



**2025**

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### **Recommended Citation**

Bharath Prakash and Jyotirmoy Banerjee, *Evaluating the Role of Whistleblowers in Modern Corporate Governance*, 4 IJHRLR 260-272 (2025).  
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# Evaluating the Role of Whistleblowers in Modern Corporate Governance

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**Manuscript Received**  
10 Jan. 2025

**Manuscript Accepted**  
12 Jan. 2025

**Manuscript Published**  
14 Jan. 2025

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## ABSTRACT

*Around the globe, we continue to see numerous exciting examples of businesses striving for excellence in corporate governance. It's truly inspiring to note how both public and private sectors are addressing past challenges and embracing transparency. Whistleblowing has emerged as an indispensable part and play a critical role in corporate governance, acting as an essential and critical tool for enhancing accountability, transparency, Integrity and ethical conduct within organizations. Whistle-blowing has surged in popularity as an essential part of corporate governance and regulatory enforcement programs, leading to positive changes and a brighter future for organizations everywhere. Corporate governance plays a vital role in steering companies towards ethical practices, boosting efficiency, and ensuring transparency across all operations. It's essential for making strategic decisions that ultimately benefit shareholders and investors alike. One key aspect of corporate governance that deserves our attention is corporate whistleblowing. The unfortunate passing of former OpenAI researcher and whistleblower Suchir Balaji has captured significant attention, reportedly due to an apparent suicide. Balaji was a passionate advocate, raising vital concerns about the ethical and legal ramifications of AI training methods. His bold critique of OpenAI's alleged copyright violations and his involvement in ongoing legal disputes showcased his commitment to accountability in the tech industry. This tragic event serves as a wake-up call, igniting conversations about the pressures and challenges faced by those who bravely speak up against powerful technology organizations. This research paper will explore the intricate dynamics of corporate whistleblowing. We will examine the concept of*

*corporate governance and the crucial roles that both whistleblowing and whistleblowers play within it. Our investigation will cover the legal frameworks governing whistleblowing in India and globally, highlighting prominent Indian whistleblowers who have made significant contributions. Finally, we will provide recommendations aimed at enhancing the effectiveness of whistleblower protection laws.*

### **KEYWORDS**

*Whistleblowers, Legislation, Corporate, Companies Act 2013*

### **INTRODUCTION**

*“Whistle-blowers protection is a policy that all government leaders support in public but few in power tolerate in private” – Thomas M. Devine<sup>1</sup>*

Corporate governance is a critical concept in the realm of business management. The term merges "corporate," which typically pertains to large-scale businesses or corporations, with "governance," a term that encompasses the processes involved in decision-making and their implementation. Essentially, corporate governance outlines the framework, procedures, and relationships that dictate how corporations are directed and controlled. This framework is key to establishing transparency, accountability, and ethical conduct within the business environment, ultimately contributing to the corporation's effectiveness and sustainability.

In the complex landscape of corporate governance, whistleblowing plays a crucial role in promoting accountability and transparency. It is clear that there are numerous examples of both effective practices and failures in their implementation. However, the success of whistleblowing initiatives depends not only on having appropriate policies but also on fostering a corporate culture that prioritizes openness and accountability. These core values can be strengthened through strict disclosure policies, effective management practices, and the establishment of procedures to identify and tackle instances of internal fraud and corruption.<sup>2</sup>

In recent years, the Indian corporate sector has faced increased scrutiny, largely due to several high-profile controversies uncovered by whistleblowers. One significant example is the Kingfisher Airlines scandal involving Vijay Mallya in 2016, which had widespread implications for the business community. This case ignited essential discussions about corporate responsibility

and highlighted serious concerns regarding the effectiveness of India's legal framework in addressing breaches and unethical conduct. The establishment of a robust whistleblower policy in India is still ongoing, and the enduring threat of retaliation continues to pose a major challenge for many employees and external individuals who seek to report unethical practices within organizations.<sup>5</sup>

