WHISTLE BLOWING PROTECTION –
A WATCH DOG FOR THE ORGANISATION

MRS. S. SRIVIDHYA*; MR. C. STALIN SHELLY**

*Assistant Professor,
Ts.Narayanaswami College of Arts & Science,
Navalur, Chennai.
**Assistant Professor,
Ts.Narayanaswami College of Arts & Science,
Navalur, Chennai.

ABSTRACT

‘Whistle Blowing’ is an increasingly common element of regulatory enforcement programs. Whistle blowing is basically an act of alerting the higher ups and the society about endanger. A whistleblower is one who blows the whistle on corruption, crime and other misconduct, including unethical conduct. Almost most of the countries across the globe are facing the impact of deteriorating governance both in the public and corporate domain. However the actions of whistle blowers across the globe have brought some cheers for the well wishers of corporate governance. But the million dollar question is: Does Whistle Blowing really bring cheers to Whistle Blowers? This paper focuses its attention mainly on the protection of Whistle Blowers. Apart from that it enquires on what makes some employees blow the whistle against wrong practices and corruption in the organisation and what organisations can do to create an environment which helps employees to prevent organisationally and socially undesirable practices.

KEYWORDS: whistle blowing, whistle blowers, whistle blower’s protection, legal help.

INTRODUCTION

‘Whistle Blowing’ is an increasingly common element of regulatory enforcement programs. Whistle blowing is basically an act of alerting the higher ups and the society about endanger. Whistle blowing may be internal or external. Internal whistle blowing is to report to the boss/higher-up, while external whistle blowing is to inform to mass media and society about such.

One important concern is that in most of the countries, the law does not protect these whistle blowers. Thus the problem and focus of this discussion is that, should or should not one whistle blow? Save the people or save his own job? Is it possible to compel the government to legislate a law to protect whistle blowers?

This paper focuses its attention mainly on the protection of Whistle Blowers. Apart from that it enquires on what makes some employees blow the whistle against wrong practices and
corruption in the organisation and what organisations can do to create an environment which helps employees to prevent organisationally and socially undesirable practices.

**WHISTLE BLOWING POLICY - MEANING**

Literally, “whistle-blowing” means that one makes a noise to alert others to misconduct. In the context of business ethics by blowing the whistle on misconduct in an organisation, one alerts the organisation to the fact that its stakeholders are being wrongfully harmed, or that they are at risk of harm.

Experts define whistle blowing as the disclosure by organisational members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organisations that may be able to affect action.

**WHISTLE BLOWER – MEANING**

A whistleblower is one who blows the whistle on corruption, crime and other misconduct, including unethical conduct.

Glazer and Glazer (1989:4) define a whistleblower as one who

(a) acts to prevent harm to others, not him or herself,

(b) while possessing evidence that would convince a reasonable person.

**IMPORTANCE OF WHISTLE BLOWER**

Almost most of the countries across the globe are facing the impact of deteriorating governance both in the public and corporate domain. However the actions of whistle blowers across the globe have brought some cheers for the well wishers of corporate governance.

Whether it is the public sector or the private sector, whistle blowers have an important role to play. It is widely believed that whistleblowers have to play a role in exposing such unethical activities in government and bureaucracy. A whistleblower is required in every organisation so as to bring to the fore the illegal and unethical practices in existence in that organisation. Such acts could be engineered by the management itself or it could be practiced by any of the concerned personnel. There is no doubt that those they blow the whistle against and their allies have defamed whistleblowers, but at the same time whistleblowers are now acknowledged as providing a useful public service.

However, with liberalisation and globalisation, the size of business organisations has been growing manifold and correspondingly the stakes have also gone up. While every person in an organisation who indulges in any illegal or unethical practice needs to be exposed, it is the larger corporations with several stakeholders where a whistleblower has a much more important role to play.
SOME WHISTLE BLOWERS AT GLOBAL LEVEL

When Time magazine described the year 2002 as the ‘year of corporate governance’ three Whistle Blowers filled their cover story. Cynthia Cooper (exposed accounting malpractice at Worldcom) of World com, Sherron Watkins (exposed accounting malpractice at Enron) of Enron and Coleen Rowley (exposed mishandling of information at FBI) of FBI made some of the most sensational scandals.

Apart from the above mentioned cases, two more cases that come readily to mind – Ingavar Bratt (who exposed plans for illegal weapons exports by the Swedish engineering firm Bofors) and Chuck Hamel (who exposed lax safety practices and cut-backs in environmental precautions in the oil industry) – there has been a marked increase in the routine reporting of ongoing or prospective wrongdoing to regulators and enforcement agencies around the world.

REASONS FOR ACTING AS WHISTLE BLOWERS

Ketan Kothari, a senior consultant with Thakker & Thakker in Mumbai, believes that employees’ typical reactions to discovering unethical or illegal behaviour within their companies fall into three general categories. First one is to blow the whistle; the second one is to not participate in something that’s wrong and to leave it alone and the third one is to participate. According to Kothari, most people in India fall into the second category, while only a few will risk pursuing the first or the third options.

