Right to Information and Whistle Blower: A Journey from Theory to Practice

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Abstract
History is witness to the fact that there have always been informers who reveal inside information to others. Ancient Greeks talked about whistleblowing centuries before. Lykourgos, the Athenian orator, in his speech against Leokratis said: neither laws nor judges can bring any results unless someone denounces the wrongdoers. Even in Ancient India, the concept of a Whistle blower was in existence, Kautilya proposed- "Any informant (súchaka) who supplies information about embezzlement just under perpetration shall, if he succeeds in proving it, get as reward one-sixth of the amount in question; if he happens to be a government servant (bhritaka), he shall get for the same act one-twelfth of the amount.
Whistle blowers play an important role in fighting corruption, in protecting the public and the environment from harm, and in providing accountability for the violation of legal norms. When an individual blows the whistle on alleged wrongdoing, he/she may suffer severe financial consequences. The law recognizes the social good that can come from whistleblowing by providing some protection for them and encouraging such conduct in a variety of ways.
Even so, whistle blowers continue to occupy a fundamentally ambivalent position in society. Some whistle blowers are celebrated for their courage and self-sacrifice in protecting society from harm. But at the same time, many whistle blowers experience financial and social retaliation. This ambivalence is reflected in the law of whistleblowing: both its limited scope and how it operates. The law offers whistle blowers some legal protection, but government officials who are responsible for administering those laws often find ways to narrow that protection. Thus, even the most robust legal protection cannot protect whistle blowers from the social consequences of their action.
While whistle blowers can play a critical role in protecting the public, they often pay an enormous personal price. The article will seek to aid an understanding of how different policy purposes, approaches, and legal options can be combined in the design of better legislation. It provides a guide to key elements of the new legislation, as an example of legislative development taking place over a long period, informed by different trends.

Keywords: Whistle-blowers, Legal protection, Policy purposes, Corruption, Information and Government officials.

Introduction

Corruption has been a common phenomenon all over the world; only the degrees of corruption differs and response towards it. The history is filled with various incidents that prove that corruption leads to inequality and hampers public interest. It constitutes a drain on the funds of many ordinary citizens, in the form of demand for bribes by the state functionaries. Hence in the words of Kofi Annan, it undermines democracy and the rule of law (which is one of the basic features of our Indian constitution), leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.

The United Nations had found that corruption was the chief reason why developing nations continued to remain in poverty. World Bank's studies have established that "corruption ….was the single greatest obstacle to economic and social development,"and when corruption goes unchallenged, when people do not speak out about it, and it flourishes in a culture of inertia, secrecy, and silence, then the problem becomes worse. In many cases, the damage is beyond repair. Consequently, the United Nations' Convention against Corruption (UNCAC) was signed on 9th December 2003, as being the only legally binding universal anti-corruption instrument. India has ratified it on 9th May 2011. Article 33 of UNCAC states that:

"Each State Party shall consider incorporating into its domestic legal system appropriate measures to protect any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offenses established by this Convention."

It encourages states to protect 'any unjustified treatment', and is thus not confined to physical threats or dismissal. Many legal systems have measures to cover crude forms of retaliation (e.g., life threats, abduction, etc.) in the form of substantive laws (such as the Indian Penal Code,1806). Still, there may be a gap as regards more subtle forms, which can have equally serious consequences (e.g., by forcing resignation). Article 33 requires states to consider adopting appropriate measures to protect whistle-blowers because they play an important role as legal-monitors; they are frequently the victims of retaliation. Article 33 of UNCAC, has an extremely wide scope, which may include any infinite list of different forms of mistreatment that can be anticipated. What may be an appropriate measure to protect people to report corruption will depend on the cultural, social, and legal frameworks that apply in that particular state.

A key challenge in preventing and fighting corruption is to detect and expose bribery, fraud, theft of public funds, and other acts of wrongdoing. People are often aware of misconduct but are frightened to report it. Public inquiries into major disasters and scandals have shown that such a workplace culture has cost lives, damaged livelihoods, caused thousands of jobs to be lost, and undermined public confidence in major institutions.

