INFORMANT REWARDS IN PRACTICE: RECALIBRATING WHISTLEBLOWER POLICY IN INDIA'S SECURITIES MARKETS

Tejbeer Singh, National Law Institute University, Bhopal.

Ananya Jain, National Law Institute University, Bhopal.

I. INTRODUCTION

The integrity of financial markets depends fundamentally on the symmetry of information available to investors. When corporate insiders exploit non-public information for personal gain or engage in fraudulent activities, they erode investor confidence and distort market efficiency. In this landscape, the whistleblower serves as a critical instrument of corporate governance. Academically, the term has been defined by Near and Miceli as the "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."[1] Similarly, consumer activist Ralph Nader defined the whistleblower as a person who, "believing that the public interest overrides the interest of the organization he serves, blows the whistle that the organization is involved in corrupt, illegal, fraudulent or harmful activity."[2]

These definitions underscore that whistleblowing is not merely an act of reporting but a mechanism to resolve the agency problem where management acts against the interests of shareholders. However, distinct from the external auditor who reports from the outside, the whistleblower is uniquely positioned as an insider. This proximity allows them to provide direct evidence of fraud that external controls often miss. Despite this value, the act of blowing the whistle is fraught with peril, often forcing an employee to choose between ethical duty and professional survival.

In India, the urgency of whistleblower protection is historically rooted not merely in employment disputes but in tangible threats to life and liberty. The risks associated with

[1] Dr. Anil Kumar & Dr. Seema Gupta, *Decoding Whistle Blowing Policies of Indian Companies*, 48 CHARTERED SECRETARY 45, 45 (2018).
[2] Debleena Chakraborty, *The Limited Efficacy of the Whistle-Blower Protection & Analysis of Whistleblower Legislation in India*, 6 INT'L J. MULTIDISCIPLINARY RSCH. 1, 2 (2024).

exposing corruption were tragically highlighted by the murder of Satyendra Dubey in 2003. Dubey, an Indian Engineering Services officer, was assassinated after exposing corruption in the Golden Quadrilateral highway project, despite his request that his identity be kept confidential.[3] Similarly, in 2005, Manjunath Shanmugam, a manager at the Indian Oil Corporation, was murdered for sealing petrol pumps selling adulterated fuel.[4] These cases sparked national outrage and highlighted the lethal consequences of a system that lacked robust legislative safeguards for those who expose corruption.

In response to public pressure and judicial intervention following these tragedies, the Indian legislature and regulators have attempted to institutionalize whistleblower protection. The Whistle Blowers Protection Act, 2014 (WPA) was enacted to establish a mechanism for receiving complaints against public servants; however, despite its passage, the Act has not been fully operationalized, leaving significant gaps in implementation.[5]

In the corporate sector, the legislative mandate arrived via the Companies Act, 2013. Section 177 of the Act mandates that every listed company establish a "vigil mechanism" for directors and employees to report genuine concerns regarding unethical behavior or fraud.[6] This requirement is reiterated in Regulation 22 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR), which requires listed entities to formulate a whistleblower policy that provides safeguards against victimization.[7] Furthermore, recognizing the difficulty in detecting complex securities offenses like insider trading, SEBI amended its Prohibition of Insider Trading (PIT) Regulations to mandate that companies enable employees to report instances of leakage of Unpublished Price Sensitive Information (UPSI).[8]

Despite these statutory provisions, the efficacy of the Indian whistleblower framework remains a subject of debate. While companies follow the regulatory framework as per the rulebook, the quality of policies varies considerably, with many lacking the goal of promoting a genuine culture of ethical values.[9] This paper critically analyzes the current whistleblower framework

[3] *Id.* at 4.
[4] *Id.* at 5.
[5] *Id.* at 3.
[6] Companies Act, 2013, § 177(9), No. 18, Acts of Parliament, 2013 (India).
[7] Kumar & Gupta, *supra* note 1, at 46.
[8] *See* Nat'l Sec. Depository Ltd., Whistle Blower Policy 5 (2024); *see also* Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, Reg. 9A(6).
[9] Kumar & Gupta, *supra* note 1, at 45.

in India's securities markets. By examining the transition from a passive reliance on internal vigilance to incentivized reporting mechanisms, and by comparing Indian laws with global best practices, this paper argues for a recalibration of policy that ensures the whistleblower is viewed not as a traitor, but as a vital guardian of market integrity.

II. THE THEORETICAL IMPERATIVE: BRIDGING INFORMATION ASYMMETRY

The integrity of securities markets hinges on resolving the "agency problem", the inherent conflict where management (agents) may act against shareholder (principal) interests.[10] While traditional governance relies on formal gatekeepers like auditors, these actors often occupy the "carpeted world" of senior management, detached from the "tiled world" of operational employees where malfeasance often originates.[11] Whistleblowing serves as a critical corrective to this information asymmetry, creating "friction" that forces directors and regulators to engage with compliance failures.[12]

However, the efficacy of this mechanism is dictated by the legal standard of reporting. While Indian corporate policies historically enforce a "Good Faith" requirement, putting the whistleblower's motives on trial, modern global standards have shifted toward "Reasonable Belief."[13] This standard acknowledges that the veracity of information, not the purity of intent, is the primary objective of fraud detection. Furthermore, the introduction of financial rewards under SEBI's 2019 amendments acknowledges that whistleblowing is often an economic decision.[14] To stimulate reporting in high-stakes environments, the framework must offset the significant professional and personal costs of disclosure with credible, timely, and predictable incentives.[15]

