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CONTEMPLATION OF WHISTLE BLOWING IN INDIA

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Prof. Sheetal Nafde

Dr. Ambedkar Institute Of Management Studies And Research Deeksha Bhoomi, Nagpur.

Prof. Amrita Taide*

Dr. Ambedkar Institute Of Management Studies And Research Deeksha Bhoomi, Nagpur. *Corresponding Author

ABSTRACT

The largest frauds that India has seen in the last few years have been detected by complaints and tip-offs received from whistleblowers. India could not acquire much success in harnessing this channel to detect frauds, despite of global recognition to the concept of whistle blowing. People adopt unethical and corrupt practices in the corporate world to satisfy their selfish motives. Such unethical behavior should be reported to the higher authorities by the members of the organization. The present paper deals with the concept and importance of whistle blowing in an organization. The article highlights the status of whistle blower in Indian scenario and throws light on the miserable treatment of whistle blower.

Introduction-

Ethics is a desirable behavior and conduct that attempts to articulate moral values in the society. Values are important in human conduct. It shapes beliefs which in turn leads to perception, which in turn develops his attitude. Value is commonly used to define all things which people regard as good, desirable and must. Human values refer to direction towards what is considered desirable or preferable by people living in society. In India, worldwide business interest is growing and Indian companies are making insistent moves in the global arena through either natural growth, or mergers and acquisitions.

In a global business scenario that is fast becoming very sensitive to ethical practices and conduct, it is imperative that Indian companies engage in ethical practices. Companies have also realized that they can attract the best talent by being observed as ethical business organizations. But on the other side people at dominant positions in Corporate often adopt practices which are corrupt or unethical to satisfy their selfish motives. Such malpractices should be reported to the higher authorities by the members of the organization to curtail the malpractices of the authorities and they should be provided protection and support by the society or the system so that they do not become the victims.

Whistle blowing is an old concept as reporting any wrong doing in the company is understood as an act of righteousness but the after-effects of whistle blowing especially in India are quite scary. The concept of Whistle-blowing is known in the business world as an act of uncovering unethical behaviors made by the employee or anyone in the same field. Whistle blowing in short is altering the others to misconduct or do something wrong. In other words, whistle blowing could be defined as raising a concern over any wrong or misdeed in the organization but concern must be a genuine concern about a crime, criminal offence, miscarriage of justice, dangers to health and safety and of the environment and the cover up of any of these.

The Whistleblowers' Protection Act 2011 provides safeguarding measures for whistleblowers (i.e., persons making a public interest disclosure relating to an act of corruption, willful misuse of power, willful misuse of discretion or a criminal offence committed or attempted by a public servant). While the whistleblower must disclose his or her identity when making the disclosure, the relevant authorities are to be statutorily obliged to ensure his or her anonymity and protection from victimization thereafter. Moreover, the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015 require companies listed on a recognized stock exchange in India to devise an effective whistleblower mechanism that enables stakeholders – including individual employees and their

representative bodies—to freely communicate their concerns about illegal or unethical practices in such companies.

Honesty from and among its employees is desired by every organization. The honesty on the part of each and every employee helps in achieving complete dedication to the organization's mission and success. A whistle blowing culture, promotes transparent structure and effective, clear communication among employees which in turn boosts the morale of the employees. More importantly, whistle blowing can protect the organization's clients, its employees as well as the organization from possible lawsuits or severe mishaps resulting in winding up of the organization.

In the Neerav Modi and Mehul Choksi case, a Bengaluru-based businessman Hari Prasad had filed a complaint against Choksi and his group companies in 2015, after he was allegedly cheated by them. Hari Prasad said that he detected a huge fraud in the company after he was cheated of nearly Rs 10 crore by Gitanjali Gems and according to him it's not just him but nearly 20 people and about 50 across the country that fell prey to this deceit.