The above fact directs the paper to know why only some employees act as whistle blowers. One obvious reason would be the availability of the information. The sensitive information would be available only to a selected few or understanding the issues in the information is possible only by particular individuals. The second reason which points at the organisational dependence and culture would be the issue of conformity. Employees at large feel that the information or the illegal activity is part of the organisational functioning and tend to avoid making bold moves to correct them. Considering both of these factors, we can generalise to a certain level that whistle blowers have a high level of moral responsibility, guts and concern for the organisation and society at large.

As is evident from the happenings in recent years, a person to be labeled a whistleblower is now usually treated as an accolade. This is so particularly in the public sector, as the beneficiary is the public at large.

POINTS TO BE CONSIDER BEFORE WHISTLE BLOWING

As employees or former employees, it is important to make sure that certain aspects are taken into consideration before whistle blowing. Whistle blowers should confirm whether the practice followed in the organisation will cause harm to an individual or the general public if uncorrected, make sure that the facts in hand are reliable and not mere rumors, be fairly certain that by bringing the matter before an outside group the problem can be corrected and harm avoided. Finally, weigh the personal risks that are to be encountered if the choice is made to be a whistle
blower. Quite often this will be the critical factor which makes the process difficult. However, this will help to deal with the future problems in a much easier way.

WHISTLE BLOWER PROTECTION

Satyendra Dubey was a Government Engineer working for the National Highways Authority of India (NHAI). In 2002 he blew the whistle on widespread irregularities and corruption that NHAI officials and contractors were engaged in on the flagship Golden Quadrilateral roads project. Dubey disclosed the corruption in a November 2002 letter to the prime minister’s office. He asked that his identity be kept secret, but his identity was revealed to all concerned. A year later, on 27 November 2003, Satyendra was murdered in Gaya, the town where he lived and worked for NHAI.

Satyendra Dubey is not the only employee of an Indian company to have paid a terrible price for taking a stand against corruption. Shanmugam Manjunath, a marketing manager at Indian Oil Corporation, was murdered in 2005 after preventing a corrupt petrol station manager from selling adulterated fuel.

Life is not a bed of roses for a whistleblower. It requires tremendous courage and conviction to take on the vested interest in the organisation or the government. So the road ahead is full of landmines and it is far from easy for anybody to become a whistleblower. The above mentioned two incidences were two extreme instances; the reality is that there is no protection available for a whistleblower after he has exposed the wrongdoers. There is no law to protect him and he will have to depend largely upon the goodwill of the community and some NGOs.

A recent review of whistle blowing incidents shows that among the whistleblowers surveyed, 62% lost their jobs, 18% felt that they were harased or transferred, and 11% had their job responsibilities or salaries reduced. Fifty-one percent of the incidents resulted in external investigations of the companies involved, 37% in management shake-ups, 22% in criminal investigations, and 11% in indictments. Although these outcomes may not be typical, they do point out the potential seriousness of whistle blowing.

The guts and high moral responsibility of whistle blowers shows that whistle blowers can play a vital role in fighting loose ethics and slack corporate governance. Ironically, they have to undergo insult and injury in form of job loss, ridiculing, retaliation and boycott.

LEGAL HELP

Satyendra Dubey and Shanmugam Manjunath cases reveal whistle blowing in India a dangerous occupation. India’s laws regarding whistle blowing are ineffectual, narrow in scope, easily eluded or not properly enforced because they merely make recommendations instead of laying down mandatory requirements. Here are a few examples:

CLAUSE 49: This clause (in the listing agreement that is required between a company and a stock exchange at the time of listing) states only that a company may have a whistle blowing policy. It is recommended, but not required.
WHISTLE BLOWERS (PROTECTION IN PUBLIC INTEREST DISCLOSURES) BILL:
This bill was introduced in India’s parliament in March 2006 – more than three years ago. The bill purportedly “provides for protection from criminal or civil liability, departmental inquiry, demotion, harassment and discrimination of whistleblowers. But the bill is still pending in parliament. Even if it does make it through, many lawyers are sceptical.

CENTRAL VIGILANCE COMMISSION (CVC): After Satyendra Dubey’s murder, the government passed a resolution authorising the CVC to receive written complaints on allegations of corruption or the misuse of office, and to recommend appropriate action in response. However, this order only covers employees of the central government, or of companies and authorities owned or controlled by the government. It does not cover employees of private sector organizations.

RESERVE BANK OF INDIA (RBI) RULES: In 2007 the RBI adopted a resolution similar to that governing the CVC, this time applying to private and foreign banks. However the role of the RBI in this regard is again recommendatory only.

Law can become handy for the whistle blowers in some cases. Support from the law can help prevent sufferings of whistle blowers. For example, in the US, Whistleblowers Protection Act of 1989 protects federal employees who make public interest disclosures. Also the fall of Enron and WorldCom initiated the Sarbanes-Oxley Act of 2002 which gives high degree of protection to the whistle blowers of publicly traded companies. Quite interestingly in India, there are no legislations to protect the interests of whistle blowers. Considering various aspects, it is important that the employees are given freedom and support to point out corrupt practices in the organisations. This culture of openness would help to prevent the humiliating falls as happened in the case of Enron or WorldCom.

