act, 2013 came into force impose criminal liability of up to three years' imprisonment for retaliation, mirroring the penalty structure already accepted by Parliament in the Whistle Blowers Protection Act,

[57] Competition Act, 2002, No. 12 of 2003 (India).
[58] Dodd-Frank Wall Street Reform and Consumer Protection Act § 922, supra note 40.
[59] Public Interest Disclosure Act 1998, c. 23 (UK).

2014.[60]

G. Civil and Criminal Immunity: The Priority Reform

If institutional or fiscal constraints permit only a single element of this reform package to be enacted in the immediate term, this article's assessment is that it should be the civil and criminal immunity provision. Modelled on Section 1317AB of the Australian Corporations Act, the CWPA should provide that no civil action for defamation, breach of contract or breach of confidence may lie in respect of a protected disclosure, and that Sections 499 and 500 of the Indian Penal Code do not apply to a disclosure made on reasonable grounds to believe the information substantially true.[61] This reform requires no new institutional architecture, no new budget line, and no adjudicatory apparatus; it is a single amendment to the Companies Act and a corresponding exemption clause under the Indian Penal Code. Because it removes the standing threat identified in Part V.F as the most acute of the six structural failures, it offers the highest ratio of protective effect to implementation cost of any measure proposed in this article, and there is respectable doctrinal ground for its constitutionality: the right to sue in defamation is a statutory and common-law right rather than a fundamental one, and Parliament may qualify it where a countervailing public interest in corporate accountability and disclosure reinforced by Article 19(1)(a)'s guarantee of free expression can be shown.[62]

H. Sequencing

Given the differing institutional demands of these measures, a phased implementation is advisable. A first phase definitional reform, civil and criminal immunity, and mandatory transparency reporting on vigil-mechanism outcomes requires only legislative amendment and no new institution. A second phase establishes the IWPA and the tiered reporting structure. A third phase introduces the mandatory financial award and the full anti-retaliation and criminal-penalty regime, sequenced last because a financial incentive introduced before civil immunity and an independent adjudicatory body are in place risks being undermined by the very retaliatory dynamics the reform is designed to counter.[63] In the transitional period, SEBI could,

[60] Directive (EU) 2019/1937, supra note 12, art. 19; Whistle Blowers Protection Act, No. 17 of 2014, § 16 (India).
[61] Corporations Act 2001 (Cth) s 1317AB (Austl.); Indian Penal Code, No. 45 of 1860, §§ 499–500 (India).
[62] India Const. art. 19(1)(a).
[63] See Corporations Act 2001 (Cth) (Austl.), as amended by the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth), implementation history.

without any legislative change, expand the Office of Informant Protection's de facto jurisdiction beyond insider trading to cover financial-statement fraud generally, relying on its existing investigative powers under the SEBI Act, 1992 providing at least a partial external channel while the CWPA moves through the legislative process.[64]

VIII. CONCLUSION

The formal architecture of India's corporate whistleblower regime Section 177 of the Companies Act, Regulation 22 of the LODR Regulations, and the OIP under the PIT Regulations represents a genuine, if incomplete, legislative acknowledgment that whistleblowers perform a function no external regulator can replicate.[65] That acknowledgment, however, has not been matched by the substantive content that would make protection real rather than nominal. Measured against the eight-element benchmark developed in Part III, the Indian regime is undefined in its personal and subject-matter scope, toothless in its antiretaliation provisions, structurally compromised in its choice of the Audit Committee as primary recipient, weak in enforcement, devoid of any meaningful financial incentive, and most acutely entirely unprotected against strategic litigation under the criminal defamation provisions of the Indian Penal Code.[66] None of these six failures is inherent to whistleblower regulation as such; each has been solved, in one design or another, by the United States, the United Kingdom, the European Union or Australia, and none of the solutions examined in Part VI lies beyond India's institutional or constitutional capacity.[67]

The reforms proposed in Part VII a standalone Corporate Whistleblower Protection Act, an Independent Whistleblower Protection Authority insulated from both political and industry capture, a mandatory percentage-based award mechanism, tiered reporting channels, a reversed burden of proof in retaliation claims, and civil and criminal immunity for protected disclosures are not proposed as an idealised template imported wholesale from abroad.[68] They are proposed as a synthesis, adapted to India's constitutional structure and institutional constraints, of measures already proven to work elsewhere. Of these, civil and criminal

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[64] Securities and Exchange Board of India Act, 1992, §§ 11, 11B, 11D (India).
[65] See Part IV supra (discussing Companies Act, No. 18 of 2013, § 177; SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 22; SEBI (Prohibition of Insider Trading) Regulations, 2015).
[66] See Part III.C supra (setting out the eight-element normative benchmark).
[67] See Part V supra (discussing the six structural failures identified in this article).
[68] See Part VI supra (comparing the whistleblower regimes of the United States, the United Kingdom, the European Union and Australia).

immunity deserves priority precisely because it requires the least institutional investment and addresses the failure this article identifies as most acute: the standing possibility, under the present regime, that a truthful disclosure exposes its author to criminal prosecution for defamation.[69]

As India's capital markets continue to deepen and its base of individual retail investors continues to grow, the cost of a whistleblower regime that exists on paper but not in substance is no longer merely a matter of employment law.[70] It is a matter of investor protection and market integrity. The question facing India's legislature is not whether whistleblower protection is desirable that question was answered, however incompletely, in 2013 but whether India can continue to accept a regime whose principal function, judged by its consequences, is compliance with the requirement to have one.

[69] See Part VII supra (proposing a standalone Corporate Whistleblower Protection Act); cf. Whistle Blowers Protection Act, No. 17 of 2014 (India).

[70] See Securities and Exchange Board of India, Annual Report 2022–23 (2023) (on the growth of retail participation in Indian capital markets); World Bank, World Development Indicators (latest ed.).