

WHISTLE BLOWERS PROTECTION LAW IN INDIA: CHALLENGES AHEAD

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***A**bstract—The term ‘whistle blowing’ means the act of an employee or individual of disclosing unethical or illegal acts, abuse of powers or discretion to an appropriate authority. The appropriate authority can be either the organisation itself as the higher authority or the Government. The persons who disclose information regarding such fraud or corruption are called as Whistleblowers. The main objective of whistle blowing is to protect the interest of general public. Such brave citizens who have tried to expose the illegal acts, series of corruptions and scams in government departments or private organisations have been harassed, threatened and some even murdered. Therefore, there is need to protect such whistleblowers. The Central Government has enacted the Whistleblower Protection Act, 2014 to protect the whistleblowers that make disclosures of fraud or corruptions in public interest. Though, this Act has been notified by the Central Government, the provisions of this Act have not been made functional due to several reasons. This paper critically examines the need and importance of whistleblowing and main provisions of the Act. It also tries to identify the challenges which are being faced in the enforceability of the provisions of this Act.*

Keywords: Whistleblowers, Whistleblowing, Whistleblower Protection Laws, Corruption, Transparency, Retaliation, Abuse of Powers, Challenges

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“Whistleblowers Protection is a policy that all government leaders support in public but few in power tolerate in private.” ...**Thomas M. Devine**

I. INTRODUCTION

The world-famous eminent physicist Albert Einstein once said that “the world will not be destroyed by those who do evil, but by those who watch them without doing anything.” The people commit wrongs for fulfilling their wants and desires. Such wrongs can neither be checked nor corrected or stopped permanently. However, wrongs can be prevented by the conscious effort from those people who can stand up against it.¹ Here comes the role of whistleblowers in combating corruption, wrongdoing and misconduct.

The expression ‘Whistleblower’ has originated from the word ‘whistle’ which is used by a referee to point out an illegal and foul play. The civil activist Ralph Nadar coined the term whistleblower in early 1970’s in order to evade any negative implications.² Later, the word ‘whistleblower’ was elaborated for first time in United Kingdom by Doggett J. in *Winters v. Houston Chronicle Publishing Co.*³ This term was attributable to the act of English lobby (Police Constable) who used to blow his whistle upon becoming aware of the commission of crime in order to alert other police personnel and the people within a danger zone.⁴

The term ‘Whistleblowing’ means the action of reporting unlawful acts or frauds inside an institution to the appropriate authority. The appropriate authority may be the institution or the Government. The person who reports the fraud or illegal act is called the whistleblower. A whistleblower need not to be necessarily an employee of the organization and an ex-employee may also be a whistle-blower.⁵ Whistleblowing seeks to call attention to a wrongdoing that is going on within an organization. It includes exposing wrongdoing or breach of legal provisions to the appropriate authorities, refusing to take part in the unlawful activity, become a witness in a legal proceeding or disclosing the

¹ Athulya, ‘Whistle Blowing Policy in India: The Law and the Challenges’, available at: <<https://vakilsearch.com/advice/wp-content/uploads/2018/12/Whistleblowing-policy-in-india-The-law-and-challenges>> (last visited on June 4, 2021).

² Sikha Patheja, “System of Whistleblowing in India” 4 Issue 7 IJSR- International Journal of Scientific Research 361 (2015).

³ 795 SW 2d 723 (Tex 1990).

⁴ *Ibid.* See also C. Peters and T. Branch (eds.), *Blowing the Whistle: Dissent in the Public Interest* 18 (New York, 1972).

⁵ *Supra* note 1.

evidence in media.⁶ Further, it also includes disclosure to organisational leaders, managers, regulators, employers and to the public via media. However, it does not cover exposure of personal grievances or complaints which may have public interest angle in cases where such grievances cannot be resolved.⁷

The whistleblower reveals information about misdemeanors in the place of work that he believes infringes the law or cause danger to the welfare of others and speaks out with an intent to expose corruption or dangers to the people or environment. In reality, the citizens who choose to blow the whistle have a great wisdom of right and wrong and wish to make sure that their voice of disagree is properly heard. The whistleblowing should be promoted because it is an effective and efficient way of reducing illegitimate and dishonest practices.⁸

The words ‘Whistleblowing’ or ‘whistleblower’ are not technical terms and there is no common legal definition. A whistleblower is at times denoted as a person giving ‘public interest information or protected disclosure’ or ‘internal witness.’⁹ Although there is no standard definition of whistleblowing and whistleblower, some of the definitions which have been widely accepted internationally may be glanced through.

The International Labour Organisation (ILO) defines the term whistleblowing as “the reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employees.”¹⁰

The Council of Europe Civil Law Convention on Corruption refers whistleblowing to be as “the employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.”¹¹

The Council of Europe Recommendation on the protection of whistle-blowers defines a whistleblower as “any person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship, whether it be in public or private sector.”¹²

The United Nations Convention against Corruption (UNCAC) denotes it to be “any person who reports in good faith and on reasonable grounds to the

⁶ Abhishek Choudhary, “Whistle Blowing Policy in India: Challenges and Suggested Reforms” 9 Issues 3 International Journal of Research in Engineering, IT and Social Science 171 (2019).

⁷ Paul Latimer and A.J. Brown, “Whistleblower Laws: International Best Practice” 31(3) UNSW Law Journal 766 (2008).

⁸ *Supra* note 2.

⁹ *Supra* note 7 at 768.

¹⁰ ILO Thesaurus, available at: <<https://ilo.multites.net>> (last visited on June 5, 2021).

¹¹ Civil Law Convention on Corruption (European Union Treaty No. 174, 2003).

¹² The Council of Europe Recommendation on the Protection of Whistle-blowers (Council of Europe, 2014).

competent authorities any facts concerning offences established in accordance with this Convention.”¹³

The most accepted definition is given by Miceli and Near who define whistle blowing as the “disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organizations (internal or external) that may be able to take action to stop the wrongdoing.”¹⁴

R.M. Green has defined a whistleblower as “an employee who, perceiving an organisational practice that he believes to be illegal and unethical, seeks to stop this practice by alerting top management or failing that by notifying authorities outside the organisation.”¹⁵

Therefore, in the light of abovementioned definitions, it can be observed that whistleblowing may be defined as an act of disclosing information regarding fraud, corruption, wrongdoings and mismanagement by the employee (including ex-employees) of the organisation to the appropriate authorities (either higher authorities or the government). The employee who makes such disclosure is called as whistleblower. The main objective of whistleblowing is to safeguard the public interest by making such disclosures.