To overcome that and to promote a culture of transparency and accountability, a clear and simple framework should be established that encourages legitimate reporting of corruption and other malfeasance and protects such "whistle-blowers" from victimization or retaliation.

Definition and Need for Whistle Blower Protection in India

Defining Whistle-Blowing

The concept of whistleblowing can be defined as raising a concern about a wrong doing within an organization. The concern may be a genuine concern or not, about a crime, criminal offense, miscarriage of justice, dangers to health and safety and of the environment – And the cover-up of any of these. Whistleblowing is also taken to mean disclosure by organization members about matters of 'public interest' - that is, suspected or alleged wrongdoing that affects more than the personal or private interests of the person making the disclosure.

Black's Law Dictionary defines a "whistle-blower" as meaning "An employee who reports employer wrongdoing to a governmental or law-enforcement agency. Federal and state laws protect whistle-blowers from employer retaliation." A whistle-blower is sometimes described as an 'internal witness,' or as a person making 'public interest disclosure, or 'protected disclosure' or giving 'public interest information'.

In the words of Calland & Dehn, whistleblowing is now used to describe the options available to an employee to raise concerns about workplace wrongdoing.' The test is not the whistle-blower's subjective motives or ethics (complaints or grievances) but the whistle-blower's perception or reason to believe that there has been wrongdoing. The definition is given by Near and Miceli' the disclosure by organization members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action'. A whistle-blower who wishes to disclose bribery, corruption, and patronage networks may live in a dictatorship with no rule of law, governed by secrecy,

fear, reprisal, and death.' It refers to the process by which insiders, called 'whistle-blowers, go public with their claims of malpractices by, or within, organizations - usually after failing to remedy the matters from the inside, and often at great personal risk to them and it can be said to be a security threat to the whistle blower. Thus the Supreme Court, in this case, observed that a form of dissent. Sometimes the cost of such valiant efforts is just too high to pay.

In Indirect Tax Practitioners Association v. R.K.Jain, the appellant leveled serious allegations against officers of the Health Department in which he was working. His exposure of corruption was not through media but by proper representation to appropriate authority. Unfortunately, it was not done. This generally creates a serious personal whistle-blower is a person who raises a concern about wrongdoing occurring in an organization or body of people. Usually, this person would be from that same organization. The revealed misconduct may be classified in many ways; for example, a violation of a law, rule, regulation, and a direct threat to the public interest, such as fraud, health/safety violations, and corruption. Whistle-blowers may make their allegations internally (for example, to other people within the accused organization) or externally (to regulators, law enforcement agencies, to the media or groups concerned with the issues). Most whistle-blowers are internal whistle-blowers who report misconduct on a fellow employee or superior within their company.

A definitional issue relates to the motivations of the whistle-blower. Fletcher, Sorrell, and Silva, for instance, assert that the whistle-blower must blow the whistle for the right moral reasons. However, the author argues that provided the whistle-blower is acting in the public interest, it is of little importance if the informant's motivations are not entirely pure. That is, even if the whistle-blower is driven by anger, spite, or even dislike for the person against whom they are making the complaint, the more important issue is the stopping of illegal or corrupt activities.

The Supreme Court has observed in the case of Manoj H. Mishra V. Union of India & Ors, that One of the basic requirements of a person being accepted as a "whistle blower" is that his primary motive for the activity should be in furtherance of a public good. In other words, the activity has to be undertaken in the public interest, exposing illegal activities of a public organization or authority…… that every informer cannot automatically be said to be a bonafide whistle-blower. A whistle-blower would be a person who possesses the qualities of a crusader. His honesty, integrity, and motivation should leave little or no room for doubt. It is not enough that such a person is from the same organization and privy to some information, not available to the general public. The primary motivation for the action of a person to be called a whistle-blower should be to cleanse an organization. It should not be an incidental or by-product for an action taken for some ulterior or selfish motive.

