

ATREYA MATHUR

Christ University , India

VARSHINI RAMESH

Christ University , India

NEED OF THE HOUR: REFORMATION IN THE SCOPE OF WHISTLEBLOWER POLICIES AND PROTECTION

Abstract:

The world has seemingly taken a step back from when Time Magazine declared it to be the year of “Whistleblowers” in 2002.

Even if the best legislations are in place, the status of a whistleblower will inevitably receive a hard blow. While employers can't retaliate directly, there is no check on unfair appraisal and deliberate over-burdening.

There is lack of protection due to the restrictive nature of the definition of a whistleblower and the complicated process of “whistleblowing” that dissuades whistleblowers from coming forward.

This paper analyses cases in which there has been inadequate protection of whistleblowers and throws light on scandals, political and economic, that could have been avoided if the laws in place were efficient.

While the guidelines and checklist put-forth by the OECD on protection of whistleblowers from retaliation is well received, it has underperformed in expanding the scope, restricting itself to employees and the corporate world. The updated UN Whistleblower Policy 2017, addresses similar issues but faces the same pitfall of a restricted approach.

This paper recognizes the need for a tradeoff between privacy and societal welfare, which is the ultimate goal of whistleblowing.

The process followed for whistleblowing in the classified system is also in need of change. Activity tends to be hidden here. Intelligence committees should establish a direct and secure system for intake in order for whistleblowers to confidentially disclose information while unclassified reports could be released on what action has been taken for whistle blower complaints.

Sarbanes Oxley provides for protection but there are procedural and substantive issues; problems of timelines obedience, one-sided submission, accessing witnesses and the mandatory arbitration agreement that provides as another obstacle making protection unsuccessful. Amendments to the act are recommended.

A comparison is made between whistleblowing mechanisms worldwide to draw parallels and bring out loopholes to be looked into, to ensure protection of whistleblowers.

However, the paper recognizes the vice of false-complaints and the current judicial trend of awarding a percentage of the fraudulent company's pecuniary penalty to the whistleblower and how it may feed other employees' propensity to complain.

The paper calls for a change in the name of “Whistleblowers” itself. It has a patrioteer connotation; a simple Google search offers, “snitch” as the synonym. The study brings out the importance of an effective mechanism for protection, and questions whether the law has the capacity to bring about a change in societal perception of whistleblowers.

Keywords:

Corporate Governance, Whistleblower Protection, Law and Policy, Sarbanes Oxley, OECD, Intelligence Committees

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