There have been various types of whistleblowing namely internal, external, alumni, open, personal, impersonal, government and corporate. Internal whistleblowing takes place in cases where a whistleblower discloses misconduct and wrongdoings and reports to the officers at higher level within the organisation where he is employed. The internal whistleblowing may be regarding indiscipline, improper conduct, disloyalty, disobedience, insubordination etc.¹⁶

External whistleblowing may occur in cases where wrongdoings are disclosed and reported to the persons outside the organisation. Such persons may be governmental enforcement agencies, media or public interest groups. Where such disclosure is made by an ex-employee it is known as alumni whistleblowing. Open whistleblowing refers to cases where identity of the whistleblower is disclosed. Personal whistleblowing occurs in cases where disclosure is made regarding the organisational wrongdoings which will injure only single person. Likewise, where the wrongdoing will injure others is called impersonal whistleblowing. Government whistleblowing refers to cases where the

¹³ United Nations Convention against Corruption (UNODC, 2015).

¹⁴ Marcia P. Miceli and Janet P. Near, *Blowing the Whistle: The Organisational and Legal Implications for Companies and Employees* 45 (Lexington Books, New York, 1992).

¹⁵ R.M. Green, *The Ethical Manager: A New Method for Business Ethics* (Macmillan, New York, 1994).

¹⁶ The Institute of Company Secretaries of India, “Whistle Blowing: Balancing on a Tight Rope”, available at: <https://www.icsi.edu/media/webmodules/45th_nc/WhistleBlowing_BalancingonaTightRope.pdf> (last visited on 8 June 2021).

disclosure is related to wrongdoings or unethical practices adopted by the government officials. Similarly, corporate whistleblowing refers to situations where a revelation is made about wrongdoing in body corporate or business enterprises.¹⁷

It may be noted that the majority of whistleblowing cases falls within the category of internal whistleblowing. The internal whistleblowers report wrongdoings or misconduct on a colleague employee or superior within the organisation.¹⁸

II. NEED AND JUSTIFICATION FOR WHISTLE BLOWER PROTECTION POLICIES AND LAWS

The modern ideology of every democratic country is good governance. The idea of good governance comprises openness, transparency and accountability. The Indian Constitution recognizes that the holders of public offices have a fiduciary duty towards the public.¹⁹ Every public officer has an obligation to act as a trustee towards the public. Therefore, he should be held responsible for corruption, maladministration and malpractice.²⁰

The main reason and need and justification for whistleblower protection policies and laws are that it will help in eradication of corruption and wrongdoings in public and private sectors. Corruption is a global and social evil which impedes balanced and proper economic and social growth. The want of sufficient protection to the complainants who report the cases of wrongdoings, corruption, abuse of powers or discretion have been noticed as one of the main obstruction in elimination of corruption.²¹

Hence, the protection of whistleblowers is an essential element of an articulate policy to combat corruption, which includes other measures to form an ethical culture in the public and financial sectors.²² It is necessary to encourage the reporting of fraud, misconduct and corruption. Whenever in any system the disclosure and reporting of corrupt practices and wrongdoings are not protected and supported, than the risk of corruption will be substantially higher. This will apply to both private and public sector environments particularly in bribery cases. The whistleblower protection in private sector helps in the reporting of corrupt acts and bribery cases which may be committed by

¹⁷ *Ibid.*

¹⁸ *Supra* note 2 at 361.

¹⁹ See the Preamble, Fundamental Rights and Directive Principles of State Policy (Part III & IV) of the Constitution of India.

²⁰ *Ibid.*

²¹ *Supra* note 2 at 362.

²² Law and Practice on Protecting Whistle-blowers in the Public and Financial Services Sectors, Working Paper No. 328, available at: <www.ilo.org/publns> (last visited on June 4, 2021).

the body corporate and companies. The protection of whistleblowers in public sector facilitates in the reporting of the misuse of public funds, as well as the passive bribery, fraud, waste and other corrupt practices.²³

The formulation of policies and enacting the laws for legal protection of the whistleblowers and clear guidance on reporting procedures facilitates and encourages the whistleblowers to report the cases of wrongdoings and corruption. It will also help to the authorities in monitoring the compliance and detect breach of the anti- corruption laws. The policies and laws made for the protection of whistleblowers will create the sense of an organisational culture where the employee will be confident about reporting procedures and also become aware about how to report such cases. It will also help to the business associations in detection and prevention of bribery cases in commercial transactions. The protection of whistleblowers in both private and public sectors from vengeance for reporting the wrongdoings and suspected acts of corruption is basically fundamental in our efforts to promote accountability and public sector integrity, combat corruption and maintain a fresh business environment.²⁴

There is no dispute regarding the fact that so many high corporate frauds have been exposed because of an insider employee's confession or revelation which could not be detected by regulatory investigation or audit report. Therefore, it is necessary to present to the whistleblower a smooth route for his disclosures by laying down an efficient whistleblowing policy. The organisation is required to make sure that there should be a simple way to report concerns, or else either the employees will remain hushed, or if the scandal becomes public, it will emerge in the most destructive manner.²⁵

Another justification for laying down the whistleblower protection policies and laws is several adverse effects of whistleblowing. The whistleblowers often face many hardships and difficulties. Such hardships may be in the form of forced to leave organisation or demotion, danger or jeopardy to the health and safety of himself and family, loss of credibility, physical or psychological isolation, loss of money etc.²⁶ The whistleblowers are not liked in their workplaces and they encounter the dilemma of exposing a wrongdoing or to protect their employer. They bear the resentment and hostility from their superiors and peers. Therefore, the persons who report the cases of corruption or wrongdoings within an organisation must not encounter retaliation or harassment as

²³ G20 Anti-Corruption Action Plan, 'Protection of Whistleblowers', available at: <<https://www.oecd.org/corruption/48972967.pdf>>.

²⁴ *Ibid.*

²⁵ Ayushi Kalyan and Aseem Deddee, "Whistleblowing Policy in India: Needs and Challenges" 2 Issue 4 Law Mantra Quarterly Online Journal (2015).

²⁶ *Supra* note 2 at 362.

they are valuable resources and asset to the organisation who wish to eradicate fraud, corruption or wrongdoings.²⁷

In India, the strongest justification for permitting the use of whistleblowing is that the Constitution of India gives to the Indian citizens the right to receive and impart information. The right to receive and impart information is a species of the right to freedom of speech and expression assured under Article 19(1) (a) of the Constitution of India. The citizens have a fundamental right to employ the best means of receiving and imparting information. The state is under an obligation to respect the fundamental rights of citizens and to maintain the conditions for effective and meaningful enjoyment of such rights by the citizens.²⁸

There have been many instances of harassment, threatening or even murder of numerous whistleblowers in India. Satyendra Dubey²⁹, Shanmughan Manjunath³⁰, Lalit Kumar Mehta³¹, Prashant Pandey³² are the names of some of the leading cases of murder and harassment.³³ Further, an Australian NGO Blueprint for Free Speech, Transparency International Australia, Melbourne University and Griffith University has rated India as one of the nations where the government is least bothered to ensure that whistleblowers must be able to speak without fright of retribution.³⁴

Therefore, there is huge need to protect the whistleblowers from all kinds of harassments, murders, social and economic losses in order to encourage citizens to report matters of maladministration, wrongdoings and corruption.

