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With this thought, we hereby present to you

# **CORPORATE WHISTLEBLOWING LAWS AND PROTECTIONS**

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## **ABSTRACT**

*This article explores the landscape of corporate whistleblowing, analysing the legal protections and challenges faced by whistleblowers in India, UK, and USA. While some jurisdictions offer robust legal frameworks and incentive programs to safeguard whistleblowers and encourage disclosures, others present significant limitations and obstacles, particularly in India. Through a comparative examination of these legal landscapes and real-world instances of whistleblowing, we highlight the critical role of whistleblowers in promoting transparency and accountability within corporate entities. By advocating for stronger legal protections and incentivizing disclosures, this article aims to contribute to the ongoing discourse on corporate governance and ethical conduct in the global business environment.*

## **INTRODUCTION**

Corporate whistleblowing serves as a cornerstone of accountability and integrity within the business world, shedding light on unethical practices and misconduct that may otherwise go unnoticed. Across the globe, countries have established varying degrees of legal frameworks to protect and incentivize whistleblowers, ensuring their safety and encouraging the disclosure of vital information. In this article, we delve into the landscape of corporate whistleblowing, with a particular focus on the contrasting scenarios in India, the UK, and the USA. By examining the legal protections, challenges, and instances of whistleblowing in these jurisdictions, we aim to underscore the importance of robust whistleblower mechanisms in fostering transparency and ethical conduct within corporate entities.



## WHISTLEBLOWING- AN OVERVIEW

The term whistleblowing was first used in the British case of *Winters v. Houston Chronicle Publishing Co*<sup>1</sup>. Whistleblowing is the act of revealing illegal, inefficient, or unethical practices within an organization by a current or former member.<sup>2</sup> This disclosure is made to individuals or entities with the ability to address the issue and enact change or take appropriate action.<sup>3</sup> Whistleblowing, as defined by the International Labour Organisation (ILO), entails employees or former employees coming forward to report instances of illegal, dangerous, or unethical practices within their organization.<sup>4</sup> It is a purposeful and voluntary act of disclosure undertaken by individuals with privileged access to organizational data or information. This disclosure, which becomes part of the public record, pertains to significant illegality or wrongdoing—whether actual, suspected, or anticipated—associated with and under the control of that organization.<sup>5</sup> The disclosure is made to an external entity that has the potential to address or rectify the wrongdoing. Whistleblowers often expose such misconduct with the aim of promoting accountability, integrity, and ethical practices within the organization and beyond.<sup>6</sup> Whistleblowers can be considered as the audacious guardians of the values that are of greater importance. However, some people within the organisation perceive them as fraudulent perpetrators who should be demotivated and removed from the corporate culture.<sup>7</sup>

Whistleblowers are broadly categorized into two types based on their reporting authority-- internal and external.

Internal whistleblowers, typically employees within a company, choose to report instances of misconduct directly to the company's management, human resources, or compliance departments.<sup>8</sup> Their aim is to address issues such as fraud, safety violations, or unethical behaviour internally, with the goal of improving operations and ensuring compliance with laws

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<sup>1</sup> *Winters v. Houston Chronicle Publishing Co.*, 795 SW 2d 723 (Tex. 1990).

<sup>2</sup> *Ibid*

<sup>3</sup> *Moral & Ethical Issues surrounding Whistleblowing*, GMUL 5063 Law, ethics & Social responsibility, (Apr. 13, 2024, 05:42 pm), <https://www.scribd.com/doc/99177778/Whistle-blowing>.

<sup>4</sup> *The Protection Of Whistle-Blowers In The Public Service Sector*, International labour Organisation, Sectoral Policies Department Geneva, 11-14, 2022 [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---sector/documents/meetingdocument/wcms\\_853876.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/meetingdocument/wcms_853876.pdf)

<sup>5</sup> Indira Carr and David Lewis, *Combating Corruption through Employment Law and Whistleblower Protection*, 39 (1) Industrial Law Journal 52–81 (2010)

<sup>6</sup> Jubba. P.B, *Whistleblowing: A Restrictive Definition and Interpretation*, Journal of Business Ethics, 77-97 (1999).