[10] *See* Janet P. Near & Marcia P. Miceli, *Whistle-Blowing: Myth and Reality*, 22 J. MGMT. 507 (1996).
[11] *See* Deborah A. DeMott, *Shareholders as Principals*, *in* AGENCY LAW IN COMMERCIAL PRACTICE 105, 112 (Danny Busch et al. eds., 2016) (utilizing the "carpeted vs. tiled" world metaphor to explain information asymmetry).
[12] WHISTLE BLOWING: THE REPORT OF THE CONFERENCE ON PROFESSIONAL RESPONSIBILITY (Ralph Nader et al. eds., 1972).
[13] *See* Kumar & Gupta, *Whistleblowing in India: An Analysis of Corporate Policies*, 15 J. CORP. L. STUD. 12 (2020) (noting that 97% of Indian firms still utilize the "Good Faith" standard).
[14] Securities and Exchange Board of India (Prohibition of Insider Trading) (Third Amendment) Regulations, 2019, Gazette of India, pt. III sec. 4 (Sept. 17, 2019).
[15] *See* MARCIA P. MICELI ET AL., WHISTLE-BLOWING IN ORGANIZATIONS 120-25 (2013) (analyzing the economic cost-benefit ratio for high-level corporate informants).

III. THE LEGAL LANDSCAPE OF WHISTLEBLOWING IN INDIA

The Indian legal framework for whistleblowing is characterized by a bifurcated structure that distinguishes between general corporate "vigilance" and specialized "informant" mechanisms for market abuse.[16] Unlike jurisdictions with a single, comprehensive statute protecting all whistleblowers (such as the United Kingdom's Public Interest Disclosure Act), India operates through a patchwork of provisions embedded within the Companies Act, SEBI regulations, and a largely non-operational act for public servants.[17]

A. The Foundational Pillar: Internal Vigil Mechanisms

The statutory cornerstone of corporate whistleblowing is Section 177(9) of the Companies Act, 2013, which replaced the voluntary guidelines of the 2002 Narayana Murthy Committee.[18] This provision mandates that listed companies establish a "vigil mechanism" to report genuine concerns regarding unethical behavior or actual fraud.[19] This is reinforced by Regulation 22 of the SEBI (LODR) Regulations, 2015, which requires formal policies providing safeguards against victimization.[20] While these provisions institutionalized reporting, they remain structurally limited as internal "safe harbors" governed by Audit Committees, creating inherent conflicts of interest when malfeasance involves senior management.

B. The Modern Pillar: The SEBI Informant Mechanism

Recognizing that insider trading is notoriously difficult to detect through traditional gatekeepers, SEBI introduced a radical "Informant Mechanism" via the 2019 Amendments to the Prohibition of Insider Trading (PIT) Regulations.[21] This Chapter IIIA framework transitioned the regulator from passive reliance on internal vigilance to an active, incentivized reporting model.[22] Key features include the Office of Informant Protection (OIP) and the

[16] *See* Debleena Chakraborty, *The Limited Efficacy of the Whistle-Blower Protection & Analysis of Whistleblower Legislation in India*, 6 INT'L J. MULTIDISCIPLINARY RSCH. 1, 3 (2024).
[17] *See* Debleena Chakraborty, *The Limited Efficacy of the Whistle-Blower Protection & Analysis of Whistleblower Legislation in India*, 6 INT'L J. MULTIDISCIPLINARY RSCH. 1, 3 (2024).
[18] *See* Dr. Anil Kumar & Dr. Seema Gupta, *Decoding Whistle Blowing Policies of Indian Companies*, 48 CHARTERED SECRETARY 45, 45 (2018).
[19] Companies Act, 2013, § 177(9).
[20] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 22.
[21] Securities and Exchange Board of India (Prohibition of Insider Trading) (Third Amendment) Regulations, 2019, ch. IIIA.
[22] Id.

introduction of Voluntary Information Disclosure Forms (VIDF).[23] Crucially, the regulations permit anonymous reporting through legal counsel and offer monetary rewards of up to 10% of disgorged proceeds, currently capped at ₹1 Crore.[24]

C. The Public Sector Gap: The Whistle Blowers Protection Act, 2014

The Whistle Blowers Protection Act, 2014 (WPA) was enacted following the tragic murders of Satyendra Dubey and Manjunath Shanmugam to protect those exposing corruption in government bodies.[25] The WPA was designed to establish a formal mechanism for receiving complaints against public servants and protecting informants from victimization.[26] However, the Act remains a "paper tiger" as it has not been fully operationalized by the Central Government, leaving its mechanisms to function largely through ad-hoc resolutions.[27] Furthermore, the WPA is restricted to public servants and does not extend to the private corporate sector.[28] In this legislative vacuum, the Supreme Court has intervened, recognizing whistleblowing as a form of speech protected under Article 19(1)(a) of the Constitution in *Indirect Tax Practitioners Association v. R.K. Jain*.[29]

IV. WHISTLEBLOWER POLICIES IN PRACTICE: A SECTORAL ANALYSIS

While the Companies Act, 2013 and SEBI Regulations provide the statutory skeleton for whistleblower protection, the muscle and sinew of these protections are determined by the internal policies adopted by individual corporations. An analysis of the whistleblower policies of major Indian entities reveals a landscape where regulatory compliance is often prioritized over the creation of a genuinely safe harbor for informants. By examining the specific provisions of Market Infrastructure Institutions (MIIs), Public Sector Undertakings (PSUs), and private entities, one can identify systemic barriers, specifically regarding anonymity and the "good faith" requirement that likely suppress the reporting of securities fraud.