III. WHISTLEBLOWER PROTECTION LAWS: AN INTERNATIONAL PERSPECTIVE

Several countries have laid down the policies, laws and procedures for the encouragement and protection of the whistleblowers. Some of them may be examined to know the international perspective. The footprints of whistleblower protection laws in the **United States of America** can be traced in the

²⁷ Shivangi Dhawan and Anupreet Kaur Mokha, "Whistle Blowing: Facing Challenges in India" 8(3) *Asian Journal of Management* 635 (2017).

²⁸ *Supra* note 16 at 21.

²⁹ An engineer was murdered in the year 2003 for exposing huge irregularities in NHAI GQ Project.

³⁰ A Sales Manager was murdered in the year 2005 for reporting adulteration of petrol and mafia behind it.

³¹ An RTI Activist was brutally murdered in the year 2008 for exposing corruption in NREGA (Palamu).

³² An IT Consultant and his family was harassed in the year 2014 for exposing corruption in M.P. Professional Board Examination.

³³ *Supra* note 27 at 630.

³⁴ Dr Meenu, "Whistleblowers and Corruption in India: A Critical Analysis" 2 Issue 4 *South Asian Research Journal of Humanities* 250 (2020).

last more than one fifty years. These laws can be seen in various legislations in the public and private sectors.³⁵ Such laws include the False Claims Act, 1863, the Whistleblower protection Act, 1989 and the Corporate and Criminal Accountability (Sarbanes- Oxley) Act, 2002.

The False Claims Act, 1989 was passed to stop frauds against the government during the period of US Civil War in the regime of Abraham Lincoln.³⁶ This Act allowed private citizens to file suits against government contractors on behalf of the US government and recover a portion of the proceeds.³⁷ This Act offered incentives to the people who reported individuals or companies making fraud to the government. It also provided imposition of penalties on fake whistleblowers. It was amended in the year 1986 to provide better protection to the whistleblowers against harassment and retaliation. Since 1986, this Act has led to the recovery of more than \$48 billion.³⁸ The whistleblower protection laws have been considerably stretched in the United States for private and federal sector employees since the 1970's.³⁹

The Whistleblower Protection Act, 1989 (WPA) was passed to give protection to the federal employees who reported fraud, abuse and waste. There were some loopholes in the Act of 1989. Hence, it was later amended in the year 1994. The Whistleblower Protection Enhancement Act, 2012 (WPEA) was passed and notified on November 27, 2012. The WPEA afforded better protection to the federal workers in reporting of wrongdoing and government corruptions as compared to the WPA. The WPA protections were very feeble as they did not apply to a federal employee if he made a disclosure to a co-worker or was not first person disclosing misconduct or disclosure was made to a supervisor or the consequences of a policy decision or whistle blowing while performing job duties. However, these lacunae were rectified by sections 101 and 102 of the WPEA and protection was provided in all such situations to the whistleblowers.⁴⁰

The Corporate and Criminal Accountability (Sarbanes- Oxley) Act, 2002 was enacted July 30, 2002 to strengthen corporate accountability and to combat corporate criminal fraud. The frauds committed by Enron Corporation and World Com resulted in financial crisis and therefore, this Act was passed to overhaul the financial sector. This Act provides for auditor independence of public corporations and enhanced financial disclosures. The audit committees of the Board of public corporations are required to set up procedures for the confidential and anonymous disclosures by the employees under section 301 of

³⁵ Norm Keith, Shane Todd and Carla Oliver, "An International Perspective on Whistleblowing" 31 No. 3 Criminal Justice 14 (2016).

³⁶ *Supra* note 16 at 14.

³⁷ *Supra* note 35.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Supra* note 16 at 13.

the Act. The employee may make disclosures either to his employer of a federal regulatory agency or a member of congress or its committee or a supervisor. Therefore, this Act affords better protections and procedures to the whistleblowers. The employers who are found guilty of retaliation may be punished up to ten years imprisonment.⁴¹ Further, section 806 creates a civil cause of action to all those employees who were subjected to retaliation for corporate whistle blowing. Public companies are not allowed to demote, discharge, harass and threaten or to cause discrimination in any other manner against an employee.⁴²

In the **United Kingdom**, the well publicized disasters and scandals between the years 1980 to 1990 led to the enactment of whistleblower protection laws. These disasters included the drowning of four children at Lyme Bay, the collapse of Bank of Credit and Commerce International (BCCI) and the Clapham Rail Crash. Therefore, the Public Interest Disclosure Act, 1998 was enacted and it became effective from July 3, 1999 in Wales and Scotland and England.⁴³ It covers almost all employees in the private, public and non-profit sectors as well as trainees, contractors and U.K. workers based overseas.⁴⁴ It excludes the police officers and lays down that a worker should not be subjected to any detriment because of the reason of his making protected disclosure. The whistleblower must make disclosure only through prescribed channels in order to get protection under this Act. The disclosure has to be made to the appropriate authority or the employer himself and disclosure to media is prohibited.⁴⁵

It is to be noted that the scheme of the United Kingdom is different from the United States of America. The UK scheme emphasises on the adherence to prescribed channel for seeking whistleblower protection under the PIDA. However, the US scheme does not press on adherence to prescribed channel to get whistleblower channel to get whistleblower protection under the WPA.

In **Canada**, a very few laws have been passed on whistleblower protection. The Federal government of Canada enacted the Public Servants Disclosure Protection Act, 2007 to protect public employees from retaliation for making disclosures of wrongdoings and corruption. This Act has been highly criticised on the ground that it lays down too much conditions to be followed by the whistleblower to get protection under it.⁴⁶ It is less comprehensive as compared to the US laws on whistleblower protection.

⁴¹ *Supra* note 16 at 14.

⁴² *Supra* note 35 at 15.

⁴³ *Supra* note 16 at 15.

⁴⁴ *Supra* note 35 at 17.

⁴⁵ *Supra* note 16 at 15.

⁴⁶ *Ibid.*

In **Australia**, the whistleblower protection laws have been enacted for all states in the public sector. The federal government has enacted the Public Interest Disclosure Act, 2013. The aim of this Act is facilitate reporting and disclosures of wrongdoings in the public sector and to protect whistleblowers from retaliation for making disclosures. They have been granted full guarantee of anonymity and exemption from liability and disciplinary actions.⁴⁷

In **India**, the genesis and evolution of whistleblower protection laws and policies have seen a long journey. After independence in the year 1947, the Constitution of India was adopted and the role of the state was declared as social welfare state.⁴⁸ India has made several efforts directly and indirectly to protect the whistleblowers. Such policies and laws may be summarized here.

