Chapter II
CONCEPTUAL AND REGULATORY FRAMEWORK ON WHISTLE BLOWING

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2.1 INTRODUCTION

This chapter aims in understanding the concept of whistle blowing. By understanding the concept the chapter highlights the features of whistle blowing, and thereby to know the positive and negative aspects of whistle blowing. Since whistle blowing is related with many other disciplines the chapter makes in understanding the different areas related to whistle blowing, where whistle blowing can be termed as multidisciplinary concept. There is need to understand the factors affecting whistle blowing in the organization, so the chapter points out the demographic and organizational variables affecting employees in their whistle blowing. The chapter also provides the regulatory framework on whistle blowing.

2.2 MEANING AND DEFINITION OF WHISTLE BLOWING

US Academicians Miceli and Near (1984) defines Whistle blowing as “the disclosure by organizational members (former or current) of illegal, immoral, or illegitimate practices under the control of their employees, to persons or organizations that may be able to effect action”.

Australian academic Jubb (1999) defines, “whistle blowing is a deliberate non-obligatory act of disclosure, which gets onto public record and is made by a person who has or had privileged access to data or information of an organization, about non-trivial illegality or other wrongdoing whether actual, suspected or anticipated which implicates and is under the control of that organization, to an external entity having potential to rectify the wrongdoing”.

According to John A. Grey (2004), the term “whistle-blower” refers primarily to an employee who, in good faith, attempts to have the employer stop conduct that the employee reasonably believes to be injurious to the public and a violation of the law either through internal efforts or by disclosing the illegal conduct externally to the press or law enforcement agencies.

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Eaton and Akers (2007)\(^8\) say whistle blowing in its simplest form involves the act of reporting wrongdoing within an organization to internal and/or external parties.

According to Daft (2006)\(^9\) “Whistle blowing is the employee’s disclosure of illegal, immoral, or illegitimate practices on the employer’s part”.

According to Hellriegel, Jackson, Staude and Associates (2001)\(^10\), “whistle blower’s as employers to other people or organizations that are capable of their employers to other people or organizations that are capable of taking corrective action”.

Camerer (2001)\(^11\) defines whistle blowing in its most general form as involving calling public attention to wrongful acts, typically in order to avert harm.

Similarly, Judy Nadler and Miriam Schulman\(^12\) defines, “whistle blowing means calling attention to wrongdoing that is occurring within an organization”.

According to Bok S (1980)\(^13\) whistle blowers are those individuals who “sound an alarm from within the very organization in which they work, aiming to spotlight or abuses that threaten the public interests”.

International Labour Organization (ILO)\(^14\) also defines whistle blowing as “the reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employers”.

Gwy Dehn the UK’s Public Concern at work and Richard Challand of the South African Open Democracy Advise Centre\(^15\), refer whistle blowing as “the options available to an employee to raise concerns about workplace wrongdoing. It refers to the disclosure of wrongdoing that threatens others, rather than a personal grievance. Whistle blowing covers the spectrum of such communications, from raising the

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\(^8\) Eaton, T., & Akers, M.D.( 2007). Whistle blowing and good governance, CPA Journal, 77(6), 66-71


\(^13\) Bok, S. (1980). Whistleblowing and professional responsibilities. In Ethics teaching in higher education (pp. 277-295). Springer US.


concern with managers, with those in charge of the organization, with regulators, or with the public […] the purpose is not the pursuit of some private vendetta but so that risk can be assessed and, where appropriate, reduced or removed”.

De Maria William\textsuperscript{16} defines it as “an open disclosure about significant wrongdoing made by a concerned citizen totally or predominantly motivated by notions of public interest, who has perceived the wrongdoing in a particular role and initiates the disclosure of her or his own free will, to a person or agency capable of investigating the complaint and facilitating the correction of wrongdoing.

When employees discover unethical, immoral, illegal transactions or potentially damaging information for the well being of the workplace in which they are employed, they are expected to disclose this sensitive information to an authority in the hierarchy through a formal/informal mechanism, which in common parlance is called “Whistle-blowing” Ranasinghe JAAS (2007)\textsuperscript{17}.

From the above definitions given by different persons and authority it is clear that whistle blowing in simple means reporting by employees about wrongdoing by their employers in the organizations seeking for corrective action to curb the unethical practices which majorly affects the public interest.

2.3 CHARACTERISTICS/ FEATURES OF WHISTLE BLOWING

a) Whistle-blowing is not the same as complaint:

Siddharth G Das, Regina Aldrin (2007)\textsuperscript{18} Complaining is not same as blowing the whistle. In most instance complaints involve personal subject matter of the complainant than with others or public interest. Whereas the whistle blowing is concerned with subject matter affecting public interest. Complaints from service users, relatives or representatives would not be classed as whistle blowing. These would need to be raised using the service’s complaints procedure. Employees those who have complaints regarding pay, hours and general grievances would need to raise their complaints using their organizations grievance procedure.

b) It is not a witness of a crime:
Witness of crime is not considered as whistle blowing. The general criminal and civil proceedings and lawsuits include witness of a crime for investigation purpose. But, whistle blower is not mere witness, but much more than witnesser. Whistle blower may be witness or may not be witness of crime, but having enough information about that crime.

c) It is non-public information:
Information about a company that is not known by the public is known as non-public information. Therefore the matter involved in whistle blowing is considered as non-public information.

d) Substantial importance:
The matter of whistle blowing must have substantial importance. The substantial importance is concerned with having or involved worth material facts and figures, the costs of damage/loss to the public. There cannot be simple matter involved in whistle blowing which causes no harm to public and less or no loss to anyone.

e) Desired changes:
The whistle blower is expecting to stop some activity which causes harm and loss to public and society. Therefore there are some desired changes involved by doing so.

f) Voluntary way:
Whistle blowing is purely a voluntary act of a person and also a group. There is no external force to make an act of whistle blowing, rather its internal force to do so.

g) Moral protest:
Moral issues are concerned with the principles or rules of right conduct or the distinction between right and wrong; ethical. The moral protest is fighting against the immoral/unethical issues. Therefore whistle blowing is considered as moral protest.

h) Public interest disclosure:
A public interest disclosure is made when a person discloses to proper authority information that tends to show past, present or proposed future improper conduct by a public body in the exercise of its functions. Definitions of improper conduct: An offence against State law; whistle blowing is public interest disclosure.