A. Market Infrastructure Institutions (MIIs): The Gatekeepers' Gate

Market Infrastructure Institutions, such as stock exchanges and depositories, are the first line

[23] *Id.* at reg. 7B.
[24] *Id.* at reg. 7K, 7M.
[25] *See* Chakraborty, *supra* note 1, at 4–5.
[26] Whistle Blowers Protection Act, 2014, No. 17, Acts of Parliament, 2014 (India)
[27] *See* Chakraborty, *supra* note 1, at 4.
[28] *Id.*
[29] *Indirect Tax Practitioners Association v. R.K. Jain* (2010) 8 SCC 281.

of defense in the securities market. Their internal whistleblower policies are therefore critical not only for their own governance but for the integrity of the market they regulate.

1. National Securities Depository Limited (NSDL)

The NSDL Whistle Blower Policy establishes a "Whistle Officer" and a "Whistle Committee" to investigate disclosures.[30] However, the policy contains a categorical exclusion that undermines the utility of the mechanism for fearful insiders. It explicitly states: "Any anonymous Protected Disclosures i.e. without complete name, address, contact details... shall not be acceptable by the Company."[31] This requirement forces the whistleblower to reveal their identity at the very first step, stripping them of the primary shield against retaliation. Furthermore, the policy mandates that the whistleblower must not only have a reasonable basis but must also avoid being "frivolous." The policy dictates that a whistleblower who reports "otherwise than in Good Faith for consequently 3 instances, will be disqualified from reporting further Protected Disclosures."[32] This provision creates a "three-strikes" rule that could deter employees from reporting borderline or complex cases of fraud for fear of being permanently silenced.

2. National Stock Exchange of India Limited (NSE)

The NSE policy similarly restricts anonymous reporting. It states that "Anonymous Complaints shall not be acted upon under Whistle Blower Policy."[33] While it allows for "pseudonymous" complaints, it imposes a strict verification procedure: if the complainant does not respond to a verification request within seven days, the complaint is filed away and ignored.[34] This procedural hurdle places the burden of engagement on the whistleblower, who may be in a precarious position. The NSE policy constitutes a "Whistle Blower Panel" comprising high-ranking officials like the Chief Regulatory Officer and Group CFO.[35] While this ensures high-level oversight, it may also intimidate junior employees who fear reporting against the very hierarchy that constitutes the panel.

[30] *See* Nat'l Sec. Depository Ltd., Whistle Blower Policy 6 (2024).
[31] *Id.* at 11.
[32] *Id.* at 10.
[33] *See* Nat'l Stock Exch. of India Ltd., Whistle Blower Policy 5 (2023).
[34] *Id.*
[35] *Id.* at 6.

B. Public Sector Undertakings (PSUs): Hierarchy and Bureaucracy

Whistleblower policies in PSUs are heavily influenced by the structured, hierarchical nature of state-owned enterprises, often conflating whistleblowing with vigilance complaints.

1. Bharat Petroleum Corporation Limited (BPCL)

BPCL's policy illustrates the tension between confidentiality and bureaucratic procedure. The policy designates the Chairman & Managing Director (CMD) as the "Competent Authority" for receiving complaints.[36] While there is a provision to bypass the CMD if there is a conflict of interest, the centralization of power in the CMD for standard complaints poses an inherent risk if the corruption flows from the top. Furthermore, the procedure for handling complaints is arduous: the "Nodal Officer" must confirm the identity of the complainant by "writing a letter to him/ her."[37] While the policy attempts to protect identity by creating a "dummy complaint" for investigators,[38] the requirement to correspond in writing to verify identity creates a paper trail that could be weaponized in a retaliatory investigation. Like the MIIs, BPCL explicitly states, "Anonymous/ Pseudonymous complaints will not be entertained."[39]

2. MOIL Limited and CONCOR

MOIL Limited's policy similarly designates the Chairman of the Audit Committee as the Competent Authority but retains the disqualification for anonymous disclosures.[40] The Container Corporation of India (CONCOR) mandates that the complaint be inserted in a closed/secured envelope superscribed "Protected Disclosure," warning that failure to do so means "it will not be possible to provide protection."[41] These procedural rigidities suggest a system designed for "vigilance" rather than modern, agile corporate whistleblowing. The policies focus heavily on the form of the complaint rather than the substance of the disclosure, potentially invalidating genuine tips due to technical errors in submission.

C. Private Sector and NBFCs: A Spectrum of Flexibility

Private sector entities and Non-Banking Financial Companies (NBFCs) show slightly more

[36] *See* Bharat Petroleum Corp. Ltd., Whistle Blower Policy 2 (2021).
[37] *Id.* at 5.
[38] *Id.*
[39] *Id.*
[40] *See* MOIL Ltd., Whistle Blower Policy 6 (2023).
[41] *See* Container Corp. of India Ltd., Whistle Blower Policy 7 (2025).

variation, with some policies acknowledging the modern realities of communication and risk.

1. SBFC Finance Limited

SBFC's policy distinguishes itself by including modern risks in its scope, such as "Social media misuse" and "Breach of IT security."[42] More significantly, unlike the rigid rejection of anonymity by NSDL and BPCL, SBFC adopts a discretionary approach. The policy states: "While anonymous Complaints will also be suitably and sincerely looked into the Whistleblower may choose to disclose his/ her identity."[43] This nuance, allowing the organization discretion to investigate credible anonymous tips aligns better with global best practices where the value of the information is prioritized over the identity of the source.

2. Larsen & Toubro Infotech (L&T)

L&T's policy relies on a "Whistle Blowing Investigation Committee" (WBIC) and explicitly states that directors or employees should report "without expecting any reward in return."[44] This expressly negates the financial incentive model promoted by the SEBI (PIT) amendments. Furthermore, L&T's policy states the WBIC is "not bound to take cognizance of anonymous letters,"[45] reinforcing the corporate preference for identified (and thus accountable) accusers over anonymous informants.

D. Synthesis: The "Good Faith" Barrier and the Identity Trap

A comparative analysis of these policies reveals two critical structural flaws that pervade the Indian landscape.