In the above case, the civil suit was filed by Mishra from the Power Project at Surat, Gujarat; he was working as a tradesman at the power-plant when one night Surat faced massive flooding inside the complex, and thus Mishra wrote a letter to the editor of Gujrat Samachar mentioning flooding inside the nuclear facility demanding an inquiry by a high-level committee but, he was sacked by the inquiry committee for criticizing the project and passing confidential information to the media. The Supreme Court says that Mishra breached a confidentiality agreement by alleging corruption in the organization.

This judgment, according to the author, is unacceptable truth should prevail in all circumstances, and personal interest and ulterior motives of the author should not be taken into consideration.

Constitutional Provisions Relating To Whistle Blowing

The strongest justification for allowing the use of whistle blowing is that the people of India have the right to impart and receive information. The right to impart and receive information is a species of the right to freedom of speech and expression guaranteed by Article 19(1) (a) of the constitution of India. A citizen has a Fundamental Right to use the best means of imparting and receiving information. The State is not only under an obligation to respect the Fundamental Rights of the citizens but also equally under an obligation to ensure conditions under which the Right can be meaningfully and effectively be enjoyed by one and all.

In-the State of U.P. V. Raj Narain, Mathew, J. eloquently expressed this proposition in the following words, "The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing", similarly in Dinesh Trivedi v. Union of India, the court observed that in modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the government, which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. To ensure that the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the government and the basis thereof.

A public servant may be subject to a duty of confidentiality; however, this duty does not extend to remaining silent regarding the corruption of other public servants. Society is entitled to know, and public interest is better served more if corruption or maladministration is exposed. The Whistle-blower laws are based upon this principle.

Article 21 enshrines the right to life and personal liberty. The expressions "right to life and personal liberty" are compendious terms, which include within themselves a variety of rights and attributes. Some of them are also found in Article 19 and thus have two sources at the same time. In R.P.Limited v. Indian Express Newspapers, the Supreme Court read into Article 21 the right to know. The Supreme Court held that right to know is a necessary ingredient of participatory democracy. Given transnational developments when distances are shrinking, international communities are coming together for cooperation in various spheres, and they are moving towards a global perspective in various fields including Human Rights, the expression "liberty" must receive an expanded meaning. The expression cannot be limited to the mere absence of bodily restraint. It is wide enough to expand to a full range of rights, including the right to hold a particular opinion and right to sustain and nurture that opinion. For sustaining and nurturing that opinion, it becomes necessary to receive information. Article 21 confers on all persons a right to know, which includes a right to receive information. The ambit and scope of Article 21 are much wider as compared to Article 19(1) (a).

Article 19 and Article 20 justify the act of the whistle-blowers hence the method whereby a whistle-blower may uncover the corrupt activities of the others must be channelized, and our legislators must provide the people of India a law which protects him/her from being victimized, which is most eminent in such cases.

Need for Legislation for Protection Whistle-Blowers

Whistleblowing is an important public policy issue for two major reasons. Integrity in government relies on the effective operation of a range of 'integrity systems' for keeping institutions and their office-holders honest and accountable. Within these systems, few individuals are better placed to observe or suspect wrongdoing within an organization than its very own officers and employees. One of the most direct methods of shining the light on corruption is whistleblowing. We often think about democracy only as a political system where we elect those who will make laws that affect us. Yet everyday decisions that are made in all kinds of organizations impact on us just as much. Therefore we have to know when decisions taken in organizations are going to affect us in ways that differ from the official organizational discourse. Whistleblowing plays a role in providing that knowledge & thus is a means to democracy. From exposing multi-million dollar financial scams to dangerous medical practices, whistle-blowers play a crucial role in saving resources and even lives.

In the initial beginning of any corrupt activity, there are some people who don't want to participate in that activity. Still, they are forced, as they are afraid of the consequences of speaking the truth and silence seems to be the best way out. Still, when those people without thinking about the consequences, tell the truth then, to put in the words of Nobel Laureate, Czesùaw Miùosz, "when people unanimously maintain a conspiracy of silence, one word of truth sounds like a pistol shot," for which they are bound to suffer retaliation, of various degrees, in return. They commonly face retaliation in the form of harassment, firing, blacklisting, threats, and even physical violence, and their disclosures are routinely ignored.