<sup>7</sup> Tanya Ganguly, *A Switch in Time, Saves Nine” - Minimizing Corporate Crime by Maximizing Corporate Whistle-Blower Protection in India*, 3.2 JCLG 70 (2020).

<sup>8</sup> Kalpita Krushnakant Pandit, *Legal Protection of Corporate Whistleblowers in India*, 3.1 JCLJ 2099 (2022).



and regulations. On the other hand, external whistleblowers are individuals who opt to report wrongdoing to external entities or authorities, bypassing internal channels. They may disclose information to regulatory agencies, government authorities, or media outlets, utilizing traditional or modern platforms like social media.<sup>9</sup> Their decision to blow the whistle externally may arise from concerns about the efficacy of internal reporting mechanisms, fear of reprisal, or a belief that the wrongdoing warrants broader public awareness and action.<sup>10</sup>

## WHISTLEBLOWER PROTECTIONS IN INDIA

The Securities and Exchange Board of India (SEBI) mandates the issuance of a Listing Agreement consisting of 54 clauses that outline corporate governance obligations for listed companies.<sup>11</sup> These clauses serve as guidelines to ensure that companies adhere to standards of transparency, accountability, and ethical conduct in their operations. Failure to comply with these regulations may result in disciplinary actions, including suspension and delisting of securities. Additionally, the agreement mandates companies to disclose certain information and conduct themselves in accordance with its clauses, ensuring transparency and accountability in their operations.

Law Commission of India in 2001 has recommended the construction of a statute to protect whistleblowers and drafted a bill to be modelled.<sup>12</sup>

In August 2003, the Securities and Exchange Board of India (SEBI) issued a circular that amended the principles of corporate governance outlined in the standard listing agreement.<sup>13</sup> It was issued as per the recommendations of 'Narayana Moorthy Committee on corporate Governance' to amend clause 49 of the listing agreement.<sup>14</sup> This amendment mandated companies to establish their own whistleblowing policies. This policy serves as a mechanism enabling employees to report any irregularities within the company directly to management.

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<sup>9</sup> Ibid

<sup>10</sup> M.P. Miceli, *Organizational Dissidence: The Case of Whistle-Blowing*, 4 Journal of Business Ethics 1–16 and 4. (1985)

<sup>11</sup> SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

<sup>12</sup> THE LAW COMMISSION OF INDIA <http://lawcommissionofindia.nic.in/reports/179rpt1.pdf> (Apr. 13, 2024, 06:02 PM),

<sup>13</sup> SECURITIES EXCHANGE BOARD OF INDIA, [https://www.sebi.gov.in/legal/circulars/apr-2008/corporate-governance-in-listed-companies-clause-49-of-the-listing-agreement\\_6921.html](https://www.sebi.gov.in/legal/circulars/apr-2008/corporate-governance-in-listed-companies-clause-49-of-the-listing-agreement_6921.html) (Apr. 13, 06:05 pm)

<sup>14</sup> *The Report of Shri N R Narayana Murthy Committee on Corporate Governance*, Securities and Exchange Board of India, (Apr 13, 2024 07:00 PM) [https://www.sebi.gov.in/reports/reports/mar-2003/the-report-of-shri-n-r-narayana-murthy-committee-on-corporate-governance-for-public-comments-\\_12986.html](https://www.sebi.gov.in/reports/reports/mar-2003/the-report-of-shri-n-r-narayana-murthy-committee-on-corporate-governance-for-public-comments-_12986.html)

SEBI incorporated these guidelines into an amendment to Clause 49 of the Listing Agreement, emphasizing the importance of transparency and accountability within corporate practices.<sup>15</sup> Employees seeking to report fraudulent activities or malpractices within the company are entitled to access the company's Audit Committee. Subsequently, the company is obligated to disseminate this information to all employees within its organization.<sup>16</sup>