If the government is really serious about encouraging people to act as whistleblowers then they need to get strong protection from the law as also full support to fight the battle till its logical end. Otherwise, whistle-blowing policy will remain a mere policy on paper.

Due to the toothlessness of Indian law on the subject, the protection of whistleblowers’ rights and safety depends almost entirely on the benevolence of their employers. Essentially, companies can choose whether to support or suppress whistle blowing.

ROLE OF STAKEHOLDERS
In the whole process the various stakeholders play a major role. The managers, other employees and the society at large can be seen as major stake holders. The whistle blowers are often treated as traitors by the organisation. Other employees tend to treat them as outcasts and blame the whistle blowers for putting the organisation in a difficult position. Study of some of the cases show that whistle blowers often leave the organisation or face employer or coworker retaliation. This creates an unsafe and difficult situation for whistle blowers and employees often take the stance of avoiding getting into trouble. In an article titled “What can you learn from Enron”, various perspectives are put forth on why things go wrong in organisations. A major factor is complacency from the part of the board, ethics officers, internal auditors, executives and
employees. Even though there is some feeling of discomfort in the way in which some division or managers is making huge profits, employees tend to be reluctant about asking how it can be done as they don’t want to be portrayed as trouble makers.

The relevant part would be what organisations can do to support whistle blowers and take actions at the right point of time. From the management point of view the important aspect would be keeping the issue from getting out of control, avoiding criticism from public and preventing image loss. Responding at the right time to issues and encouraging people to bring out problems concerning the functioning and governance of the organisation would be critical here.

ROLE OF HUMAN RESOURCE MANAGER

HR is considered a neutral department in organisations and can play a critical role in hearing the voice of employees. For HR, setting up channels and other mechanisms that not only allow but also promote healthy, open communication will be important for setting up an employee friendly culture. Training which explicitly states the ethics policy in organisations and the means that employees can take to handle issues of corruption in organisations will be relevant. Assigning accountability officers and providing special telephone numbers and e-mail accounts encourage employees to bring out issues and will help in maintaining anonymity. Meindertsma, an expert in whistle blowing litigation suggests that it is important for organisations to formulate a zero tolerance policy and should be ready to respond quickly, encourage employees in bringing forth issues, understand the legal implications and provide training to managers and supervisors regarding whistle blowing. Independent and neutral provision for reporting may be critical. Setting up a clear value system in the organisation which is implied in recruitment, training, performance appraisal etc would help to develop and sustain an open, honest culture.

ROLE OF SEBI

Initially, when clause 49 was introduced by SEBI in the listing agreement with a view to enforcing corporate governance in listed companies, it had also provided for whistleblower policy to be laid down by the companies. However, due to unfavourable response from the corporate sector the same was not made mandatory.

According to the revised clause 49 of the listing agreement, "A company may establish a mechanism for employees to report to the management concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy. This mechanism could also provide for adequate safeguards against victimisation of employees who avail of the mechanism and also provide for direct access to the chairman of the audit committee in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organisation. The investors should note that this stipulation is merely recommendatory in nature and not mandatory.

In other words, it is up to the company to decide whether it would like to create a mechanism whereby employees will have a means to communicate to the management about any unethical behaviour. It is an open secret that not many companies have taken steps to create any such mechanism for whistleblowers. In fact, there is a school of thought that believes that employees
to settle scores amongst themselves would misuse any such system. Consequently, any such measure would generate more nuisance than good for the company.

ROLE OF ORGANISATION

Whistle blowing policies should have the following components as a minimum:

(1) A clear statement that employees who are aware of possible wrongdoing within the organisation have a responsibility to disclose that information to appropriate parties inside the organisation;

(2) The designation of specific individuals or groups outside the chain of command as complaint recipients;

(3) A guarantee that employees who in good faith disclose perceived wrongdoing to the designated parties inside the organisation will be protected from adverse employment consequences; and

(4) The establishment of a fair and impartial investigative process.

RECOMMENDATIONS

The above discussion paves way for the following recommendations for an effective Whistle Blowing Policy

• Whistleblower policy be made mandatory, with clear cut guidelines for prosecuting intimidation of or retaliation against the complainant

• Inclusion of other stakeholders, such as vendors, shareholders and customers, in the list of eligible complainants

• Imposition of fines/ penalties for frivolous or mischievous complaints

• Fast-track disposal of cases

CONCLUSION

In general, the level of whistle blowing activity is likely to depend not just on the legal protection granted to whistleblowers but also on the regulatory response to whistle blowing. For instance, more prospective whistleblowers might come forward if the policy regime is deemed to be responsive – that is, if there is a higher probability that whistle blowing will trigger enforcement action rather than be ignored – or if the malfeasance uncovered by whistle blowing were expected to lead to severe penalties

However an important aspect here would be the tolerance of the society towards corruption and unfair practices. In the Indian context it is of high importance that organisations takes a serious
view of instilling high sense of ethics and laws are formulated to protect the employees who play
the role of whistle blowers against corruption both in the private and public sector.

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