2.4 WHISTLE BLOWING-KEY ISSUES

The following are some of the key issues relating to whistle blowing discussed:

a) Disclosure of wrong doing:

Whistle blowing is an act by employee. The act is disclosing of wrong doing. Information is about possible or actual, important wrongdoing in an organization that threatens the public’s well-being. Important wrongdoing is different from a trivial one by the 1) number of people affected; 2) the seriousness of the consequences for them; or 3) the amount of money involved.

b) Type of wrong doing:

Most of wrong doing incidents are theft, fraud and corruption, harassment, discrimination, environmental hazards, breaches of policy, misconduct, workplace safety, bullying other unethical behavior.

c) Whistle blower:

The American Heritage® Dictionary defines a whistle blower as one who reveals wrongdoing within an organization to the public or to those in positions of authority. Glazer and Glazer (1989) define a whistle-blower as one who (a) acts to prevent harm to others, not him or her, (b) while possessing evidence that would convince a reasonable person

Whistle blowers are defined as persons who sound an alarm from within the very organization in which they work aiming to spotlight, neglect or abuses that threaten the public interest. Former employees, home workers, seconded individuals, independent contractors and individuals responsible for the management of an organisation (for example directors) can blow the whistle. The individual who exposes a wrongdoing is not a journalist or ordinary citizen; he or she must be a member or former member of an organization.

d) Whistle blowing hotlines:

Whistle blowing takes place using various hotlines such as telephone, post, email, web services, fax, SMS.

e) **Whistle blowing procedure/process:**

The process of whistle blowing differs depending on the nature of wrong doing and type of organization. There is a systematic way of reporting wrong doing and investigation to be taken. There should be proper channel for effective whistle blowing which forms the best whistle blowing procedure. Sometimes the employee may be in confusion with respect to whom to report wrong doing, will it be considered seriously by them and affects serious investigation and action. There may be formal whistle blowing procedure provided by the organization. But not all organizations provides for it.

f) **Types of whistle blowing:**

   **Internal whistle blowing:**

Most whistle blowers are internal whistle blowers, who report misconduct on a fellow employee or superior within their company. One of the most interesting questions with respect to internal whistle blowers is why and under what circumstances people will either act on the spot to stop illegal and otherwise unacceptable behavior or report it. There is some reason to believe that people are more likely to take action with respect to unacceptable behavior, within an organization, if there are complaint systems that offer not just options dictated by the planning and control organization, but a choice of options for absolute confidentiality.

   **External whistle blowing:**

External whistle blowers, however, report misconduct on outside persons or entities. In these cases, depending on the information's severity and nature, whistle blowers may report the misconduct to lawyers, the media, law enforcement or watchdog agencies, or other local, state, or federal agencies. In some cases, external whistle blowing is encouraged by offering monetary reward.

g) **Confidentiality:**

The confidentiality of whistle blower is very essential in an effective whistle blowing procedure. Generally the person receiving the disclosure would be expected to use their best endeavors to keep the whistle blower’s identity secret.
h) **Protection:**

The procedure should record the protection that will be given to employees who make a disclosure. Examples include protection against:

- Retaliatory action by the employer;
- Discrimination/victimization under the Human Rights Act 1993; and
- Criminal or civil liability arising from the disclosure (unless the whistle blower was personally involved in the serious wrongdoing).

i) **Demographic Influences:**

Several demographic factors might be expected to be associated with the likelihood of blowing the whistle. The demographic factors such as age, gender, income level, religion, education level etc., may have association with whistle blowing.

j) **Whistle blowing policy:**

The organizations having whistle blowing policy work and perform far better than those who don’t have. The purpose of this policy is to provide a framework to promote responsible and secure whistle blowing. It protects employees wishing to raise a concern about serious irregularities within the company.

k) **Whistle blowing rewards:**

Whistle blowing rewards are considered as anti-corruption act by many countries and thus encourage whistle blowing activity among employees by rewarding them. They feel whistle blowing can decrease the cost of wrongdoing and thereby increase the stability of organization by cost savings. There are exceptions, however. A public official who reports an act of corruption in connection with his duties may not eligible for the reward.

l) **An Ethical Dilemma:**

In practical terms, if someone is concerned about corruption or serious wrongdoing in or by an organization, they have three options. These are:

- To stay silent.
- To blow the whistle internally or with the responsible person.
- To blow the whistle outside to the authorities or the media.
2.5 ASPECTS OF WHISTLE BLOWING - POSITIVE AND NEGATIVE

Positive Aspects:

The whistle blowing act has some positive aspects. These positive aspects reflect the benefits, advantages, significance, importance and good side of whistle blowing. The following factors explain about the positive aspects of whistle blowing.

a) **Whistle blowing is an anti-corruption tool:** It minimizes fraud and misconduct can be corrected.

b) **It ensures effective system of internal control:**

   Whistle blowing can play an essential role as a preventive and detective control, if the organization explicitly incorporates reporting mechanisms that disclose incidents of wrongdoing into its internal control structure Poneman (1994)\(^\text{22}\).

c) **It is a good corporate governance practice:**

   The organization promotes transparent structure and effective, clear communication among all levels of employees. This can protect organizational clients. Organizations contain many stakeholders such as shareholders, directors, managers, employees, vendors; consumers. Each of these groups has a vested interest in the health and long term success of the corporation. Each group seeks to secure its own success through the activity of the corporation. Each group seeks to do this in a fair and equitable way. The only stakeholders that really know what is happening within a corporation are the employees. So it is in the hands of the employees to protect the interest of various stakeholders. Whistle blowing gives all stakeholders, but most importantly employees, the opportunity to keep the corporation ethical and also to keep fellow employees honest. The end of the evil practices in the organization is possible by the effective whistle blowing. If no one questions the bad behavior, it will continue and as a result cause even more damage to the organization itself and public.

