

WHISTLEBLOWING BY A PUBLIC EMPLOYEE AND ADMINISTRATIVE LAW

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ABSTRACT

Let the cat out of the bag is prominently used when there is a need to ask someone to disclose secrets or such information that is previously unknown. In law, whistleblowing or blowing the whistle means to make the disclosure of information and the details of wrongdoing or a wrongful act in the eyes of the law. The person who exposes such information is called a whistleblower. Whatever happens should happen between the four walls of the law, i.e., the Constitution, which lays the Grund Norm. Whistleblowing is one of the most important tasks when it comes to the application of the Rule of Law and Prevention of Rule by Law in the administration of the organization. Whistleblowing can be done in situations like a criminal offense, danger to a person or environment, etc. The act of Whistleblowing is a significant one that requires a whistleblower to be highly courageous and unafraid of notifying the concerned authorities of such ongoing malpractices. There are some often observed threats to whistleblowers. This article aims to put forth insights into the concept of whistleblowing and whistleblower, the threats to and protection of whistleblowers, legal aspects of whistleblowing, etc. This research article will give an overview of whistleblowing and its laws in India. Ultimately, this research article puts forth the lacuna in the whistleblowing laws and policies in India. It states the suggestions of the author to overcome the same.

Keywords: Whistleblower, Fraudulent Act, Crime, Whistleblowers Protection Act, Transparency, Concern, Protection.

INTRODUCTION

Whistleblowing is a term first used in the case of *Winters v. Houston Chronicle Pub. Co.*¹ by Dogget J. The act of whistleblowing means to put into the picture and make the authorities aware of the malicious, fraudulent, and unethical actions taking place in the organization. The act of whistleblowing is most prominent in the corporate sector but is also widely seen in public-sector employment. a whistleblower is a person who exposes or publicizes the fraudulent activities of the employees to the authorities concerned. A whistleblower is a

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¹*Winters v. Houston Chronicle Pub. Co.*, [1990] 795 S.W.2d 723

person either currently or formerly employed with the company. The acts which can be recorded and publicized under whistleblowing involve a proposition where there is harm to a person or his health in particular, violation of the regulations, vandalism of the environment, criminal acts, instigating an offense or covering up an offense, etc. The core essence of whistleblowing is to maintain transparency by reporting the objective crimes happening in the workplace specifically involving white-collar crimes. Whistleblowing helps counter and reduce the illegal and malicious practices of corruption, smuggling, tax evasion, money-laundering and much more. It helps maintain the ethics of public employment and develops transparency. The act of whistleblowing is done in the best interest of the public. The whistleblowers help in the reduction of such crimes by reporting the fraudulent and unethical activities of the workers. They are against inefficiency, non-accountability and non-transparency in the workplace. Hence, there is a need for appropriate consistent and practically suited rules and regulations for the legal protection of whistleblowers in society. The job of a whistleblower is backed by statute which means it is his statutory responsibility to communicate such crimes. According to the whistleblowers, the state apparatus must be based on transparency.

CATEGORIZATION OF KINDS OF WHISTLEBLOWERS

There are the following categories of whistleblowers:

- Internal whistleblowers - Internal whistleblowers are the ones who report the fraudulent act to the authorities of the management or office where the person is employed. This is mainly done to protect the company's reputation which could have been harmed by reporting the wrongdoing to an outside authority or media. This includes matters of violation of the company's regulations, disobeying the code of conduct, etc.
- External whistleblowers - External whistleblowers are the ones who publicize the fraudulent act in the media or public.
- Personal whistleblowers - it is the person who reports the whistleblowing in such a situation where malicious practices in the employment are done and that injure a particular person or his personal surroundings.
- Impersonal whistleblowers - such a whistleblower informs the concerned authorities of the fraudulent acts going on in the organization that does not affect the other persons.

- Government whistleblowers - here, the whistleblower reveals the illicit acts of government employees to maintain more transparency in the government sector.
- Alumniwhistleblowers - An Alumni refers to a person who was formerly part of an organization or institution. Thus, the Alumni whistleblower refers to the person who was a former employee of the organization and presently reports the wrongdoings by the employees of the organization.
- Corporate whistleblowers - is when whistleblowing is done by a member of an established business firm or corporation.

LAWS IN INDIA

In 2001, the protection of whistleblowers was suggested by the then Law Commission of India. In 2003, when the Satyendra Dubey case ²took place, the Supreme Court had to introduce resolutions for the safeguards of whistleblowers. The Right to Information Act ³was enacted in 2005. It provided the public sector with more accountability, a helping hand in governance, and maintaining transparency. Thus, it leads to a decrease in fraudulent acts. Though the Right to Information Act⁴was implemented to control the situations like that of corruption and other crimes, it still had a major pit. It led to harsh consequences for the whistleblowers leading to their deaths in most circumstances. In 2011, the Whistleblowers Protection Bill was introduced but was passed in 2014 as the Whistleblowers Protection Act, 2014⁵. Thus, taking about three years to become a statute. The Whistleblowers Protection Bill of 2011 was implemented in 2014 in a way that the limits were imposed on the exposure of information regarding fraud in areas of scientific, intellectual property, security interests, etc. This statute helps establish the provisions for the complaints of misappropriated conduct in the workplace, protects the whistleblowers raising their voices against such conducts and acts etc. It also provides punishments, penalties, remedies, appeals, and so on. Protection of the whistleblowers helps establish integrity which is one of the foremost goals of our union leaders. Sections 206 to 229 of the Companies Act 2013 ⁶mentions the arrest, investigation and inquiry of such persons involved in the crimes. Section 211 of the Companies Act 2013

² [Shreya Malhotra, Right to information and protection of whistleblowers, \(iPleaders, 06 October, 2020\)<Right to information and protection of whistleblowers - iPleaders>accessed 20 July, 2023](#)

³ Right to Information Act, 2005

⁴ *Ibid*

⁵ Whistleblowers Protection Act, 2014

⁶ The Companies act 2013, s. 206 - 229

⁷mentions the setup of a statutory office for the inspection of the persons involved in such fraudulent acts. Also came the Security and Exchange Board of India (SEBI) regulations.

