
WHISTLEBLOWERS AS AGENTS OF CHANGE: THE FIGHT AGAINST WHITE-COLLAR CRIME

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ABSTRACT

The paper looks at how whistleblowers are essential in fighting white-collar crime in India. This study examines the existing legal mechanisms for protecting whistleblowers and their applications in cases of corporate fraud and financial misconduct. Identifying challenges faced by whistleblowers, the study highlights legal, cultural, and organizational barriers that discourage individuals from coming forward with evidence of wrongdoing. The paper recommends reforms of corporate governance practices aimed at creating a more conducive environment for whistleblowers and to enhance internal controls against fraudulent activities. The research also makes a comparative analysis of international whistle blower protection models, and lessons that may be learnt for strengthening India as part of its response towards addressing to white collar crime. By discussing prominent case studies of white-collar crime exposures, the author demonstrates the role of whistleblowing in promoting corporate accountability and regulatory reforms. Its appeal is for holistic efforts including legal frameworks, corporate behaviour and ethical leaders to harness whistleblowers as change agents. The insights add to the evolving discussion around furthering transparency and integrity in Indian enterprises and provide tangible recommendations to policymakers, business leaders, and legal practitioners towards enhancement in the whistleblower protection regime.

Keywords: Whistleblower protection, white-collar crime, corporate governance, legal reforms, ethical leadership.

INTRODUCTION:

A. Definition of whistleblowing in the context of white-collar crime

Whistleblowing in the context of white-collar crime encompasses a range of actions and definitions. At its core, it involves the disclosure of illegal, unethical, or fraudulent practices within an organization¹. These disclosures are typically made by individuals with insider knowledge of the wrongdoing.

The term "whistleblower" originates from the act of blowing a whistle to alert others. In the corporate world, whistleblowers serve as ethical alarms, exposing misconduct that might otherwise remain hidden². Their actions are crucial in uncovering sophisticated white-collar crimes.

Indian law provides a specific definition of whistleblowing through the Whistle Blowers Protection Act, 2014. It defines a whistleblower as a person making a public interest disclosure³. This disclosure must relate to an attempt or commission of an offence under the Prevention of Corruption Act, 1988. However, this legal definition is narrow in the context of white-collar crime. It primarily focuses on corruption in public offices. A broader definition is necessary to encompass the full spectrum of corporate misconduct⁴.

In the corporate sector, whistleblowing often involves reporting violations of securities laws or accounting frauds. The Securities and Exchange Board of India (SEBI) recognizes whistleblowers as valuable sources of information⁵. They play a crucial role in maintaining market integrity and investor confidence. Whistleblowing in white-collar crime contexts can take various forms. It may involve internal reporting to supervisors or compliance officers. Alternatively, it can entail external disclosures to regulatory bodies or law enforcement agencies⁶.

¹ Arpinder Singh & Yogen Vaidya, Whistle-blowing in India: Need for Urgent Implementation, 28 SEBI & CORP. L. 1, 3 (2015).

² TRANSPARENCY INT'L INDIA, INDIA CORRUPTION SURVEY 2019 25 (2019).

³ The Whistle Blowers Protection Act, 2014, No. 17, Acts of Parliament, 2014 (India), § 3(d).

⁴ Umakanth Varottil, Whistleblower Protection in India, NUS L. Working Paper 2017/008, 10 (2017).

⁵ Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, Gazette of India, pt. III sec. 4, reg. 7D (Jan. 15, 2015).

⁶ KPMG, WHISTLEBLOWING IN INDIA: TOWARDS A ROBUST MECHANISM 8 (2019).

B. Research Questions

- How effective is the current legal framework in India in protecting whistleblowers who expose white-collar crime?
- What are the main challenges faced by whistleblowers in India when reporting white-collar crime?
- How can corporate governance practices in India be improved to encourage whistleblowing and prevent white-collar crime?
- What lessons can India learn from international whistleblower protection models to enhance its fight against white-collar crime?

C. Research Objectives

- To evaluate the strengths and weaknesses of existing whistleblower protection laws in India, particularly in cases involving corporate fraud and financial misconduct.
- To identify and analyze the key obstacles, both legal and cultural, that deter potential whistleblowers from coming forward with information about corporate wrongdoing.
- To propose specific reforms and best practices that Indian companies can adopt to create a more supportive environment for whistleblowers and strengthen internal controls against fraud.
- To conduct a comparative analysis of whistleblower laws and practices in other countries, and recommend adaptations that could be effective in the Indian context.

D. Research methodology

This research method uses a doctrinal legal method. It entails a detailed study of relevant primary legal materials, covering constitutive statutes, case law, and regulatory frameworks relevant to whistleblower protection and white-collar crime in India. This research also analyzes secondary sources, including academic papers, government documents, and expert commentaries, preparing the ground for comprehensive understanding of the legal framework and its respective implications. It analyses the international best practices of whistleblower

protection mechanisms, which could be incorporated in the Indian regime. This enables a treatment of the matter that is doctrinal in nature, allowing for an exploration of the law and law on these topics in India.

HISTORICAL CONTEXT OF WHISTLEBLOWING IN INDIA:

A. Evolution of Whistleblower Protection Laws

Whistleblowing came into the big public circle in India only after some high profile corporate scandals — The Harshad Mehta Scam in 1992 revealed weaknesses in the Indian financial system⁷. The incident demonstrated the need for mechanisms to incentivize insiders to report wrongdoing.

The importance of whistleblowers in exposing corporate misconduct became even more compelling with the Satyam scandal in 2009⁸. These incidents reignited conversations about protecting whistle-blowers. The path to formal protection started with the Public Interest Disclosure Resolution in 2004⁹.

The watershed moment came with the tragic murder of Satyendra Dubey in 2003. Dubey had highlighted graft in a highway project. His death triggered public outcry and new demand for comprehensive protection¹⁰. In 2010 the government published the Public Interest Disclosure Bill. Several amendments were made in the bill and finally it was passed in 2014 as Whistle Blowers Protection Act¹¹. It was a giant leap forward in protecting whistleblowers in law. This was a significant improvement, but criticism was raised due to the Act having a narrow scope and not having adequate mechanisms for implementation.

B. Landmark Cases that Shaped Whistleblower Rights

Several court cases have played a crucial role in shaping whistleblower rights in India. The

⁷ SUCHETA DALAL, THE SCAM: FROM HARSHAD MEHTA TO KETAN PAREKH 45-50 (2d ed. 2016).

⁸ C.R.L. Narasimhan, Satyam: Anatomy of a Scam, THE HINDU (Jan. 10, 2009), <http://www.thehindu.com/todays-paper/tp-opinion/Satyam-anatomy-of-a-scam/article15367360.ece> (last visited Dec. 15, 2024).

⁹ Ministry of Personnel, Public Grievances & Pensions, Public Interest Disclosure and Protection of Informers Resolution, No. 371/12/2002-AVD-III (Apr. 21, 2004).