On other side by encouraging a whistle blowing culture within the organization, the organization promotes transparent structure and effective clear communication. More importantly whistle blowing can protect the organization clients.

d) **It is a risk management strategy (Ross Bentley\(^23\):**

It’s better to hear the wrongful act at its initial stage, so the solution could be found at the earliest in preventing further damage to the organization in long run.

e) **It may result in change in public policy (as in case of Brown and Williamson Tobacco Corporation\(^24\):**

**Negative Aspects:**

The act of whistle blowing even has some negative aspects. These negative aspects reflect drawbacks, disadvantages, harms and bad/ugly side of whistle blowing. The following factors explain about the negative aspects of whistle blowing.

a) **Employees take advantage of whistle blowing for personal benefit:**

The employee with greed can misuse the whistle blowing mechanism for personal benefit. The benefit may include personal grudge, power, position, and money (as in case Douglas Durand\(^25\)).

b) **Lack of support for whistle blowing:**

If the entire organization does not have positive attitude towards whistle blowing, then employees may fear speaking up (Jennifer Loftus\(^26\)). The lack of organization support for internal whistle blowing may result in external whistle blowing, causing serious damage to goodwill of the organization.

c) **Stress, termination and mistrust:**

Whistle blowing causes stress, termination and mistrust on part of the employees. These results are retaliatory acts by their employers. The employers may retaliate against their employees for blowing the whistle.

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causing them heightened stress and discomfort in job. In most cases the employers terminate their employees for the act of whistle blowing. It develops mistrust on employees about their organization (Cee Donohue27). The added stress by whistle blowing act can cause several health problems and fractures in relationship (Gerald Hanks28). Ruined careers, stress-related illness, and even broken marriages are the impact of whistle blowing Vicki D Lachman (200829).

d) Disrupt the team spirit:
Whistle blowing makes people suspicious of one another, which may disrupt the team spirit and co-operation within the companies. This affects the operations of company in long run. Whistle blowers suffer from emotional self-accusation (Nicole Zhang30).
After knowing both positive and negative aspects of whistle blowing, one can say that positive outweights negatives, if negatives treated effectively. Whistle blowing benefits, if there is clear procedures, actively and effectively maintained, reduce not only harassment and reliability liability but also the likelihood of punitive damages (Janet Near, et al.31).

2.6 FACTORS INFLUENCING WHISTLE BLOWING

Demographic Factors:
The researcher cannot suggest effective management strategies until the factors affecting whistle blowing are understood David Ra, et al. (1987)32. This finding helps in two ways, firstly to achieve conformity of previous research studies in getting consistent results and secondly in framing effective management strategy especially in public sector enterprise in the Indian context. The demographic factors may impact whistle blowing. Some of the studies have tested with this factor.

Janet P Near and Marcia P Micelle (1985)\(^3\), in their paper have proposed the individual factors affecting whistle blowing. The authors have considered gender as an individual factor in testing the likelihood of blowing the whistle. The authors have proposed males may be more likely than females to blow the whistle because of the reported case histories which is dominated by males.

The author justifies the proposition by analyzing the personal characteristics of male such as high self esteem, locus of control, initiative nature and wide opportunities and distribution network and awareness about wrongdoing were strongly associated with male than female.

John P Keenan (1993)\(^4\), in his study tested the likelihood of blowing the whistle on less serious fraud by the employees at different managerial level. The demographic factors such as age, gender, level of education, managerial level, and job tenure were the variables used for testing. The finding says the likelihood of blowing the whistle on less serious fraud and wrongdoing is positively associated with upper or middle level managers than lower level managers, where the results are consistent with previous research. The likelihood of blowing the whistle on less serious fraud and wrongdoing is not associated with higher education and gender (male), where the results are inconsistent with previous research. The likelihood of blowing the whistle on less serious fraud and wrongdoing is associated with age (older), and job tenure (more), where the results are mixed in the previous research.

Abhijeet K Vadera, et al (2009)\(^5\), the authors discuss the individual antecedents of whistle blowing. The antecedents were categorized as consistent and inconsistent factors. The pay level and education were consistent factors, gender, age, and job tenure was considered as inconsistent factors. The findings are mainly based on previous literature reviews.

Brown A J (2007)\(^6\), the draft report of Australian Research Council Linkage Project about whistle blowing in American Public Sector observes that the demographic

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variables such as age, gender, education level, employment status, tenure, income had significant association in blowing the whistle among non-reporters and reporters (role and non-role). Age, tenure, employment status and salary are inter-related and having stronger association in blowing the whistle. The study also found the significant demographic differences between reporters and non-reporters.

Organizational Factors:

The organization factors includes leadership style, organization system and organization culture factors some of the studies considers these organization factors having impact on whistle blowing

Leadership style and whistle blowing:

A leadership style is a leader’s style of providing direction, implementing plans and motivating people. Leadership is influencing people by providing purpose, direction, and motivation while operating to accomplish the mission and improving the organization U.S. Army (1983)\(^{37}\). There is lack of studies pertaining to examining the relationship between whistle blowing and Leadership style. However, one of the study found examined the relationship between whistle blowing and transformational leadership style. Employees were more comfortable blowing the whistle when they perceived organizational leaders and managers were practicing transformational leadership than when they perceived they were not Caillier J G-(2013)\(^{38}\). The transformational leaders inspire individuals within the organization to transcend their own self-interest for the greater good of the organization Robbins (2008:432)\(^{39}\).

Leaders who are more transformative are likely to have followers who are more likely to voice. Positive team content was associated with more individuals willing to voice. This suggests the role of the team leader can also include building a favorable climate for voice. With increase number of women in the managerial cadre, the gender role leadership is of significant to study. When they are in positions of authority, women leadership styles impact workplace voice behavior. Not only women in higher organizational positions are more likely to engage in voice behavior themselves, they

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may also create a more favorable climate for others to voice, as well Ronald J Burke, Cary L Cooper. The motives behind the voice behavior in men and women as been proposed by Ronald J Burke, which says the equity theory is more likely to explain why women engage in voice behavior while expectancy theory is more likely to explain why men engage in voice behavior. And women will be more likely to engage in voice behavior on behalf of others.

