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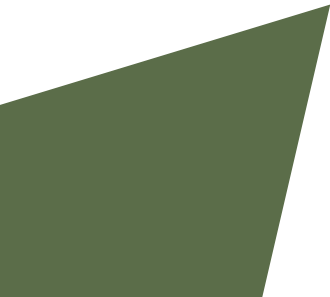
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Adequacy of Whistleblower protection Laws in India

Uttara Jhaveri & Akshara Bhansali

ABSTRACT

There have been many brave hearts in India that have sacrificed their safety and well-being to bring to light scams and malpractices of the Government. A journey into the lives of citizens like Satyendranath Dubey and Ashok Khemka reveals the hardships of whistle blowers in the country. A comparison to a country like the United States of America shows us the inherent flaws in our system which require immediate attention. The whistle blowers protection schemes and identity protection offered by the United States is far superior to the below average protection and treatment they receive in India. The need for a stronger legislation in our country is required to create a safe environment for whistle blowers. This paper therefore thoroughly analyses past instances of whistle blowers in the country, critically analyses their treatment and the present legislations. It concludes by providing various solutions and suggestions.

INTRODUCTION

The acts of bravery and valour have always come at a steep price in the context of Whistle blowers in India. The will to inform the society about the malpractices of an organization, bureaucracy or the government itself shows the importance rendered by such an individual to the public interest above his or her personal interest and therefore deserves protection. It is also to be understood that whistleblowing in most cases is against someone with political power, which poses grave danger to the Whistle blowers. The protections offered must be in advancement of their best interests.

However India has failed to protect its whistle blowers from political prowess. The injustices meted out to whistle blowers began with India's most prominent whistle blower Satyendra Dubey, an engineer in the Golden Quadrilateral Highways. The young engineer's brutal murder shook the collective conscience of the society and as per the 2004 Supreme Court directives; the Central Vigilance Commission (CVC) was given the power to act on complaints of whistle blowers.¹

Moreover, the Second Administrative Report recommended the enactment of legislation for the protection of whistle blowers in 2007.² Hence, the Whistle blowers Protection Act was proposed in 2011, which later became a law in 2014. Unfortunately, this victory was short-lived as the loopholes and lack of anonymity in the legislation guaranteed little to no protection to them.

WHISTLEBLOWERS: A COMPARATIVE ANALYSIS BETWEEN INDIA AND U.S.A

The United States of America has many laws in place to protect the Whistle blowers in its country. Just like India the United States of America has witnessed various instances of whistleblowing over the years. Few of the most prominent and influential whistle blowers are Benjamin Franklin, Karen Silkwood, Sharen Watkins, Cynthia Cooper, Edward Snowden etc. Therefore, it is important to analyse the laws of the country.

One of the prominent cases of whistle blowing began with Sherron Watkins is known for her role in unearthing the Enron scandal. She prepared the memo indicating the accounting loopholes created for shell companies of Enron. The licenses of the chief auditors were also suspended.³ Cynthia Cooper was the Vice President of Internal Audit at Worldcom, when she unveiled

¹ Staff, Dean, Resorts and Alumni, IIT Kanpur, <https://iitk.ac.in/dora/satyendra-dubey-new>

² Second Administrative Reform Committee Report, <https://darpg.gov.in/arc-reports>

³ Government Accountability Project, A timeline of Whistleblowers, <https://whistleblower.org/timeline-us-whistleblowers/>

information about \$3.8 billion corporate fraud. Due to this information the CEO and four other executives were imprisoned and Cynthia was named as one of the “*Person of the Year*” along with Sherron Watkins and Coleen Rowley.⁴

