

INTERNATIONAL JOURNAL OF RESEARCH IN COMMERCE & MANAGEMENT

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UNPUBLISHED DISSERTATIONS AND THESES

- Kumar S. (2011): "Customer Value: A Comparative Study of Rural and Urban Customers," Thesis, Kurukshetra University, Kurukshetra.

ONLINE RESOURCES

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WEBSITES

- Garg, Bhavet (2011): Towards a New Natural Gas Policy, Political Weekly, Viewed on January 01, 2012 <http://epw.in/user/viewabstract.jsp>

WHISTLE BLOWING IN INDIA

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ABSTRACT

The whistle blowing has occupied a prominent position in the corporate governance; it refers to the act of exposing misconduct and malpractice within an organisation. Lot of cases of whistle scams have been registered in India and abroad like world.com, apple, Microsoft, google, united state army, Olympus corporation, national highway authority of india, Indian oil, Ranbaxy, maharashtra irrigation scam etc. In the present study we are analysing the conceptual framework of whistle blowing, legal provision and few Indian cases of success and failure of whistle blowing.

KEYWORDS

whistle blowing, illegal, protection, public disclosure.

INTRODUCTION**MEANING OF WHISTLE BLOWING**

Whistle blowing refers to the act of exposing misconduct and malpractice within an organisation. A whistleblower is a person who exposes misconduct, alleged dishonest or illegal activity occurring in an organization. The alleged misconduct may be classified in many ways; for example, a violation of a law, rule, regulation and/or a direct threat to public interest, such as fraud, health and safety violations, and corruption. Whistleblowers may make their allegations internally (for example, to other people within the accused organization) or externally (to regulators, law enforcement agencies, to the media or to groups concerned with the issue).

A person who informs on a person or organization engaged in an illicit activity is known as whistle blower or Anyone who has and reports insider knowledge of illegal activities occurring in an organization. Whistleblowers can be employees, suppliers, contractors, clients or any individual who somehow becomes aware of illegal activities taking place in a business either through witnessing the behaviour or being told about it. Whistle blowing in its most general form involves calling (public) attention to wrong doing, typically in order to avert harm. It is an attempt by a member or former member of an organization to disclose wrong doing in or by the organization. The essential feature of whistle blowing is the 'disclosure by organisation 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 effect action. Whistle blower may be defined as:

- One who reveals wrong-doing within an organization to the public or to those in positions of authority.
- One who discloses information about misconduct in their workplace that they feel violates the law or endangers the welfare of others.
- One who speaks out, typically to expose corruption or dangers to the public or environment.

POINTS TO BE CONSIDERED BEFORE BLOWING THE WHISTLE

Before blowing the whistle, the individual who perceives an instance of moral or legal wrongdoing in his/her organization should consider the following:

1. Are the reasons valid for claiming that an alleged offense constitutes a serious and persistent wrong? How reliable is your information?
2. To what extent does this wrong cause harm?
3. Have you identified what the wrong and harm are?
4. Have you identified who is responsible for the wrong?
5. Is the wrongdoing of sufficient gravity to make it worth incurring unpleasant personal, professional, or organizational repercussions? Is the wrong continuing to cause harm?
6. If you plan to blow the whistle, first try to exhaust all reasonable channels within the organization before going outside of the organization. The goal is to minimize the harm from the infraction and the time it takes to correct the problem. But, in rare instances, reporting outside the organization may actually be the best option for minimizing the harm to those put at risk by the wrong.
7. Many professional groups have phone numbers you can call for guidance when you are confronted with a difficult issue like whistle blowing.

Types of whistle blowing

Internal whistle blowing -When an individual advocates beliefs or revelations within the organization.

External whistle blowing -When an individual advocates beliefs or revelations outside the organization.

OBJECTIVES OF THE STUDY

- To understand the concept of whistle blowing
- To analyse cases of success and failure of whistle blowing in India
- To examine the legal provisions on whistle blowing in India.

RESEARCH METHODOLOGY

To have insight of the topic whistle blowing secondary sources have been adopted for study. Various newspapers, Journals, Articles, websites and books have been accessed to collect the information for study.

MAJOR FINDINGS: There is strong desire to change the current state of policy with regard to the whistle blowing. And it should be made mandatory for all sector government as well as private.

LEADING CASES OF WHISTLE BLOWING IN INDIA (SUCCESS AND FAILURES)**NATIONAL HIGHWAY AUTHORITY OF INDIA**

WHISTLE BLOWER- Satyendra Dubey (1973–2003)-Project engineer at National Highways Authority of India

Satyendra Dubey was born in 1973 at the village of Sahpur in the Siwan district of Bihar, India. He did his basic studies from Gang Baksh Kanodiya High School in Sahpur. He has done civil engineering from IIT KANPUR in 1994 and did his M.TECH from IIT VARANASI IN 1996. After completing his studies in 2002 he joined Indian engineering service and he became project director in National Highway Authority of India and he was responsible for managing a part of the Aurangabad-Barachatti section of National Highway. This highway was part of the Golden Quadrilateral Corridor Project, the Prime Minister's initiative, which aimed to connect many of the country major cities by four-lane limited-access highways totalling 14,000 km, at an overall cost more than USD 10 billion.