For virtually all aspects of organizational activity, effective leadership leads to improvement of performance. This extends to encouraging employees to come forward with reports of wrongdoing and ensuring that the organization protects them. Leadership in the context of reporting wrongdoing comprehends Peter Roberts, et al (2011).

1. Actively engendering a culture supportive of whistle blowing and a culture of consistency, openness and transparency.
2. An emphasis on sorting out bullying and harassment.
3. Drawing the connection between whistle blowing, ethics and integrity.
4. Resisting the temptation for leaders to simply look after their own position when under political pressure.

Organization Culture and Whistle Blowing:

Organization culture plays a very important role in prevention and management of whistle blowing; whistle blowing is often the result of an organizational culture that lacks the accountability for its exposed values Vicki. D. Lachman (2008). Bensia Berry (2004), has considered seven dimensions of organization culture that influence the employee reflection process that ultimately leads to whistle blowing behavior, which includes a) vigilance, b) engagement, c) credibility, d) accountability, e) empowerment, f) courage and g) options. Whistle blowing is the failure of organization culture Ranasinghe JAAS (2007). The ethical

organizational culture can be created by developing a code of conduct, having ethics committee, education and curriculum, clear procedure Vicki. D. Lachman (2008) 45. The organizations must hire morally responsible people, where their performance must be evaluated periodically, and implementing no-tolerance policy and by giving training to them, can bring ethical organizational culture in them Greene and Latting (2004) 46.

Organization System and Whistle Blowing:

The organization system includes information system, communication system, reward system, performance appraisal system. The organization system needs to be transparent to be effective Vicki D. Lachman (2008) 47. Many countries reward whistle blowers and encourage them for future whistle blowing. The communication also plays very important role in whistle blowing. The support for upward communication encourages whistle blowing. The communication gap between the different levels of management creates misunderstanding among the employees. Therefore there is a need for transparency in the organization structure about the policies, procedures, strategies and so on.

2.7 WHISTLE BLOWING MECHANISM

Whistle blowing mechanism is recognized as a tool to good corporate governance. Employees are the major source of information in detecting the fraud at work place to the extent of 89%, only 3% from shareholders and owner-Rajiv Bhuva 48. Effective WBM will favour those employees for reporting wrongdoing without causing harm to themselves and organization. The study on WBM includes mainly reporting channel and reported authority. The reporting channel includes confidential reporting hotline. There are many confidential employee reporting hotlines used by the employees for blowing the whistle, which includes anonymous letters, fax, internet, e-mail, mobile, landline phones. Among these, anonymous letters is the conventional, old and traditional mode of channel used by employees for

48 Rajiv Bhuva. Editor- Business today- Dated June 24 2012.
blowing the whistle and remaining are the modern tools and techniques that are used for blowing the whistle.

Mary B Curtis CPA, CISA (2006)⁴⁹ conducted the survey among 90 respondents who were the members of Dallas Chapter of internal auditors, among them 48 were members of research team. The survey analyzed the perceptions of two different groups, users and responders of whistle blowing mechanism. The survey studied the need for incorporating whistle blowing in code of ethics, employee awareness about confidential reporting hotline, technology being used by the respondents for blowing the whistle, reporting channel, reported authority, and follow-up of reports. The findings said most of the respondents (71%) were certain about company’s code requires reporting on fraud by their employers, 64% of the respondents were certain about their organization having confidential reporting hotline, whereas 25% were not certain and 11% were unsure. 78% of the respondents used telephone, 34% used internet, and 9% used faxed or mailed letters for reporting wrongdoing. 60% of them reported to legal, compliance or ombudsman, 14% to human relations, 12% to audit committee board and 10% to internal audit.

Kaplan, et al (2009)⁵⁰ the authors in their study analyzed the anonymous and non anonymous reporting channels among male and female respondents. The findings said female participants reporting intention for an anonymous channel were higher than the male participants.

Dworkin and Baucus, (1998)⁵¹, the authors studied the internal and external channels of whistle blowing and influence of demographic factors such as gender, tenure, level of education, amount of evidence collected, seriousness of harm, effectiveness of whistle blowing and retaliation in choosing or deciding the channel of whistle blowing. The findings said external whistle blowers had less tenure with the organization, greater evidence of wrongdoing. The author observed external whistle blowers also experienced more extensive retaliation than internal whistle blowers; the study also found the patterns of retaliation by management against the whistle blowers varied depending on whether the whistle blower reports internally or externally.


King (1997), the author studied whether severity of wrongdoing and relational closeness factor is associated with the channel of whistle blowing (internal and external). The findings said regardless of the closeness factor and severity of the wrongdoing, respondents would follow the proper chain of command in reporting a wrongdoing.

Michael T. Dehg, et al (2008), in their study analyses the reporting channels and degree of retaliation faced by employees (between male and female category) in choosing the channel to blow the whistle. The findings said the degree of retaliation was not positively associated with whistle blower’s subsequent use of external channels to report wrongdoing.

Brown A J (2007), the empirical study was undertaken to know the various issues relating to whistle blowing. The study also intended in knowing how officials report wrongdoing using different reporting paths and when do whistle blowers choose those paths. The study wanted to know whether choosing the path (internal or external) for reporting wrongdoing had any association with trust in management by the employees in Australian Public Sector. The findings of the report revealed 97% of the public interest whistle blowers reported internally within the organization to the agencies at initial stage of reporting. Only 3% of whistle blowers reported to an external agency or the media at first stage of reporting. The report also said internal whistle blowing reflected strong trust in management. It also increases the obligation on agencies to manage whistle blowing well, and protect whistle blowers.

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2.8 WHISTLE BLOWING – REGULATORY FRAMEWORK

a) Introduction:

The protections for whistle blowers are severely recognized across the globe. Let us understand firstly why protection is needed? For what protection is needed for whistle blowers?

Why protection is needed for whistle blower?