In 2004, the Government of India introduced the Public Interest Disclosure and Protection of Informers Resolution<sup>17</sup>, which bestowed authority upon the Central Vigilance Commission to address matters concerning whistleblowing. The Second Administrative Reforms Commission in 2007 also suggested a framework for the protection of whistleblowers.<sup>18</sup>

Regulation 18 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 contains the essence of this. Entry A (15) of Schedule II Part C entails reviewing the findings of internal investigations conducted by internal auditors concerning suspected fraud, irregularities, or significant failures in internal control systems. Subsequently, the results of such investigations are reported to the board. This provision underscores the importance of diligent oversight and proactive measures to address potential risks and ensure the integrity of the company's operations. Section 177(9) of Companies Act, 2013 also provides for establishment of a vigil mechanism for whistleblowing.<sup>19</sup>

Finally, Whistleblower Protection Act, 2014<sup>20</sup> was enacted. The legislation provides a comprehensive framework for receiving complaints related to the disclosure of allegations of corruption or misuse of power against public servants. It empowers competent authorities to inquire into such disclosures and ensures safeguards against victimization of whistleblowers.<sup>21</sup> Notably, the law mandates that complaints must be made with the identity of the complainant established, and anonymous complaints are not entertained.<sup>22</sup> The maximum time limit for

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<sup>15</sup> Bhumesh Verma and Abhishar Vidyarthi, *Whistleblowing in India: The Way Forward*, PL (CL) , (2019)

<sup>16</sup> *Whistle Blowing and Whistle Blowers: A Diagnostic Approach to Human Resource Management Dimensions of Whistle Blowing Studies*. Corporate Governance - Millennium Challenges, 253-269 (2011).

<sup>17</sup> PUBLIC INTEREST DISCLOSURE AND PROTECTION OF INFORMERS (PIDPI) RESOLUTION, <https://www.ireda.in/doc/writereaddata/pidpi-resolution-and-procedures.pdf> (Apr. 13, 2024, 06:19 PM)

<sup>18</sup> *Ethics In Governance*, 4 Second Administrative Reforms Commission, 2007 [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2010/ARC\\_report\\_on\\_ethics\\_in\\_gov.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2010/ARC_report_on_ethics_in_gov.pdf)

<sup>19</sup> Companies Act, 2013, § 177(9), Act No. 18, Acts of Parliament, 2013(India).

<sup>20</sup> Whistleblower protection Act, 2014, Act No. 17, Acts of Parliament, 2014 (India).

<sup>21</sup> Whistleblower protection Act, 2014, § 5, Act No. 17, Acts of Parliament, 2014 (India).

<sup>22</sup> Whistleblower protection Act, 2014, § 4(6), Act No. 17, Acts of Parliament, 2014 (India)

lodging a complaint is seven years.<sup>23</sup>

Under this law, various competent authorities are defined, including the Prime Minister for complaints against Union Ministers.<sup>24</sup> However, the Special Protection Group (SPG) personnel and officers are exempted from the provisions of this Act.<sup>25</sup> In case of appeal against any order of the Competent Authority, aggrieved individuals can approach the respective High Court within a specified period.<sup>26</sup> Penalties are imposed for revealing the identity of whistleblowers<sup>27</sup> or making false disclosures<sup>28</sup>. Furthermore, the Competent Authority is required to prepare an annual report on its activities, which is submitted to the Central or State Government and presented before the respective legislative bodies.<sup>29</sup> It's important to note that the Whistleblowers Act supersedes the Official Secrets Act, 1923<sup>30</sup>, allowing disclosures even if they involve classified documents<sup>31</sup>, provided they don't compromise national sovereignty.<sup>32</sup> However, there have been proposed amendments that may restrict whistleblowers from disclosing documents classified under the Official Secrets Act, which critics argue could weaken the effectiveness of the 2014 Act.