First, the obsession with **Identity Verification**. Almost every policy analyzed (NSDL, NSE, BPCL, MOIL, Repro India) explicitly rejects or discourages anonymous complaints.[46] This stands in stark contrast to the US SEC's whistleblower program under Dodd-Frank[47], which allows whistleblowers to report anonymously through a lawyer.[48] In the Indian context, where the risk of physical violence (as seen in the Satyendra Dubey case) is real, the requirement to

[42] *See* S.B.F.C. Fin. Ltd., Vigil Mechanism and Whistleblower Policy 7 (2024).
[43] *Id.* at 11.
[44] *See* Larsen & Toubro Infotech Ltd., Whistle Blower Policy 3 (2014).
[45] *Id.* at 5.
[46] *See* Repro India Ltd., Whistle Blower Policy 5 (2025).
[47] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).
[48] *See* 17 C.F.R. § 240.21F-9(c) (2011).

self-identify is a massive deterrent. BPCL's procedure of verifying identity by writing a letter to the whistleblower represents a bureaucratic formalism that endangers the very person the policy claims to protect.

Second, the prevalence of the **"Good Faith"** requirement. As noted in the academic analysis by Kumar and Gupta, 97% of Indian companies stipulate that concerns must be raised in "good faith."[49] This is evident in the policies of NSDL,[50] CDSL,[51] and BPCL.[52] The "Good Faith" standard places the burden on the whistleblower to prove their motive is pure, rather than on the organization to prove the information is false. This contrasts with the "Reasonable Belief" standard evolving globally, where the whistleblower's motive (even if malicious) is irrelevant provided the information regarding fraud is true.[53] By threatening disciplinary action for "frivolous" complaints, as seen in the NSDL's "three-strikes" rule, companies effectively weaponize the policy against employees, turning a protection mechanism into a potential disciplinary trap.

V. THE REWARD PARADIGM: INCENTIVIZING THE INFORMANT

A. The SEBI Reward Structure: Moving Beyond Compliance

Historically, the Indian corporate governance framework relied on the moral obligation of employees to report misconduct, viewing whistleblowing as a fiduciary duty rather than an economic activity.[54] However, recognizing that the social and professional costs of reporting often outweigh moral imperatives, SEBI introduced a paradigm shift with the 2019 amendments to the Prohibition of Insider Trading (PIT) Regulations.[55] This amendment institutionalized the "Informant Mechanism," explicitly monetizing the value of information.

Under this regime, an "Informant" who voluntarily submits a Voluntary Information

[49] Dr. Anil Kumar & Dr. Seema Gupta, *Decoding Whistle Blowing Policies of Indian Companies*, 48 CHARTERED SECRETARY 45, 48 (2018).
[50] Nat'l Sec. Depository Ltd., *supra* note 52, at 5.
[51] Cent. Depository Servs. (India) Ltd., *supra* note 58, at 5.
[52] Bharat Petroleum Corp. Ltd., *supra* note 60, at 2.
[53] *See* INT'L BAR ASS'N & GOV'T ACCOUNTABILITY PROJECT, ARE WHISTLEBLOWING LAWS WORKING? A GLOBAL STUDY OF WHISTLEBLOWER PROTECTION LITIGATION 65 (2021).
[54] *See* Dr. Anil Kumar & Dr. Seema Gupta, *Decoding Whistle Blowing Policies of Indian Companies*, 48 CHARTERED SECRETARY 45, 46 (2018) (noting that only 40% of companies framed reporting as a duty).
[55] *See* Henil Shah, *SEBI empowers Informants to quash any Insider Trading attempts*, VINOD KOTHARI & COMPANY (Oct. 2, 2020), http://vinodkothari.com/2020/10/sebi-empowers-informants-to-quash-any-insider-trading-attempts/.

Disclosure Form (VIDF) alleging insider trading is eligible for a monetary reward. The regulations stipulate that if the information provided leads to a successful enforcement action resulting in disgorgement of at least ₹1 Crore, the informant may receive a reward equal to 10% of the monies collected, subject to an upper limit of ₹1 Crore (approximately $135,000).[56] This reward is paid from the Investor Protection and Education Fund (IPEF).[57] Additionally, to alleviate immediate financial pressure on the whistleblower, SEBI is empowered to grant an interim reward of up to ₹10 Lakhs at the stage of the final order, even before monetary recovery is fully realized.[58]

While this mechanism represents a significant evolution from the passive "vigil mechanisms" mandated by the Companies Act, the reward cap of ₹1 Crore has been critiqued as modest when compared to the career risks undertaken by senior executives who are often best positioned to detect complex insider trading schemes.[59]

B. Comparison with the US Model (Dodd-Frank Act)

The Indian reward cap stands in stark contrast to the bounty program established by the United States under the Dodd-Frank Act.[60] The Dodd-Frank Act authorizes the US Securities and Exchange Commission (SEC) to pay rewards to whistleblowers who provide original information leading to monetary sanctions exceeding $1 million.[61] Crucially, the US model offers a reward ranging from 10% to 30% of the sanctions collected, with no absolute statutory cap on the dollar amount.[62]

The efficacy of the US model is evidenced by its volume. Since the program's inception, the SEC has received over 22,000 whistleblower tips and paid out more than $149 million in awards to 41 whistleblowers by 2017.[63] Notable individual awards have reached as high as $30 million and $22 million for single cases involving accounting fraud and misleading financial