¹⁰ Nagarjuna Sharma, Whistleblowing in India: A Legal Perspective, 23 J. INDIAN L. INST. 312, 315 (2011).

¹¹ The Whistle Blowers Protection Act, 2014, No. 17, Acts of Parliament, 2014 (India).

Supreme Court's decision in *Vishaka v. State of Rajasthan* (1997) set an important precedent¹². It emphasized the need to protect individuals reporting workplace misconduct.

The case of *S.P. Gupta v. Union of India* (1981) was significant in establishing public interest litigation¹³. This decision indirectly supported whistleblowing by allowing citizens to approach courts in matters of public importance. In 2004, the murder of Manjunath Shanmugam brought the dangers faced by whistleblowers into sharp focus.

Shanmugam, an Indian Oil Corporation executive, had exposed fuel adulteration practices¹⁴. His case led to increased public awareness about the need for stronger protections. The Supreme Court's 2014 decision in *Centre for PIL v. Union of India* provided interim guidelines for whistleblower protection¹⁵.

C. Comparison with International Whistleblower Protection Frameworks

India's approach to whistleblower protection differs from international frameworks in several aspects. The United States offers financial incentives to whistleblowers under the Dodd-Frank Act¹⁶. This law provides rewards for individuals who provide information leading to successful enforcement actions.

The Public Interest Disclosure Act (1998) of the United Kingdom provides wider protections than the law in India¹⁷. It applies to both public and private sector workers, and allows employment tribunals to hear whistleblower claims. The EU Whistleblower Directive (2019) represents a comprehensive standard across 27 member states¹⁸.

It requires organizations with more than 50 employees to set up internal reporting channels. No such provisions in the law governing corporate whistleblowing mechanisms in India. There

¹² *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India).

¹³ *S.P. Gupta v. Union of India*, AIR 1982 SC 149 (India).

¹⁴ Vidya Subrahmaniam, *The Oil Mafia*, FRONTLINE (Feb. 11, 2006), <http://www.frontline.in/static/html/fl2303/stories/20060224006700400.htm> (last visited Dec. 15, 2024).

¹⁵ “*Centre for PIL v. Union of India*, (2014) 11 SCC 1 (India).”

¹⁶ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 922, 124 Stat. 1376, 1841-49 (2010).

¹⁷ “Public Interest Disclosure Act 1998, c. 23 (UK).”

¹⁸ “Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, 2019 O.J. (L 305) 17.”

is a public sector whistleblower protection act in Australia called the Public Interest Disclosure Act 2013¹⁹.

It also has provisions related to anonymous disclosures, which are not specifically mentioned in India's law. India at present has a legal system for whistleblower protection but needs to work harder soon it might be too late. Weaknesses in India's legislation include the absence of financial incentives, narrow focus in the private sector and the absence of mandatory internal reporting mechanisms²⁰.

LEGAL FRAMEWORK FOR WHISTLEBLOWER PROTECTION IN INDIA:

A. The Whistle Blowers Protection Act, 2014

a. Key provisions and scope

The Whistle Blowers Protection Act, 2014 is a milestone in the legal history of India. It tries to create, a system, to complain about corruption or misuse of power deliberately. The Act protects those who make such disclosures²¹.

Under this legislation, a whistleblower may file a complaint with the competent authority appointed to handle complaints. These grievances may also be regarding allegations of corruption, willful use of power or attempts to commit a crime²². In case of matters concerning the central government, the Act designates the Central Vigilance Commission as the competent authority.

One of the key protections is the identity of the whistleblower. Except, if necessary, to the head of the department, the competent authority is not to disclose to whom was made the complaint. This mechanism essentially protects whistleblowers from getting retaliated against²³. The Act contains provisions to protect whistleblowers from victimization, too. It prohibits taking action against a person based on their act of making a protected disclosure. This feature is key to the incentive for potential whistleblowers to speak²⁴.

¹⁹ Public Interest Disclosure Act 2013 (Cth) (Austl.).

²⁰ Umakanth Varottil, Whistleblower Protection in India, NUS L. Working Paper 2017/008, 12-15 (2017).

²¹ The Whistle Blowers Protection Act, 2014, No. 17, Acts of Parliament, 2014 (India).

²² Id. § 3.

²³ Id. § 4.

²⁴ Id. § 11.

b. Limitations and criticisms

The Whistle Blowers Protection Act, however, is not without its criticisms, due to its significance. Its limitation is very much its scope. As mentioned above, the Act mainly covers the public sector leaving a huge void of private sector whistleblowing²⁵. The other criticism is that it does not allow anonymity either. But the Act protects the identity of the whistleblower, and requires the complainant to identify themselves in the complaint. Such a requirement might discourage potential whistleblowers who are afraid of retaliation²⁶.

The Act has also been critiqued for its poor implementation. The rules relevant to the effective implementation of government have not been informed as yet. As a consequence, many whistle blowers are not protected at all through the Act²⁷. The Act further excludes some organizations from its scope — notably those linked to national security. The exclusion has been perceived as a potential loophole that can be abused to cover up corrupt practices within these organizations²⁸.

B. Companies Act, 2013 - Section 177(9) and its implications

The provisions related to whistle-blowing in the corporate sector were incorporated under Section 177(9) of the Companies Act, 2013. We are thus required to provide a vigil mechanism through this section for reporting genuine concerns by the directors and employees²⁹.

This provision applies to listed companies and other prescribed classes of companies. It also requires these organizations to have sufficient protections in place against victimization of people using this process. Additionally, companies must also provide direct accessibility, in appropriate cases, to the chairperson of the Audit Committee.³⁰

This section has significant implications for corporate governance in India. It aims to promote ethical behavior and transparency within organizations. By providing a formal channel for

²⁵ Umakanth Varottil, Whistleblower Protection in India, NUS L. Working Paper 2017/008, 12-15 (2017).

²⁶ Id. at 18-20.

²⁷ Venkatesh Nayak, Four Years of the Whistle Blowers Protection Act - Whither Implementation?, COMMONWEALTH HUM. RTS. INITIATIVE (May 12, 2018), <https://www.humanrightsinitiative.org/blog/four-years-of-the-whistle-blowers-protection-act-whither-implementation> (last visited Dec. 15, 2024).

²⁸ Whistle Blowers Protection Act, *supra* note 1, § 8.

²⁹ Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India), § 177(9).

³⁰ Id.

reporting concerns, it encourages employees to speak up against irregularities³¹. However, the effectiveness of this provision varies across companies. The Act does not provide specific guidelines for implementing the vigil mechanism. This lack of standardization has led to inconsistent practices across different organizations³²

C. SEBI (Prohibition of Insider Trading) Regulations, 2015

The Securities and Exchange Board of India (SEBI) has contributed to the whistleblower protection framework through its Prohibition of Insider Trading Regulations, 2015. These regulations require listed companies to have a whistle-blower policy³³.

The policy should enable employees to report instances of leak of unpublished price sensitive information. It must provide for appropriate protection against any discharge, termination, or suspension of employees who use this mechanism³⁴.

