



CRITICAL ISSUE: PROTECTION OF WHISTLEBLOWERS IN INDIA

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"We say in this nation that we are looking for people with honesty, integrity, drive and dedication, and then when we find such people, we take them out and whip them."

Anonymous whistleblower¹

Abstract: *To achieve "a society where the corrupt people are easily exposed without causing any danger to the whistleblower", it becomes essential for us as a civil society to provide the much needed protection to the whistleblower, so that he may not be left to pay the price for his courage and determination. In a civilized society it becomes our duty to put in to place a framework and structure of protection for the whistleblower as it is too human to not to attack the person who has blown whistle. There is an urgency to put in to place a comprehensive legislative protection for the whistle blowers so that a person may be protected from being punished for showing his honesty and morality in public. The protection of the whistleblower is of utmost importance and there are examples of statutory protection being accorded to the whistleblowers in a number of foreign countries where such legislations have done wonders in terms of fulfilling their objectives of exposing corruption and malpractices, the non-availability of such a measure in India, till time is genuinely intriguing.*

Keywords: *whistleblowers, corruption, right to information, democracy, protection of whistleblowers*

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¹ http://whistleblowersupporter.typepad.com/my_weblog/quotes-for-whistleblowers/



PROLOGUE:

Corruption is a phenomenon, which denotes the deviation from the formal duties of a public role because of private pecuniary or status gains. It is the corruption of mind and corruption at work place which leads to illegal activities and the person who is involved tries to hide it and those who uncover their activities are informer or whistleblower. Corruption in our country has a historical perspective of its own. As pointed recently by the Supreme Court, State of M.P. vs. Ram Singh ²“the menace of corruption was found to have enormously increased by the First and Second World War conditions. Corruption, at the initial stages, was considered to be confined to the bureaucracy, which had the opportunities to deal with a variety of State largesse in the form of contracts, licences and grants. Even after the war, the opportunities for corruption continued as large amounts of government surplus stores were required to be disposed of by public servants. As a consequence of the wars, the shortage of various goods necessitated the imposition of controls and extensive schemes of post-war reconstruction involving the disbursement of huge sums of money which lay in the control of the public servants, giving them a wide discretion, with the result of luring them to the glittering shine of wealth and property”. The Court observed that “in order to consolidate and amend the laws relating to prevention of corruption and matters connected thereto, the Prevention of Corruption Act, 1947 was enacted which was amended from time to time. In the year 1988 a new Act on the subject, being Act 49 of 1988, was enacted with the object of dealing with the circumstances, contingencies and shortcomings which were noticed in the working and implementation of the 1947 Act.” In the same case, the Supreme Court further observed :

“Corruption is termed as a plague which is not only contagious but if not controlled, spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence, shaking the socio-economic -political system in an otherwise healthy, wealthy, effective and vibrating society”.

² 2000 (5) SCC 88



The term whistle blower is comparatively a new term and its evolution as a phenomenon may also be a new thing for us but the practice is certainly not new one. Sometimes certain corrupt, incompetent and unethical people make certain decisions which are much below then the ethical standards of our society .Then the voice from the core of the hearts of the people has always come out in the open, often to expose the menace of the corruption and malpractices. It is a well-known fact that the corruption is a common phenomenon in several countries though the degree of corruption may differ³. Due to the lack of transparency and openness in the system of governance one naturally feels himself to be deaf and dumb because it is often very difficult to know as to what is actually happening in the four corners of the wall ,this is where we realize the importance of the phenomenon of whistle blowing ,which is increasingly being recognized as a measure to reduce corruption and avoid dangerous situations by encouraging the disclosure of unethical, illegal ,or prohibited activities performed by private institutions or the government which also helps to improve internal management and efficiency. To achieve“ a society where the corrupt people are easily exposed without causing any danger to the whistleblower”, it becomes essential for us as a civil society to provide the much needed protection to the whistleblower , so that he may not be left to pay the price for his courage and determination.

In a civilized society it becomes our duty to put in to place a framework and structure of protection for the whistleblower as it is too human to not to attack the person who has blown whistle. The brutal murder of Mr. Satyender Dubey the engineer in the NHAI, and Two years later, an Indian Oil Corporation officer, Shanmughan Manjunath⁴ was murdered for sealing a petrol pump that was selling adulterated fuel. Then another instance where another whistleblower had to face the harsh result for whistleblowing is Mr. Mahantesh, Karnataka official SP who is said to be a whistle-blower in controversial land allotments by societies was murdered in May 2012. Mr. Mahantesh was working as Deputy Director of the audit wing in the state’s Cooperative department and had reported irregularities in different societies involving some officials and political figures.