The Constitution of India guarantees some fundamental rights to the citizens. Article 21 guarantees the right to life and personal liberty to all persons residing in India.⁴⁹ Whenever there has been threat or danger to life and personal liberty of any person, he can directly approach to the Supreme Court under Article 32 or to the High Court under Article 226 for the protection of his rights.

The Supreme Court has evolved some techniques to protect the fundamental rights of the citizens by the name of 'Public Interest Litigation' (PIL).⁵⁰ Any public spirited citizen can file a writ petition in the High Courts or the Supreme Court for the protection of the rights of poor or indigent person or group of persons or socially or economically backward persons.⁵¹ The Supreme Court has given protection to right to life and personal liberty to numerous persons under this writ jurisdiction.

There have been some statutory provisions of law which afford protection to the whistleblowers in public and private sectors. Section 173(6) provides that if a police officer thinks that any part of the statement recorded of a witness as per section 161 needs to be examined by the prosecution and such statement should not be disclosed to the accused in the interest of justice, than the court

⁴⁷ *Supra* note 35 at 19.

⁴⁸ *Supra* note 19.

⁴⁹ The Constitution of India, Art. 21. Art. 21 reads: "No person shall be deprived of his life or personal liberty except according to procedure established by law."

⁵⁰ *S.P. Gupta v. Union of India*, 1981 Supp SCC 87 : AIR 1982 SC 149.

⁵¹ *Ibid.*

may allow for the same.⁵² The Supreme Court has upheld the validity of the provisions providing protection to the witnesses in many cases.⁵³

The Companies Act, 2013 provides many provisions to stop fraud and corruption in the body Corporate. Section 177(9) & (10) of the Companies Act, 2013 and Rule 7 of the Companies (Meeting of Boards and its Powers) Rules, 2014 mandates that every listed company⁵⁴ or a company borrowing money of fifty crores from public or financial institutions⁵⁵ must establish a vigilant mechanism for the protection of the Directors and employees reporting wrongdoings or corruption in the company. Further, sections 206 to 229 provide detailed for the enquiry, investigation and inspection in the companies. An inspector has to be appointed to investigate in to the company affairs in matters of fraud.⁵⁶ Similarly, a Serious Fraud Investigation Officer needs to

⁵² The Code of Criminal Procedure, 1973, S. 173(6). S. 173 (6) reads: “If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.”

⁵³ See *Gurbachan Singh v. State of Bombay*, AIR 1952 SC 221; *Naresh Shridhar Mirajkar v. State of Maharashtra*, AIR 1967 SC 1; *Meneka Sanjay Gandhi v. Rani Jethmalani*, (1979) 4 SCC 167 : AIR 1979 SC 468; *A.K. Roy v. Union of India*, (1982) 1 SCC 271 : AIR 1982 SC 710; *Kartar Singh v. State of Punjab*, AIR 1961 SC 1787.

⁵⁴ The Companies Act, 2013, Ss. 177 (9), (10). S. 177(9) reads: “Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed; (10) The vigil mechanism under sub-section (9) shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases: Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board’s report”

⁵⁵ The Companies (Meeting of Boards and its Powers) Rules, 2014, Rule 7. Rule 7 reads: “**Establishment of vigil mechanism**—(1) Every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances— (a) the Companies which accept deposits from the public; and (b) the Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees; (2) The companies which are required to constitute an Audit Committee shall oversee the vigil mechanism through the committee and if any of the members of the committee have a conflict of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on hand; (3) In case of other companies, the Board of Directors shall nominate a Director to play the role of Audit Committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns; (4) The vigil mechanism shall provide for adequate safeguards against victimisation of employees and directors who avail of the vigil mechanism and also provide for direct access to the Chairperson of the Audit Committee or the Director nominated to play the role of Audit Committee, as the case may be, in exceptional cases; (5) In case of repeated frivolous complaints being filed by a director or an employee, the Audit Committee or the Director nominated to play the role of Audit Committee may take suitable action against the Director concerned or employee including reprimand.”

⁵⁶ The Companies Act, 2013, S. 208.

be appointed to look in to such matters.⁵⁷ The Auditors have been casted with duty to report frauds or malpractices to the Central Government committed by the companies.⁵⁸

The Securities and Exchange Board of India (SEBI) being watchdog of securities market issued a circular dated August 26, 2003 and made amendment in the Principles of Corporate Governance relating to standard Listing Agreement. The formation of whistleblower policy for companies was mentioned in clause 49 of Listing Agreement. However, this clause was not mandatory and the companies adhered to this clause voluntarily.⁵⁹ Recently, the Circular of 2003 has been amended and Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 has been notified by the SEBI. Regulation 22 of these Regulations makes it mandatory to set up the whistleblower mechanism to the Directors and employees of the company.⁶⁰

There were serious concerns in the early 1990's for making economic reforms as there was major setback to the economy due to high corruptions and fraud in private and public sector, Harshad Mehta scam in securities market and downfall of economy. Therefore, the government had to take various measures to provide stability to economy in India. The policy of economic liberalization, privatization and globalization was adopted in the year of 1991 and the need to promote citizens to make disclosures about wrongdoings and corruptions was being realized.

Therefore, a bill was first launched for the Protection of Whistleblowers by the Chief Vigilance Commissioner (Mr. N. Vittal) in the year 1993.⁶¹ Later in December, 2001, a report namely 'Public Interest Disclosure Bill' (Draft bill) was submitted to the Ministry of Law, Justice and Public Affairs by the Law Commission of India which suggested that there was urgent need to enact a law for whistleblower protection in order to eradicate corruption.⁶² The draft bill of 'the Public Interest Disclosure (Protection of Informers) Bill, 2002' was circulated in January, 2003. The brutal murder of Satyendra Dubey⁶³ in 2003 triggered the public and media outrage against corruption and led for strong demand for enacting a whistleblower protection law. In the year 2004, the Supreme Court issued directions to set up a mechanism to act on the disclosures made by the whistleblower till a comprehensive law is passed by the parliament. Therefore, the Central Government empowered the Central

⁵⁷ *Id.*, S. 211.

⁵⁸ *Id.*, Ch. X.

⁵⁹ *Supra* note 16 at 28.

⁶⁰ *Ibid.*

⁶¹ See the Statements of Objects and Reasons, The Whistleblower Protection Act, 2014.

⁶² Law Commission of India, 179th Report on The Public Interest Disclosures and Protection of Informers, (December, 2001).

⁶³ A Project Director who exposed the corruption practices in NHAI.