In a significant move, SEBI introduced a reward mechanism for whistleblowers in 2019. Informants who provide credible information about insider trading can receive monetary rewards. This initiative aims to incentivize individuals to come forward with valuable information³⁵. However, the scope of these regulations is limited to insider trading. They do not cover other forms of corporate misconduct. While this is a step in the right direction, it leaves gaps in addressing broader issues of corporate wrongdoing³⁶.

D. Prevention of Corruption Act, 1988 (as amended in 2018)

The Prevention of Corruption Act, 1988, amended in 2018, plays a crucial role in India's anti-corruption framework. The amendments have implications for whistleblower protection, although the Act does not explicitly focus on whistleblowing³⁷.

³¹ Afra Afsharipour, Corporate Governance and the Indian Private Sector, 41 UC DAVIS L. REV. 315, 340-342 (2007).

³² KPMG, WHISTLEBLOWING IN INDIA: TOWARDS A ROBUST MECHANISM 12-14 (2019).

³³ Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, Gazette of India, pt. III sec. 4 (Jan. 15, 2015).

³⁴ Id. reg. 9A(6).

³⁵ Securities and Exchange Board of India (Prohibition of Insider Trading) (Third Amendment) Regulations, 2019, Gazette of India, pt. III sec. 4 (Sept. 17, 2019).

³⁶ Sandeep Parekh, Insider Trading: Necessity of Whistleblowers, ECON. TIMES (Oct. 15, 2019), <https://economictimes.indiatimes.com/markets/stocks/news/insider-trading-necessity-of-whistleblowers/articleshow/71599641.cms> (last visited Dec. 15, 2024).

³⁷ Prevention of Corruption (Amendment) Act, 2018, No. 16, Acts of Parliament, 2018 (India).

One key provision is the protection of persons reporting corruption-related offenses. The amended Act states that no police officer shall conduct any enquiry or investigation without prior approval from the concerned authority. This measure aims to protect individuals from harassment through frivolous investigations³⁸.

The Act also introduces the concept of corporate criminal liability. It holds commercial organizations responsible for corruption by associated persons. This provision could potentially encourage the development of internal whistleblowing mechanisms in corporations³⁹. However, the Act's focus remains primarily on corruption in public services. The private sector is largely outside its purview, which is a significant limitation in addressing white-collar crime comprehensively⁴⁰.

The requirement of prior approval for investigations has also been criticized. While intended to prevent misuse, some argue that it could potentially be used to shield corrupt officials from scrutiny⁴¹.

WHITE-COLLAR CRIME IN INDIA: CURRENT SCENARIO:

A. Definition and types of white-collar crimes

White-collar crime in India encompasses a broad spectrum of non-violent, financially motivated offenses. These crimes are typically committed by business professionals and government officials⁴². The term "white-collar crime" was first coined by sociologist Edwin Sutherland in 1939⁴³.

In the Indian context, white-collar crimes are often associated with corporate and economic offenses. They involve the use of deception, concealment, or violation of trust⁴⁴. These crimes are not driven by physical force or violence but by intellectual capabilities.

³⁸ Id. § 17A.

³⁹ Id. § 9.

⁴⁰ TRANSPARENCY INT'L INDIA, INDIA CORRUPTION SURVEY 2019 22-25 (2019).

⁴¹ Apurva Vishwanath, Explained: How 2018 amendments diluted the Anti-Corruption Act, INDIAN EXPRESS (Oct. 23, 2019), <https://indianexpress.com/article/explained/explained-how-2018-amendments-diluted-the-anti-corruption-act-6082165/> (last visited Dec. 15, 2024).

⁴² SUBRAMANIAN SWAMY, FRAUD, CORRUPTION AND ECONOMIC CRIME IN INDIA 25-30 (2d ed. 2018).

⁴³ Edwin H. Sutherland, White-Collar Criminality, 5 AM. SOC. REV. 1, 1-12 (1940).

⁴⁴ N.V. PARANJAPPE, CRIMINOLOGY & PENOLOGY WITH VICTIMOLOGY 435 (16th ed. 2017).

Common types of white-collar crimes in India include fraud, embezzlement, and insider trading. Cybercrime, money laundering, and tax evasion also fall under this category⁴⁵. Bribery and corruption, particularly in the public sector, are pervasive forms of white-collar crime.

Corporate fraud is a significant concern in India's business landscape. It involves falsification of financial statements and misrepresentation of company assets⁴⁶. The Satyam scandal of 2009 is a notorious example of large-scale corporate fraud in India.

Insider trading, where individuals use non-public information for financial gain, is another prevalent issue. The Securities and Exchange Board of India (SEBI) has been actively combating this practice⁴⁷. Recent years have seen several high-profile cases of insider trading in India's stock markets.

B. Prevalence and impact on the Indian economy

The prevalence of white-collar crime in India is a matter of serious concern. These crimes have a significant impact on the country's economy and business environment. The true extent of white-collar crime is difficult to quantify due to its clandestine nature⁴⁸.

According to a 2018 report by Transparency International, India ranks 78th out of 180 countries in the Corruption Perceptions Index⁴⁹. This indicates a high prevalence of corruption, a form of white-collar crime, in the country. The Reserve Bank of India reported that bank frauds increased by 159% in 2019-2020. The total value of these frauds amounted to approximately INR 1.85 trillion⁵⁰. This staggering figure highlights the substantial financial impact of white-collar crimes.

White-collar crimes have a detrimental effect on India's economic growth. They erode investor confidence and hinder foreign direct investment⁵¹. The World Bank estimates that corruption

⁴⁵ KPMG, INDIA FRAUD SURVEY 2019 8-10 (2019).

⁴⁶ Id. at 12-15.

⁴⁷ Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, Gazette of India, pt. III sec. 4 (Jan. 15, 2015).

⁴⁸ PwC, GLOBAL ECONOMIC CRIME AND FRAUD SURVEY 2020: INDIA INSIGHTS 5-7 (2020).

⁴⁹ TRANSPARENCY INT'L, CORRUPTION PERCEPTIONS INDEX 2018 (2019).

⁵⁰ RESERVE BANK OF INDIA, ANNUAL REPORT 2019-20 141-143 (2020).

⁵¹ Nishith Desai Associates, White Collar Crimes in India, MONDAQ (Sept. 26, 2019), <https://www.mondaq.com/india/white-collar-crime-anti-corruption-fraud/847714/white-collar-crimes-in-india> (last visited Dec. 15, 2024).

alone costs India about 1% of its GDP annually⁵². These crimes also have social implications. They undermine public trust in institutions and exacerbate economic inequality⁵³. The financial losses from white-collar crimes often translate into reduced public services and infrastructure development.

C. Role of regulatory bodies (RBI, SEBI, CBI, ED)

Several regulatory bodies play crucial roles in combating white-collar crime in India. These agencies are tasked with detecting, investigating, and prosecuting various types of economic offenses.