[56] *Id.*; *see also* Radhika Iyer & Meher Mehta, *Analyzing SEBI's paper on rewarding whistleblowers*, INDIA BUS. L.J., July/Aug. 2019 (noting the cap of ₹10 million).
[57] Shah, *supra* note 80.
[58] *Id.*
[59] *See* Iyer & Mehta, *supra* note 81 (discussing the factors determining the success of the mechanism).
[60] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).
[61] *See* Jason Zuckerman & Dallas Hammer, *Recent Developments in Whistleblower Law*, ZUCKERMAN LAW (Aug. 2017), at 32.
[62] *Id.*; *see also* TRANSPARENCY INT'L HELPDESK ANSWER, WHISTLEBLOWER REWARD PROGRAMMES 10 (2018) (noting the 10-30% range).
[63] Zuckerman & Hammer, *supra* note 85, at 33.

statements.[64] This high-stakes incentive structure has been termed a "game changer" by SEC leadership, generating high-quality tips that span market manipulation and offering fraud.[65] The US model demonstrates that when the potential reward is high enough to compensate for the "lifetime unemployability" that often follows whistleblowing, insiders are more willing to risk coming forward.[66]

C. The "Bounty Hunter" Debate: Ethics and Efficacy

The introduction of financial incentives transforms the whistleblower from a "moral guardian" into an economic actor, raising significant ethical debates. Critics argue that offering bounties may create perverse incentives, encouraging opportunistic reports or even entrapment.[67] Theories suggest that if rewards are based on the severity of the penalty, informants might delay reporting to allow the fraud to grow, thereby maximizing their potential payout.[68] Furthermore, there is a risk of false or frivolous complaints driven solely by the prospect of financial gain.[69]

However, proponents argue that these risks are outweighed by the necessity of counteracting the immense pressure to remain silent. Research indicates that employees perform a cost-benefit analysis before reporting; if the expected reward outweighs the anticipated cost of retaliation (dismissal, blacklisting), disclosures increase.[70] In jurisdictions like South Korea, which offers rewards up to $2 million for reporting cartel activity, the mechanism has successfully destabilized anti-competitive rings by creating distrust among conspirators.[71] Ultimately, SEBI's adoption of a reward system acknowledges that in the high-stakes environment of securities fraud, relying solely on ethics is insufficient; credible deterrence requires aligning the economic interests of the whistleblower with those of the regulator.

VI. CRITICAL GAPS AND IMPLEMENTATION CHALLENGES

While the SEBI (Prohibition of Insider Trading) Regulations, 2015 and the Companies Act,

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[64] *Id.*
[65] *Id.* at 32.
[66] *See* TRANSPARENCY INT'L, *supra* note 86, at 3 (citing Franke et al. regarding cost-benefit analysis of whistleblowing).
[67] *Id.* at 5 (discussing entrapment and moral hazards).
[68] *Id.* (citing Howse and Daniels regarding opportunistic delays).
[69] *Id.* at 4 (discussing the risk of false reports).
[70] *Id.* at 3.
[71] *Id.* at 4 (citing Stephan regarding Korean cartel detection).

2013 provide a statutory skeleton for whistleblower protection, a forensic examination of the internal policies of major Indian corporations and Market Infrastructure Institutions (MIIs) reveals deep structural fractures. When contrasted with global best practices and the sophisticated evidentiary standards of the United States, the Indian framework exhibits critical gaps regarding the burden of proof, the "good faith" requirement, and the handling of anonymous complaints, which collectively undermine the "credible deterrence" doctrine.

A. Non-Operational Statute

The most glaring gap in India's whistleblower protection regime is the non-operational status of the Whistle Blowers Protection Act, 2014 (WPA). Although the Act received Presidential assent on May 9, 2014, the Central Government has failed to notify the date of its entry into force, leaving the statute in a state of legislative coma. Unlike best practices in jurisdictions like the United States, the WPA does not allow for anonymous complaints. The Act mandates that a complainant must disclose their identity; if a complaint is made anonymously, no action shall be taken.[72] The WPA is restricted strictly to public servants and government bodies.[73] It does not cover the private corporate sector, leaving employees of non-governmental companies without statutory protection unless they fall under specific SEBI or Companies Act provisions.[74]

B. The "Good Faith" Trap vs. Reasonable Belief

A pervasive flaw in the Indian corporate governance landscape is the retention of the "Good Faith" requirement for whistleblowers. Academic analysis of the top 100 listed Indian companies indicates that approximately 97% of whistleblower policies stipulate that concerns must be raised in "good faith."[75] This requirement is not merely semantic; it fundamentally shifts the inquiry from the *veracity* of the information to the *motive* of the informant.

For instance, the Whistle Blower Policy of the National Securities Depository Limited (NSDL) defines "Good Faith" as lacking when the whistleblower "reasonably should have known that the communication... is malicious, false or frivolous."[76] Similarly, the National Stock

[72] *Id.* at 4.
[73] *Id.*
[74] *Id.* at 7.
[75] Dr. Anil Kumar & Dr. Seema Gupta, *Decoding Whistle Blowing Policies of Indian Companies*, 48 CHARTERED SECRETARY 45, 48 (2018).
[76] Nat'l Sec. Depository Ltd., *Whistle Blower Policy* 5 (2024).

Exchange (NSE) policy disqualifies whistleblowers who report "otherwise than in good faith."[77] This creates a hazardous legal environment where a whistleblower who exposes genuine fraud may be denied protection if the company argues the disclosure was motivated by a personal vendetta or workplace grievance.

This contrasts sharply with global best practices. As noted by the International Bar Association (IBA) and Government Accountability Project, the "good faith" standard puts the whistleblower's motives on trial, rather than the misconduct.[78] Consequently, jurisdictions like the United States and the United Kingdom have moved toward the "Reasonable Belief" standard.[79] Under the US Whistleblower Protection Act (WPA) and the UK Public Interest Disclosure Act (PIDA), protection is granted if the whistleblower reasonably believes the information is true, regardless of whether their motive is altruistic or vindictive.[80] By clinging to the "good faith" doctrine, Indian policies inadvertently discourage reporting by employees who fear their intentions will be scrutinized more rigorously than the fraud they expose.