## WHISTLEBLOWER SAFEGUARDS IN THE UK

The enactment of whistleblower protection laws in the United Kingdom during the late 20th century was indeed influenced by a series of well-publicized disasters and scandals that occurred between 1980 and 1990.<sup>33</sup> These incidents highlighted the need for mechanisms to encourage and protect individuals who report wrongdoing within organizations. In response to these events, the Public Interest Disclosure Act of 1998<sup>34</sup> (PIDA) was passed, coming into effect on July 3, 1999, in Wales, Scotland, and England. This legislation aimed to provide protection to whistleblowers across various sectors, including private, public, and nonprofit, as well as covering trainees, contractors, and U.K.-based workers employed overseas.

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<sup>23</sup> Whistleblower protection Act, 2014, § 6(3), Act No. 17, Acts of Parliament, 2014 (India)

<sup>24</sup> Whistleblower protection Act, 2014, § 3(b), Act No. 17, Acts of Parliament, 2014 (India)

<sup>25</sup> Whistleblower protection Act, 2014, § 2, Act No. 17, Acts of Parliament, 2014 (India)

<sup>26</sup> Whistleblower protection Act, 2014, § 20, Act No. 17, Acts of Parliament, 2014 (India)

<sup>27</sup> Whistleblower protection Act, 2014, § 16, Act No. 17, Acts of Parliament, 2014 (India)

<sup>28</sup> Whistleblower protection Act, 2014, § 17, Act No. 17, Acts of Parliament, 2014 (India)

<sup>29</sup> Whistleblower protection Act, 2014, § 23, Act No. 17, Acts of Parliament, 2014 (India)

<sup>30</sup> Official Secrets Act, 1923, Act No. 19, Acts of Parliament, 1923 (India)

<sup>31</sup> Whistleblower protection Act, 2014, § 4, Act No. 17, Acts of Parliament, 2014 (India)

<sup>32</sup> Whistleblower protection Act, 2014, § 8, Act No. 17, Acts of Parliament, 2014 (India)

<sup>33</sup> Neha Jain and Sindhu V. Reddy, *Effective Implementation of Whistleblower Policy Vis-A-Vis The Leniency Approach*, 1.5 JCLG 568 (2012)

<sup>34</sup> Public Interest Disclosure Act 1998 (c. 23)



Notably, police officers were excluded from the scope of the Act. The PIDA prohibits employers from subjecting workers to any form of detriment as a result of making a protected disclosure, also known as whistleblowing.<sup>35</sup> Protected disclosures are those made in the public interest and relate to certain specified categories of wrongdoing, such as criminal offenses, breaches of legal obligations, dangers to health and safety, environmental damage, and miscarriages of justice.<sup>36</sup> To qualify for protection under the PIDA, whistleblowers must follow prescribed channels when making their disclosures. This typically involves reporting the concern to an appropriate authority within the organization or directly to the employer. Importantly, disclosing information to the media is generally not considered a protected action under the Act. Overall, the PIDA represents a significant step in promoting transparency, accountability, and ethical conduct within organizations by providing legal safeguards for whistleblowers who come forward with concerns about wrongdoing.<sup>37</sup>

In the case of *Initial Services Ltd. v. Putterill*<sup>38</sup>, the Queen's Bench acknowledged an exception to the general principle of non-disclosure of confidential information. This exception arises when there is misconduct of such a nature that it is deemed to be in the public interest to disclose it to others. However, it's essential that the disclosure is made to someone who has a legitimate interest in receiving it.

Similarly, in *Lion Laboratories Ltd. v. Evans*<sup>39</sup>, employees provided copies of internal documents to a national daily, expressing doubts about the reliability of breath analysers manufactured by their employer. Despite the company seeking an injunction to prevent publication on grounds of breach of confidence, the employees were found to have a just cause or excuse for disclosure, and the company's action failed.

In the subsequent case of, *re, A Company's Application*<sup>40</sup>, the High Court declined to grant an injunction against an employee in the financial services sector from disclosing confidential information about their company to a regulatory body, even if the disclosure might have been

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<sup>35</sup> Sujoy Chatterjee and Alok Chaturvedi, *Whistleblower Policy: is India in "Tune" With the World?*, 4.1 GNLU L. Rev. 119 (2013).