Vigilance Commission to receive complaints of corruption relating to Central Authorities in the year 2004. Later, the Right to Information Act, 2005 was passed as a means for ensuring transparency and accountability. Again in 2006, the draft of the Public Services Bill, 2006 provided that the government must establish a mechanism to give protection to whistleblowers. In 2007, a report of the Second Administrative Reforms Commission recommended that a separate and specific law for the protection of the rights of whistleblowers should be enacted. Further, India had already signed ‘the United Nations Convention against Corruption’ in the year 2005 and it ratified the same on May 9, 2011. This convention required member states to facilitate reporting of corruptions by the government officials and provide safeguards against retaliation of witnesses and experts. Later on 26th August 2010, the Ministry of State Personnel, Public Grievances and Pensions introduced the Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010 in the Lok Sabha. This Bill was passed in Lok Sabha on December 27, 2011 with proposed amendments. This Bill was passed by Rajya Sabha in 2014.⁶⁴ The Bill received the assent of President of India on May 9, 2014 and came in to statute book as The Whistle Blowers Protection Act, 2014, but has not yet come into force. Before this law could test the waters, the Lok Sabha passed the Whistleblowers Protection (Amendment) Bill, 2015 which has been currently pending for consideration before the Rajya Sabha.⁶⁵

IV. THE WHISTLEBLOWER PROTECTION ACT, 2014: SOME GLIMPSES

The policy of The Whistle Blowers Protection Act, 2014 (hereinafter to be referred as WPA, 2014) is to set up a system where complaints relating to corruption, abuse of powers or discretion against a government servant can be lodged and enquired and to give protection against victimisation to the persons making such disclosures.⁶⁶

Any person including a public servant or a non government organisation⁶⁷ can make a disclosure⁶⁸ to the Competent Authority (Central Vigilance

⁶⁴ *Supra* note 16 at 29.

⁶⁵ Prakriti Bhatt, “Whistle Blowing: A Hobson’s Choice? Cherry-Picking between State Authorities and Third-Party Internet Platforms” 10 *The Law Review, Government Law College* 1 (2019).

⁶⁶ The Whistle Blowers Protection Act, 2014. The policy of this Act says, “An Act to establish a mechanism to receive complaints relating to disclosure on any allegation of corruption or wilful misuse of power or wilful misuse of discretion against any public servant and to inquire or cause an inquiry into such disclosure and to provide adequate safeguards against victimisation of the person making such complaint and for matters connected therewith and incidental thereto.”

⁶⁷ The Whistle Blowers Protection Act, 2014, S. 4(1).

⁶⁸ *Id.*, S. 3(d). It defines the term ‘disclosure’ as “disclosure means a complaint relating to,— (i) an attempt to commit or commission of an offence under the Prevention of Corruption Act, 1988 (49 of 1988); (ii) wilful misuse of power or wilful misuse of discretion by virtue

Commission or State Vigilance Commission). The Competent Authority in relation to the Central Government or their employees will be the Central Vigilance Commission and in relation to State Government or their employees the State Vigilance Commission.⁶⁹ Further, the disclosure made under the WPA, 2014 must be a public interest disclosure.⁷⁰ Every disclosure made under this Act shall be deemed as public interest disclosure and has to be filed before the Competent Authority.⁷¹ Such disclosure has to be made in good faith containing a declaration that the complainant reasonably believes in the truthfulness of the allegations made in disclosure.⁷² The disclosure can be made in either online or offline mode and should be in the form of written complaint or electronic mail or message.⁷³ The complainant may be asked to furnish further information by the Competent Authority.⁷⁴ The Competent Authority cannot take any action on the basis of such public interest disclosure if the identity of the complainant is not revealed by such disclosure or complainant's identity is false or incorrect.⁷⁵ Furthermore, the provisions of the WPA, 2014 do not apply to the Special Protection Group (SPG) forces established under the Special Protection Group Act, 1988.⁷⁶

The powers and functions of the Competent Authority have been provided in Chapter- III of the WPA, 2014. This chapter provides the procedure of enquiry in matters of public interest disclosures. The Competent Authority after receiving a public interest disclosure has to verify from the complainant or the public servant that whether such disclosure was made by him or not and the Authority will make arrangement of concealment of identity of such persons. However, such concealment of identity will not be applicable in cases where the identity of the complainant has already been disclosed to the staff or the Authority by the complainant himself or otherwise.⁷⁷ The Competent Authority on the basis of such complaint will make a prudent investigation to undertake further actions. It will determine that where there has been any substance in the allegations made in the disclosure for proceeding further or not.⁷⁸ Where the Competent Authority forms the opinion on the basis of discreet inquiry or disclosure itself than the Competent Authority will ask for

of which demonstrable loss is caused to the Government or demonstrable wrongful gain accrues to the public servant or to any third party; (iii) attempt to commit or commission of a criminal offence by a public servant, made in writing or by electronic mail or electronic mail message, against the public servant and includes public interest disclosure referred to in sub-section (2) of S. 4.”

⁶⁹ *Id.*, S. 3(b).

⁷⁰ *Supra* note 67.

⁷¹ The Whistle Blowers Protection Act, 2014, S. 4(2).

⁷² *Id.*, S. 4(3).

⁷³ *Id.*, S. 4(4).

⁷⁴ *Id.*, S. 4(5).

⁷⁵ *Id.*, S. 4(6).

⁷⁶ *Id.*, S. 2.

⁷⁷ *Id.*, S. 5(1)(a) and (b).

⁷⁸ *Id.*, S. 5(2).

explanation or comments or report from the concerned Department Head or Authority, board or corporation within a reasonable period.⁷⁹ The Competent Authority shall not disclose the identity of the public servant or complainant to such concerned Head of the Department while seeking comments or explanation and this prohibition will be applicable on the Head of the Department also. However, in some cases where it is necessary to disclose the identity of complainant or public servant to seek comments or explanation from concerned Head of the Department or Authority or board or corporation, than the Competent Authority can disclose the identity of such complainant only with his prior written consent. If such complainant refuses to disclose his identity to the Head of the Department or Authority concerned than the Competent Authority can provide only documentary evidence in support of his complaint.⁸⁰ The identity of the complainant or public servant shall not be disclosed to the public either directly or indirectly by such Head of the Department or Authority.⁸¹ The Competent Authority can close a matter where it is of opinion after making an enquiry on the grounds of either the allegations made in the complaint are frivolous or vexatious or there has been no grounds for taking action in a complaint.⁸² The Competent Authority will analyse the report received from such Head of the Department or Authority concerned and it appears from such report that there has been abuse of powers or discretion or corruption, the Competent Authority shall make recommendations to the Public Authority to take various measures namely to initiate proceedings against the public servant, to take disciplinary action to redress the losses caused to the government due to such abuse of powers or discretion or corruption, to take corrective or other measures and to initiate criminal proceedings under the relevant governing laws etc.⁸³ The public authority who has been given the recommendation by the Competent Authority need to take action on the basis of such recommendation within three months period. Such period can be extended by the Competent Authority to further three months on a request made by the public authority. However, the public authority may disagree with the recommendations of the Competent Authority by assigning reasons for

⁷⁹ *Id.*, S. 5(3).