Protection is needed to the whistle blower for his activity of moral concern against the wrongful act by his/her employer. Whistle blower may face severe retaliation by his employer for his/her moral activity. The probable retaliation might occur by his activity, in which the whistle blower suffers. Therefore there is a need to protect the whistle blowers. The risk is involved in blowing the whistle; the whistle blower must be insured for the risk.

For what protection is needed for whistle blowers?

The protection is needed for the life, career, job, family and personal image of the whistle blowers. Most of the whistle blowers in India have been threatened for their life, Satyendra Dubey, Shanmughan Manjunath are some cases were their life included the risk by blowing the whistle. Ultimately, when life is at risk, it could not be compensated by giving back the life. However the family members who are dependent on those whistle blowers who have given their life must be compensated. Such whistle blowers are equal to those soldiers working in border areas in protecting the countries. The soldiers at the border protect the country from external attacks, whereas the whistle blowers are the internal soldiers, not watching at border areas, but actually trying to protect the internal safety in different sense at workplace. There is a need to identify or know the types of retaliation faced by the whistle blowers from their employers to provide protection. The employees face loss of job or forced retirement, negative performance evaluations, criticism or avoidance by co-workers, blacklisting Rothschild and Miethe (1999)\textsuperscript{55}. Whistle Blowers often suffer from job harassment and demotions; physical, psychological, and family problems Jos. et al

However, the fear of retaliation makes the employees not to blow the whistle in spite of assuring the protection Miceli and Near (1984)\(^57\).

**Significance of Whistle Blower Policy:**

The organizations having whistle blowing policy work and perform far better than those who don’t have. The purpose of this policy is to provide a framework to promote responsible and secure whistle blowing. It protects employees wishing to raise a concern about serious irregularities within the company. The process of whistle blowing differs depending on the nature of wrong doing and type of organization. There is a systematic way of reporting wrong doing and investigation to be taken. There should be proper channel for effective whistle blowing which forms the best whistle blowing procedure. Sometimes the employee may be in confusion with respect to whom to report wrong doing, will it be considered seriously by them and affects serious investigation and action. There may be formal whistle blowing procedure provided by the organization. But not all organizations provides for it.

**b) Global Scenario:**

**Sarbanes Oxley Act:**

The Sarbanes-Oxley Act of 2002 (often shortened to SOX) is legislation passed by the U.S. Congress to protect shareholders and the general public from accounting errors and fraudulent practices in the enterprise, as well as improve the accuracy of corporate disclosures. The U.S. Securities and Exchange Commission (SEC) administers the act, which sets deadlines for compliance and publishes rules on requirements. The Sarbanes-Oxley Act was enacted in response to a series of high-profile financial scandals that occurred in the early 2000s at companies including Enron, WorldCom and Tyco that rattled investor confidence. The act, drafted by U.S. Congressmen Paul Sarbanes and Michael Oxley, was aimed at improving corporate governance and accountability. Now, all public companies must comply with SOX (Margaret Rouse\(^58\)). The SOA encourages those who work within accounting firms to report any illegal activity the firm engages in by offering whistle blower protection.


Current and former employees and subcontractors of publicly-traded companies are included in this protection. A publicly-traded company is one that sells shares to the general public. The protection covers revealing any fraudulent violations the company commits against shareholders. However, the action must violate federal law; the SOA doesn't cover violations of state law. (Stephanie Dube Dwilson)  

**OECD Guidelines on whistle blowing:**

OECD-Organization for Economic Co-operation and Development is an international economic organization of 34 countries founded in 1961 to stimulate economic progress and world trade. India is non-member country of OECD. The [OECD Principles of Corporate Governance](http://business.gov.in/corporate_governance/oecd_principles.php) were developed with a view to assist OECD and non-OECD governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries, and to provide guidance and suggestions for stock exchanges, investors, corporations, and other parties that have a role in the process of developing good corporate governance. Although, these principles mainly focuses on publicly traded companies (both financial and non-financial), they also act as a useful tool to improve corporate governance in non-traded companies, for example, privately held and state owned enterprises.

The OECD Principles of Corporate Governance put the issue of whistle blowing under the header of the ‘role of stakeholders’ (Vim Vandekerckhove). The OECD PUMA policy briefs of 2000 and 2003 express efficiency drive; detecting individual cases of wrongdoing within the public sector (OECD 2000c; 2003b).

**Whistle Blower Protection Legislation- Global Scenario:**

The law that a government enacts to protect such persons who help expose corruption is called a whistle blower protection law. The Whistle Blower protection laws are passed in different countries, after realizing the need to protect the whistle blowers, who aims in protecting the interest of the public. US have more laws relating

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61 Vim Vandekerckhove (n.d) “whistle blowing and organizational social responsibility-A global assessment”.

to Whistle Blower Protection. US legislation has considered protection for whistle blowers in all the laws having public interest such as Sarbanes Oxley Act, 2002; False Claims Act 1863; Clean Water Act, 1972; Safe Drinking Water Act, 1974 and so on. Apart from these laws, the comprehensive Whistle Blower Protection Act has been passed in 1989, to protect the federal employees. Table 1 shows the description of whistle blower protection legislation in 20 countries, across five continents by “content analysis” technique. On one hand US has Strong legislation for protecting the whistle blowers, whereas, on the other hand in Egypt, there is no law for protecting the whistle blowers, neither specifically aiming to protect whistle blowers nor the patchwork legislation having provisions to protect whistle blowers. Therefore in Egypt, there exists very poor legislation in protecting the whistle blowers*. The comprehensive whistle blower protection law is a single piece of law, specific in nature, mainly aiming in whistle blower protection. The legislation (labor laws & witness protection laws) containing less or limited provisions on whistle blower protection, not mainly aiming at whistle blower protection, are considered as patchwork or fragmented protection. The countries such as France, Germany, Italy, Kenya, and Brazil have patchwork /fragmented laws for whistle blower protection, whereas Romania, UK, South Africa, Nigeria, Ghana, Canada, US, Australia, New Zealand, Japan, China, Malaysia, Philippines, and India have comprehensive Whistle blower protection laws.