The United States of America provides for a variety of legislative safeguards to whistle blowers in the public as well as the private sector. The Whistle blowers Protection Act 1989 specifically protects the whistle blowers who reveal dishonest and illegal activities that occur in the government departments. The *Prohibited Personnel Practices Act* provides for specific protections against retaliation or threats to employees who disclose gross misconduct, fraudulent activities or mismanagement. These safeguards exist under *Title 5: Government organizations and employers*. Action can be taken against an agency official if they take, fail to take, or threaten to take a personnel action because of an employee’s whistleblowing.⁵ The *Occupational Safety and Health Agency (OSHA)* also provides for strict guidelines if an employer is suspected of retaliation towards an employee who has acted as a whistle blower. The employee must immediately report any kind of retaliation to OSHA and must file a prima facie complaint. OSHA will then interview the complainant and decide whether an investigation must be conducted.⁶

The *Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No Fear Act)* further penalizes discrimination and retaliation prohibited under the Whistle blowers law. Any discrimination carried out by the agencies must be punished if it falls outside of the ambit of whistle blower laws. The agencies are required to seek the permission of the Special Counsel to discipline an employee and such permission will be granted, if it is permitted under the existing laws.⁷

The *Freedom of Information Act*, like the Right to Information Act in India also, mandates disclosure of documents held by the Government in public interest. Although, there are certain exemptions like national security, specific prohibition from disclosure by another law, internal personnel matters and so on.⁸ The *Sarbanes Oxley Act 2002* promotes corporate governance and penalizes

⁴ The Employment Law Group, Timeline of U.S Whistleblowers, <https://www.employmentlawgroup.com/timeline-us-whistleblowing/>

⁵ U.S Office of special counsel, Prohibited Personnel practices overview, United States Government, <https://osc.gov/Services/Pages/PPP.aspx#tabGroup18>

⁶ United States agency of Labour, Whistleblower Protection Programme, Occupational Safety and Health Administration, https://www.osha.gov/OshDoc/data_General_Facts/whistleblower_rights.pdf

⁷ U.S Department of the Treasury, No Fear Act, <https://home.treasury.gov/footer/no-fear-act>
<https://docs.google.com/document/d/1qBYmvXHDAtPZWh33mSkAt5UnXi6Cmnikc7DGYLmua68/edit>

⁸ U.S Department of Justice, Freedom of Information Act, <https://www.foia.gov/>

unlawful acts. It has created protections for whistle blowers for providing information about shareholder fraud, bank fraud, and violation of any SEC rules and so on.⁹

However, these safeguards have their limitations and certain public duties trump the First Amendment Rights of the citizens in the US. In *Snepp v. US*¹⁰, [444 U.S. 507 (1980)] the Court ruled that any military or intelligence agency personnel are not permitted to disclose confidential or sensitive information because it impairs the working of the agencies and breaches national security protocols. In the above mentioned case, Snepp was not given the benefit of the First Amendment right to free speech as he published a book on the inner workings of the CIA without first submitting a manuscript to the agency.

Two crucial legislations were also enacted during the Civil War in the light of frauds taking place at the time. The *False Claims Act, 1863*, which is considered as one of the most successful legislation for whistle blowers received the approval of President Abraham Lincoln during that time. Initially this act came into force to combat fraud committed against the army by supplying them cheap material.¹¹ But over the years this act has become the most effective tool to eliminate fraud against the government. It empowers the whistle blowers that have information about such fraud to bring the suit on behalf of the government and they are entitled to recover the 15–30% of the amount that the Government recovers. Additionally, it has a strong anti-retaliation policy. If the wrongdoer strikes back against the complaint of the whistle blower, he can file a discrimination suit and if successful, the employee is granted double back pay, fees and costs of the suit and special damages.¹²

Its success is evident from the numerous cases (mostly Medicare) where American taxpayer's money has been saved from scams by the successful suits filed by the whistle blowers. The US Department of Justice released a report on the success of False Claims Act and it stated that more than \$30 billion dollars were recovered since 1986 and \$8.8 billion since 2009.¹³ These figures itself indicate the success of this legislation which has helped save public resources and funds of the government. In one of the instances Johnson & Johnson was compelled to pay \$81 million to