Blowing the whistle carries high personal risk, particularly when there is little legal protection against dismissal, humiliation, or even physical abuse. Controls on information, libel and defamation laws, and inadequate investigation of whistle-blowers' claims can all deter people from speaking out. Individuals reporting incidents of bribery or corruption faced numerous hurdles, including verbal threats, physical violence, and ostracism. Others encountered workplace retaliation. Confronted with these risks, many potential whistle-blowers chose to remain silent. Whistle-blowers are less likely to report workplace misconduct when their employers do not provide clear internal reporting channels. And in some settings, whistleblowing carries connotations of betrayal rather than being seen as a benefit to the public. Ultimately, societies, institutions, and citizens lose out when there is no one willing to cry foul in the face of corruption.

The purpose of whistle-blower protection is to encourage people to report the crime, civil offenses (including negligence, breach of contract, breach of administrative law), miscarriages of justice, and health and environmental threats by safeguarding them against victimization, dismissal and other forms of reprisal. Whistle-blowers need to be given adequate legal protection if they are to expose the wrongdoings to the public or external parties that are occurring in one of the agencies of the government and an external organization that is violating the law makes regulations of the government.

Legal Development of Whistle Blower Protection System

In India, Mr. N. Vittal, who was the Chief Vigilance Commissioner in 1993, initiated the whistle-blower protection legislation. He requested via a letter dated 24/8/1999 to Law Commission to draft a Bill encouraging the disclosure of corrupt practices by public functionaries and protecting honest persons making such disclosures. The Law commission headed by Justice, B.P. Jeevan Reddy submitted a report on the "Public Interest Disclosure Bill" and submitted it on 14.12.2001 to tackle this problem.

Meanwhile, the absence of legislation on protection for whistle-blowers was felt by the entire nation when National Highways Authority of India (NHAI) engineer Satyendra Dubey was killed after he wrote a letter to the office of then P.M. Shri. Atal Bihari Vajpayee, detailing corruption in the construction of highways. In the letter, he had asked specifically that his identity be kept secret. Instead, the letter was forwarded to various concerned departments without masking Dubey's identity. Dubey's murder led to a public outcry at the failure to protect him.

The GOI passed the Public Interest Disclosures and Protection of Informers Resolution, 2004, designating CVC as the nodal agency to handle complaints on corruption. Over a year later, Manjunath Shanmugham, an IIM graduate and a sales manager of the Indian Oil Corporation, was murdered on 19th Nov 2005 for honestly carrying out his duties, i.e., exposing the racket of adulteration of petrol and the mafia behind it. This incident has shocked the entire nation and has shaken the confidence of thousands of aspiring officers. This brought renewed focus on the need for a law to protect whistle-blowers.

It has taken more than 11 years, after Law commission submitted its report on the subject, for the bill to become the Whistle-Blowers Protection Act, 2011, which was passed on 9 May 2014, after receiving president asset. Still, the irony is, it is yet to come into force.

Whistle Blower Protection Act, 2011

The Act was enacted to provide a mechanism to receive complaints relating to the disclosure on any allegation of corruption or wilful misuse of power or wilful misuse of discretion against any public servant and to provide safeguards against their victimization.

As per §4, any public servant or any other person or non-governmental organization can file a complaint under it. Such a complaint has to be filed to the competent authority. The section further provides that no anonymous complaint will be admitted, and it is mandatory for the public servant to disclose his identity. All anonymous whistle-blower complaints or complaints that don't indicate the identity of the public servant (accused) will be treated like garbage. This provision has been inserted to avoid frivolous and vexatious complaints. Anonymity has practical consequences for the whistle-blower. It protects the

weak that are unable to protect themselves from powerful institutions and encourages the exposure of wrongdoing. It is submitted that the anonymous complaints, if accompanied by sufficient evidence, should be taken cognizance of, and in that case, it would be easier to protect the complainant. If an anonymous complaint is received by the Competent Authority and the facts mentioned in the complaint and the supporting documents reveal a prima facie case, the Competent Authority should not reject it only for want of identity of the complainant. Anonymous complaints, if substantiated, would make the task of the Competent Authority easier as it would be less worried about the aspect of protecting the identity of the complainant, which is an important objective of the Whistle-blower Protection.