⁸⁰ *Id.*, S. 5(4).

⁸¹ *Id.*, S. 5(5).

⁸² *Id.*, S. 5(6).

⁸³ *Id.*, S. 5(7). S. 5(7) reads, "After receipt of the comments or explanations or report referred to in sub-section (3), if the competent authority is of the opinion that such comments or explanations or report reveals either wilful misuse of power or wilful misuse of discretion or substantiates allegations of corruption, it shall recommend to the public authority to take any one or more of the following measures, namely: (i) initiating proceedings against the public servant concerned; (ii) taking appropriate administrative steps for redressing the loss caused to the Government as a result of the corrupt practice or misuse of office or misuse of discretion, as the case may be; (iii) recommend to the appropriate authority or agency for initiation of criminal proceedings under the relevant laws for the time being in force, if so warranted by the facts and circumstances of the case; (iv) recommend for taking of corrective measures; (v) take any other measures not falling under cls. (i) to (iv) which may be necessary for the purpose of this Act."

doing so.⁸⁴ The Competent Authority will have to inform the complainant or public servant regarding the actions taken by the authority and final conclusion on the disclosures made by them. However, if the Competent Authority comes to the conclusion after making an enquiry that the case should be closed than the Competent Authority on the wish of the complainant must afford reasonable opportunity of being heard to the complainant before closing the case.⁸⁵

Chapter IV of the WPA, 2014 lays down the powers of the Competent Authority. The Competent Authority will have the power for the purpose of enquiry to call any person or public servant to provide information or produce documents it. However, this power is in addition to the powers given to the Competent Authority (Central Vigilance Commission or State Vigilance Commission) under any other law for the time being in force. The Competent Authority shall have the powers of civil court as per the Code of Civil Procedure, 1908 for the purpose of either preliminary enquiry or other enquiry. Such powers include summoning and enforcing attendance of witnesses, production of documents, taking evidence on affidavits etc. The proceeding before the Competent Authority shall be deemed judicial proceedings and it will be recognized as civil court.⁸⁶ The Competent Authority shall have the authority to seek assistance from the police authorities or other authorities for the purpose of completing inquiry within reasonable time.⁸⁷

It is to be noted that certain matters have been exempted from enquiry by the Competent Authority. Such matters include the disclosures in any matter or issue which has been determined by a competent Court or Tribunal.⁸⁸ The Competent Authority shall not enquire in to a disclosure in respect of which a public enquiry has already been ordered under the Public Servants (Inquiries)

⁸⁴ *Id.*, S. 5(8).

⁸⁵ *Id.*, S. 5(9).

⁸⁶ *Id.*, S. 7. S. 7 reads, "Powers of Competent Authority.—(1) Without prejudice to the powers conferred upon the competent authority under any other law for the time being in force, the competent authority, may require, for the purpose of any inquiry any public servant or any other person who in its opinion shall be able to furnish information or produce documents relevant to the inquiry or assist in the inquiry, to furnish any such information or produce any such document as may be necessary for the said purpose.; (2) For the purpose of any such inquiry (including the preliminary inquiry), the competent authority shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely: (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of any document; (c) receiving evidence on affidavits; (d) requisitioning any public record or copy thereof from any court or office; (e) issuing commissions for the examination of witnesses or documents; (f) such other matters as may be prescribed; (3) The competent authority shall be deemed to be a civil court for the purpose of S. 195 and Ch. XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the competent authority shall be deemed to be a judicial proceeding within the meaning of Ss. 193 and 228 and for the purposes of S. 196 of the Indian Penal Code (45 of 1860)."

⁸⁷ *Id.*, S. 10.

⁸⁸ *Id.*, S. 6(1).

Act, 1850 or an inquiry under the Commissions of Inquiry Act, 1952.⁸⁹ The Competent Authority cannot make inquiry in to a matter which had taken place before seven years.⁹⁰

Further, the disclosure of any matters relating to the sovereignty and integrity of India, friendly relations with foreign state, public order, defamation, contempt of court, incitement to an offence, decency or morality have been expressly exempted from inquiry by the Competent Authorities.⁹¹

The provisions for protection of the persons making disclosures have been provided under Chapter- V of the WPA, 2014. The Central Government will make sure that any person or public servant who made a disclosure is not to be victimized by beginning of any proceedings or otherwise because of his making such disclosures or rendering help in inquiry under the provisions of this Act.⁹² Wherever any person makes a complaint to the Competent Authority that he is being victimized or likely to be victimized because of his making disclosures or rendering help in inquiry under the provisions of this Act, the Competent Authority shall redress his grievances and take all such actions as may be necessary and give directions to the public authority or public servant to take necessary action to avoid his victimisation. However, the Competent Authority should hear the public authority or public servant before giving directions to them. Further, the burden of proof that the public authority did not victimise the complainant shall be on the public authority.⁹³ Every public servant or public authority who has been alleged to have victimised the complainant shall be bound to comply with the directions issued by the Competent Authority.⁹⁴ This power of the Competent Authority to issue directions to the public authority or public servant includes the direction for restoration of

⁸⁹ *Id.*, S. 6(2).

⁹⁰ *Id.*, S. 6(3).

⁹¹ *Id.*, S. 8. S. 8 reads, "Certain matters exempt from disclosure.—(1) No person shall be required or be authorised by virtue of provisions contained in this Act to furnish any such information or answer any such question or produce any document or information or render any other assistance in the inquiry under this Act if such question or document or information is likely to prejudicially affect the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign State, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence,—

(a) as might involve the disclosure of proceedings of the Cabinet of the Union Government or any Committee of the Cabinet; (b) as might involve the disclosure of proceedings of the Cabinet of the State Government or any Committee of that Cabinet, and for the purpose of this sub-section, a certificate issued by the Secretary to the Government of India or the Secretary to the State Government, as the case may be, or, any authority so authorised by the Central State Government certifying that any information, answer or portion of a document is of the nature specified in cl. (a) or cl. (b), shall be binding and conclusive.

(2) Subject to the provisions of sub-section (1), no person shall be compelled for the purposes of inquiry under this Act to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before a court."

⁹² *Id.*, S. 11(1).

⁹³ *Id.*, S. 11(2).