Table 2.8.1
Table Showing Whistle Blower Protection Legislation across Different Countries

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Country</th>
<th>Legislation type</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Comprehensive / Specific</td>
<td>French Criminal Code, Labour Law, &amp; Data Protection Law</td>
</tr>
<tr>
<td>1</td>
<td>France (Europe)</td>
<td>Patchwork/ Fragmented</td>
<td>Constitutional &amp; Labor Law</td>
</tr>
<tr>
<td>2</td>
<td>Germany (Europe)</td>
<td>Patchwork/ Fragmented</td>
<td>Code of Criminal Procedure, Labor Laws, &amp; witness protection</td>
</tr>
<tr>
<td>3</td>
<td>Italy (Europe)</td>
<td>Patchwork/ Fragmented</td>
<td>Whistle Blower Protection Act(Law 571), 2004</td>
</tr>
<tr>
<td>4</td>
<td>Romania (Europe)</td>
<td>Comprehensive/ Specific</td>
<td>The Public Interest Disclosure Act,1998</td>
</tr>
<tr>
<td>5</td>
<td>UK (Europe)</td>
<td>Comprehensive/ Specific</td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Country</td>
<td>Type</td>
<td>Law</td>
</tr>
<tr>
<td>-----</td>
<td>------------</td>
<td>----------------</td>
<td>------------------------------------</td>
</tr>
<tr>
<td>6</td>
<td>Egypt</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>7</td>
<td>South Africa</td>
<td>Comprehensive/ Specific</td>
<td>The Protected Disclosure Act, no 26, 2000</td>
</tr>
<tr>
<td>8</td>
<td>Kenya</td>
<td>Patchwork/ Fragmented</td>
<td>Witness protection Act, 2006</td>
</tr>
<tr>
<td>9</td>
<td>Nigeria</td>
<td>Comprehensive/ Specific</td>
<td>Whistle blower protection bill, 2011</td>
</tr>
<tr>
<td>10</td>
<td>Ghana</td>
<td>Comprehensive/ Specific</td>
<td>Whistle Blower Protection Act (Act 720), 2006</td>
</tr>
<tr>
<td>11</td>
<td>Canada</td>
<td>Comprehensive/ Specific</td>
<td>The Public Servants Disclosure Protection Act, 2007</td>
</tr>
<tr>
<td>12</td>
<td>United States (US)</td>
<td>Comprehensive/ Specific</td>
<td>Whistle Blower Protection Act, 1989</td>
</tr>
<tr>
<td>13</td>
<td>Brazil</td>
<td>Patchwork/ Fragmented</td>
<td>Labour Laws &amp; Witness Protection **</td>
</tr>
<tr>
<td>14</td>
<td>Australia</td>
<td>Comprehensive/ Specific</td>
<td>Public Service Act, Sec 16, Public Interest Disclosure Bill, 2013</td>
</tr>
<tr>
<td>15</td>
<td>New Zealand</td>
<td>Comprehensive/ Specific</td>
<td>Protected Disclosures Act, 2000</td>
</tr>
<tr>
<td>16</td>
<td>Japan</td>
<td>Comprehensive/ Specific</td>
<td>Whistle Blower Protection Act (Law 122), 2004</td>
</tr>
<tr>
<td>17</td>
<td>China</td>
<td>Comprehensive/ Specific</td>
<td>Labor Security Supervision (the Regulation) and Criminal Procedure Law, 2004</td>
</tr>
<tr>
<td>18</td>
<td>Malaysia</td>
<td>Comprehensive/ Specific</td>
<td>Whistle Blower Protection Act, 2010</td>
</tr>
<tr>
<td>19</td>
<td>Philippines</td>
<td>Comprehensive/ Specific</td>
<td>Whistle Blower Protection Act, 2011</td>
</tr>
<tr>
<td>20</td>
<td>India</td>
<td>Comprehensive/ Specific</td>
<td>Public Interest Disclosure (Protection of Informers), Act, 2002 (Renamed as Whistle Blower Protection Act, 2011)</td>
</tr>
</tbody>
</table>

**Source: Compilation by Google search engine**

Most of the Whistle Blower Protection Acts has been passed only after 2000. The past decade (2000-2010) has shown most of the global legislation accepting and promoting whistle blowing mechanisms and protecting whistle blowers. US is the first country and having dominant whistle blower protection laws compared to other countries.
c) Indian Scenario:

The regulatory framework on whistle blowing in Indian Context can be understood by the following initiatives:

1. Committee reports and recommendations.
2. Clause 49 of SEBI listing agreement.

Committee Reports and Recommendations:

The Committees recommending whistle blowing as an element of corporate governance includes the following.

Table 2.8.2

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Committee</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Santhanam Committee Report</td>
<td>1963</td>
</tr>
<tr>
<td>2</td>
<td>The Administrative Reforms Commission Report</td>
<td>1967</td>
</tr>
<tr>
<td>3</td>
<td>Vohra Committee Report</td>
<td>1993</td>
</tr>
<tr>
<td>4</td>
<td>Confederation of Indian Industry (CII) Code on Corporate Governance</td>
<td>1998</td>
</tr>
<tr>
<td>5</td>
<td>Kumar Mangalam Birla Committee Report</td>
<td>1999</td>
</tr>
<tr>
<td>6</td>
<td>Law Commission Report</td>
<td>2001</td>
</tr>
<tr>
<td>7</td>
<td>Naresh Chandra Committee Report</td>
<td>2002</td>
</tr>
<tr>
<td>4</td>
<td>N.R. Narayana Murthy Committee</td>
<td>2003</td>
</tr>
</tbody>
</table>

Clause 49 of SEBI listing Agreement:

The clause 49 of the listing agreement provides for establishment of mechanism of whistle blowing, to establish adequate safeguards in protecting the whistle blowers, proper communication of mechanism and the power of audit committee to ensure proper functioning.
CORPORATE GOVERNANCE VOLUNTARY GUIDELINES 2009:

These guidelines provide for a set of good practices which may be voluntarily adopted by the Public companies. Private companies, particularly the bigger ones, may also like to adopt these guidelines. The guidelines are not intended to be a substitute for or additions to the existing laws but are recommendatory in nature.

a) The companies should ensure the institution of a mechanism for employees to report concerns about unethical behavior, actual or suspected fraud, or violation of the company’s code of conduct or ethics policy.

b) The companies should also provide for adequate safeguards against victimization of employees who avail of the mechanism, and also allow direct access to the Chairperson of the Audit Committee in exceptional cases.