<sup>36</sup> Ayushi Singhal, *Whistle Blowers Protection Act, 2011: Does It Truly Protect the Unsung Heroes?*, 1.8 JCLG 1004 (2014).

<sup>37</sup> Nikhil Varshney and Amartya Saha, *The Whistleblower Bill, 2010: A Critical Analysis*, 1 NSLJ 79 (2012).

<sup>38</sup> *Initial Services Ltd. v. Putterill*, [1967] 3 WLR 1032.

<sup>39</sup> *Lion Laboratories Ltd. v. Evans*, [1984] 3 WLR 539

<sup>40</sup> [1989] 3 WLR 265

motivated by malice. While the injunction against general disclosure was continued, Justice Scott affirmed that an employee's duty of confidence does not prohibit them from disclosing matters to regulatory authorities that fall within the authorities' jurisdiction to investigate.

However, the common law has not provided clear and reliable guidelines regarding what information can be disclosed and to whom, except in situations where an employee reports a breach of statutory duty to a relevant regulatory body. This lack of clarity underscores the complexity and nuance involved in whistleblowing cases, where considerations of public interest, legal obligations, and ethical responsibilities intersect.

### **LEGAL POSITION IN USA**

Whistleblowing laws in USA are chiefly guided by False Claims Act, 1863, the Whistleblower Protection Act, 1989 and the Corporate and Criminal Accountability Act, 2002.

The False Claims Act<sup>41</sup>, originally enacted in 1863 during the presidency of Abraham Lincoln, marked a significant step in combatting fraud against the government. This legislation empowered private citizens to bring lawsuits on behalf of the government against individuals or companies engaging in fraudulent activities. Through these lawsuits, whistleblowers could recover a portion of the proceeds obtained through such fraudulent actions. The Act served as a powerful tool to incentivize individuals to report fraud committed against the government.<sup>42</sup> It also included provisions to penalize those who made false claims or attempted to misuse the system for personal gain. In 1986, the False Claims Act underwent significant amendments aimed at strengthening whistleblower protections. These amendments provided enhanced safeguards against harassment and retaliation for individuals who came forward with information about fraud. Since the amendments in 1986, the False Claims Act has been instrumental in recovering substantial sums of money for the government, totalling over \$48 billion.<sup>43</sup> This underscores its effectiveness in deterring fraudulent activities and holding wrongdoers accountable. In the United States, whistleblower protection laws have seen considerable expansion since the 1970s, extending to both private and federal sector employees. These measures aim to encourage individuals to report wrongdoing without fear of

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<sup>41</sup> False Claims Act of 1863(USA)

<sup>42</sup> Ben Depoorter and Jef De Mot, *Whistle Blowing: An Economic Analysis of the False Claims Act*, 14 Supreme Court Economic Review, (2006).

<sup>43</sup> Norm Keith, Shane Todd and Carla Oliver, "An International Perspective on Whistleblowing" 31 Criminal Justice 14 (2016).

reprisal, thus fostering accountability and integrity in various sectors of the economy.<sup>44</sup>

The Whistleblower Protection Act (WPA) of 1989<sup>45</sup> was a significant legislative measure aimed at providing protection to federal employees who reported instances of fraud, abuse, and waste within the government. Despite the amendments protections under the WPA were limited. To address these shortcomings and afford better protection to federal workers reporting wrongdoing and government corruption, the Whistleblower Protection Enhancement Act (WPEA) was enacted and notified on November 27, 2012.<sup>46</sup> The WPEA represented a significant advancement over the WPA, offering broader and more robust protections to whistleblowers. Sections 101 and 102 of the WPEA played a crucial role in rectifying the loopholes present in the WPA.<sup>47</sup> These provisions ensured that whistleblowers were protected in a wider range of situations, including disclosures made to co-workers, disclosures not originating from the whistleblower themselves, or disclosures made in response to policy decisions or while performing job duties. By closing these gaps in protection, the WPEA bolstered the ability of federal employees to report misconduct and corruption without fear of retaliation.<sup>48</sup>