Whistleblowing is a vital concept that refers to the act of reporting corruption or unlawful conduct within an organization or corporation. According to researchers Kelly and Jones, observe, in many scandals staff had voiced their concerns; the problem was getting someone to listen<sup>3</sup>. Notably, the term "whistleblower" lacks a statutory definition, suggesting that legislative intent was to give the term a broad and inclusive interpretation. Generally, a whistleblower is seen as an employee with insider knowledge of corruption, fraud, or abuses of power perpetrated by upper management. Implementing a robust whistleblowing mechanism can significantly benefit organizations by discouraging illegal activities and allowing for the early detection of wrongdoing. Such a mechanism can empower whistleblowers to report misconduct safely, without fear of retaliation.<sup>2</sup>

**Table 1**  
Types of whistleblowing

Type of whistleblowing	Examples
<b>Informal</b>	
<b>Anonymous, internal</b>	Unsigned note sent to a manager in the internal mail; telephone call to HR (or similar) giving no name
<b>Anonymous, external</b>	Tip-off to a journalist; anonymous web postings
<b>Identified, internal</b>	Discussing one's concerns with a colleague
<b>Identified, external</b>	Posts on social media criticising one's employer
<b>Formal</b>	
<b>Anonymous, internal</b>	Leaving a message on a drug error hotline
<b>Anonymous, external</b>	Medication error reporting programmes
<b>Identified, internal</b>	Raising concerns with a Speaking Up guardian
<b>Identified, external</b>	Raising concerns with a regulator; approaching a MP; speaking to a journalist

**Table 2**  
Steps in the whistleblowing process (from Near and Miceli)

<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>	<b>Step 4</b>
Observer's decision 1: is the observed activity illegal, immoral or illegitimate?	Observer's decision 2: should the activity be reported?	Organization's decision 1: should the action be halted?	Organization's decision 2: should the whistleblower be punished?

In the past decade, establishing a robust corporate governance framework has become essential for the efficient operation of organizations and companies. High-profile cases, such as the tragic murder of Satyendra Dubey and the scandals involving Infosys and Satyam Computers, have underscored the significant challenges that whistleblowers face in India, particularly due to inadequate regulations. In light of these events, numerous leading companies have adopted comprehensive whistleblower policies designed to protect the identities of employees who report misconduct, thereby fostering a more transparent and accountable corporate culture. Recently, a workshop titled "Constitution and National Unity Conference" was held in Karnataka, focusing on the pivotal role of whistleblowers in safeguarding democracy. The workshop emphasized the necessary protections to shield whistleblowers from retaliation, similar to the experiences endured by Satyendra Dubey.<sup>4</sup>

### **PRINCIPLES OF CORPORATE GOVERNANCE**

1. The board of directors must ensure fair and unbiased treatment of all stakeholders, including shareholders, employees, suppliers, and the wider community.
2. It is crucial for the board to provide timely and accurate information, particularly regarding financial performance, potential conflicts of interest, and risk factors that might affect shareholders and other stakeholders.
3. The identification and management of risks is a collaborative effort between the board and management. Both parties are responsible for implementing necessary measures to mitigate risks and ensuring all relevant stakeholders are informed about these potential challenges.
4. The board is tasked with overseeing corporate affairs and management activities to secure the company's long-term success. This includes the critical responsibility of selecting

a capable CEO who prioritizes the best interests of the company and its shareholders.

5. There is an obligation for the board and company leadership to explain the company's actions, outcomes, and overall performance. They are responsible for evaluating the organization's strengths, potential, and accomplishments, and must keep shareholders informed about significant developments.<sup>5</sup>

Additionally, principles such as awareness and impartiality are fundamental to effective corporate governance. The role of whistle-blowers is a crucial component of corporate governance, serving as a mechanism for reporting unethical behavior that may have gone unnoticed prior to the implementation of mandatory reporting practices. An effective whistleblowing framework empowers organizations to foster accountability, encouraging employees to voice their concerns to the appropriate authorities.<sup>6</sup> This proactive approach can help identify and mitigate issues related to wrongdoing, malpractice, corruption, or fraud at an early stage, thereby protecting the organization's reputation. Such frameworks typically outline specific guidelines and procedures for reporting grievances against companies or institutions that may be at fault. In India, the protection of whistle-blowers has garnered attention due to previous incidents, yet many reputable companies have integrated this mechanism into their operations to combat corrupt practices effectively.<sup>5</sup>