⁹⁴ *Id.*, S. 11(3).

the person making the complaint to the status quo ante.⁹⁵ A penalty extending up to rupees thirty thousand may be imposed on the public officer who makes willful default in compliance of the directions issued by the Competent Authority.⁹⁶ The Competent Authority in all cases where the safety and security of the complainant or witnesses are in danger can issue appropriate directions to the government authorities including police to take necessary steps for safety and security of such persons.⁹⁷ The Competent Authority shall make all endeavors to hide the identity of the complainant and documentary evidences received except court order.⁹⁸ The Competent Authority on the basis of disclosures made by the Complainant is also empowered to make interim orders to stop any corrupt practices immediately.⁹⁹

Chapter- VI of the WPA, 2014 deals with offences and penalties. When a preliminary inquiry is made by the Competent Authority on the basis of disclosures and the public authority or public person asked to supply a report or explanation and such report or explanation has not been sent within the time specified, than a penalty of rupees two fifty per day which can extend up to fifty thousand rupees can be imposed by the Competent Authority on the organization and official concerned. Similarly, if it has been destroyed or incomplete, misleading or false report has been provided, than a maximum penalty of rupees fifty thousand can be imposed. However, no such penalty can be imposed by the Competent Authority without affording a reasonable opportunity of being heard to the defaulting person.¹⁰⁰ Any person disclosing the identity of the complainant either negligently or malafidely shall be liable to be punished with imprisonment for a maximum term of three years and fine of rupees fifty thousand.¹⁰¹ The maximum punishment of two years or

⁹⁵ *Id.*, S. 11(4).

⁹⁶ *Id.*, S. 11(5).

⁹⁷ *Id.*, S. 12.

⁹⁸ *Id.*, S. 13.

⁹⁹ *Id.*, S. 14.

¹⁰⁰ *Id.*, S. 15. S. 15 reads, "Penalty for furnishing incomplete or incorrect or misleading comments or explanation or report.—Where the competent authority, at the time of examining the report or explanations or report referred to in sub-section (3) of S. 5 on the complaint submitted by organisation or official concerned, is of the opinion that the organisation or official concerned, without any reasonable cause, has not furnished the report within the specified time or mala fidely refused to submit the report or knowingly given incomplete, incorrect or misleading or false report or destroyed record or information which was the subject of the disclosure or obstructed in any manner in furnishing the report, it shall impose—

(a) where the organisation or official concerned, without any reasonable cause, has not furnished the report within the specified time or mala fidely refused to submit the report, a penalty which may extend to two hundred fifty rupees for each day till report is furnished, so, however, the total amount of such penalty shall not exceed fifty thousand rupees;

(b) where the organisation or official concerned, has knowingly given incomplete, incorrect or misleading or false report or destroyed record or information which was the subject of the disclosure or obstructed in any manner the furnishing of the report, a penalty which may extend to fifty thousand rupees: Provided that no penalty shall be imposed against any person unless he has been given an opportunity of being heard."

¹⁰¹ *Id.*, S. 16.

fine of thirty thousand rupees can be imposed on any public servant or person who makes malafidely false and frivolous disclosures.¹⁰² The Head of the Department shall be liable to be punished for the offences committed by their Departments under the provisions of this Act, unless they prove innocence and exercise of due diligence.¹⁰³ Similarly, an officer in charge in a company will be punished for offences committed by the company unless he shows lack of knowledge and due diligence.¹⁰⁴ Any person aggrieved by the penalty imposed by the Competent Authority can file an appeal in the High Court challenging such penalty within a period of sixty days. However, the limitation period of sixty days can be relaxed by the High Court for sufficient cause shown by the petitioner.¹⁰⁵

V. CHALLENGES AHEAD

There have been persistent fears that the legal protection provided to the whistleblowers can only be symbolic and the retribution remains the rule. The state must develop a system in which the whistleblowers shall have faith in system and he will be protected against criminal or civil liability. The paramount practice comprises effective operational systems for the administration of whistle blowing. The whistleblowers protection laws must guarantee that the whistleblowers have protection from retaliation, reprisal, retribution, punishment and discrimination by organizations, employers and others. Some whistleblowers protection laws give protection to disclosure of secret information believing such disclosures as considerably true and some defend the disclosures made by a bona fide informer. Similarly, the whistleblowers protection laws should not give protection to disclosures of false information which has been given due to malice, vindictiveness, ill will, bad motives and personal grievances and such informers need to be punished. The whistleblowers protection laws must promote a system where truthful disclosures are valued, respected and rewarded. The default in the protection of whistleblowers leads to promotion and protection of wrongdoings and misconduct.¹⁰⁶ The whistleblower protection laws will be effective only in a democratic society which supports disclosures, transparency and accountability.¹⁰⁷ The prerequisite for the whistleblower protection law is the rule of law, independent legal system and independent judiciary.¹⁰⁸

The people working against corruption and many international and national experts have identified and discussed various challenges to the framework of the Whistleblowers Protection Act, 2014. The foremost challenge and biggest

¹⁰² *Id.*, S. 17.

¹⁰³ *Id.*, S. 18.

¹⁰⁴ *Id.*, S. 19.

¹⁰⁵ *Id.*, S. 20.

¹⁰⁶ *Supra* note 7 at 767.

¹⁰⁷ *Supra* note 7 at 769.

¹⁰⁸ *Ibid.*

shortcoming of the WPA, 2014 is regarding the anonymity of a whistleblower.¹⁰⁹ An anonymous complaint or disclosure regarding corruption, abuse of powers can not be filed under the WPA, 2014. Section 4(6) expressly says that no action will be taken by the Competent Authority in a public interest disclosure where the identity of complainant is not disclosed.¹¹⁰ Hence, anonymous disclosures under the WPA, 2014 cannot be made even if they are in public interest or meritorious.¹¹¹ This provision may endanger the life and liberty of a complainant and he may be victimised by his organisation or employer. The complainant has to solely depend on the Competent Authority for the protection of his identity. However, in United States of America, the US laws give complete anonymity to a person who makes a complaint. Further, such complainant can remain anonymous and get rewards if he proceeds through a legal practitioner.¹¹²

The Supreme Court had stressed on the need to keep secret the identity of informers in many cases. The Supreme Court has upheld the holding of an in-camera trial on the ground of protection of witnesses.¹¹³ In *A.K. Roy v. Union of India*, the Supreme Court held that “the disclosure of the identity of the informant may abort the very process of preventive detention because, no one will be willing to come forward to give information of any prejudicial activity if his identity is going to be disclosed, which may have to be done under the stress of cross examination.”

Further, the WPA, 2014 does not provide the definitions of the terms ‘whistleblowing’, ‘Victimisation’ and ‘Retaliation.’ These are the key words which are most relevant to any whistleblowing. The want of definitions leads to make the Act susceptible to manipulation.¹¹⁴ Again, the definition of the term ‘Disclosure’ is considerably restrictive and it leaves the negligent acts or omissions of the public servants from its ambit.¹¹⁵ Furthermore, the WPA, 2014 does not clearly lay down the definition or essentials of a valid ‘public interest disclosure’. Section 4 mandates a disclosure made by the complainant to be a public interest disclosure. It merely treats any disclosure under section 4(1) as public interest disclosure.¹¹⁶

Further, the WPA, 2014 does not contain any provision for giving reward to the whistleblowers as compared with American laws. However, it makes provision for punishment to the whistleblowers whose complaints are found

¹⁰⁹ Kapil Mishra, “Legal Framework and Regulations Protecting Whistleblowers in India”, available at: <<https://blog.ipleaders.in/whistle-blowers-protection/>> (last visited on July 6, 2021).