The Corporate and Criminal Accountability (Sarbanes-Oxley) Act of 2002<sup>49</sup> was enacted on July 30, 2002, with the aim of bolstering corporate accountability and combating corporate fraud. The enactment of this law was prompted by high-profile cases of fraud involving companies like Enron Corporation and WorldCom, which had significant impacts on the financial sector and led to widespread financial crises.<sup>50</sup> One of the primary objectives of the Sarbanes-Oxley Act was to enhance transparency and accountability in financial reporting. It introduced measures to ensure auditor independence for public corporations and mandated stricter financial disclosures.<sup>51</sup> Under section 301 of the Act, audit committees of the boards of public corporations were required to establish procedures for confidential and anonymous

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<sup>44</sup> Peter Bowden, *A comparative Analysis of Whistleblower Protection*, (Apr. 11, 2024, 1:00 pm), [https://www.researchgate.net/publication/228175753\\_A\\_Comparative\\_Analysis\\_of\\_Whistleblower\\_Protection](https://www.researchgate.net/publication/228175753_A_Comparative_Analysis_of_Whistleblower_Protection)

<sup>45</sup> Whistleblower Protection Act of 1989 (USA)

<sup>46</sup> Whistleblower Protection Enhancement Act of 2012 (USA)

<sup>47</sup> Whistleblower Protection Enhancement Act of 2012, § 101,102 (USA)

<sup>48</sup> The Institute of Company Secretaries of India, “*Whistle Blowing: Balancing on a Tight Rope*,” (Apr. 13, 2024, 06:31 PM) <[https://www.icsi.edu/media/webmodules/45th\\_nc/WhistleBlowing\\_BalancingonaTightRope.pdf](https://www.icsi.edu/media/webmodules/45th_nc/WhistleBlowing_BalancingonaTightRope.pdf)>

<sup>49</sup> Corporate and Criminal accountability Act of 2002 (USA)

<sup>50</sup> Nikhil Varshney and Riddhima P. Murjani, *Whistleblowing Regime In The U.S. and The U.K. : The Way Ahead For India*, 6 CNLU LJ 107[2016-17].

<sup>51</sup> Ibid



disclosures by employees.<sup>52</sup> This provision aimed to encourage whistleblowing within organizations by providing channels for employees to report misconduct without fear of retaliation. The Sarbanes-Oxley Act also significantly strengthened protections for whistleblowers. Employees who faced retaliation for reporting corporate wrongdoing were afforded recourse under the law. Section 806 of the Act created a civil cause of action for employees who experienced retaliation for whistleblowing, allowing them to seek legal remedies against their employers.<sup>53</sup> Moreover, the Act imposed severe penalties on employers found guilty of retaliating against whistleblowers, including potential imprisonment of up to ten years.<sup>54</sup> Public companies were prohibited from demoting, discharging, harassing, threatening, or discriminating against employees who engaged in whistleblowing activities. Overall, the Sarbanes-Oxley Act of 2002 represented a landmark legislative effort to restore trust and integrity in corporate governance by providing robust protections for whistleblowers and enhancing accountability within the financial sector.

## **FAMOUS INCIDENTS OF WHISTLEBLOWING**

The most debated incident of whistleblowing was Snowden's controversial whistleblowing in USA.<sup>55</sup> Edward Snowden is a former intelligence contractor who gained global attention in 2013 for leaking classified information from the National Security Agency (NSA) to journalists. As a whistleblower, Snowden revealed extensive surveillance programs conducted by the NSA, including the mass collection of telephone metadata and internet communications. His actions sparked widespread debate about government surveillance, privacy rights, and civil liberties. Snowden's disclosures led to significant reforms and scrutiny of intelligence practices around the world, while also raising questions about the balance between national security and individual privacy.<sup>56</sup> However, Snowden's actions also brought legal challenges and controversy, as he faced charges of espionage and theft of government property in the United States. Currently living in exile in Russia, Snowden remains a polarizing figure, viewed by some as a hero defending civil liberties and by others as a traitor endangering national security.<sup>57</sup>

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<sup>52</sup> Corporate and Criminal Accountability Act of 2002, § 301 (USA)

<sup>53</sup> Corporate and Criminal Accountability Act of 2002, § 806 (USA)

<sup>54</sup> Nikita Mittu, *Comparative Analysis of Corporate Governance in India and USA*, 2.1 VSLR 18 (2020).