The importance of protecting the identity of a whistle-blower was also appreciated in the case of Manjeet Singh Khera v. the State of Maharashtra, the apex court observed:

There are many cases, where certain persons do not want to disclose the identity as well as the information/complaint passed on them to the Anti-Corruption Bureau. If the names of the persons, as well as the copy of the complaint sent by them, are disclosed, that may cause embarrassment to them and sometimes threaten to their life.

The Hon'ble Supreme Court has legitimized the practice of anonymous whistleblowing, which is a great boon for anonymous whistle-blowers in India, with its 20th November 2014 order.

Further, the Act requires the whistle-blower to make a disclosure specifically naming the public servant responsible for or involved in the wrongdoing. The whistle-blower is also required to submit supporting documents and other material in support of his or her disclosure. It is submitted that these provisions put the burden on the potential whistle-blower that might not have all the data. This will probably mean as if the whistle-blower is taking on the role resembling that of an investigating agency or a public prosecutor, for which the State will neither pay him, nor recognize him, nor accord him special status, protection or extent assistance of any kind. It is further submitted that the above mechanism is inherently contradictory to the main intention of the statue. The complainant is disclosing the public interest; therefore, the undue burden should not be placed on him/her to provide proof to substantiate his/her case. Moreover, it would be unreasonable to expect a private citizen, who is the sufferer or at the receiving end having minimal resources at his/her disposal, to place before the Competent Authority proof sufficient to substantiate the complaint. The Competent Authority may have a reasonable expectation from the complainant, i.e., he/she should make out a prima facie case, and subsequently, the Competent Authority should follow up the complaint to its logical conclusion.

Section 5 of the Act provides that the Vigilance Commission shall not reveal the identity of the complainant to the head of the organization except if it thinks that it is necessary to do so. This provision is a virtual death knell for a potential whistle-blower. The main concern is that it does not specify the conditions under which it may become necessary to reveal the name of the complainant and that it leaves the Competent Authority with the wide scope of discretion in this regard. Further, it may make it very difficult to keep the identity of the complainant secret from the person/organization against whom the complaint is filed. The protection of the identity of the complainant is pivotal to the successful implementation of Whistleblowing. To make sure that the interests of the complainant are protected, it is submitted that the identity of the complainant should not be revealed by the Competent Authority to the Head of the Department, at least not without the written consent of the complainant.

Under this Act, a complaint can be filed against public servants relating to the actual commission or attempt to commit an offense under the Prevention of Corruption Act, 1988 which provides for offenses such as acceptance of gratification by the public servant of any amount other than legal remuneration or doing of any act which they are not otherwise authorized to do. The complaint can also be filed for wilful misuse of power or wilful misuse of discretion by which demonstrable loss is caused to the Government, or demonstrable wrongful gain accrues to the public servant or any third party or for a criminal offense. It is submitted that expression 'wilful misuse of power or discretion by a public servant' is vague in itself as misuse of power and

discretion can never be unintentional. Further, acts such as 'wilful maladministration,' 'human rights violations,' and wrongdoings that may hurt 'public health, safety or environment' has been deleted despite the law commission recommendation.

A complaint in writing or electronically can be filed to the designated competent authority under the Act which is the PM/CM for Ministers, Chairman/ Speaker of the legislature for MPs/MLAs, High Court about any subordinate judge, Central/State Vigilance Commissions/other designated authority, for employees of Central & State Government organizations or any other appropriate competent authority to be designated for Armed Forces/ forces charged with the maintenance of public order/ any intelligence organization or any person connected with the telecommunication systems for these organizations.

Section 6(4) of the Act prohibits the Competent Authority from questioning, in any inquiry under this statute, any bonafide action or bonafide discretion (including administrative or statutory discretion) exercised in discharge of duty by the employee. It is submitted that no parameters have been provided to ascertain whether the alleged action amounts to bonafide action or bonafide use of discretion or not, hence in the absence of which leaves the room for foul play to be committed with malafide intentions.