Hariprasad claims that initially he filed a criminal complaint with Bengaluru Police, and then he wrote to all agencies concerned (ED, CBI, SEBI) in early 2016 to look into the matter seriously because there is a fraud, but nobody took any action. So, then he finally wrote to the Prime Minister's Office (PMO) from where he received an acknowledgement letter mentioning that they have forwarded the letter to the Registrar of Companies (RoC) to look into the matter. But Hariprasad received no response from the ROC. He also wrote to the media and gave interview but these were never published.

The second case which can be quoted here, is about ICICI Bank where CBI had initiated a preliminary enquiry (PE) to probe the flaws and irregularities between Deepak Kochhar, husband of Chanda Kochhar (The CEO and MD of ICICI Bank), and the Videocon Group. The latter had availed Rs 3,250 crore loan from the bank, of which Rs 2,810 crore remained unpaid and was declared NPA in 2017. Whistleblower Arvind Gupta said that the entire board of ICICI Bank should be made liable in the deepening ICICI-Videocon controversy. The whistleblower Gupta said Kochhar's disclosures (regarding the investments made by Venugopal Dhoot in NuPower, promoted by her husband Deepak Kochhar), should have been investigated properly and that the Board should have exercised its powers to prevent the private lender from approving the loan to Dhoot's Videocon. The whistleblower Gupta opined that the entire board, including independent directors, should be held liable as the board should always follow some standards, The money lent to companies

belongs to collaborators and as bankers, Kochhar and team should have thought a hundred times before granting a loan as if a particular group will be able to repay or not.

Status of whistleblowers in India:

In the long term, whistle-blowing is much needed for our society. If we look at the status of whistleblowers, more than 15 whistleblowers have been murdered in India in the past three years. Certain cases which reached the door of Supreme Court of India showed instances where the whistleblowers who blew the whistle against corrupt and wrong practices in some of the government organizations, were killed. Some of the "whistle-blowers" who lost their lives fighting against illegal and corrupt system are **Manjunath Shanmugam, Satyendra Dubey, Satish Shetty, Narendra Kumar** and **Lalit Mehta**. Parliament may have passed the Whistle Blowers Protection (WBP) Act in 2014, but this did not help save their lives as the government has obstinately declined to operationalise the law. The objective of the act is to safeguard or protect people who are whistleblowers i.e. who bring to the notice of the authorities concerned allegations of corruption, willful misuse of power or commission of a criminal offence against the administration. Most importantly, the law affords protection against victimization of the complainant or anyone who renders assistance in an inquiry. This is scathing as whistle-blowers are routinely subjected to various forms of victimization like suspensions, withholding of promotions, demotions, threats of violence and attacks. The competent authorities are empowered by the law with the police protection. But in few cases, whistleblowers like Ram Thakur, Nandi Singh and Amit Jethwa were intimidated and sought police protection in vain, before they were murdered.

Conclusion:

Whistle-blowers Protection Act should actually be a shield for whistleblowers, but it has got its own challenges. Under whistleblowers Act, the whistle blowers cannot act anonymously. They have to disclose their identity which has proved a dangerous shortfall during the long run. US laws provides complete anonymity to the complainant, which proves as a safeguard to the complainant. Whereas in India, the complainant is solely dependent upon the authority to protect his/her identity. If we wish to have a corruption free, ethical society we need to do the alterations in Act or else the innocents who have a vision of virtuous society, free of fraud, graft, malfeasance will have to lose their lives.

References:

1. <https://www.emeraldinsight.com/doi/abs/10.1108/JAOC-03-2012-0028>
2. <http://www.customessaymeister.com/customessays/Ethics%20and%20Law/17936.htm>
3. <https://essayassist.com/>
4. http://www.humanrightsinitiative.org/programs/ai/rti/news/whistleblowing_law.htm
5. <http://www.newindianexpress.com/business/2018/apr/05/onus-of-video-conrow-on-icici-bank-board-says-whistleblower-arvind-gupta-1797146.html>
6. <http://www.thehindu.com/opinion/op-ed/dont-shoot-the-messenger/article19397939.ece>