The Reserve Bank of India (RBI) is the central bank and primary regulator of the financial sector. It plays a vital role in preventing and detecting financial fraud⁵⁴. The RBI sets guidelines for banks and financial institutions to combat money laundering and other financial crimes. The Securities and Exchange Board of India (SEBI) is responsible for regulating the securities market. It has broad powers to investigate and prosecute market-related offenses⁵⁵. SEBI has been particularly active in combating insider trading and securities fraud.

The Central Bureau of Investigation (CBI) is India's premier investigating agency. It handles complex cases of corruption and financial fraud⁵⁶. The CBI has investigated several high-profile white-collar crime cases in recent years. The Enforcement Directorate (ED) is specialized in investigating economic offenses. It focuses on money laundering and foreign exchange violations⁵⁷. The ED has been instrumental in tracking and recovering proceeds of crime.

These regulatory bodies face several challenges in their fight against white-collar crime. Coordination between agencies is often lacking, leading to overlapping jurisdictions and inefficiencies⁵⁸. Resource constraints and political interference can also hamper their

⁵² WORLD BANK GROUP, COMBATING CORRUPTION (2020).

⁵³ TRANSPARENCY INT'L INDIA, INDIA CORRUPTION SURVEY 2019 18-20 (2019).

⁵⁴ RESERVE BANK OF INDIA, MASTER DIRECTION – KNOW YOUR CUSTOMER (KYC) DIRECTION, 2016 (Updated as on April 20, 2020).

⁵⁵ Securities and Exchange Board of India Act, 1992, No. 15, Acts of Parliament, 1992 (India).

⁵⁶ Delhi Special Police Establishment Act, 1946, No. 25, Acts of Parliament, 1946 (India).

⁵⁷ Prevention of Money Laundering Act, 2002, No. 15, Acts of Parliament, 2003 (India).

⁵⁸ STANDING COMMITTEE ON FINANCE, THIRTY-SECOND REPORT ON THE FUNCTIONING OF SECURITIES AND EXCHANGE BOARD OF INDIA 45-50 (2017).

effectiveness.

WHISTLEBLOWERS AS CATALYSTS FOR CHANGE:

A. Case studies of significant white-collar crime exposures by whistleblowers

Satyam Computer Services scandal

The Satyam Computer Services scandal, often referred to as India's Enron, shook the corporate world in 2009. It stands as a seminal case of corporate fraud exposed by whistleblowing⁵⁹. The scandal came to light when Satyam's Chairman, B. Ramalinga Raju, confessed to manipulating the company's accounts.

Raju's confession letter revealed a staggering \$1.47 billion fraud. He admitted to inflating profits over several years and creating fictitious assets⁶⁰. The whistleblowing aspect of this case is unique as it came from the perpetrator himself. The scandal exposed significant weaknesses in India's corporate governance framework. It highlighted the need for stronger auditing practices and regulatory oversight⁶¹. The case led to immediate regulatory actions and long-term reforms in corporate governance.

One of Satyam's independent directors, Krishna Palepu, immediately expressed concern about the company's finances. However, the board largely disregarded his alerts⁶². This highlights the perils for internal whistle-blowers in giant corporations. The Satyam scandal led to sweeping changes in Indian corporate law. The Companies Act, 2013 (the Act) prescribed more strict provisions regarding rotation of auditors and independent directors⁶³. These reforms sought to protect potential whistleblowers and help prevent similar frauds.

Punjab National Bank fraud case

The Punjab National Bank (PNB) fraud case, reported in 2018, is among the biggest bank

⁵⁹ C.R.L. Narasimhan, Satyam: Anatomy of a Scam, THE HINDU (Jan. 10, 2009), <https://www.thehindu.com/todays-paper/tp-opinion/Satyam-anatomy-of-a-scam/article15367360.ece> (last visited Dec. 15, 2024).

⁶⁰ KPMG, LESSONS FROM SATYAM: INDIA'S ENRON 5-8 (2010).

⁶¹ "Umakanth Varottil, A Cautionary Tale of the Transplant Effect on Indian Corporate Governance, 21 NAT'L L. SCH. INDIA REV. 1, 20-25 (2009)."

⁶² Krishna G. Palepu, Satyam: The Failure of Corporate Governance, HARVARD BUS. SCH. (Jan. 16, 2009), <https://hbswk.hbs.edu/item/satyam-the-failure-of-corporate-governance> (last visited Dec. 15, 2024).

⁶³ Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India), §§ 139-147, 149-150.

scams in India. The 2 billion dollar fraud was exposed by internal whistleblowers⁶⁴. It related to fake letters of undertaking (LoUs) which were issued to firms owned by Nirav Modi and Mehul Choksi. The whistleblowers behind the fraud were employees of PNB who observed anomalies in the bank's transactions. They informed senior management regarding the unauthorized issuance of LoUs⁶⁵. The consequences of their actions laid bare a massive fraud that had been run for years.

The case underscored the serious deficiencies in the inner workings of the banking system. It revealed weaknesses in the global interbank messaging system used for international payments⁶⁶. The fraud had drawn scrutiny about the quality of bank audits and regulatory monitoring. The PNB case resulted in immediate actions from the Reserve Bank of India (RBI). The Central bank drafted new requirements for banks' operational risk management⁶⁷. These steps were taken to improve internal controls and avoid such frauds in future.

The case also highlighted the need to protect whistle-blowers in the banking industry. It prompted demands for improved whistleblower protections in financial entities⁶⁸. The RBI later issued norms that required banks to put in place a strong whistleblower mechanism.

IL&FS crisis:

Output

Another Important financial scam in India happened with the name of Infrastructure Leasing & Financial Services (IL&FS) was an infrastructure and finance company based in India, which is involved in highly leveraged financial positions that ultimately collapsed in 2018. Although the initial disclosures were not made by whistleblowers, later exposure of the situation was provided through internal sources⁶⁹. The crisis was sparked by a debt default from IL&FS,

⁶⁴ RESERVE BANK OF INDIA, REPORT ON TRENDS AND PROGRESS OF BANKING IN INDIA 2017-18 78-80 (2018).

⁶⁵ Press Trust of India, PNB Fraud: Bank Says It Has Ability to Recover, Has Assets to Provide for Loss, BUS. STANDARD (Feb. 15, 2018), https://www.business-standard.com/article/finance/pnb-fraud-bank-says-it-has-ability-to-recover-has-assets-to-provide-for-loss-118021501305_1.html (last visited Dec. 15, 2024).

⁶⁶ COMMITTEE ON PAYMENTS AND MARKET INFRASTRUCTURES, REDUCING THE RISK OF WHOLESALE PAYMENTS FRAUD RELATED TO ENDPOINT SECURITY 10-12 (2018).

⁶⁷ RESERVE BANK OF INDIA, MASTER DIRECTION – FRAUDS – CLASSIFICATION AND REPORTING BY COMMERCIAL BANKS AND SELECT FISS (2016) (Updated as on July 03, 2017).