<sup>55</sup> Prakriti Bhatt, *Whistle Blowing: A Hobson's Choice? Cherry-Picking Between State Authorities and Third-Party Internet Platforms*, 10 Law Rev GLC 1 (2019)

<sup>56</sup> THE GUARDIAN, <https://www.theguardian.com/world/2013/jun/09/edward-snowden-nsa-whistleblower-surveillance> (Apr 16, 2024, 10:20 AM)

<sup>57</sup> BRITANNICA, <https://www.britannica.com/biography/Edward-Snowden>, (Apr 16, 2024, 10:25 AM)

In India, Satyendra Dubey, an employee of National Highway Authority was allegedly murdered for his whistleblowing. Dubey informed the then prime Minister Atal Bihari Vajpayee about certain misconducts and deviations in the financial department.<sup>58</sup> Despite of his request to maintain his anonymity, the Prime Minister's Office forwarded the letter to Ministry of Transport and highways. Unfortunately, he was murdered very soon but the murder was linked to a robbery and no evidence was left to connect his murder to the scam.<sup>59</sup>

Dinesh Thakur, an employee in a popular pharmaceutical company was awarded with 48 million dollars by the US Regulators for his efforts to uncover a scam.<sup>60</sup> The Indian company regulators removed Dinesh from service indefinitely for his attempts to uncover illegal manufacturing practices in the company. However, he gathered evidence and documentation against the company and sent it to the US heads resulting in his much-celebrated acknowledgment.<sup>61</sup>

The case of Wikileaks<sup>62</sup> has brought whistleblowing into the mainstream consciousness, demonstrating its power and impact on a global scale. Wikileaks served as a platform for individuals to anonymously publish sensitive and often classified information, uncovering numerous scandals and controversies. The founder, Julian Assange, faced significant opposition from various organizations, including the US government, due to the revelations facilitated by Wikileaks.<sup>63</sup> Despite Assange being merely a conduit for whistleblowers, his role made him a target, forcing him to seek refuge outside his home country and continue his legal battles in defence of his rights. Wikileaks' ability to disseminate top-secret data underscored the importance of whistleblower protection and highlighted the tension between transparency and government secrecy in the digital age.<sup>64</sup>

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<sup>58</sup> THE HINDU, <https://www.thehindu.com/news/national/Three-get-life-in-Satyendra-Dubey-murder-case/article16625349.ece> (Apr 16, 2024, 10:27 AM)

<sup>59</sup> Rinchen Norbu Wangchuk, 'An IES Officer From IIT, This Bihar Braveheart's Battle Against Corruption Cost Him His Life', THE BETTER INDIA, (Apr 10, 2024 2:00 AM) <<https://www.thebetterindia.com/163087/satyendra-dubey-iit-whistleblower-vajpayee-11.news/>>

<sup>60</sup> Ibid

<sup>61</sup> Soma Das & Divya Rajagopal, *Meet Dinesh Thakur: Former Ranbaxy employee who blew whistle and pocketed Rs. 244 crore*, The Economic Times, (Apr 10, 2024 5:20 PM) <<https://economictimes.indiatimes.com/news/company/corporate-trends/meet-dinesh-thakur-former-ranbaxy-employee-who-blew-whistle-and-pocketed-rs-244-crore/articleshow/20056354.cms?from=mdr>>

<sup>62</sup> WIKILEAKS, <https://wikileaks.org/> (Apr 16, 2024, 11:02 AM)

<sup>63</sup> Michael Ray, *Julian Assange Australian computer programmer*, BRITANNICA (Apr 10, 2024, 4:00 PM) <<https://www.britannica.com/biography/Julian-Assange>>

<sup>64</sup> Ibid

## LIMITATIONS IN INDIAN LAW

India's whistleblowing laws and protections face significant challenges and constraints. One key issue is the lack of clarity regarding whistleblowing against members of the board of directors or audit committee. There is uncertainty about whether these entities can take appropriate actions based on incriminating information.<sup>65</sup> This ambiguity can lead to unfair treatment of whistleblowers and their allegations.

