

---

## UNDERSTANDING WHISTLEBLOWING REGULATIONS IN INDIA'S CORPORATE SECTOR

---

CS Simranjeet Kaur, Assistant Professor, Amity University, Mohali  
Research Scholar at Rajiv Gandhi National University of Law, Patiala  
B.COM, CS, LLB, LLM (Gold Medalist), PhD (Pursuing), Diploma in Corporate  
Governance (Post Membership Qualification)

### ABSTRACT

Market listed companies must establish a whistleblower mechanism for board members and workers to report unethical behaviour, deception, or violations of the company's code of conduct, as per government regulations. Whistleblowers should have enough protection against exploitation, and their identities should be protected. The Act mandates that the company's Audit Committee (hereinafter referred to as AC) to oversee and assess the effectiveness of the whistleblower. The AC will communicate the whistleblower mechanism policy to all employees and post it on the corporate website.

The provision has led to an increase in the reporting of unethical activity, fraud, and violations of business standards. This has helped organizations identify and address issues, resulting in better governance and ethical standards. Whistleblower protection: The watch mechanism in Section 177 of Companies Act, 2013 (hereinafter referred to as CA) protects whistleblowers' identity and prevents them from being victimized. This has encouraged more employees to express their concerns without fear of repercussions.

To create a secure and supportive environment in which whistleblowers can report concerns, the method must be better understood and implemented. Overall, the findings show that Section 177 has significantly improved corporate governance and transparency in India. There is clearly room for improvement, particularly in terms of raising awareness and developing a whistleblower mechanism.

## **I. INTRODUCTION**

**(A) Statement of Problem:** - The issue of whistleblowing in India is multidimensional. Although a legal framework exists to protect whistleblowers, implementation frequently falls short, resulting in a culture of silence and fear. Reporting unethical behaviour or unlawful conduct may result in retaliation and exploitation, with minimal remedies available. Employees and companies in India lack awareness and education about whistleblowing, resulting in a reluctance to reveal problems.

Unethical behaviour is frequently overlooked and addressed because to a lack of understanding, trust in the system, and quiet in the workplace. Even with legislation in existence, whistleblowers receive little protection. Whistleblowers frequently face retaliation from their employers, including termination, demotion, or harassment. Whistleblowers in India are vulnerable and lack protection as a result of the judicial system's slow response.

Overall, the issue of whistleblowing in India is complex, necessitating a multifaceted response. To promote openness and corporate governance, it's important to raise awareness of whistleblowing, increase legal protections for whistleblowers, and effectively apply current legal frameworks. To promote ethical behaviour, it's important to foster a trusting and open atmosphere where employees can disclose concerns without fear of punishment or exploitation.

### **(B) Objectives**

1. To assess the effectiveness of Section 177 in encouraging whistleblowers in India.
2. To assess the effectiveness of Clause 49 of Listing Agreement and Regulation 22 of SEBI LODR Regulations in context of Whistleblower Policy.

### **(C) Research Questions**

1. What are the barriers to whistle-blowing in India and how may they be addressed?

## **II. RESEARCH ANALYSIS**

1. **Whistleblowing in India:** Whistleblowing is critical for encouraging transparency, accountability, and ethical behaviour in businesses. It enables employees to report wrongdoing

or unethical behaviours without fear of retaliation. In India, whistleblowing is controlled by Section 177 of the CA, 2013.

Further clause 49 of the listing agreement specifies that the corporation may establish a mechanism for employees to report the concerns about un-ethical behaviour.<sup>1</sup> This un-ethical behaviour can be alleged or confirmed deception or violation of company's code of conduct or violation of ethics policy. The policy to provide safeguards against exploitation of employees who expose wrong doings. The policy should provide access to the Chairman of the AC in exceptional case. The policy when established should be appropriately be communicated to everyone in the organization. This was one of the non- mandatory requirements.

Whistleblowers must also be protected from exploitation and reprisal. Whistleblowers can disclose concerns through several routes, including a hotline or email address, or to a designated authority. The policy requires confidentiality for whistle-blowers and prohibits reprisal or mistreatment.

The SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015, became effective on 1st December 2015. Regulation 22 of SEBI (LODR) Regulations, 2015 required listed entities to establish a whistle-blower policy for Board and employees.<sup>2</sup> The regulations are being refined after Kotak Committee recommendations, promoting transparency and accountability in corporate governance. They require comprehensive disclosures on financial performance, related party transactions, and corporate social responsibility. SEBI continuously updates these regulations to keep pace with global best practices and address evolving issues, promoting transparency, accountability, and integrity in operations.