C. The Anonymity Paradox: Internal Policy vs. Regulatory Intent

While SEBI's 2019 "Informant Mechanism" allows for anonymous reporting to the regulator via a legal representative, the internal "vigil mechanisms" of Indian companies often explicitly reject anonymity, creating a disconnect. Internal reporting is typically the first step for a whistleblower; if this channel is unsafe, the entire system falters.

An analysis of specific policies reveals a hostility toward anonymous complaints. The NSDL policy categorically states, "Any anonymous Protected Disclosures... shall not be acceptable by the Company... and shall not be under any obligation to act upon or investigate."[81] NSE policy mandates that "Anonymous Complaints shall not be acted upon."[82] While it allows for "pseudonymous" complaints, it requires the complainant to respond to verification requests within 7 days, failing which the complaint is discarded.[83] BPCL policy explicitly states,

[77] Nat'l Stock Exch. of India Ltd., *Whistle Blower Policy* 6 (2023).
[78] *See* INT'L BAR ASS'N & GOV'T ACCOUNTABILITY PROJECT, ARE WHISTLEBLOWING LAWS WORKING? A GLOBAL STUDY OF WHISTLEBLOWER PROTECTION LITIGATION 65 (2021).
[79] *Id.*
[80] *See* Sagnik Sarkar, *A Critical Analysis of the Informant Mechanism under the SEBI (Prohibition of Insider Trading) Regulations, 2015 Vis-à-Vis Global Best Practices on Whistleblowing*, 10 RGNUL FIN. & MERCANTILE L. REV. 145, 154 (2023).
[81] Nat'l Sec. Depository Ltd., *supra* note 97, at 11.
[82] Nat'l Stock Exch. of India Ltd., *supra* note 98, at 5.
[83] *Id.*

"Anonymous/ Pseudonymous complaints will not be entertained."[84] Furthermore, it mandates a dangerous verification procedure where the Nodal Officer confirms identity by "writing a letter to him/ her," creating a paper trail that compromises confidentiality.[85]

This blanket rejection of anonymous tips ignores the reality that valid information often comes from fearful insiders who cannot risk identification. In contrast, the SBFC Finance policy offers a more progressive approach, stating that while identity disclosure is encouraged, "anonymous Complaints will also be suitably and sincerely looked into."[86] Major institutions fails to investigate the anonymous tips on merits, thereby ignoring credible information.

D. The "Three Strikes" Rule and Disqualification

Perhaps the most alarming discovery in the policy analysis is the existence of punitive "disqualification" clauses. The NSDL policy states that a whistleblower who reports "otherwise than in Good Faith for consequently 3 instances, will be disqualified from reporting further Protected Disclosures under this Policy."[87] The NSE policy mirrors this, disqualifying whistleblowers who make 3 or more disclosures found to be "frivolous, baseless or reported otherwise than in good faith."[88]

This "three strikes" rule is highly problematic. It effectively permanently silences an employee who may have raised concerns that were difficult to prove or were dismissed by an internal committee biased toward management. If that same employee later discovers irrefutable evidence of a massive fraud (e.g., a Satyam-like accounting scandal), they are procedurally barred from using the vigil mechanism. This provision treats whistleblowing as a privilege rather than a statutory right and duty to report illegalities.

E. Retaliation and the Burden of Proof

The ultimate test of a whistleblower framework is its ability to protect against retaliation. Here, Indian regulations lag significantly behind the US model regarding the burden of proof.

In the United States, under statutes enforced by the Department of Labor (such as SOX), a

[84] Bharat Petroleum Corp. Ltd., *Whistle Blower Policy* 5 (2021).
[85] *Id.* at 5.
[86] S.B.F.C. Fin. Ltd., *Vigil Mechanism and Whistleblower Policy* 11 (2024).
[87] Nat'l Sec. Depository Ltd., *supra* note 97, at 10.
[88] Nat'l Stock Exch. of India Ltd., *supra* note 98, at 6.

"burden-shifting" framework applies. Once a whistleblower demonstrates by a preponderance of the evidence that their protected activity was a "contributing factor" in an adverse action (e.g., termination), the burden shifts to the employer.[89] The employer must then prove by **"clear and convincing evidence"**, a much higher standard than preponderance, that it would have taken the same adverse action even absent the whistleblowing.[90] This standard makes it difficult for employers to disguise retaliation as a layoff or performance-based firing.

In India, the SEBI (PIT) Regulations prohibit discrimination and harassment,[91] but they do not statutorily shift the burden of proof. The onus remains largely on the employee to prove that their victimization was a direct result of their disclosure. Given the power asymmetry and the employer's control over personnel records, this burden is often insurmountable for the employee. Furthermore, company policies like Diamond Power Infrastructure Limited explicitly state that the policy does not protect an employee from adverse action due to "poor job performance,"[92] a common pretext used by employers to fire whistleblowers. Without a statutory "reverse burden of proof," such clauses give employers broad cover to retaliate under the guise of routine HR management.

F. Limited Remedial Power

Finally, while SEBI can penalize a listed company for violating the Code of Conduct, it lacks the plenary power to order specific performance in employment disputes, such as reinstating a fired executive or awarding "front pay" (damages for lost future earnings). In the US, courts have awarded substantial front pay in lieu of reinstatement when the work environment is too hostile for the whistleblower to return.[93] For example, in *Hagman v. Washington Mutual Bank*, a whistleblower was awarded $640,000 in front pay.[94] In India, a victimized whistleblower is often left to navigate the sluggish civil court system for wrongful termination damages, with no immediate interim relief to sustain their livelihood during the litigation.