### **OVERVIEW OF INNOVATIVE WHISTLEBLOWING POLICIES ADOPTED BY INDIAN CORPORATIONS**

India currently lacks a dedicated legislative framework to specifically tackle the issue of whistleblowing. In 2002, the Narayan Murthy Committee on Corporate Governance, established by the Securities and Exchange Board of India (SEBI), recommended the implementation of a mandatory whistleblower policy for listed companies. Despite this, significant pushback from the corporate sector led to the proposal being altered to a non-mandatory guideline. It wasn't until the enactment of the Indian Companies Act, 2013 that a more robust requirement was established, mandating listed companies to put a whistleblowing mechanism in place.

#### ***The Companies Act, 2013***

- **SECTION 179:** The Companies Act of 2013 emerged from the Companies (Amendment) Bill 2019, which was approved by the Lok Sabha. This comprehensive act

consists of 470 sections and 7 schedules, and it is applicable throughout India. The origins of corporate regulation in the country trace back to the First Companies Act, which was enacted in 1956 following the recommendations of the Bhabha Committee. Oversight of this act falls under the purview of the Ministry of Corporate Affairs.

According to Section 177 (Clauses 9 and 10) of this Act, every listed company, along with specified categories of companies, is required to implement a vigil mechanism. This allows both directors and employees to raise concerns regarding unethical conduct, actual or suspected fraud, or breaches of the company's code of conduct or ethics policy. To safeguard whistleblowers, the Act includes provisions aimed at protecting individuals from victimization while using this mechanism. Furthermore, companies must disclose information related to their vigil mechanism on their websites and within the Board of Directors' reports.

*“Additionally, Regulation 22 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 reiterates the key aspects of Section 177 of the Companies Act, 2013. This reinforces the notion that a well-structured governance framework is indispensable for the effectiveness and integrity of an organization's daily operations.”*

- **SECTION 179(1):** – Section 179 of the act delineates the authority of the board of directors. It stipulates that the board can exercise all necessary powers and undertake actions essential for the operation of the company. Nevertheless, these actions must align with applicable laws, the company's memorandum or articles of incorporation, and all other regulations that do not conflict with the provisions of the company act.
- **SECTION 179(2):** – Any regulations made by the company during a general meeting will not undermine or invalidate any decisions previously made by the board. Those earlier decisions remain in effect.
- **SECTION 179(3):** – The Board of Directors holds the authority to formally delegate certain powers to designated individuals or groups within the organization, which may include committees, managers, or officers across branch offices. Additionally, they are able to set forth specific conditions that outline how and when these powers should be exercised.

The Whistleblower Protection Act of 2014 has notable shortcomings. One key issue is the absence of a procedure for complainants who wish to appeal decisions made by the relevant authorities. Furthermore, the 2015 amendments introduced a requirement for whistleblowers to disclose their identities, effectively excluding anonymous complaints from consideration. This amendment appears to draw inspiration from section 8 (1) of the Right to Information Act of 2005. Additionally, the most recent proposed amendment would limit disclosures to specific categories.

In 2017, an amendment was made to Section 177 of the Companies Act, changing the term from "every listed company" to "*every publicly listed company*." Implementing a vigil system can significantly benefit the organization by offering a structured avenue for whistleblowers to report illegal activities, fraudulent behavior, or other forms of misconduct occurring within the company. This approach not only fosters transparency but also enhances accountability in corporate governance.<sup>10</sup>

### **SECTION 208 AND 210**

Section 208 and Section 210 of the Companies Act, 2013 empower the Registrar or Inspector to delve into company records and subsequently prepare a report for the central government. Should the government require further information, the Registrar or Inspector is obligated to provide all pertinent documents and share any relevant recommendations regarding the investigation. Additionally, Section 210 delineates the specific procedures that the Registrar or Inspector must adhere to during their scrutiny of a company's operations.<sup>10</sup>