The Section 8 of the Act which exempts certain matters from disclosure, 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 about contempt of court, defamation or incitement to an offense and the authority to determine as what constitutes "likely to prejudicially affect" the above-mentioned grounds is the state and central government itself through the Secretary to the Government of India or the Secretary to the State Government, as the case may be. The most astonishing part of this provision is that the decision taken by them as to what prejudicially affect and what does not is, because of statutory fiction, is binding and conclusive. Therefore, the government has the authority to determine what constitutes sensitive information and what does not, and the decisions taken under section 8 are unchallengeable. It is submitted binding and conclusive powers to the Secretary to the Government of India or the Secretary to the State Government, to certify that a document is of the nature specified in clause 8(a) and (b), is inappropriate since the RTI Act clearly states what information can be given.

The Act does not provide a time limit: - (i) for conducting the discreet inquiry; or (ii) for inquiry by the head of the organization/office; 5(2), 5(3) respectively, of the Act, but grants discretion to the competent authority, to provide a time frame for the inquiry. It is submitted that the absence of a time limit in the statue will retard the pace of disposal of cases and thereby defeating the objective of the Act itself. Such provision is essential to ensure the effective implementation of this statute because the malady which presently affects the country's system is not the absence of statutes, but rather their non-effective/lax implementation.

Protections provided by the Act are concealment of identity of complainant and protection against victimization of the complainant or anyone who has rendered assistance in an inquiry. It also makes provision for police protection for the complainant, witness, or anyone who has rendered assistance in the inquiry. However, it also provides for imprisonment of 2 years in case of frivolous and vexatious complaints.

It is submitted that in terms of imprisonment, the bar is too high. It acts as a big deterrent for anybody to even use the Act. There are a lot of applications that are filed in the Supreme Court and the High Courts, which are frivolous, which are misconceived, but the court does not send those people to jail. It usually just fines them. Therefore, "Currently, the issue, now, is that there are whistle-blowers. Maybe, there are not enough whistle-blowers, but we do have a lot, I mean a lot of corruption." So, the real question is how to make sure that people who find fault with the functioning, in terms of real corruption happening, can come forward without fear of victimization or suffering any consequences. And, at the same time, we need to make sure that honest officers are not unnecessarily dragged.

That is why a clause to penalize the people for mala fide, and knowingly false and misleading complaints are inevitable. The provision for penalizing frivolous / malafide complainants is acceptable, but the quantum of punishment prescribed in the Act is not at all acceptable. It will not only be a major deterrent for the prospective whistle-blowers but also increase the possibility of misuse of this provision, especially in cases where the accused is high and mighty and can influence the decision as to whether a complaint is frivolous / malafide. There may be a case where the complaint is not proved beyond a reasonable doubt, or a complaint is not found to be sustainable or a complaint is dismissed for other reasons, it should not be, termed as frivolous/ malafide, it should be expressly mentioned in the act as an explanation. It is submitted that whether a disclosure is frivolous/ malafide or not, the Competent Authority should exercise a great amount of caution and give primary importance to the fact whether the complainant while making the disclosure, had based his/ her action on the documents/ information in his possession/ knowledge. Hence, the focus should be on the intention and not the outcome of the inquiry.

Whistle-Blowers Protection (Amendment) Bill, 2015

It amendments Section 4 of the Act and takes away immunity from prosecution of the whistle-blower under the Official Secrets Act and at the same time has also included 10 exemptions in Section 4 (1A), whereby any matter that is certified by it as not being in "public interest" or affecting the "sovereignty and integrity of India" or related to "commercial confidence" or "information received in confidence from a foreign government" will remain outside the ambit of inquiry under the law. The Author thinks that instead of imposing such a blanket ban, the government of India should develop a mechanism to keep such disclosures and inquiry confidential.

Suggestions

The Whistle-blower Protection Act, 2011, took almost four years to pass, as it was first introduced on August 26, 2010, and finally fully ratified on May 12, 2014. However, s till the Act lacks teeth and therefore needs to be vigorously debated in public and thoroughly revised so that it doesn't become yet another cosmetic exercise.