³ Wikipedia,the free encyclopedia source

⁴ <http://www.hindustantimes.com/India-news/NewDelhi/SC-to-hear-Manjunath-murder-case/Article1-584910.aspx>



All these are few examples of what a whistleblower, has to face for speaking up and hence it has clearly, amplified the urgency to put in to place a comprehensive legislative protection for the whistle blowers so that a person may be protected from being punished for showing his honesty and morality in public. There have been a number of measures to tackle the problem of corruption in India. for example ,departmental action; prosecution under the prevention of corruption act,1988,read with the relevant provisions of Indian penal code,1860; the Benami Transaction (prohibition) Act, 1988; and the institution of Ombudsman (Lok Pal and Lok Ayuktas).

However, these measures come in to picture only when an instance of corruption is identified. The single most important problem in tackling and containing the menace of corruption is the problem of gathering the information. The procedures such as direct evidence ,laying traps, search and seizure operations and proving disproportionate sources of income ,are though effective but not sufficient enough for the purpose. The Right to information is an important weapon to collect information's, but it does not provide laws regarding the protection of whistleblowers. The protection of the whistleblower is of utmost importance and there are examples of statutory protection being accorded to the whistleblowers in a number of foreign countries where such legislations have done wonders in terms of fulfilling their objectives of exposing corruption and malpractices, the non-availability of such a measure in India, till time is genuinely intriguing.

The Law Commission's 179th report has provided the much needed momentum for enacting a comprehensive legislation for this purpose. The model Draft Bill as suggested by the Law Commissioner's report has been at the core of all the efforts till date in this regard, the bill is currently pending in the parliament for the consideration.

EVOLUTION OF WHISTLEBLOWING

The initiatives to legally protect individuals who stand up against failures of the system, originated in the U.S.A .In the U.S.A, whistleblowing protection was one way of reinforcing the cultural value of protecting the individual and even more important: his/her freedom of speech. The U.S.A false claims act (FCA), which originated during the civil war in 1863, is commonly viewed as the start of whistleblowing legislation. The act was established as a result of fraudulent actions by companies that took advantage of war time. Citizens were

⁵ <http://lawcommissionofindia.nic.in/reports/179rpt1.pdf>



able to sue the malignant company on behalf of the U.S.A for years the shape of whistleblower protection varied greatly between the different states of U.S.A. Thus to try and overcome these stately differences and to give better protection to whistleblowers the civil service reform act (CSRA) was passed in 1978. As the CSRA was not a success straight away. This led to several amendments over the past years (1989, 1994). After the U.S.A it was the UK which also enacted public disclosure act. The UK public disclosure act (PIDA) of 1998 is the first much referred to whistleblower protection act outside the U.S.A national scandals in the late 1980's in the UK spurred the whistleblowing debate in the UK. As a result of this public concern, the public interest research centre (PIRC) started a research project on self-regulation and whistleblowing in UK companies. As a result of the PIRC report and public pressure the UK non-profit organization public concern at work (PAW) was established in 1993. In 1998 they succeeded; the PIDA was finally enacted, in 1999 it came into force.

Examples of countries which have Whistleblower Protection in National Law are: Australia (Public Interest Disclosure Act 1993), New Zealand (Protected Disclosures Act 2001), Israel (Employees Protection Law, 1997) Japan (Whistleblowing Protection Act 2004, In effect 2006) and South- Africa (Protected Disclosures Act 2000). The government of Ireland was committed to Adopt a comprehensive Whistleblower Protection law, and it came in to force in January 2012. The Bill will reportedly cover both the public and private sectors. In Jamaica, the Protected Disclosures Act, 2011 received assent in march 2011. It creates a comprehensive system for the Protection of Whistleblowers in the public and private sector. It is based on the UK's Public Interest Disclosure Act. A number of other countries have recently adopted comprehensive Whistleblower laws including Ghana, South Korea, and Uganda. They are also being considered in Kenya and Rwanda. The European Court of Human Rights ruled in 2008 that Whistleblowing was protected as Freedom of Expression.

The Government of India has been considering adopting a whistleblower protection law for several years. In 2003, the Law Commission of India recommended the adoption of the Public Interest Disclosure (Protection of Informers) Act, 2002. In August 2010, the Public Interest Disclosure and Protection of Persons Making the Disclosures Bill, 2010 was introduced into the Lok Sabha, lower house of the Parliament of India. The Bill was approved by the cabinet in June, 2011. The Public Interest Disclosure and Protection of



Persons Making the Disclosures Bill, 2010 was renamed as The Whistleblowers' Protection Bill, 2011 by the Standing Committee on Personnel, Public Grievances, Law and Justice⁶. The Whistleblowers' Protection Bill, 2011 was passed by the Lok Sabha on 28 December 2011. The Bill is however currently pending in the upper house of Parliament, Rajya Sabha for discussion and further passage. The Bill was introduced in Rajya Sabha on 29 March 2012 by V. Narayanaswamy, Minister of State for Parliamentary Affairs.