### **CLAUSE 49 OF THE SEBI'S EQUITY LISTING AGREEMENT.**

Clause 49 of SEBI's equity listing mandates that all listed companies establish a vigil mechanism and a whistleblower program. This provision ensures that organizations inform their employees about the policy, making it clear how to report any instances of crime, fraud, or corruption, as well as how to disclose sensitive information. Furthermore, it obligates companies to take appropriate measures to protect the interests of their directors and other stakeholders involved.<sup>10</sup>

### **ANALYZING THE WHISTLEBLOWING POLICIES OF INDIAN CORPORATIONS**

The analysis of the top 100 Indian listed companies reveals that 74 percent of these organizations articulated the objectives of



their whistleblowing policies. Common statements included intentions such as “to foster an environment that supports responsible and safeguarded whistleblowing” and “to create a platform and mechanism for employees and directors to express genuine concerns.” Furthermore, over 50 percent of the companies effectively detailed the processes and procedures designed to enhance their internal whistleblowing mechanisms. Furthermore, the policies provided a clear definition of essential terms including “Protected Disclosure,” “Act,” “Alleged Wrongful Conduct,” “Audit Committee,” “Disciplinary Action,” and “Good Faith,” among others.<sup>6</sup>

### **Reporting Guidelines**

The policies outline several key details that need to be documented, including: the "nature of the suspected violation," the "identities of the individuals involved," the "date and time of the incident," the "location of the event," and a description of "what occurred" as it pertains to the types of concerns raised. Additionally, it's important to include "descriptions of any relevant documents" that relate to the suspected violation, among other pertinent specifics. Some organizations have also made specific forms available on their websites for this purpose.<sup>7</sup>

**Table 3**

<b>Reporting Guidelines</b>	<b>% of companies</b>
Sufficient detail/factual to allow an investigation	66
Specific details should be reported	54
Prescribed reporting Form/Format given	17
Requirement to explain suspicion (with evidence)	35
Requirement to explain suspicion (without evidence)	09
Checklist for criteria of unethical behaviour	01
Multi-lingual filing of concern allowed	24
Complaint in a specific language only	03
Time frame of reporting from the occurrence of incident	27
Withdrawal of complaint	02

### **RECOMMENDATIONS FOR ENHANCING THE WHISTLEBLOWER POLICY**

Agencies such as the Securities and Exchange Board of India

(SEBI), the Directorate of Enforcement (ED), and the Central Bureau of Investigation (CBI) have amplified their efforts to address corporate misconduct and individual wrongdoings. Since India became a member of the Financial Action Task Force in 2006, significant amendments have been made to vital legislation, including the Prevention of Money Laundering Act, 2002 (PMLA), the Prevention of Corruption Act, 1988 (amended in 2018), and the Companies Act, 2013. These changes aim to improve transparency and strengthen corporate governance practices. Statistics reflect this trend, with financial crime reports escalating from 262,000 in 2020–21 to 664,000 in 2022, representing a striking 150% increase. Notably, as of last year, the ED has issued provisional attachment orders for properties valued at over ₹1 lakh crore under the PMLA.<sup>8</sup>

In terms of whistleblower incentives, SEBI's Prohibition of Insider Trading Regulations 2015 stands out as the sole framework providing monetary rewards, albeit limited to cases involving insider trading and stock market manipulation. The effectiveness of this reward system is illustrated by SEBI's decision to increase the whistleblower reward to ₹10 crore.<sup>5</sup>

However, the lack of more extensive and comprehensive reward structures has drawn criticism, especially when compared to other countries like the United States and South Korea, where financial incentives have proven effective in promoting disclosures. The only notable recognition for whistleblowing in India is the Ramon Magsaysay Award, which was bestowed in 2015 upon Sanjiv Chaturvedi, an Indian Forest Service officer, for his efforts in exposing corruption in a public office. Furthermore, several Indian whistleblowers have utilized US laws to report illicit activities to American regulators and have subsequently received rewards for their disclosures.<sup>9</sup>

The Act's scope should be broadened to encompass private sector enterprises, as it currently offers protection solely to whistleblowers reporting corruption, fraud, and irregularities within government entities.