The Act should provide for a specific and exhaustive definition of the term "Victimization." The protection against victimization should be more specific and exhaustive. The Clause detailing punishment for frivolous disclosures ought to be removed. This clause is a clear deterrent to those making Public Interest Disclosures and the human rights defenders, specifically. The Act does not provide an adequate definition of "frivolous disclosures," which leaves things open to manipulation. The Act should provide for cash rewards. The term "Complainant" should not be used as it reflects narrow thinking and prejudice against a person making the disclosure. Instead, the term "Whistle Blower" may be used.

The names of the whistle blowers should not be revealed even to the head of the Government Department. By seeking to make the identity of the whistle-blower a secret, the Act inadvertently creates conditions wherein anybody with that privileged information. Thus, the Act perversely endangers the Whistle-blowers and sets the stage for various kinds of attacks and retributions.

There should be a specific mechanism for moving trials on a fast track. The action taken by the Competent Authority should be put in the public domain. On receiving complaints, the Competent Authority should give a complaint number. The complainant should be apprised of the development and action completed at each stage so that he may be able to point out the deficiencies. The time limit, as provided in Clause 5(3) of the Bill, should be removed. The scope of the disclosure should be widened to include complaints relating to illegal acts performed by contractors/suppliers directly or through their employees and hired persons. Clause 10(1) of the Bill after the words "Central Government" and before the word "shall" the words "and the State Governments" may be inserted.

The CVC is not suitable to be the Competent Body under this Bill for the following reasons:-

- It has to seek permission to initiate inquiries.
- It does not have jurisdiction over politicians.

- It does not have resources and thus will need to outsource investigation.
- It only has advisory powers & thus cannot mandate enforcement of its recommendation.
- The Appointment procedure for a CVC is non-transparent, and as seen from the past controversy over the incumbent's appointment, may also lack moral authority.
- There are no provisions for transparency and accountability of the CVC in the CVC Act, or the Competent Authority in this Bill.

Lack of timeline for investigation may be used to shield corrupt public servants. Further, a long drawn investigation will render whistle-blower protection (if needed) irrelevant. The burden of proof to prove victimization is on the whistle-blower. In case of grievous hurt to the whistle-blower, a special task force under the Competent Authority should investigate issues being probed by the whistle-blower.

The act provides for an arbitrary exemption in favor of judges of the Supreme Court and judges of High Court, and there is no mechanism to report against the acts of Prime Minister and Chief Minister. The author thinks that no doubts it necessary to protect the integrity of such offices, but if true and honest complaints have been filed against them the same should be admitted. Truth should prevail in all circumstances. However, extra care should be taken in such cases to make sure that details of such complaints don't come in the public domain.

Further, whistle-blowers must be provided an opportunity for rebuttal in case a complaint is closed based on preliminary investigation. Moreover, the Act does not specify as to who will be 'Public Authority' under the Act, who is responsible for taking action against the complaint of the whistle-blower.

Conclusion

The national motto - 'Satyameva Jayate' drawn from the Mundaka Upanishad is a noble principle anyone can aspire to be. Still, the irony is people of this country don't feel sufficiently emboldened to speak out, and those who did speak out have paid with their lives.

The Government and its agencies are duty-bound to respect this motto. The conclusion is that whistle-blower law assures the people of this country, that high-placed government officials do not abuse the power of their positions. This would be a breakthrough if the concept of independent counsel is included as a special prosecutor position, this position could be used to investigate individuals holding or formerly holding certain high positions in the government and rich business people, industrialists. Effective whistleblowing arrangements are a key part of good governance. Significant informer incentives and fraud deterrence ensure whistle-blower's continued vitality. Thus far, history has shown this to be an adynamic combination in combating fraudulent activities against the government.

A strong whistle-blower protection law in India would expose corruption, illegal, and unethical activities in a way that reinforces faith in the system and also in ethical business practices. Hence, the author would like to sum up the conclusion by using the words the great Abraham Lincoln, metaphorically used, "the people can save their nation if the government will allow them".

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