⁹ U.S Department of Labour, Occupational Safety and Health Administration, SO Act (Sox 18 USC), https://www.whistleblowers.gov/statutes/sox_amended

¹⁰ 444 U.S 507 (1980)

¹¹ Stephen M. Kohn, Whistleblowing and The Coronavirus Crisis, National Law Review (March 16 , 2020), <https://www.natlawreview.com/article/whistleblowing-and-coronavirus-crisis>

¹² Reuben A. Guttman, False Claims Act, Whistleblowerslaws, <http://www.whistleblowerlaws.com/false-claims-act/>

¹³ Department of Justice, Office of Public Affairs, Justice Dept celebrates 25th anniversary of False Claims Act, (January 31, 2012), <https://www.justice.gov/opa/pr/justice-department-celebrates-25th-anniversary-false-claims-act-amendments-1986>

resolve both civil and criminal allegations under the FCA. It was alleged that the subsidiary companies of J&J promoted the sale of Topamax for off-label purposes. The whistle blowers were paid approximately \$9 million from the recovery.¹⁴

In the present context, with the prevalence of the novel Coronavirus, this law gains importance as it is relevant due to the large-scale funding on programs like Medicare. The employees are protected under this act and thus can provide information of any fraud in these programs and save the public and the government. The *Fraud Enforcement and Recovery Act, 2010* further strengthened the Government's ability to conduct investigations and prosecute such frauds and ensure confidentiality of the informers.

Therefore, the protections for the Whistle blowers in the United States is far and wide encompassing numerous legislations, anti-retaliation and anti-discriminatory measures. The Indian scenario is vastly different and the protections seemingly inadequate. A thorough study of the Indian Whistle blowers Act is required to understand the disparities and loopholes in the legislation.

THE INDIAN SCENARIO

In India, the fight for protection is a continued effort by the whistle blowers. This fight began with Satyendra Dubey, an engineer for the Golden Quadrilateral Highways. The brave heart exposed several contractual and financial irregularities of the NH2 stretch of the highway. Satyendra Dubey first wrote a letter to the officials of the National Highway Authorities of India (NHAI). When he received no response, he decided to address the Prime Minister's office directly and urged them not to reveal his identity. Unfortunately, his identity was revealed, which subsequently led to his murder. The murder was shrugged off as "a petty robbery gone wrong" and the prime witnesses of the case were either reported missing or were found murdered, hours after their interrogation. Accusations of foul-play and wrongful conviction of suspects were also alleged in his case.¹⁵ The Whistle blowers Act proposed after his death was not made functional even several years after his death. The death of Satyendra Dubey shook the country and the need for a law protecting the whistle blowers was highlighted. The questions of police protection, witness protection and anonymity were looming in the context of whistle blowers.

¹⁴ United States ex rel. Spivack v. Johnson & Johnson and Ortho – Mcneil Pharmaceutical, Inc., Civil Action, No. 04 – 11886 – WGY.

¹⁵ Staff, Dean, Resorts and Alumni, IIT Kanpur, <https://iitk.ac.in/dora/satyendra-dubey-new>

However, these hurdles did not scare the whistle blowers who continued to come forward and expose several irregularities or scams in the system. Two years after Satyendra Dubey's death another whistle blower from the Indian Oil Corporation (IOC) posted at Uttar Pradesh came forward revealing the malpractices of the petrol pump owners, which lead to sealing of the petrol pump in his jurisdiction. Shanmugam Manjunath was later murdered due to his involvement as a whistle blower.¹⁶

The Vyapam Scam surrounding the malpractices in the Madhya Pradesh Professional Exam Board (MPPEB), which conducted professional examinations, was accused of colluding with candidates and middlemen to secure seats for undeserving students. This scam came to light back in 1995 and a FIR was filed in 2000 but due to the widespread government inaction and corruption, justice could not be served. Finally, in 2013 over twenty people were arrested after the malpractices and corruption was exposed by Prashant Pandey, Dr Anand Rai and Ashish Chaturvedi. Over thirty people related to the scam died under mysterious circumstances and the three people responsible for exposing the scam have continuously received threats. However, they have not been provided with police protection even after repeated requests to the Prime Minister.¹⁷ This highlights the loopholes and inadequacies of the system, which is marred by lack of personnel and witness protection schemes.