- Regulators and relevant authorities must undertake all reasonable measures to establish a robust whistleblower policy that safeguards the anonymity of whistleblowers and shields them from retaliation or harassment.
- Amendments should be made to specific Acts to incorporate whistleblower provisions, thereby enhancing the overall whistleblower policy framework.

- It is essential for senior management to ensure that all employees are made aware of the whistleblowing policy, and to facilitate workshops that educate personnel about these guidelines.
- Organizations should also implement accountability measures for complainants who submit frivolous allegations.<sup>10</sup>

### NOTABLE WHISTLEBLOWERS

Whistleblowers play a vital role in exposing corporate misconduct, often at great personal risk. They stand up against malpractice and wrongdoing within their organizations, demonstrating remarkable integrity and courage.<sup>7</sup>

#### In India:

1. **Satyendra Dubey** served as a project manager with the National Highway Authority of India and brought to light significant financial irregularities in the Golden Quadrilateral Corridor Project. He took decisive action by suspending the engineers involved and voiced his concerns directly to Prime Minister Atal Bihari Vajpayee while requesting confidentiality. Tragically, Dubey's life ended under suspicious circumstances shortly thereafter.
2. **Manjunath Shanmugam**, a marketing manager at Indian Oil Corporation, Manjunath Shanmugam took a stand against corruption by shutting down petrol stations that were selling adulterated fuel. His dedication to ethical practices ultimately led to his tragic murder.
3. **Dinesh Thakur and the Ranbaxy Debacle**, where Dinesh Thakur, who joined Ranbaxy Laboratories in 2003, left in 2005 after alerting senior management to dubious manufacturing practices. Subsequently, he provided U.S. regulators with critical evidence of Ranbaxy's malpractice, which included falsifying drug records and violations of good manufacturing practices, as well as distributing adulterated medications.
4. **Infosys Whistleblowing Case:**, in the Infosys case, allegations of financial impropriety against the CEO and CFO, raised by a collective known as "Ethical Employees," were investigated by the audit committee, which ultimately found no supporting evidence for these claims.
5. **Edward Snowden**, in 2023, Edward Snowden voiced his

ethical concerns regarding the extensive surveillance programs executed by the American National Security Agency, highlighting privacy violations on a global scale.

6. **Frank Serpico**, who was instrumental in exposing widespread corruption within the New York City Police Department through a significant article published in the New York Times in the 1970s, prompting public awareness and reform.
7. **Chelsea Manning**, in 2010, U.S. Army intelligence analyst Chelsea Manning leaked a vast trove of classified documents to WikiLeaks. This leak revealed critical information concerning the detention, mistreatment, and abuse of prisoners, among other sensitive subjects.<sup>5</sup>

## CONCLUSION

Over the past few decades, numerous high-profile scandals have emerged globally, including the Tyco scandal, the Harshad Mehta scam, the Satyam Computer scandal, the murder of Satyendra Dubey, the Worldcom scandal, and issues involving AIG. These incidents have significantly impacted many lives, highlighting the urgent need for companies to implement robust measures that protect ordinary individuals from becoming victims of such fraudulent activities. It is crucial for organizations to prioritize transparency and accountability to safeguard the interests of the public.

The role of whistle-blowers is a crucial component of corporate governance, serving as a mechanism for reporting unethical behavior that may have gone unnoticed prior to the implementation of mandatory reporting practices. An effective whistleblowing framework empowers organizations to foster accountability, encouraging employees to voice their concerns to the appropriate authorities. This proactive approach can help identify and mitigate issues related to wrongdoing, malpractice, corruption, or fraud at an early stage, thereby protecting the organization's reputation. Such frameworks typically outline specific guidelines and procedures for reporting grievances against companies or institutions that may be at fault. In India, the protection of whistle-blowers has garnered attention due to previous incidents, yet many reputable companies have integrated this mechanism into their operations to combat corrupt practices effectively.

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