### **Analysis:**

Critical Analysis of Clause 49 of Listing Agreement and Regulation 22 of SEBI LODR Regulations in context of Whistleblower Policy: -

- Non- Mandatory/ Mandatory Requirement: - Clause 49, which states that the policy is non-mandatory, may lead to industry inconsistency and increased frauds due to reluctance

---

<sup>1</sup> Listing Agreement, clause 49

<sup>2</sup> The SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015, regulation 22

among employees to report wrongdoings. However, Regulation 22<sup>3</sup> mandates market listed companies to establish a whistleblower policy for Board and employees, but the broad guidelines can lead to varying interpretations.

- **Reporting mechanism and Safeguards:** - The listing agreement and SEBI LODR Regulations outline a mechanism for employees to report unethical concerns to management, but do not specify the reporting process or whistleblowing policy format. The clause/regulation suggests safeguards but lacks specific details, including protective measures, confidentiality clause, anti-retaliation policies, and support resources for whistleblowers.
- **Direct Access to the Chairman of AC and Anonymous Complaints:** - The mechanism allows direct access to AC chairman in exceptional cases, but lacks clear definition of what constitutes an "exceptional case" for consistent application. The document lacks details on anonymous complaints, their status, punishment, and any further action plan for the wrongdoer.

**2. Independent Director and Whistleblowing:** - Appointing an independent director to investigate concerns submitted under the policy ensures fairness and objectivity. Whistleblowing is a critical tool for detecting and combating corporate malfeasance. It entails reporting unethical or unlawful behaviour within an organization to relevant authorities. Section 177 of the CA, 2013, requires corporations in India to create whistleblowing policies and procedures.

Section 177 of the CA, 2013 mandates that all market listed companies and prescribed classes establish a mechanism for board and workers to report unethical behaviour, fraud, or violations of the company's code of conduct. To prevent exploitation, the vigil system must have suitable safeguards.<sup>4</sup> The Ministry of Corporate Affairs' Companies (Meetings of Board and its Powers) Rules, 2014 outline the prerequisites for creating a vigil mechanism.

According to Section 177 (9) of the regulations, every listed business or class of companies must provide a vigil system for Board and employees to submit legitimate concerns in the manner authorized.<sup>5</sup> According to Section 177 (10) of the CA of 2013, every listed company or such class or classes of businesses as may be defined must provide a vigil system for Board

---

<sup>3</sup> *ibid*

<sup>4</sup> The CA, 2013, s. 177

<sup>5</sup> The CA, 2013, s. 177 (9)

and staff to report real concerns in the manner required. The method will provide necessary safeguards against exploitation for those who use it, as well as direct access to the AC chairperson in appropriate or exceptional instances.<sup>6</sup>

According to the Companies (Meetings of Board and its Powers) Rules, 2014, every listed company, companies that accept public deposits, or companies that have borrowed more than fifty crore rupees from banks or public financial institutions, as well as companies that are required by law to form an AC, must oversee the whistleblower mechanism through an AC. In the case of other firms, the board to nominate a director to play the job of the committee.<sup>7</sup>

The rules also state that the whistleblower mechanism must provide adequate safeguards against the exploitation of employees and Board who use the mechanism, and that they may approach the Chairman of the AC or the director in the case of other companies, but only in exceptional circumstances. If a director or employee files repeated frivolous complaints, the committee or director may take action against that person.<sup>8</sup>

#### **Critical analysis of section 177 (9) & (10) of the CA, 2013 and Rule 7 of Companies (Meetings of Board and its powers) Rules 2014:**

- Coverage limitation: - The whistleblower mechanism is only applicable to market listed companies or those with deposits over fifty crore rupees. Private or small companies are excluded. In case of other companies, it is the board who nominate a director for AC powers, with multiple Board, especially independent ones, for better oversight and objectivity.
- Exceptional case: - The rules outline a whistleblower mechanism to protect employees and Board from exploitation, allowing them to approach the Chairman of the AC or director in exceptional cases, ensuring clarity and consistency. What constitutes exceptional case is open to interpretation, hence in order to ensure clarity and consistency, the phrase ‘exceptional case’ should be defined.
- Exploitation: - The rules do not define exploitation and provide adequate safeguards, but

---

<sup>6</sup> The CA, 2013, s. 177 (10)

<sup>7</sup> Companies (Meetings of Board and its Powers) Rules, 2014, available at: <https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/rules.html> (last visited November 15, 2024)

<sup>8</sup> Companies (Meetings of Board and its Powers) Rules, 2014, available at: <https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/rules.html> (last visited November 15, 2024)

lack specific implementation and monitoring mechanisms for protection and monitoring.