Ashok Khemka, an IAS officer, came to the forefront in 2012 as he cancelled the land deal between Sonia Gandhi's son-in-law Robert Vadra and DLF Universal Limited. Robert Vadra was accused of purchasing land worth 300 crore rupee, funds for which were provided by DLF through "unsecured interest free loans."¹⁸ Ashok Khemka stated in an interview that if government officials and servants were honest in their jobs, government scams would never take place. The Haryana based whistle blower has been transferred about 53 times in his 28- year tenure. The transfer orders were passed for 14 IAS officers, including him, in violation of the Supreme Court orders.¹⁹ The blatant disrespect and disregard for honest and hardworking civil servants is a great contributor to

¹⁶ Hari Narayan, The extraordinary tale of an ordinary man, The Hindu, (January 5, 2013, 16: 38 IST), <https://www.thehindu.com/features/magazine/The-extraordinary-tale-of-an-ordinary-man/article12291362.ece>

¹⁷ Indulekha Aravind, What keeps Vyapam Whistleblower Ashish Chaturvedi going, Economic Times, (September 17, 2017, 12:00 AM IST) <https://economictimes.indiatimes.com/news/politics-and-nation/what-keeps-vyapam-whistleblower-ashish-chaturvedi-going/articleshow/60714054.cms>

¹⁸ Aman Malik, DLF - Robert Vadra Controversy: A news roundup, Livemint, (August 16, 2013, 12:05 pm IST), <https://www.livemint.com/Politics/blyiB4vh8SxBgjy54H1BGP/DLFRobert-Vadra-controversy-A-news-roundup.html>

¹⁹ India Today Webdesk, IAS Officer Ashok Khemka gets transferred again, 53rd transfer in 28 years, (November 27, 2019, 22:36 IST), <https://www.indiatoday.in/india/story/coronavirus-pandemic-india-announces-ban-on-passengers-coming-from-uk-eu-and-turkey-1656124-2020-03-16>

the widespread corruption and deceit in the Indian system. Unflinching power in the hands of politicians, no accountability with regards to stricter laws and police protection perpetuate scams like the 2G and Coalgate scam in India.

As P.N Sinha rightly pointed out the former secretary of Central Vigilance Commission, stated that reporting instances of corruption should be considered as a public duty. But the problem after so many years of enacting the first Whistle blowers Protection Act still remains the same, i.e. we don't have adequate protection for our potential informants.²⁰

It becomes a huge problem when corruption becomes systemic as it tends to change things for worse in the long run. We all notice at some point that people around us criticize the establishment or any politician of corruption, which may seem like a general situation in the first instance but it is also a result of systematic corruption that has become inevitable especially in today's times irrespective of party, manifesto or ideology. Thus, it becomes important to not only encourage but also protect the potential whistle blowers and other such non – governmental actors who are willing to take this chance. The stakeholders not only include the government, whistle blowers, the society at large but also media. A free press and media can help promote disclosure like no other stakeholder. It can also play an important role in hiding the identities of the whistle blowers. There is no doubt that both whistle blowers and freedom of journalism is essential for our society and in these times when the UNESCO is discussing the need for protecting the confidentiality of news sources and whistle blowers in the same manner, it also becomes incumbent upon the media to be careful while reporting about instances of corruption.²¹