EXPOSED CORRUPTION

He had written a letter to the then Prime Minister Shri Atal Vajpayee complaining of the corruption which was going on in a particular project. The letter said the NHAI officials showed a great hurry in giving mobilisation advance to selected contractors for financial consideration. "In some cases the contractors have been given mobilisation advance just a day after signing the contract agreement."

"The entire mobilisation advance of 10 per cent of contract value, which goes up to Rs 400 million (USD 10 million) in certain cases, are paid to contractors within a few weeks of award of work but there is little follow up to ensure that they are actually mobilised at the site with the same pace, and the result is that the advance remains lying with contractors or gets diverted to their other activities," it said.

TRUTH SILENCED

He could have continued doing his job as a deputy general manager in the Centre's National Highway Authority of India (NHAI) and shut his eyes to the variegated ways in which a prestigious project - Instead Dubey opted to do the right thing by alerting the PMO to these developments because he believed the project was of "unparalleled importance to the nation". **He paid with his life for having done so**

Awards and recognition to SK DUBEY

- Whistleblower of the year award from the London-based Index on Censorship The Transparency International's Annual integrity award. The Service Excellence award from the All India Management Association. He was nominated for the Padma shree awards in 2011.
- S. K. Dubey Foundation: S. K. Dubey Foundation for Fight Against Corruption was founded in the US by Ashutosh Aman (IIT Kanpur, Satyendra's batchmate) and Atal Bansal (IIT Kanpur) to systematically fight against corruption.
- IIT Kanpur instituted an annual award in his name, Satyendra K Dubey Memorial Award, to be given to an IIT alumnus for displaying highest professional integrity in upholding human values.
- Institute for Research and Documentation in Social Sciences (IRDS) has been awarding the Satyendra Dubey award for civil services in reverence to his contributions to the cause of fighting corruption. The Indian Express also announced a fellowship in the name of Dubey

INDIAN OIL CORPORATION

WHISTLE BLOWER-Shanmughan manjunath (1978-2005) Marketing manager at Indian Oil Corporation

Shanmughan Manjunath (1978-2005) was an engineer the Indian Oil Corporation (IOC) who was murdered for opposing corruption in the erstwhile government firm's petrol pumps. He has done his schooling from kendriya vidyalay Karnataka. He Later on he did his Computer Science Engineering degree from Sri Jayachamarajendra College of Engineering, Mysore, and completed his MBA from the prestigious institute the Indian Institute of Management Lucknow. He started working in Indian oil corporation as senior marketing manager While working for the Indian Oil Corporation (IOC) in Lucknow, he had ordered two petrol pumps at Lakhimpur Kheri sealed for selling adulterated fuel for three months. When the pump started operating again a month later, Manjunath decided to conduct a surprise raid around 19 November 2005. during his inspection, Manjunath had been shot dead in Gola Gokarannath town of Lakhimpur Kheri. His body, riddled with at least six bullets, was found in the backseat of his own car, which was being driven by two employees of the petrol pump. Both were arrested and the main accused, pump-owner Pawan Kumar Mittal, was held on 23 November along with seven others. Indian Oil Corporation paid 2.6 million compensation to the family.

Awards and recognition to manjunath:

The Manjunath Shanmugam Trust was registered on Feb 23rd, 2006. It is an international IIM alumni initiative; and works to improve governance in Indian public life.

STATES COOPERATIVE DEPARTMENT

WHISTLE BLOWER- SP Mahantesh

He was working as deputy director of the audit wing in the states cooperative department .he had reported irregularities in different societies including some officials and public figures. He was murdered in may 2012.

RANABAXY

WHISTLE BLOWER- DINESH THAKUR

Former Ranbaxy executive Dinesh Thakur got about \$49 million from the \$500 million penalty slapped on the drug manufacturer for selling adulterated drugs and lying to federal regulators in a case relating to substandard quality drugs. Thakur had notified the company of the problems and when they failed to correct the problems he had blown the whistle by filing a federal lawsuit accusing the company of knowingly submitting false information to the food and drug administration

KANDLA PORT TRUST (KPT)

WHISTLE BLOWER- MANORANJAN KUMAR

In 2006, IES officer Manoranjan Kumar was appointed KPT vice-chairman. In December 2007, he submitted a report to the Shipping Ministry about a land scam of over 1,000 acres. In January 2008, he was asked to proceed on three months leave, along with then chairman Janardan Roa, who was reportedly one of the accused in the report filed by Kumar. With the Shipping Ministry not taking any action against his report, Kumar moved the CVC and sent a copy of the report to CBI.