The Public Interest Disclosure (Protection of Informers) Bill, 2002- The proposed Law:

The Public Interest Disclosure (Protection of Informers) Bill, 2009 was prepared by the department of personnel and training (DoPT). As per the draft law, any person can make a complaint of corruption or disclosure against any central government employee or central government-backed institution to the CVC. The CVC, which would be designated as the competent authority for complaints, would have the powers of a civil court, including powers to summon anybody, order police investigation and provide security to the whistle blower.

The CVC would not reveal the identity of the complainant but would have the authority to ignore complaints of vexatious or frivolous nature. It would also not be able to investigate complaints pertaining to matters which are sub judice, prejudicial to national security, international relations, and proceedings of the Union Cabinet or those beyond the limitation period of five years.

However, the proposed law does not deal with corporate whistle blowers as per the recommendations of the Second Administrative Reforms Commission.
WHISTLE BLOWER PROTECTION ACT, 2013:

The Government of India has been considering adopting a whistle blower 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 Loksabha, 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 Justice. The Whistleblowers' Protection Bill, 2011 was passed by the Loksabha on 28 December 2011 and by the Rajyasabha on 21 February 2014. The Whistle Blowers Protection Act, 2011 has received the Presidential assent on May 9, 2014 and the same has been subsequently published in the official gazette of the Government of India on May 9, 2011 by the Ministry of Law and Justice, Government of India.

Companies Act, 2013:

The provisions of New Companies Act, 2013 is considered as the bridging gaps for better corporate governance. Most of the good corporate governance practices are suggested and included for companies in the provisions of this Act. The well defined system is the reason for successful implementation, unless the system is implemented. The Companies Act 2013 has strived in this regard by defining the provisions for better governance, which can be considered as well defined system for successful implementation and working of Companies. Whistle blowing mechanism is one such practice for good and effective corporate governance. Whistle blowing is mostly identified as the voluntary act, but the mechanism and procedure mentioned in Companies Act 2013 remembers the related person as his duty, right and responsibility. Hence whistle blowing is not the mere voluntary act, but the real responsibility.
Table 2.8.3
Table Showing Comparative Statement of Companies’ Act 2013 with 1956 with Respect to Issues Relating to Whistle Blowing

<table>
<thead>
<tr>
<th>Description</th>
<th>Companies Act, 1956</th>
<th>Companies Act, 2013</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power to call for information, inspect books and conduct inquiries</td>
<td>Sec 234</td>
<td>Sec 206(1)</td>
<td>Registrar as the sole authority for investigation has been removed, where other statutory investors appointed by central government can also investigate.</td>
</tr>
<tr>
<td>Conduct of inspection and enquiry</td>
<td>207</td>
<td>newly added</td>
<td></td>
</tr>
<tr>
<td>Report on inspection made</td>
<td>208</td>
<td>newly added</td>
<td></td>
</tr>
<tr>
<td>Search and Seizure</td>
<td>234A</td>
<td>209</td>
<td></td>
</tr>
<tr>
<td>Investigation into affairs of company</td>
<td>235</td>
<td>210</td>
<td></td>
</tr>
<tr>
<td>Establishment of Serious Fraud Investigation Office (SFIO)</td>
<td>211</td>
<td>newly added</td>
<td></td>
</tr>
<tr>
<td>Investigation into affairs of company by SFIO</td>
<td>212</td>
<td>newly added</td>
<td></td>
</tr>
<tr>
<td>Investigation into company's affairs in other cases</td>
<td>237</td>
<td>213</td>
<td>improved</td>
</tr>
<tr>
<td>security for payment of costs and expenses of investigation</td>
<td>214</td>
<td>newly added</td>
<td></td>
</tr>
<tr>
<td>Firm, Body Corporate or Association not to be appointed as inspector</td>
<td>238</td>
<td>215</td>
<td>improved</td>
</tr>
<tr>
<td>Investigation of ownership of company</td>
<td>247</td>
<td>216</td>
<td>improved</td>
</tr>
<tr>
<td>Procedures, Powers etc of inspectors</td>
<td>217</td>
<td>newly added</td>
<td></td>
</tr>
<tr>
<td>Protection of Employees during Investigation</td>
<td>635B</td>
<td>218</td>
<td>improved</td>
</tr>
<tr>
<td>Power of inspector to conduct investigation into affairs of related companies</td>
<td>239</td>
<td>219</td>
<td>improved</td>
</tr>
<tr>
<td>Seizure of documents by inspector</td>
<td>240A</td>
<td>220</td>
<td>improved</td>
</tr>
<tr>
<td>Freezing of assets of company on inquiry and investigation</td>
<td>221</td>
<td>newly added</td>
<td></td>
</tr>
<tr>
<td>Imposition of restrictions upon securities</td>
<td>250</td>
<td>222</td>
<td>improved</td>
</tr>
<tr>
<td>Inspector's Report</td>
<td>241</td>
<td>223</td>
<td>improved</td>
</tr>
<tr>
<td>Actions to be taken in pursuance of inspector's report</td>
<td>224</td>
<td>newly added</td>
<td></td>
</tr>
<tr>
<td>Expenses of investigation</td>
<td>245</td>
<td>225</td>
<td>improved</td>
</tr>
<tr>
<td>Voluntary Winding up of company not to stop investigation</td>
<td>250A</td>
<td>226</td>
<td>improved</td>
</tr>
<tr>
<td>----------------------------------------------------------</td>
<td>------</td>
<td>-----</td>
<td>---------</td>
</tr>
<tr>
<td>Legal Advices and bankers not to disclose certain information</td>
<td>251</td>
<td>227</td>
<td>improved</td>
</tr>
<tr>
<td>Investigation of foreign companies</td>
<td></td>
<td>228</td>
<td>newly added</td>
</tr>
<tr>
<td>penalty for furnishing false statement, mutilation, destruction of documents</td>
<td></td>
<td>229</td>
<td>newly added</td>
</tr>
</tbody>
</table>