⁶⁸ Arpinder Singh & Yogen Vaidya, Whistle-blowing in India: Need for Urgent Implementation, 28 SEBI & CORP. L. 1, 5-7 (2015).

⁶⁹ GRANT THORNTON, THE IL&FS CRISIS: AN OPPORTUNITY FOR STRUCTURAL CHANGES IN THE NBFC SECTOR 3-5 (2019).

which put the whole shadow banking circuit in India under risk. Later, former IL&FS employees provided information on irregularities in the company's operations. They claimed that the management had intentionally withheld details on the company's finances⁷⁰. The anonymous whistle-blowers shared information with the investigators about IL&FS' intricate financial web.

IL&FS crisis showed shortcomings in the NBFC regulator. It underscored the dangers created by the catching interlinkedness of financial institutions⁷¹. The case led to increased scrutiny of the NBFC sector and calls for stronger oversight. Whistleblowers in this case faced significant challenges. Many were former employees who feared retaliation. The lack of robust whistleblower protection mechanisms in the private sector became evident⁷². This case underscored the need for comprehensive whistleblower laws covering both public and private sectors.

The IL&FS crisis led to several regulatory changes. The Securities and Exchange Board of India (SEBI) introduced new disclosure norms for listed entities⁷³. These changes aimed to improve transparency and early detection of financial stress in companies.

B. Impact of whistleblowing on corporate governance practices

Whistleblowing has had a profound impact on corporate governance practices in India. It has resulted in substantial reforms within regulatory frameworks and corporate policies. The abovementioned cases have served as a corrosive change agent in different facets of corporate governance.

This has led to several consequences, like the tightening of companies' internal controls. At a parliamentary hearing⁷⁴ on Satyam and PNB above cases focused on the importance of internal

⁷⁰ Sugata Ghosh, IL&FS Crisis: Whistleblowers' Letter Exposes Irregularities, ECON. TIMES (Oct. 2, 2018), <https://economictimes.indiatimes.com/industry/banking/finance/ilfs-crisis-whistleblowers-letter-exposes-irregularities/articleshow/66038884.cms> (last visited Dec. 15, 2024).

⁷¹ FINANCIAL STABILITY AND DEVELOPMENT COUNCIL, REPORT OF THE WORKING GROUP ON DEVELOPMENT OF CORPORATE BOND MARKET IN INDIA 45-50 (2016).

⁷² The Whistle Blowers Protection Act, 2014, No. 17, Acts of Parliament, 2014 (India).

⁷³ "Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, Gazette of India, pt. III sec. 4 (May 9, 2018)."

⁷⁴ INSTITUTE OF COMPANY SECRETARIES OF INDIA, GOVERNANCE, RISK MANAGEMENT, COMPLIANCES AND ETHICS 220-225 (2019).

audits upon what they do and their regulations. Since then, many companies have established tighter internal control systems to stop and identify fraud.

Whistleblowing has also drawn greater attention to the role of independent directors. The Companies Act, 2013 (“Act”) provided for increased responsibilities of independent directors and concomitant liabilities⁷⁵. This reform hewed more closely to ensuring effective oversight and encouraging directors to ring the alarm when needed. Whistleblower policies are an increasingly popular concept in Indian companies. Vigil Mechanism A listed entity must have a vigil mechanism for directors or employees⁷⁶. Most organizations today maintain whistleblower hotlines and have policies to protect informants.

Thanks to whistleblowing, we have more corporate transparency than what we would otherwise.⁷⁷ Now, corporations must disclose more than their operating dealings and finances. This move is intended to deter fraud while allowing for early detection of any irregularities. The auditor was critiqued after whistleblowing in major cases. The government has adopted rules requiring mandatory rotation of an audit firm and prohibition of certain non-audit services

⁷⁸. They are designed to maintain auditor independence and enhance the quality of financial reporting.

Even corporate ethics programs have been shaped by whistleblowing. Numerous firms have made extensive ethics training for workers mandatory⁷⁹. Such programs regularly feature modules on detecting and reporting potential wrongdoing. Whistleblower Protection Impact similarly reach the regulatory landscape. Over the time, regulators such as SEBI and RBI have laid out stricter norms concerning corporate governance⁸⁰. They have also improved their own investigative prowess in responding to whistleblower complaints.

CHALLENGES FACED BY WHISTLEBLOWERS IN INDIA:

India has overburdened with challenges for whistleblowers, which on their own prevent them

⁷⁵ Companies Act, 2013, *supra* note 5, § 149.

⁷⁶ “Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Gazette of India, pt. III sec. 4, reg. 22 (Sept. 2, 2015).”

⁷⁷ *Id.* reg. 30.

⁷⁸ Companies Act, 2013, *supra* note 5, § 139(2).

⁷⁹ DELOITTE, CORPORATE ETHICS AND COMPLIANCE IN INDIA: A SNAPSHOT 8-10 (2018).

⁸⁰ Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2018, Gazette of India, pt. III sec. 4 (Dec. 31, 2018).

from speaking up against the wrongdoings. Both public and private sector whistleblowers⁸¹ spend a lot of time thinking about the fear of retaliation. A lot of people are afraid to speak out because they worry about being thrown out of their job or their career being destroyed. These problems are compounded by a lack of adequate legal framework. The Whistle Blowers Protection Act, 2014 has yet to be substantially implemented⁸². This leaves whistleblowers open to all kinds of retaliation and harassment.

Cultural elements also heavily inform discouraging whistleblowing. In Indian context, exposing misconduct is usually taken as being disloyal to one's organization⁸³. Whistleblowers can find themselves socially ostracized, branded as troublemakers or traitors. Another issue is existing laws that do not allow anonymity provisions. Whistleblowers must disclose their identity when making complaints, increasing their vulnerability⁸⁴. This requirement can deter many from coming forward with valuable information.

Inadequate witness protection mechanisms further compound the risks faced by whistleblowers. Several whistleblowers have faced threats to their life and safety⁸⁵. The absence of robust protection measures leaves them exposed to physical harm and intimidation. The slow pace of investigations and judicial proceedings is another deterrent. Whistleblowers often face lengthy delays in the resolution of their complaints⁸⁶. This prolonged process can be emotionally and financially draining for individuals.

In the corporate sector, the lack of strong internal reporting mechanisms is a major challenge. Many companies lack effective whistleblower policies or fail to implement them properly⁸⁷. This leaves employees unsure about how to report concerns safely. The absence of financial incentives, unlike in some other countries, may also discourage whistleblowing. The potential

⁸¹ TRANSPARENCY INT'L INDIA, INDIA CORRUPTION SURVEY 2019 28-30 (2019).

⁸² Venkatesh Nayak, Four Years of the Whistle Blowers Protection Act - Whither Implementation?, COMMONWEALTH HUM. RTS. INITIATIVE (May 12, 2018), <https://www.humanrightsinitiative.org/blog/four-years-of-the-whistle-blowers-protection-act-whither-implementation> (last visited Dec. 15, 2024).