In the Indian legal landscape, whistleblowers do not enjoy protection of their identity, as statutes explicitly prohibit anonymity.<sup>66</sup> This lack of anonymity exposes whistleblowers to various threats, leaving them vulnerable to repercussions. While there are mechanisms in place to mitigate victimization, they are not foolproof and do little to prevent it altogether. This reality is underscored by numerous incidents where whistleblowers have faced threats to their life, liberty, and property. Even prominent whistleblowers like Edward Snowden have had to flee their homeland to escape persecution.<sup>67</sup> Regardless of their significance, all whistleblowers inevitably face loss and turmoil as a consequence of their actions.

Indeed, there are exceptions to the lack of whistleblower protections, such as the Dodd-Frank Wall Street Reform and Consumer Protection Act in the US. This act established a whistleblower program overseen by the US Securities and Exchange Commission (SEC) in 2010.<sup>68</sup> Under the SEC's program, individuals who provide credible information may receive awards ranging from 10 to 30 percent of the amount received in enforcement actions. Similarly, in India, there have been instances where companies have rewarded employees with up to Rs. 1,00,000 for whistleblowing.<sup>69</sup>

In my view, adopting a similar approach could be beneficial in promoting whistleblowing and ensuring the credibility of information provided. Providing incentives such as monetary rewards not only encourage individuals to come forward with valuable information but also

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<sup>65</sup> UMAKANT VAROTTIL, MIHIR NANIWADEKAR, V NIRANJAN, THE REFORM DECADE: CORPORATE AND COMMERCIAL LAW IN INDIA, 80-82 (EBC Reader, 2019)

<sup>66</sup> Ibid

<sup>67</sup> *Edward Snowden, Traitor or Hero?*, Ethics Unwrapped (Apr 17, 2024, 12:08 PM) <https://ethicsunwrapped.utexas.edu/case-study/edward-snowden-traitor-hero>

<sup>68</sup> US SECURITIES AND EXCHANGE COMMISSION, OFFICE OF THE WHISTLEBLOWER, (Apr 13, 2024, 09:02 AM) <https://www.sec.gov/whistleblower>

<sup>69</sup> Arundhati Ramanathan, The Rise Of Whistleblowers (Apr 13, 2024 04:20 PM) <https://www.livemint.com/Companies/pAbNlqNsrvM4E25iY3SEJ/The-rise-of-whistleblowers.html>



enhances the effectiveness of regulatory enforcement mechanisms. This model could potentially help mitigate some of the challenges and limitations faced by whistleblowers in India.

## CONCLUSION

Corporate whistleblowing plays a vital role in ensuring transparency and accountability in the business world. However, its effectiveness is often compromised due to inconsistent legal protections across jurisdictions. While countries like the UK and the USA have well-established whistleblower protection laws and incentive programs, India faces considerable challenges. The lack of strong anonymity safeguards and insufficient measures to prevent retaliation expose whistleblowers to significant risks, including threats and victimization.

Despite these obstacles, instances of whistleblowing in India and around the globe highlight the courage and integrity of individuals willing to speak out against wrongdoing, often at great personal risk. As we navigate the complexities of corporate governance and ethical conduct, it becomes imperative for India to enhance its legal framework to better safeguard whistleblowers and promote a culture of accountability. By adopting measures such as monetary incentives and stronger legal protections, India can foster an environment where whistleblowers are empowered to expose misconduct without fear of retaliation, ultimately contributing to a more transparent and ethical corporate landscape.

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