- **Frivolous Complaints:** - The rules allow committees or Board to take action against repeated frivolous complaints filed by Board or employees, but a clear framework is needed to define frivolous complaints.
- **Mandatory Awareness Training;** - The rules do not specify mandatory training or awareness camps for workers and board on the whistleblower mechanism process, its functioning, and available protections.
- **No Timelines provided:** - The rules lack clear timelines for reporting concerns, investigating issues, and resolving complaints, potentially causing delays and causing uncertainty in the process.
- **No Appeal provision:** - The CA, 2013 and rules do not provide an appeal provision, preventing employees from challenging decisions, which goes against natural justice principles and hinders governance.

**3. Whistleblower Protection Act, 2014:** - Companies must provide a way for Board and employees to report any concerns. The procedure should keep consumers safe from exploitation and provide direct access to the AC chairperson. The recommendations require the watch system to provide safeguards against exploitation, as well as direct access to the AC chairperson in appropriate cases. In addition to the Companies Act of 2013, numerous laws in India provide whistleblower protections. The Whistleblowers Protection Act of 2014 protects whistleblowers who report corruption, abuse of power, or criminal action by public officials. The Act provides a structure for receiving complaints about wrongdoing or corruption and protects whistleblowers from retaliation. Establishing whistleblower policies and practices under Section 177 of the Companies Act of 2013 encourages transparency and integrity in corporate governance.

### **Drawbacks of the WPA, 2014**

Despite various scandals like, Harshad Mehta (1992), C.R Bhansali (1992-1996), Ketan Parekh (2001), Satyam (2009), Saradha Group (2013), Bank of Baroda (2015), PNB Scam (2018) etc, the commercial sector and the private sector are beyond the scope of the Act even though public

sector contributes only 20 percent to the national income, whereas the public sector contributes 40 percent of the total wages.<sup>9</sup>

Section 8 excludes disclosures that may affect the national interest of India, e.g. The disclosure that affects the sovereignty, integrity, security of India, relations with foreign states and disclosures that are against ethical and legal concerns, e.g. public order, decency, morality and contempt of court. This exclusion might limit the powers of the Act in addressing critical and important issues. The Act lacks clear definitions of whistleblower and disclosure terms, leading to confusion. It doesn't accept anonymous complaints, deterring whistleblowers due to fear of retaliation. Retaliation penalties are insufficient, and the Competent Authority's advisory role is limited. Granting civil-court powers may cause delays and abuse of power. A check-balance system is needed.

### **III. CONCLUSION:**

The Act mandates that firms create a reporting mechanism for Board and workers to report unethical behaviour, fraud, or violations of the company's code of conduct. Whistleblowers should not be victimized and their identities should be protected.

The Act requires the company's AC to oversee and analyse the efficacy of the vigil mechanism. The AC shall convey the vigil mechanism policy to all personnel and disclose it on the corporate website. Moreover, despite legal protections which the Act specifies, whistleblowers in India continue to confront obstacles in disclosing problems. Many firms lack effective reporting mechanisms, leading to employee fear of reprisal or exploitation. This emphasizes the importance of corporate governance, ethical behaviour, and effective whistle-blowing mechanisms.

The CA of 2013 establishes a foundation for whistle-blowing methods and policies in India. Effective implementation of these tools, as well as employee willingness to use them without fear of reprisal, are key to their effectiveness. Companies must promote an ethical and transparent culture to encourage whistleblowers to share problems safely.

---

<sup>9</sup> Report by a domestic rating agency [https://www.business-standard.com/article/economy-policy/public-sector-contributes-20-to-national-income-40-of-total-wages-122082900733\\_1.html](https://www.business-standard.com/article/economy-policy/public-sector-contributes-20-to-national-income-40-of-total-wages-122082900733_1.html)