The need for better Whistle bower legislation has been realized and advocated for by various NGOs and civil society groups. The instances of frauds, scams and malpractices have grown at a drastic rate especially in the last decade with scams like 2G, Coalgate, Satyam, Vyapam etc. In the past two decades a lot of whistle blowers have been murdered and this has elevated the need for adopting stringent laws for protection of whistle blowers. The “Public Interest Disclosure and Protection of Informers Resolution” was passed in 2004. The entire aim behind this resolution was to create a platform for receiving complaints. The Central Vigilance Commission (CVC) was empowered to take up such complaints and act upon it. The Whistle bower Protection Bill of 2011 was transformed into an act only in 2014. Though this piece of legislation came much later,

²⁰ P.N Sinha, *The Scenario for Whistleblowers in India, Controlling Corruption in the Asia and the Pacific (Chapter 5)*, oecd.org/site/adboecdanti-corruptioninitiative/regionalseminars/35137772.pdf

²¹ Guy Berger, *Journalists and Whistleblowers need protection*, <https://en.unesco.org/news/journalists-and-whistleblowers-need-protection>

it was a significant change. This law again hands over the task of taking complaints, analyzing such requests and most importantly protecting the informants to the CVC. It contained provisions for the protection of the whistle blowers and did try to protect the identity of the whistle blowers to a certain extent.²² Despite its shortcomings this legislation was an essential step towards curbing instances of corruption. But the amendments have further tried to weaken the position of whistle blowers. The discretion to decide whether the identity of the whistle blowers needs to be revealed is with CVC.

Further disclosures concerning matters of national importance are kept outside the purview of the act. The same information is prohibited under RTI citing the reasons of sovereignty, security, integrity etc. and on this basis numerous applications under RTI are denied. The conditions laid down as per the amendment are vague and thereby offer a lot of scope to the people in power to know the identity of the whistle blowers. Hence, a safe and secure legislation with proper identity protection and witness protection schemes is the need of the hour.

CRITICAL ANALYSIS

In the previous section we highlighted the salient features of the Whistle blower's protection scheme and the identity protection under the American laws. However, their laws too, suffer from certain discrepancies and do not provide for a fool-proof system.

Usually in the United States, whistle blowers adopt one of three routes; firstly, the whistle blower in possession of classified information surpasses his superiors and the administration and leaks the documents directly to the media. A prime example of this is Daniel Ellsberg, who exposed classified and secret information about the real reason the United States fought the Vietnam War. He gave 7000 classified documents, known as Pentagon Papers to the New York Times and exposed the authorities. He was charged under the Espionage Act but later acquitted as it was proven that the Government was spying on him.²³ Another example is Chelsea Manning, an American soldier who leaked classified documents about war crimes to Wikileaks and was sentenced to 7 years of imprisonment.²⁴ Even Edward Snowden, popularly known for leaking information about the mass surveillance projects undertaken by the Government had to flee the

²² Christine Liu, India's Whistleblowers Protection Act, An important step but not enough, (June 5, 2014), <https://ethics.harvard.edu/blog/indias-whistleblower-protection-act-important-step-not-enough>

²³ Vox, "How America fails its Whistleblowers", Youtube, (November 27, 2019), <https://www.youtube.com/watch?v=xuiDuoRJkOY&t=134s>

²⁴ Id.

country and is currently being prosecuted for espionage. Therefore, leaking classified information inevitably leads to incarceration or exile.²⁵

The second route adopted by whistle blowers is the procedure under the Intelligence Community Whistle blower Protection Act of 1998. The Act states that if any person wishes to bring to light a scam or misconduct in the department, they must file a complaint with the Inspector General, then the Director of National Information and later the Congress. However, after following this procedure if the White House intervenes and declares the operation or activity legal, the investigation will be terminated. Thomas Frank, a former NSA Agency followed the necessary procedures to expose the classified information about “*STELLARWIND*,” which collected the phone conversations, emails, web histories and other private information about American citizens, without a warrant. However, the Congress intervened, and Frank’s department informed him that the operation was legal irrespective of any constitutional provisions. The law under which Frank was governed did not provide for any anti-retaliation provision. This led to Frank becoming increasingly isolated until the day he was fired from his job at the NSA. He later leaked unclassified documents to the media. After Frank’s debacle the American laws were amended to include anti-discrimination and anti-retaliation provisions. Unfortunately, none of the whistle blower laws penalize revelation of the whistle blowers name and identity. The accused is permitted to reveal the name of the whistle blower in the public domain, which would jeopardize that person’s life and would further discourage other whistle blowers from coming forward.²⁶