**Source:** Article Publication

**Companies Act, 2013 over Companies Act 1956**

The Companies Act, 2013, though does not include the terminology whistle blowing; the provisions are laid out on the concept. The separate chapter in the Act titled “Inspection, Inquiry and Investigation” deals with the various aspects of the concept whistle blowing. Sec 210 to 229 of the Act provides new procedure for investigation of company affairs. The Sec 211(1) of the Act provides for establishment of Serious Fraud Investigation Office (SFIO). According to Companies Act, 2013 whistle blowing is not just voluntary act of the person willing to do so, but actually it is the duty, right and responsibility of the person to assist in company affairs. The Act encourages and motivates by the provisions to investigate and curb unethical Act. The Sec 218 of the Act provides for the protection of employees during investigation, Sec 221 provides for Freezing of assets of company on enquiry and investigation and Sec 229 provides for penalty for furnishing false statement, mutilation, destruction of documents. These special provisions are mainly relating to effective whistle blowing mechanism. The Companies Act 1956 does not provide for such provisions, therefore the inadequacy of the old Act is filled by the provisions of new Act.

**Findings of special provisions related to whistle blowing in Companies Act, 2013:**

a) Formation of Serious Fraud Investigation Office- Institutionalization of whistle blowing.

b) Serious fraud undefined.

c) Serious Fraud Investigation Office headed by Director having various subject expertises.

d) Strict Investigation Procedure.

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63 The Companies Act, 2013.
64 The Companies Act, 1956.
e) Independent power for investigators.
f) Protection of employees assisting for investigation.
g) Former employees also included in investigation.
h) Registrar is not the sole authority for inspection, there could be other inspectors.
i) Punishment for misleading informants for investigation.
j) Pro-activeness of the authority in identifying the fraudulent activity. (Not waiting for employees to report).
k) Investigation is proceeded though the company thinks to liquidate or wind-up.
l) It is the duty of Independent director to blow the whistle.
m) Assistance for investigation by other investigation agencies.

The provisions of New Companies Act, 2013 is considered as the bridging gaps for better corporate governance. Most of the good corporate governance practices are suggested and included for companies in the provisions of this Act. The well defined system is the reason for successful implementation, unless the system is implemented. The Companies Act 2013 has strived in this regard by defining the provisions for better governance, which can be considered

2.9 WHISTLE BLOWING AND RTI (Right to Information Act)

The Right to Information Act (RTI) is an Act of the Parliament of India "to provide for setting out the practical regime of right to information for citizens" and replaces the erstwhile Freedom of information Act, 2002. The Act applies to all States and Union Territories of India except Jammu & Kashmir. Under the provisions of the Act, any citizen may request information from a "public authority" (a body of Government or "instrumentality of State") which is required to reply expeditiously or within thirty days.

The RTI and whistle blowing has been identified with some differences with respect to information and disclosure connected there with. Firstly, RTI is a reactive approach, whereas whistle blowing is a proactive as well as reactive approach. The applicant for RTI requests for the required information within the definition of information provided in Right to Information Act. Most of the information is exclusive in nature (chapter-2, Sec 8). But there are no such inclusive and exclusive factors for information disclosure in whistle blowing. The whistle blower considers
such information for disclosure which majorly harms the public health and safety. RTI provides platform for whistle blowing. Many RTI activists have been threatened to death. Some of the noted RTI activists who lost their life are Amit Jethwa, Satish Shetty, Datta Patil, Sola Ranga Rao, Vitthal Gite, Lalit Kumar Gupta, Kameshwar Yadav, Vishram Laxman, Sasidhar Mishra & Venkatesh. Both RTI activists and whistle blowers are victimized for their act. Both need protection. The whistle blowers protection Act does not include the provision to protect RTI activists for their RTI disclosures (G Sampath 201465). Secondly, all RTI activists can be considered as whistle blowers but, all whistle blowers are not mainly being called RTI activists. The RTI activists are those always fighting against corruption. They can be noted very frequently in the media too. Whereas the whistle blowers are among the common public, who unexpectedly fight against the wrongful act in their work place. Some of the noted whistle blowers66 are Satyendra Dubey, Shanmugham Manjunath. They are usually and preferably anonymous fighters. The RTI activists use the formal mechanism as mentioned in the process of RTI Act for getting the information, whereas the whistle blowers get information informally by their observation. The information obtained by RTI applicant is secondary, whereas the information obtained by whistle blower usually is primary. Therefore, RTI can be defined as getting formal information through formal means and ending with mostly informal or even with formal disclosures. Whistle blowing can be defined as knowing informal information through informal means and ending with formal or informal disclosures. Both RTI Act and Whistle Blower Protection Act seek the identity of applicant and informant as in case of RTI and whistle blowing respectively.

2.10 WHISTLE BLOWING PRINCIPLES

The whistle blowing principles serve as guidance for formulating new and improving existing whistle blower legislation. The whistle blowing principles help and ensure that whistle blowers are afforded proper protection and disclosure opportunities. The whistle blowing principles should be adopted to an individual country’s political, social and cultural contexts and to its existing legal frameworks.

The principles for whistle blowing are developed by taking into lessons learned from existing laws and their implementation in practice from whistle blowers experts, government officials, academia, research institutes and NGO’s from all regions. The principles are updated and refined as experiences with legislation and practices continue.

The international principles for whistleblower legislation are developed for effective and efficient Whistle blowing protection legislation by Transparency international\(^67\).

WIN\(^68\) Whistle blowing International Network, an NGO for Whistle Blowing as given the statement of principles for Whistle blowing. The Romanian legislation\(^69\) on whistle blowing has identified the general principles (Art 4) on whistle blowing.