[89] *See* Jason Zuckerman & Dallas Hammer, *Recent Developments in Whistleblower Law*, ZUCKERMAN LAW (Aug. 2017), at 9.
[90] *Id.* at 15; *see also Palmer v. Canadian Nat'l Ry.*, ARB No. 16-035, ALJ No. 2014-FRS-154, slip op. at 57 (ARB Sept. 30, 2016).
[91] Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, Reg. 7I.
[92] Diamond Power Infrastructure Ltd., *Vigil Mechanism/Whistle Blower Policy* 2 (2024).
[93] Zuckerman & Hammer, *supra* note 111, at 26.
[94] *Id.*

VII. RECALIBRATING THE POLICY: A ROADMAP FOR REFORM

The foregoing analysis indicates that while India has established the rudiments of a whistleblower protection framework, the current regime is structurally deficient when compared to the "gold standard" established by the US Sarbanes-Oxley Act (SOX)[95] and Dodd-Frank Act.[96] To transition from a compliance-based tick-box exercise to a robust system of "credible deterrence," the Indian framework requires a fundamental recalibration. This roadmap for reform proposes four critical interventions: adopting the "Reasonable Belief" standard, legislating a "Reverse Burden of Proof" for retaliation, institutionalizing independent oversight, and expanding the scope of compensable damages.

A. Implementing the Act

To transition from a "paper tiger" to a robust shield, the Whistle Blowers Protection Act, 2014 must not only be notified immediately but also amended to incorporate the following reforms derived from global best practices.

B. "Good Faith" to "Reasonable Belief"

The most immediate reform required is the abandonment of the "Good Faith" requirement prevalent in 97% of Indian corporate whistleblower policies.[97] As noted by the International Bar Association, requiring a whistleblower to demonstrate "good faith" places their *motives* on trial rather than the *veracity* of their disclosure, effectively deterring genuine reports from employees who may have mixed motives or personal grievances.[98] India must align with the global best practice of the "Reasonable Belief" standard, as applied in the US *Sylvester v. Parexel* decision. Under this standard, a whistleblower need only show a subjective belief that a violation occurred, and that this belief was objectively reasonable, regardless of their intent.[99]

Furthermore, the specific "Informant Mechanism" under the SEBI (Prohibition of Insider Trading) Regulations must be amended to reduce the evidentiary burden on the informant.

[95] Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745.
[96] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).
[97] Dr. Anil Kumar & Dr. Seema Gupta, *Decoding Whistle Blowing Policies of Indian Companies*, 48 CHARTERED SECRETARY 45, 48 (2018).
[98] INT'L BAR ASS'N & GOV'T ACCOUNTABILITY PROJECT, ARE WHISTLEBLOWING LAWS WORKING? A GLOBAL STUDY OF WHISTLEBLOWER PROTECTION LITIGATION 65 (2021).
[99] *See* Jason Zuckerman & Dallas Hammer, *Recent Developments in Whistleblower Law*, ZUCKERMAN LAW (Aug. 2017), at 4 (discussing *Sylvester v. Parexel Int'l LLC*, ARB Case No. 07-123 (ARB May 25, 2011)).

Currently, the regulations define an "informant" as one who discloses an act that "has occurred, is occurring, or is about to occur," implying that the informant must be correct about the legal violation to receive protection.[100] As Sarkar argues, this imposes an onerous burden on employees to make legal determinations they are not qualified to make. The definition should be broadened to protect the disclosure of any information the informant *reasonably believes* evidences a violation, even if that belief ultimately proves mistaken.[101]

C. The "Reverse Burden of Proof"

The most critical legislative gap in India is the absence of a "Reverse Burden of Proof" in retaliation cases. Currently, an Indian employee alleging victimization bears the entire burden of proving that the adverse action (e.g., termination) was a direct result of their whistleblowing, a near-impossible task given the information asymmetry between employer and employee.[102]

India should adopt the burden-shifting framework utilized by the US Department of Labor under SOX. This framework operates in two stages:

1. Contributing Factor

The whistleblower must first prove by a preponderance of the evidence that their protected activity was a "contributing factor" in the adverse action. As clarified in *Palmer v. Canadian National Railway*, "contributing factor" is a broad and forgiving standard; the whistleblowing need not be the sole or primary reason, playing "any role whatsoever" is sufficient.[103]

2. Clear and Convincing Evidence

Once the employee meets this low threshold, the burden shifts to the employer to prove by "clear and convincing evidence", a much higher standard than mere preponderance, that it would have taken the same adverse action even absent the protected activity.[104]

Implementing this standard in India would prevent employers from using "poor performance"

[100] Sagnik Sarkar, *A Critical Analysis of the Informant Mechanism under the SEBI (Prohibition of Insider Trading) Regulations, 2015 Vis-à-Vis Global Best Practices on Whistleblowing*, 10 RGNUL FIN. & MERCANTILE L. REV. 145, 166 (2023) (citing SEBI (PIT) Regulations, Reg. 7A(b)).
[101] *Id.* at 174.
[102] *Id.* at 176.
[103] Zuckerman & Hammer, *supra* note 119, at 11 (discussing *Palmer v. Canadian National Railway*, ARB No. 16-035 (ARB Sept. 30, 2016)).
[104] *Id.* at 13.

or "insubordination" as pretextual justifications for retaliatory firing, a common tactic in corporate India.[105] Additionally, SEBI regulations should be amended to explicitly vest employees with the "Right to Refuse" directions from superiors that they reasonably believe to be unlawful, protecting them from insubordination charges during the interim period before a legal determination is made.[106]