The Trump administration is seemingly a failure in terms of identity protection, confidentiality and protection against retaliation. The Congress which has passed so many laws over the years has turned its back on the whistle blowers when they need it the most.²⁷ The recent and most prominent incident is that concerning the President himself where the whistle blower filed a complaint with regards to the phone call between Trump and the Ukrainian president Volodymyr Zelenskiy. Trump has asked the Ukrainian president to investigate his counterpart for the 2020 election, Joe Biden and his son. The whistle blower in doing so has followed the due procedure required by filing the report with the Inspector General Michael Atkinson as per the *Intelligence Community Whistleblower Protection Act of 1998*. The inspector general found the complaint credible and shared it with the Director as per the ICWPA.²⁸

²⁵ *Id.*

²⁶ *Id.*

²⁷ Elie Mystal, Why would a Whistleblower save this nation of cowards? (September 23, 2019) <https://www.thenation.com/article/archive/whistleblower-trump-ukraine/>

²⁸ Jan Wolfe, Explainer: Is it illegal for Trump or the Congress to name the impeachment Whistleblower? (November 8, 2019, 1:47 AM), <https://www.reuters.com/article/us-usa-trump->

This incident in the USA which involved the impeachment trial of the president further reveals the problematic nature of the above-mentioned legislation. The main crack was evident when the President himself tried to reveal the name of the whistle blower and publicly condemn the person for revealing such information. Since then there has been a constant debate as to whether the President has committed any wrong by naming the person. The President does have certain responsibilities under the whistle blower statute. But the problem lies as the statute does not explicitly prohibit the Congress or the President for outing the whistle blower.²⁹ There is no precedent for the present scenario as the possibility of a president naming such informants was not considered before.

Thus, the president has not committed any wrong as per the federal laws. But at the same time this instance has posed a serious question about the weakness of the existing federal laws which went unnoticed for the longest time. The identity protection should be part of good governance of any country and should include the President and the Congress/Parliament. The effect on the future potential whistle blowers is chilling and any informer would think about the repercussions multiple times before even thinking about informing internally. This incident has undermined the integrity of the entire whistle blower system and has caused damage to the mechanism in the long run. The need of the hour is that this instance of revealing name by the President should be considered as retaliation against the whistle blower and necessary action should be taken.

There is no denying that America has been proactive when it comes to whistle blower protection as it is one of the first countries to enact whistle blower legislation. In the present setting there are numerous laws for whistleblowing with varied impacts. It cannot be said that all the legislations create a strong impact, for instance the intelligence officials (who are covered under the Intelligence Community Whistle blower Protection Act, 1998) do not have the privilege of taking retaliation cases to the court due to the 'classified information' they possess. This means larger repercussions for these officials as they face the risk of losing their jobs.³⁰ Further the power of the director to refuse to forward the complaint and intervention of the White House becomes a huge roadblock for the whistle blower. It also poses a serious question on the element of transparency in the whole process. All these factors indicate that the two most crucial elements of whistle blower protection i.e. identity protection and protection against retaliation are weakened.

impeachment-whistleblower-e/explainer-is-it-illegal-for-trump-or-congress-to-name-the-impeachment-whistleblower-idUSKBN1XH2QS

²⁹ Tom Spiggle, President Trump just showed us what's wrong with a federal whistleblowing Law, (October 1, 2019, 11.27 PM), <https://www.forbes.com/sites/tomspiggle/2019/10/01/president-trump-just-showed-us-whats-wrong-with-a-federal-whistleblowing-law/#77bbb0394c2a>

³⁰ Ibid.