RIGHT TO INFORMATION ACTIVISTS: WHISTLE BLOWER

The Right to Information Bill, 2005 was passed by the Lok Sabha on May 11, 2005 and by Rajya Sabha on May 12, 2005 and received the assent of the President of India on June 15, 2005 and came to force on October 12, 2005. Citizens Access to Information (ATI) is an essential step in ensuring transparency and accountability in government systems and processes. When a government is transparent, there is less chance for corruption and more room for accountability. That's why Freedom of Information Acts (FOIAs) is becoming standard good practice in the international arena. The RTI generally understood as the right to access information held by public authorities is not just a necessity of the citizens; it is a precondition to good governance. To be specific, ATI makes democracy more vibrant and meaningful and allows citizens to participate in the governance process of the county. In particular, it empowers ordinary citizens, especially those in rural areas.

The RTI act 2005 is an important instrument in the hands of people but it is not enough to merely pass the law to protect those who give information regarding corruption and frauds in the execution of the state projects. Many RTI activists had to pay with their life for exposing corruption. Some of the RTI activist who have become victim to harsh effects of the blowing the Whistle naming a few:

- RTI activist Amit Jethwa was the latest to pay for exposing corruption with his life. He was gunned down outside the Ahmedabad High Court in July 2010. Jethwa had named an MP while exposing illegal mining on the Gir forest periphery;
- RTI activist Datta Patil was found murdered in Ichalkaranji in May 2010. Patil, had unearthed a corruption racket, which had resulted in removal of a deputy superintendent of police and action against Ichalkaranji corporation officials;

⁶ <http://cvc.nic.in/pidpi.htm>



- Vitthal Gite, an education activist, was killed in Aurangabad in April 2010, who had exposed irregularities in a village school in Beed;
- Shashidhar Mishra of Begusarai in Bihar was murdered by unknown assailants in February 2010. Mishra had exposed corruption at the panchayat and block levels;
- Arun Sawant, who had filed many RTI applications in connection with the municipal corporation of Badlapur, was shot dead on February 2010.
- Vishram Laxman Dodiya of Ahmedabad had filed a RTI application to get details about the illegal electricity connection by a private firm. He was murdered shortly after a meeting with the officials of the company in February 2010.
- Sola Ranga Rao of Andhra Pradesh had filed many applications seeking information from the Mandal Parishad Development Office on the funds sanctioned and utilised for the village's drainage system. He was murdered on April 2010.
- Ramdas Ghadegavkar, 43-year-old RTI activist was found dead in August 2010 under mysterious circumstances after he exposed the sand mafia in Nanded. The death of Ramdas, who used the RTI Act, adds another name in the victim list of whistleblowers in the country.

All these are just a few examples, there are many more who have been victimized for being honest and refusing to silently let the wrongdoers carry on their illegal activities.

CONCLUSION:

Whistleblowing is an act done by a person who does not accept the wrongful activities of those who do not abide by the rules and regulations and are involved in illegal practices for their own personnel benefits. If someone poses a risk to society, then society has a right to know about it. Whistleblowing is an act which requires great courage and it is done by those people whose conscience does not allow them to remain silent and keep a blind eye towards the wrongdoings of others. The RTI activists who brought in light the wrongdoings of others had to face the wrath of their actions as their anonymity was not ensured to them hence this has become an important issue which must be readily dealt with. The whistleblowers when they become witness to such wrongful activities they raise their voice against such wrongful activity, their objective may be to receive an economic benefit or some other type of reward. He or she might turn state's witness in order to avoid prosecution, for example. These individuals, by exposing illegal practices, challenge the



existing powers and put themselves at risk as the wrongdoers are in a position to hurt the individual making the disclosure we need to be conscious and vigilant about the risks posed to individuals who raise concerns about wrongdoing. Hence there is requirement of laws which protects these whistleblowers and also such laws which provide them such healthy procedures by which they reveal the wrongdoings of others and also ensuring their protection.

It can be concluded that by disclosing wrongdoing that results in public harm, all the forms of whistleblowing protect the community, promote the public good, and extend the rule of law. Hence their protection is of an utmost importance and the whistleblowers must be ensured atleast their protection.

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