¹¹⁰ The Whistleblowers Protection Act, 2014, S. 4(6).

¹¹¹ *Supra* note 65 at 7.

¹¹² *Supra* note 109.

¹¹³ *Naresh Sridhar Mirajkar v. State of Maharashtra*, AIR 1967 SC 1.

¹¹⁴ *Supra* note 6 at 179.

¹¹⁵ *Ibid.*

¹¹⁶ *Supra* note 65 at 6.

frivolous or false disclosures.¹¹⁷ This will result in discouragement of whistleblowers as the terms ‘frivolous’ or ‘false’ have not been defined under the WPA, 2014.¹¹⁸

Similarly, the WPA, 2014 does not expressly provide special provisions or mechanism for the personal safety of the whistleblowers in spite of there being large number of reported cases of attacks and retribution on the whistleblowers. The victim has to seek remedy only under the governing penal laws.¹¹⁹ The protections provided against the victimization are very weak.¹²⁰

Further, there has been no provision for making appeals against the orders of the Competent Authority except the penalty cases under sections 14, 15 and 16 of the WPA, 2014. If a person does not agree with the decision of the Competent Authority in any matter of public interest disclosure, he will have no remedy in such situation.¹²¹

Another challenge is regarding the implementation and enforceability of the WPA, 2014. Though, the Whistleblowers Protection Act, 2014 has been notified by the Central Government on 9th May 2014, the provisions of this Act have neither been implemented by the Central Government nor by the State Government. The Central Government had paused the implementation of this Act and instead of its implementation; it introduced the Whistle Blowers Protection (Amendment) Bill, 2015 on 11th May 2015 which was passed by Lok Sabha on 13th May 2015. Since then, this Bill has been waiting of its approval from Rajya Sabha.¹²² This clearly shows that around six years have lapsed after passing of the Bill of 2015 and the government seems to be very reluctant in passing this Bill in Rajya Sabha.

The Amendment Bill of 2015 amends the WPA, 2014 and forbids the reporting of disclosures relating to wrongdoings or corruption if the disclosure is related to 10 prohibited categories. These 10 categories include sovereignty, scientific or economic interests of India, cabinet proceedings, intellectual property, courts prohibition etc.¹²³ It has been pointed out that the Bill of 2015 intended to dilute the provisions of the WPA, 2014 instead of its empowerment. It implements the provisions of the Official Secrets Act, 1923 and forbids the disclosure of information relating to 10 categories. This will limit the scope of disclosure relating to corruptions and wrongdoings. Further, the Bill of 2015

¹¹⁷ The Whistleblowers Protection Act, 2014, S. 17.

¹¹⁸ *Supra* note 6 at 179.

¹¹⁹ *Ibid.*

¹²⁰ *Supra* note 65 at 5.

¹²¹ *Ibid.*

¹²² *Supra* note 6 at 177.

¹²³ *Ibid.* See also the Whistleblowers Protection (Amendment) Bill, 2015, available at: <<https://prsindia.org/billtrack/the-whistle-blowers-protection-amendment-bill-2015>> (last visited on July 6, 2021)

provides no provisions expanding the rights of whistleblowers and it focuses only on prohibitions in spite of several incidents of brutal murders and victimization of whistleblowers in recent past. Again, the procedure to be followed by the Competent Authorities has been made very complex and dilatory. The action of the Competent Authority on the basis of public interest disclosures by the informant has been made dependent on the report of the Governmental Authority.¹²⁴

Another challenge is the need to incorporate the system of e- disclosures in the era of economic liberalization, privatization and globalization. The WPA, 2014 does not make provision for making anonymous e- disclosures. However, the disclosures made in recent years on Wikileaks and other similar platforms have become very popular.¹²⁵ Therefore, the WPA, 2014 must incorporate these technological innovations.

It is to be noted that the WPA, 2014 is applicable on public sector employees or public servants. There has been no specific legislation providing protection to the private sector employees or public sector undertakings (PSU's). In the era of economic liberalisation, globalisation and privatisation, where large number of employees work in private sectors, it becomes very crucial to encourage the private sector employees to report disclosures of fraud, corruption and mismanagement within the company by providing a broad coverage to the WPA, 2014 and to apply on private sector employees to protect them from victimisation, discrimination and disadvantage. The rise in the number of private sector or corporate scams like Punjab National Bank, ICICI Bank, Satyam, Kingfisher, Enron etc. demand a strong whistle blowing mechanism in private sector also.¹²⁶

VI. CONCLUSION

Every democratic country committed to achieve the goals of good governance, transparency and accountability in their administration. In this context, Lord Acton rightly said that “Every secret degenerates, even the administration of justice, nothing is safe that does not show how it can bear discussion and publicity.”¹²⁷ There has been lot of awareness about the importance of whistle blowing process, in spite of it, many employees choose to remain silent and do not make disclosures regarding corruptions or wrongdoings. Whistle blowing is not an easy process as it requires moral evaluation and courage and whistleblower has to put in danger his job, life and personal safety and social

¹²⁴ *Ibid.*

¹²⁵ *Supra* note 65 at 15.

¹²⁶ Bhumesh Verma and Abhisar Vidyarthi, “Whistleblowing in India: The Way Forward”, available at: <<https://www.scconline.com/blog/post/2019/09/07/whistleblowing-in-india-the-way-forward/>> (last visited on July 7, 2021).

¹²⁷ Dr J.N. Barowalia, *Commentary on the Right to Information Act 436* (Universal Law Publishing, New Delhi, 4th edn., 2017).

relations. Whistle blowing process can help in reduction of white-collar crimes, and it can prevent the collapse of organization. The whistle blowing policy and laws requires being more than words on paper. Every whistleblower policy must promote ethical values and sense of responsibility among the employees within an organization and to give protection to whistleblowers from retaliation and victimization.

India has enacted the Whistleblowers Protection Act, 2014 to combat corruption and wrongdoings in government departments. It is pertinent to mention here that the enforcement of a good whistleblowers protection law is as much important as its enactment as the failure of enforcement or implementation weaken the good laws. Therefore, the Central Government must take decision on the implementation of the Whistleblowers Protection Act, 2014 as soon as possible. The Whistleblowers must be permitted to make anonymous disclosures of corruption or wrongdoings and their secrecy should be maintained. The key terms of whistle blowing process must be defined under the WPA, 2014. Further, the provisions for e- complaints, appeal against orders of the Competent Authority, incentives or rewards for making public interest disclosures, applicability of the WPA, 2014 to the private sector undertakings (PSU's) etc. should be provided to tackle various challenges to whistle blowing process in India.