In the Indian context, identity protection is a complex and ignored aspect in terms of the whistle blowers act. The identity of a whistle blower in India is very difficult to protect considering the socio-cultural aspects and the close-knit relationships in the country. The chain of custody for a complaint is so long that any middleman can trace and find the complainant with ease. The accused, mostly being people with immense power retaliate with violence to delay and prolong the trial against them or discontinue the investigation completely. The systemic oppression is deeply rooted in political and muscle power, which creates practical problems to protect the identity of whistle blowers. A counter to this problem would be police protection and witness protection programmes. However, India suffers from a shortage of police force which contributes to the underwhelming protection provided to the whistle blowers. This has led to the whistle blowers being given police protection in the form of aged officers at the brink of retirement. Further, the identity can be protected by reducing the chain of command managing the complaints to maintain secrecy.

A whistle blower must be protected at all costs because they strive for the welfare of the common man and bring to light scams, which would lead to wastage of public funds. The weakening of the Whistle blowers Act and the Right to Information Act in the past two years shows the insecurities of the politicians and the blatant disregard for the lives of people who want to do good for the society. Thomas M. Devine once stated that *“Whistle blowers protection is a policy that all government leaders support in public but few in power tolerate in private.”*³¹ This seems true especially in today’s context here populist leaders are trying their best to suppress the data or the person who has the information of their illegal activities.

Further the 2014 law was no doubt a narrow one, as it left out the private sector and also slightly ambiguous as it did not define few important terms. But it still protected the identity of the whistle blower after the disclosure. Whereas the 2015 amendment has sought to keep the disclosures concerning ‘national importance’ outside the scope of protection. The government has tried to cover numerous things under the garb of national importance in the past few years. This has resulted in major dilution of the already diluted legislation. This crippled legislation will ensure more problems for the whistle blowers rather than protecting them and therefore we need strong protection mechanisms to ensure best public interest and legitimacy of state institutions.

³¹ 179th Report, Law Commission of India, The Public Interest Disclosure and Protection of Informers, (December, 14, 2001).

CONCLUSION/SUGGESTIONS

The need of the hour is to let go of the ambiguities in the existing legislation and clearly define as to what information cannot be protected and under what circumstances, rather than trying to cover multiple things under the ambit of 'national security'. This defeats the purpose of such a noble legislation and indirectly also undermines the legitimacy of the state authorities.

Further it is also to be noted that though the federal laws in the USA are not perfect, certain provisions with regards to filing suits directly by the whistle blower (as under Federal Claims) are noteworthy and should be considered. But at the same time it is to be understood that considering the nature of cultural and societal differences between the two countries, it is also not possible for India to simply adopt what America has been practicing for many years now. The difference also lies in the way the media carries out the information, while in India the media has never hesitated in revealing the identity of the whistle blower while in the USA the media has been careful about the same.

It is well known that India functions on the Separation of Powers between the Legislature, Executive and the Judiciary. It forms the basic structure and must be maintained with adequate checks and balances. However, in certain cases the Judiciary may have to intervene and become a guiding force for the Legislature.³² The Vishakha guidelines are a prime example of intervention by the Judiciary and the lack of initiative by the Legislature. The Whistle blowers Act also must be strengthened and suo moto action must be taken by the Judiciary. They should setup a committee for the effective enactment of the Whistle blowers Protection Act with proper anti-discrimination and anti-retaliation provisions and protection for the whistle blower. The Supreme Court must set certain guidelines for the law and must monitor the progress of the enactment. Salient aspects from the Whistle blower Acts of countries like the United States, Norway, Japan, and Denmark and so on must be incorporated after tweaking them to suit the Indian conditions.

³² Keshvananda Bharti v. State of Kerala and Anr. (1973) 4 SCC 225)

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