CONCERNS

The pulping concerns of whistleblowing and its laws in India to date are the following:

Insecurity in the workplace - the existence of offenses and fraudulent acts including white-collar crimes makes the workplace insecure and unsafe for the workers and employees. It makes them feel uncomfortable working at such a place of existing wrongdoings.

The RTI Blot - The Right to Information Act of 2005 ⁸highlighted huge loops. It was considered an act to protect whistleblowers but led to intolerant and irreversible circumstances. The activists related to the RTI had even to face deaths as they were killed in some way other than exposing the negatives. A few such activists included Arun Sawant, Data Patil, VishramDodiya, Ram Ghadegavkar, and the list goes more, etc.

Loops in Public Sector - In the public sector of employment, the highly recognized fraud is that of corruption or bribery. Corruption refers to the deflection of the workers or even the higher authorities from the performance of their employment responsibilities for personal monetary perks and benefits.

Danger to Whistleblowers - in most cases of whistleblowing, it is seen that the whistleblowers who raise their voices against the wrongs in the workplace with a positive objective have to face unexpected and life-threatening consequences. In most of the cases, it results in the death of whistleblowers. In some cases, it also leads to the consequences of trapping the family in the results of the actions of whistleblowers. Threats to Whistleblowers in a workplace are when they report a person indulging in a crime. The most limelight threats to whistleblowers and their families include physical violence and mental harassment. The whistleblowers are under harsh pressure from their seniors and supervisors. The whistleblowers even have to face legal challenges in case while reporting the wrongdoing, they also mention the aspect of some information of the workers that was meant to remain confidential. Thus, breaching the confidentiality clause of the employment contract. The whistleblowers can even lose their employment in case they report an illicit act of a higher

⁷ The Companies Act 2013, s. 211

⁸ Right to Information Act, 2005 (n3)

authority. And unfortunately, most of the cases of offenses including white-collar crimes such as corruption are recorded where the people at higher positions of employment are indulged. Such threats halt the whistleblowers from performing their jobs. This makes the whistleblowers afraid of the consequences. Thus, pausing them from notifying the scandals.

The two most prominent cases of whistleblowing and the threats to whistleblowers are the following:

Satyendra Dubey case⁹ - In this case, Satyendra Dubey was an engineer in the National Highway Authority of India. As a whistleblower, he informed of the corruption and such frauds in the Golden Quadrilateral Project 2003 started by the then Prime Minister Atal Bihari Vajpayee. Mr. Satyendra Dubey was killed in the place of Gaya, Bihar in the matter of reporting the fraud. Ultimately, no solution was sought to the complaints he made.

M ShanmuganManjunath case¹⁰ - it is a case that took place after two years of Satyendra Dubey's case¹¹. In this case, Mr. M ShanmuganManjunath worked as a manager in the petrol pumps of Uttar Pradesh under the Indian Oil Corporations. He found and reported that the fuel sold was of not the expected quality and was of bad standard. Thus, the sale needed to be stopped. As a consequence, the petrol pump was sealed. Mr. M ShanmuganManjunath was shot dead. Ultimately, the remedy to the complaint of low petrol quality was not sought.

Implementation - though there has been a system of protection of whistleblowers through laws and policies, which includes the Whistleblowers Protection Act 2014¹², the SEBI Regulations, the RTI Act¹³, etc., the extent of practical Implementation of these points to the loops in the administration and execution of these laws and policies. These are not enforced in a way as expected. Thus the practicality remains a great concern to protect the Whistleblowers for the courageous Act of reporting ill- practices.

RECOMMENDATIONS

Prosecution - The Prosecution should be against the accused of the crime.

⁹ Shreya Malhotra (n2)

¹⁰ M ShanmuganManjunath CRL OP MD23136(2022)

¹¹ Shreya Malhotra (n 2)

¹² Whistleblowers Protection Act, 2014 (n 5)

¹³ Right to Information Act, 2005 (n3)

Stringent Laws - not only theoretical policies would work but also stringently practically implemented laws are needed to look after such crimes and fraudulent acts in the workplace.

Execution - the implementation or the execution remains the foremost blot on the laws passed by the Indian Parliament. Thus, it can be called an indirect cause of action of the conflicts impacting directly. This must be rectified. The previously existing rules and regulations, laws, and policies must be implemented appropriately, and the upcoming ones must be such as may be practical in their application.

Reduction of threats to whistleblowers - whistleblowers can have physical as well as mental threats. These must be reduced by appropriate and suitable measures, policies, and a foundational legal framework for the same. Whistleblowers should have the full freedom to perform their tasks without the fear of some negative consequences.

CONCLUSION

In a nutshell, it can be noticed that the act of whistleblowing exposes the menaces to prevent further melancholy. It unveils such acts that can harm the reputation of the organization or negatively impact the people related to the organization. The whistleblowers risk themselves to prevent greater harm to the organization and its workers. Hats off to the courage, dedication and determination of the whistleblowers in the workplace. The whistleblowers not only require a minimum amount of protection but they require a maximum of it for their courage and endeavours. There still exists greater threats to the whistleblowers and even to their families in certain cases. These must be reduced and removed. This can be done by considering the above-mentioned recommendations.