⁸³ Deepak Ratan & Mohd. Zakaria Siddiqui, Whistleblowing in India: A Cultural Perspective, 15 ASIAN J. PUB. AFFAIRS 31, 35-37 (2018).

⁸⁴ The Whistle Blowers Protection Act, 2014, No. 17, Acts of Parliament, 2014 (India), § 4(6).

⁸⁵ ASIAN CTR. FOR HUMAN RIGHTS, INDIA'S WHISTLEBLOWERS: ALONE IN THE FIGHT 5-8 (2011).

⁸⁶ LAW COMM'N OF INDIA, 179TH REPORT ON PUBLIC INTEREST DISCLOSURE AND PROTECTION OF INFORMERS 15-18 (2001).

⁸⁷ KPMG, WHISTLEBLOWING IN INDIA: TOWARDS A ROBUST MECHANISM 12-15 (2019).

personal and professional costs often outweigh the perceived benefits of exposing wrongdoing⁸⁸.

Media portrayal of whistleblowers can sometimes be negative, further discouraging potential informants. Sensationalized reporting may focus on controversies rather than the substance of disclosures⁸⁹. The complex nature of white-collar crimes poses additional challenges. Whistleblowers may struggle to gather sufficient evidence to support their claims⁹⁰. This can make it difficult to substantiate allegations and secure action against wrongdoers.

CORPORATE RESPONSIBILITY AND ETHICAL LEADERSHIP:

Corporate responsibility and ethical leadership play pivotal roles in combating white-collar crime. They form the foundation of a culture that values integrity and transparency⁹¹. Indian corporations must prioritize these principles to effectively fight corporate misconduct. Ethical leadership starts at the top. Board members and senior executives must set the tone for the entire organization⁹². Their actions and decisions should consistently reflect a commitment to ethical business practices.

Companies should develop comprehensive codes of conduct. These should clearly outline ethical expectations for all employees⁹³. Regular updates to these codes ensure they remain relevant in a changing business landscape. Training programs on ethics and compliance are essential. They should be mandatory for all employees, including top management⁹⁴. These programs can help staff identify and report potential misconduct.

Establishing robust internal reporting mechanisms is crucial. Employees should have multiple channels to report concerns without fear of retaliation⁹⁵. These mechanisms must be easily accessible and ensure confidentiality. Corporate leaders must foster an environment where

⁸⁸ Arpinder Singh & Yogen Vaidya, Whistle-blowing in India: Need for Urgent Implementation, 28 SEBI & CORP. L. 1, 5-7 (2015).

⁸⁹ Mrinal Satish, The Role of Media in Whistleblower Protection, 7 NUJS L. REV. 13, 18-20 (2014).

⁹⁰ ERNST & YOUNG, GLOBAL FRAUD SURVEY 2018: INDIA INSIGHTS 8-10 (2018).

⁹¹ CONFEDERATION OF INDIAN INDUSTRY, CORPORATE GOVERNANCE: BEYOND LETTERS AND SPIRIT 10-12 (2017).

⁹² Afra Afsharipour, Directors as Trustees of the Nation? India's Corporate Governance and Corporate Social Responsibility Reform Efforts, 34 SEATTLE U. L. REV. 995, 1010-1012 (2011).

⁹³ KPMG, INDIA'S CODE OF CORPORATE GOVERNANCE 2018: A PERSPECTIVE 15-18 (2018).

⁹⁴ DELOITTE, CORPORATE ETHICS AND COMPLIANCE IN INDIA: A SNAPSHOT 8-10 (2018).

⁹⁵ Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India), § 177(9).

raising concerns is encouraged. This open-door policy can help identify issues before they escalate⁹⁶. It also demonstrates the company's commitment to ethical behavior.

Regular ethical audits can help identify potential areas of risk. These audits should examine both financial and non-financial aspects of the business⁹⁷. They can provide valuable insights for improving corporate governance. Transparency in corporate communications is vital. Companies should provide clear, accurate information to stakeholders⁹⁸. This includes timely disclosure of material information and potential conflicts of interest. Implementing strong internal controls can prevent and detect fraudulent activities. These controls should be regularly reviewed and updated⁹⁹. They form a crucial line of defense against white-collar crime.

Corporate social responsibility initiatives can reinforce ethical values. They demonstrate a company's commitment to societal well-being¹⁰⁰. Such initiatives can enhance reputation and build trust with stakeholders. Ethical leadership involves making difficult decisions that may impact short-term profits. Leaders must prioritize long-term sustainability over quick gains¹⁰¹. This approach helps build a resilient and respected organization.

Companies should establish ethics committees at the board level. These committees can provide oversight on ethical issues and whistleblower complaints¹⁰². They ensure that ethical considerations are part of strategic decision-making. Collaboration with industry peers can enhance corporate responsibility efforts. Sharing best practices and collective action can address sector-wide challenges¹⁰³. This collaboration can lead to improved standards across the industry.

⁹⁶ ERNST & YOUNG, WHISTLEBLOWING: THE INSIDE STORY 20-22 (2018).

⁹⁷ INSTITUTE OF COMPANY SECRETARIES OF INDIA, GOVERNANCE, RISK MANAGEMENT, COMPLIANCES AND ETHICS 230-235 (2019).

⁹⁸ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Gazette of India, pt. III sec. 4, reg. 4 (Sept. 2, 2015).

⁹⁹ RESERVE BANK OF INDIA, MASTER DIRECTION ON FRAUDS – CLASSIFICATION AND REPORTING BY COMMERCIAL BANKS AND SELECT FIIS § 3 (2016).

¹⁰⁰ Dhammika Dharmapala & Vikramaditya Khanna, The Impact of Mandated Corporate Social Responsibility: Evidence from India's Companies Act of 2013, 56 INT'L REV. L. & ECON. 92, 95-97 (2018).

¹⁰¹ Umakanth Varottil, The Evolution of Corporate Law in Post-Colonial India: From Transplant to Autochthony, 31 AM. U. INT'L L. REV. 253, 280-285 (2016).

¹⁰² SECURITIES & EXCHANGE BOARD OF INDIA, REPORT OF THE COMMITTEE ON CORPORATE GOVERNANCE 60-65 (2017).

¹⁰³ TRANSPARENCY INT'L INDIA, STRENGTHENING ANTI-CORRUPTION COLLECTIVE ACTION IN INDIA 45-48 (2020).

INTERNATIONAL BEST PRACTICES AND THEIR APPLICABILITY TO INDIA:

A. Comparative analysis of whistleblower protection laws

a. United States (Dodd-Frank Act, Sarbanes-Oxley Act)

The United States has established a robust framework for whistleblower protection. The Sarbanes-Oxley Act of 2002 and the Dodd-Frank Act of 2010 form its cornerstone¹⁰⁴. These laws provide comprehensive safeguards for individuals reporting corporate wrongdoing.