While the CBI took up the inquiry, the CVC did not act. Kumar moved the central administrative tribunal (CAT) in August 2008. The Shipping Ministry did not act on CAT's order dated August 2008 for Kumar's repatriation. Kumar, who again moved the CAT, won the case in February 2009. This time the CAT slammed CVC in strong words for failing to protect the officer and asked the Shipping Ministry to send him back to KPT and pay compensation of Rs 25,000. Kumar finally won the case on March 18 2009 in the High Court, moved by the shipping ministry seeking a stay on the CAT order.

MAHARASHTRA IRRIGATION SCAM

WHISTLE BLOWER- VIJAY PANDHARE

The Maharashtra Irrigation Scam was an alleged government scam which involved financial irregularities of US\$5.6 billion in the Indian state of Maharashtra during 1999-2009. The Nationalist Congress Party (NCP) leader Ajit Pawar was the irrigation minister of Maharashtra during 1999-2009. In February 2012, the Chief Engineer Vijay Pandhare, wrote a letter to the state's Governor, the Chief Minister and the Irrigation Department's principal secretary, complaining about rampant corruption in the department., he alleged that more than half the amount spent on the irrigation projects between 1999-2009 had been pocketed by the corrupt politicians and contractors. He highlighted specific instances of corruption including cost escalations, unnecessary additions to the

project scope and poor-quality construction. Pandhare accused Ajit Pawar of being directly involved in the scam. He also accused the corrupt leaders of "playing with citizens' lives", saying that the construction quality had been compromised in the dam projects. As a precautionary measure, Pandhare was accorded police security in view of threat perceptions.

LEGAL PROVISIONS REGULATING THE WHISTLE BLOWING POLICY IN INDIA

Protection of Whistleblowers was first initiated in 1993 by Mr. N. Vittal. In December 2001, Law Commission recommended that in order to eliminate corruption, a law to protect whistleblowers was essential and submitted its report on 'Public Interest Disclosure Bill' to Mr. Arun Jaitley (then Minister of Law, Justice and Public Affairs) along with the draft bill. In January 2003, the draft of Public Interest Disclosure (Protection of Informers) Bill, 2002 was circulated. In 2004, the Supreme Court directed that machinery be put in place for acting on complaints from whistleblowers till a law is enacted. Government of India notified a resolution to enable Central Vigilance Commission to receive complaints of corruption for Central Authorities in May 2004. Right to Information Act was notified in October, 2005. In 2006, The Public Services Bill 2006 (Draft) stated that within six months of the commencement of the act, the government must put into place mechanisms to provide protection to whistleblowers. In 2007, the report of the Second Administrative Reforms Commission also recommended that a specific law be enacted to protect whistleblowers.

On August 26, 2010 Union Minister of State for Personnel, Public Grievances and Pensions Prithviraj Chavan introduced the Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010, or the Whistle-blower Bill, in the Lok Sabha. Since 2010, The Whistleblowers' Protection Bill, 2011 was passed by the Lok Sabha on 28 December 2011 and by the Rajyasabha on 21 February 2014. The Bill is pending for assent of the President of India and further notification of its commencement.

CLAUSE 49

Clause 49 of the Listing Agreement of Stock Exchanges places a non-mandatory requirement for listed companies in India to adopt a Whistle-Blower Policy. The specific recommendation, placed in Annexure I D to Clause 49 specifies that :

- (i) The company will 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.
- (ii) The mechanism must provide for adequate safeguards against victimisation of employees who avail of the mechanism.
- (iii) The mechanism must also provide, where senior management is involved, direct access to the Chairman of the Audit Committee.
- (iv) The existence of the mechanism must be appropriately communicated within the organisation.
- (v) The Audit Committee must periodically review the existence and functioning of the mechanism.

SARBANES OXLEY ACT 2002

A similar provision for protection of whistle-blowers is found in the **Sarbanes-Oxley Act** of 2002, which forms part of the United States Federal Law. S. 806 of this Act protects employees who provide information or assist in an investigation from discharge, demotion, suspension, threats, harassment or any form of discrimination. The Sarbanes-Oxley Act has now increased the protection provided to whistle-blowers. The provisions have made it clear that retaliation against whistle-blowers will not be tolerated. It is now a criminal offence to retaliate against whistle-blowers, carrying penalties from a large fine to 10 years in prison.

CONCLUSION

There is no doubt that in today's fast-paced world and mega corporations, institution of a whistle-blower policy is not a corporate luxury, but an organisational necessity. Whistle blowing should be made mandatory for all type of sector whether it is government or private, penalty should be imposed for having any kind of illegal activity. This policy will help in fostering good governance by encouraging employees to escalate deceitful actions by colleagues/ seniors/third parties, Promotion of the organisational values thus nurturing a culture of openness in workplace, Sending a clear message that severe action will be taken against unethical and fraudulent acts, Dissuading employees from committing fraud by instilling fear of unfavourable consequences when caught.

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