D. Institutionalizing Independence

The reliance on internal Audit Committees to adjudicate whistleblower complaints is fundamentally flawed when senior management is implicated. As seen in the analysis of PSU policies like BPCL, the "Competent Authority" is often the Chairman/CMD, creating an inherent conflict of interest.[107] To address this, India requires an independent statutory body similar to the "House for Whistleblowers" in the Netherlands or the Office of the Whistleblower at the US SEC.[108]

While SEBI has established an Office of Informant Protection (OIP), its current powers are limited to insider trading. The jurisdiction of such a body should be expanded to cover all securities law violations, including fraudulent financial reporting and corporate governance failures. Furthermore, this independent body must have the power to void "Gag Orders" in employment and settlement agreements. As demonstrated by the US SEC's enforcement action against KBR, Inc., confidentiality clauses that threaten discipline for discussing internal investigations with regulators act as a massive deterrent to reporting.[109] SEBI must explicitly declare such clauses void *ab initio*.

E. Enhancing Remedies

Finally, the remedial powers of Indian regulators must be expanded. Currently, SEBI's ability to enforce anti-retaliation remedies is legally tenuous and arguably *ultra vires* the SEBI Act, which focuses on market regulation rather than labor disputes.[110] A specific amendment to the

[105] *See* Diamond Power Infrastructure Ltd., *Vigil Mechanism/Whistle Blower Policy* 2 (2024) (noting that the policy does not protect employees from adverse action due to "poor job performance").
[106] Sarkar, *supra* note 120, at 174.
[107] *See* Bharat Petroleum Corp. Ltd., *Whistle Blower Policy* 2 (2021).
[108] INT'L BAR ASS'N, *supra* note 118, at 58 (discussing the Dutch House for Whistleblowers Act).
[109] Zuckerman & Hammer, *supra* note 119, at 41 (discussing *In the Matter of KBR, Inc.*, Exchange Act Release No. 74619 (Apr. 1, 2015)).
[110] Sarkar, *supra* note 120, at 171–72.

SEBI Act is necessary to empower the regulator to order comprehensive relief.

This relief must go beyond mere reinstatement, which is often untenable in a hostile work environment. Indian law should incorporate the concept of "Front Pay" (damages for lost future earnings) in lieu of reinstatement, as affirmed by US courts in *Jones v. SouthPeak Interactive Corp*.[111] Additionally, provisions for compensatory damages for emotional distress and reputational harm should be codified.[112] Without the prospect of being "made whole" financially, the rational employee will always choose silence over the career suicide of whistleblowing.

VIII. CONCLUSION

This research has critically examined the trajectory of whistleblower policy in India's securities markets, revealing a distinct evolution from the passive "vigil mechanism" mandated by the Companies Act, 2013, to the proactive "Informant Mechanism" introduced by SEBI in 2019. While the regulatory architecture has undeniably strengthened, the empirical analysis of corporate policies, ranging from PSUs like BPCL to market infrastructure institutions like NSDL, exposes a persistent gap between statutory intent and practical implementation.

The data indicates that while Indian companies adhere to the regulatory framework "as per the rulebook," they largely fail to foster a genuine culture of ethical values.[113] The prevalence of "Good Faith" clauses and the explicit rejection of anonymous complaints in 97% of analyzed policies serve as structural deterrents, placing the burden of proof on the whistleblower rather than the wrongdoer.[114] Unlike the United States, where the SEC's bounty program has successfully incentivized reporting by protecting anonymity and offering uncapped rewards, India's framework is hamstrung by a cap of ₹10 Crores and a lack of statutory protection against private sector retaliation.[115]

To recalibrate the policy effectively, regulators must move beyond a "tick-box" compliance

[111] Zuckerman & Hammer, *supra* note 119, at 26 (citing *Jones v. SouthPeak Interactive Corp.*, 777 F.3d 658 (4th Cir. 2015)).
[112] INT'L BAR ASS'N, *supra* note 118, at 28.
[113] Dr. Anil Kumar & Dr. Seema Gupta, *Decoding Whistle Blowing Policies of Indian Companies*, 48 CHARTERED SECRETARY 45, 45 (2018).
[114] *Id.* at 48.
[115] *See* Jason Zuckerman & Dallas Hammer, *Recent Developments in Whistleblower Law*, ZUCKERMAN LAW (Aug. 2017), at 32; *see also* Radhika Iyer & Meher Mehta, *Analyzing SEBI's paper on rewarding whistleblowers*, INDIA BUS. L.J., July/Aug. 2019.

approach. The first step is legal harmonization: the "Good Faith" standard must be legislatively replaced with the "Reasonable Belief" standard, ensuring that a whistleblower's motive does not invalidate the truth of their disclosure.[116] Furthermore, the protections envisaged under the non-operational Whistle Blowers Protection Act, 2014 must be extended to the private sector to cover corporate frauds that threaten national economic security.[117]

Ultimately, the whistleblower is an "economic guardian" who mitigates the information asymmetry inherent in securities markets. Until the legal system shifts the cost of reporting from the individual to the institution, through robust financial rewards and a reverse burden of proof in retaliation cases, the "islands of honesty" within corporate India will remain isolated and silent.[118]

[116] Sagnik Sarkar, *A Critical Analysis of the Informant Mechanism under the SEBI (Prohibition of Insider Trading) Regulations, 2015 Vis-à-Vis Global Best Practices on Whistleblowing*, 10 RGNUL FIN. & MERCANTILE L. REV. 145, 174 (2023).
[117] Debleena Chakraborty, *The Limited Efficacy of the Whistle-Blower Protection & Analysis of Whistleblower Legislation in India*, 6 INT'L J. MULTIDISCIPLINARY RSCH. 1, 4 (2024).
[118] Kumar & Gupta, *supra* note 133, at 45.