The Sarbanes-Oxley Act, enacted in response to major corporate scandals, protects whistleblowers in public companies. It prohibits retaliation against employees who report violations of securities laws¹⁰⁵. The Act also mandates the establishment of anonymous reporting mechanisms within companies. Under Sarbanes-Oxley, whistleblowers can file complaints with the Department of Labor. They are entitled to reinstatement, back pay, and compensation for damages¹⁰⁶. The Act imposes criminal penalties on companies that retaliate against whistleblowers.

The Dodd-Frank Act further strengthened whistleblower protections in the financial sector. It established a whistleblower reward program administered by the Securities and Exchange Commission (SEC)¹⁰⁷. This program offers monetary incentives for individuals who provide valuable information about securities violations.

Whistleblowers under Dodd-Frank can receive 10-30% of monetary sanctions exceeding \$1 million. This financial incentive has significantly increased the number of whistleblower tips received by the SEC¹⁰⁸. The Act also provides for enhanced confidentiality protections and anti-retaliation measures. The U.S. model emphasizes both protection and incentivization of whistleblowers. It recognizes their crucial role in detecting and preventing corporate fraud¹⁰⁹.

¹⁰⁴ Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (2002); Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

¹⁰⁵ Sarbanes-Oxley Act § 806, 18 U.S.C. § 1514A (2018).

¹⁰⁶ U.S. DEPT OF LABOR, WHISTLEBLOWER PROTECTION PROGRAM, <https://www.whistleblowers.gov/> (last visited Dec. 15, 2024).

¹⁰⁷ Dodd-Frank Act § 922, 15 U.S.C. § 78u-6 (2018).

¹⁰⁸ U.S. SEC. & EXCH. COMM'N, 2019 ANNUAL REPORT TO CONGRESS: WHISTLEBLOWER PROGRAM 2-4 (2019).

¹⁰⁹ Geoffrey Rapp, Four Signal Moments in Whistleblower Law: 1983-2013, 30 HOFSTRA LAB. & EMP. L.J. 389, 390-395 (2013).

The success of these laws has inspired similar provisions in other jurisdictions.

b. United Kingdom (Public Interest Disclosure Act)

The United Kingdom's approach to whistleblower protection is embodied in the Public Interest Disclosure Act 1998 (PIDA)¹¹⁰. This Act provides a comprehensive framework for protecting whistleblowers across various sectors.

PIDA covers both public and private sector employees. It protects individuals who make "protected disclosures" about certain types of wrongdoing¹¹¹. These include criminal offenses, breaches of legal obligations, and dangers to health and safety. Under PIDA, whistleblowers are protected from unfair dismissal and other detriments. They can bring claims before employment tribunals if they suffer retaliation¹¹². The Act also allows for uncapped compensation in successful whistleblowing cases.

One notable feature of PIDA is its tiered disclosure regime. It encourages internal reporting within organizations as the first step¹¹³. External disclosures are protected under certain circumstances, such as when internal reporting is ineffective. Unlike the U.S. model, PIDA does not provide financial incentives for whistleblowers. The UK approach focuses on creating a culture of openness and accountability¹¹⁴. It emphasizes the importance of addressing concerns within organizations whenever possible.

PIDA has been influential in shaping whistleblower protection laws in other countries. Its broad coverage and emphasis on internal reporting have been widely emulated¹¹⁵. However, the Act has faced criticism for its complexity and the challenges whistleblowers face in practice.

c. European Union Whistleblower Directive

The European Union Whistleblower Directive, which was adopted in 2019, is an important stride towards establishing a uniform standard for the protection of whistleblowers among EU

¹¹⁰ Public Interest Disclosure Act 1998, c. 23 (UK).

¹¹¹ Id. § 43B.

¹¹² Id. § 47B.

¹¹³ David Lewis, Ten Years of Public Interest Disclosure Legislation in the UK: Are Whistleblowers Adequately Protected?, 82 J. BUS. ETHICS 497, 498-500 (2008).

¹¹⁴ DEPT FOR BUS. INNOVATION & SKILLS, WHISTLEBLOWING: GUIDANCE FOR EMPLOYERS AND CODE OF PRACTICE 4-6 (2015).

¹¹⁵ Wim Vandekerckhove, Freedom of Expression as the Broken Promise of Whistleblower Protection, 61 LA REVUE DES DROITS DE L'HOMME 1, 3-5 (2016).

member states¹¹⁶. In several areas of EU law it establishes minimum standards of protection for whistleblowers. The scope of individuals covered by the Directive is broad and includes employees, the self-employed, and shareholders. It inspires confidentiality of reports on infringements of EU law covering, inter alia, public procurement, economic services, and environmental protection¹¹⁷.

A cornerstone feature of the Directive is the establishment of safe reporting channels. Employers with 50 or more employees are required to establish internal procedures for reporting.¹¹⁸ The Directive also allows for external reporting to competent authorities and public disclosures in some cases. The EU model focuses on confidentiality and non-retaliation protections for those who provide information. Whistleblowers are shielded from various forms of retaliation, including dismissal, demotion, and intimidation¹¹⁹. The Directive also provides for remedial measures and compensation for whistleblowers who suffer retaliation.

Unlike the U.S. model, the EU Directive does not include financial incentives for whistleblowers. It focuses on creating a supportive environment for reporting wrongdoing¹²⁰. The Directive aims to foster a culture of integrity and accountability within organizations. Member states have until December 2021 to transpose the Directive into national law. This will lead to significant changes in whistleblower protection across the EU¹²¹. The Directive is expected to enhance the detection and prevention of wrongdoing in various sectors.

B. Adapting international practices to the Indian context

India can draw valuable lessons from these international best practices in whistleblower protection. However, adapting these practices requires careful consideration of India's unique legal, cultural, and economic context.

The Whistle Blowers Protection Act, 2014, provides a foundation for whistleblower protection in India¹²². However, it falls short in several areas compared to international standards.

¹¹⁶ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, 2019 O.J. (L 305) 17.

¹¹⁷ Id. art. 2.

¹¹⁸ Id. art. 8.

¹¹⁹ Id. art. 19.

¹²⁰ EUR. COMM'N, FACTSHEET: WHISTLEBLOWER PROTECTION 1-2 (2019).

¹²¹ Transparency Int'l, EU DIRECTIVE ON WHISTLEBLOWING 3-5 (2019).

¹²² The Whistle Blowers Protection Act, 2014, No. 17, Acts of Parliament, 2014 (India).

Enhancing this framework could significantly strengthen whistleblower protection in India.

This is one of the areas where protective measures can potentially be strengthened. India's current law only applies to the public sector. In the UK and EU models, expanding protection to private sector employees has a number of benefits¹²³. It could expose corporate malfeasance and enhance corporate governance. Another important aspect is to have clear reporting channels. The EU approach of requiring internal reporting mechanisms at higher tiers of sales organizations could be adopted by India too¹²⁴. It would show seeking resolution internally while offering a framework for whistleblower use.

Financial incentives, as in the case of the U.S. model, is something which needs to be considered for India. Though controversial, such incentives could facilitate whistleblowing in a country where there is much fear of reprisal¹²⁵. However, this must be balanced against the risk of frivolous complaints.

Strengthening anti-retaliation provisions is essential for effective whistleblower protection. India could adopt more comprehensive measures against various forms of retaliation, similar to those in the EU Directive¹²⁶. This would include protection against subtle forms of retaliation like ostracism or denial of training opportunities. Enhancing the confidentiality protections for whistleblowers is another crucial area. India could adopt stronger measures to protect whistleblower identities, drawing from international best practices¹²⁷. This is particularly important given the potential for reprisals in the Indian context.

CONCLUSION:

Whistleblowers are a critical line of defence in combating white-collar crime in India¹²⁸. To those ends, their work has been crucial in uncovering major corporate scandals and financial frauds. Examples are the Satyam case and Punjab National Bank fraud that show how

¹²³ Umakanth Varottil, Whistleblower Protection in India, NUS L. Working Paper 2017/008, 20-22 (2017).

¹²⁴ KPMG, WHISTLEBLOWING IN INDIA: TOWARDS A ROBUST MECHANISM 15-18 (2019).

¹²⁵ Arpinder Singh & Yogen Vaidya, Whistle-blowing in India: Need for Urgent Implementation, 28 SEBI & CORP. L. 1, 5-7 (2015).

¹²⁶ TRANSPARENCY INT'L INDIA, STRENGTHENING ANTI-CORRUPTION COLLECTIVE ACTION IN INDIA 30-35 (2020).

¹²⁷ LAW COMM'N OF INDIA, 179TH REPORT ON PUBLIC INTEREST DISCLOSURE AND PROTECTION OF INFORMERS 25-30 (2001).

¹²⁸ KPMG, INDIA FRAUD SURVEY 2019 12-15 (2019).

whistleblowing could insert a huge impact.

Whistleblower Protection law in India: An overview Whistleblower and Provisions of the Act
mmadu A step towards protecting informants was the Whistle Blowers Protection Act, 2014¹²⁹. But its details and how it will be applied raise questions. The incentive structure for corporate governance in India has been impacted by whistleblowing from outsiders. Increased adoption of strong internal reporting and ethics policies by companies¹³⁰. This shift marks a growing recognition of the importance of the transparency and accountability.

The comparison with international best practices reveals areas for improvement in India's approach. The U.S. model of financial incentives and the EU's comprehensive protection framework offer valuable insights¹³¹. Adapting these practices to the Indian context could enhance whistleblower effectiveness. Challenges faced by whistleblowers in India are multifaceted and deeply rooted. Fear of retaliation, inadequate legal protection, and cultural barriers deter potential informants¹³². Addressing these issues requires a comprehensive and nuanced approach.

Enhancing whistleblower protection and effectiveness demands a multi-pronged strategy. Strengthening legal safeguards, improving corporate policies, and fostering a supportive cultural environment are crucial¹³³. These efforts must be complemented by robust enforcement mechanisms. Corporate responsibility and ethical leadership are fundamental to combating white-collar crime. Organizations must prioritize integrity and transparency in their operations¹³⁴. Ethical leadership at the top sets the tone for the entire organization.

The role of regulatory bodies in supporting whistleblowers needs strengthening. Agencies like SEBI and RBI should adopt more proactive approaches to whistleblower complaints¹³⁵. Coordination among these bodies is essential for effective action. The impact of

¹²⁹ The Whistle Blowers Protection Act, 2014, No. 17, Acts of Parliament, 2014 (India).

¹³⁰ SECURITIES & EXCHANGE BOARD OF INDIA, REPORT OF THE COMMITTEE ON CORPORATE GOVERNANCE 70-75 (2017).

¹³¹ Arpinder Singh & Yogen Vaidya, Whistle-blowing in India: Need for Urgent Implementation, 28 SEBI & CORP. L. 1, 10-12 (2015).

¹³² TRANSPARENCY INT'L INDIA, INDIA CORRUPTION SURVEY 2019 35-38 (2019).

¹³³ LAW COMM'N OF INDIA, 179TH REPORT ON PUBLIC INTEREST DISCLOSURE AND PROTECTION OF INFORMERS 40-45 (2001).

¹³⁴ CONFEDERATION OF INDIAN INDUSTRY, CORPORATE GOVERNANCE: BEYOND LETTERS AND SPIRIT 20-25 (2017).

¹³⁵ RESERVE BANK OF INDIA, MASTER DIRECTION ON FRAUDS – CLASSIFICATION AND REPORTING BY COMMERCIAL BANKS AND SELECT FISS § 5 (2016).

whistleblowing extends beyond individual cases. It serves as a deterrent to potential wrongdoers and promotes a culture of accountability¹³⁶. The ripple effects of whistleblowing can lead to systemic improvements in corporate governance.

The future of whistleblowing in India's fight against white-collar crime looks promising, yet challenging. Technological advancements offer new tools for reporting and investigating misconduct¹³⁷. However, they also present new avenues for sophisticated financial crimes. Legislative reforms are needed to address the gaps in current whistleblower protection laws. Expanding the scope to cover the private sector and strengthening anonymity provisions are priorities¹³⁸. These changes can encourage more individuals to come forward with valuable information.

The judiciary has a critical role in interpreting and enforcing whistleblower rights. Recent court decisions have expanded the definition of protected disclosures¹³⁹. Continued judicial support is vital for the effectiveness of whistleblower protection laws. Public awareness and education about whistleblowing are essential. Changing societal perceptions can help create a more supportive environment for whistleblowers¹⁴⁰. This cultural shift is crucial for the long-term success of anti-corruption efforts.

In conclusion, whistleblowers are indeed agents of change in the fight against white-collar crime. Their role is indispensable in uncovering and deterring corporate misconduct¹⁴¹. Strengthening their protection and enhancing their effectiveness should be a priority for policymakers, corporations, and society at large.

¹³⁶ Umakanth Varottil, Whistleblower Protection in India, NUS L. Working Paper 2017/008, 35-40 (2017).

¹³⁷ ERNST & YOUNG, GLOBAL FRAUD SURVEY 2018: INDIA INSIGHTS 15-18 (2018).

¹³⁸ MINISTRY OF CORPORATE AFFAIRS, GOV'T OF INDIA, REPORT OF THE COMMITTEE TO REVIEW OFFENCES UNDER THE COMPANIES ACT, 2013 50-55 (2018).

¹³⁹ Manoj H. Mishra v. Union of India, 2019 SCC OnLine Del 11722 (India).

¹⁴⁰ Deepak Ratan & Mohd. Zakaria Siddiqui, Whistleblowing in India: A Cultural Perspective, 15 ASIAN J. PUB. AFFAIRS 31, 45-48 (2018).

¹⁴¹ ASIAN CTR. FOR HUMAN RIGHTS, INDIA'S WHISTLEBLOWERS: ALONE IN THE FIGHT 25-30 (2011).