

BUSINESS ETHICS THROUGH WHISTLE BLOWING

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ABSTRACT

In a company form of business the money of public is used by the issue of shares or debentures and at the same time it is essential to check whether money received by these companies is utilized properly. In order to control the activities of the business the whistle-blower act is framed to empower the complainant and act to check fraud at an early stage. The complainant can be an insider or an outsider. The act specifies how complaints can be filed and the complainant can be protected. The act encourages reporting any wrongdoing. The paper studies the reporting of unethical business by whistle-blowing and the problems concerned with it. It critically studies the whistleblower act and suggests suitable way-out to overcome the hurdles of this act and improve the ethical aspect of the business.

Keywords: Whistle Blowing, Business Ethics, Whistleblower; Corporate Fraud.

Introduction

Business ethics is checking whether the business's working is morally correct. Working in an ethical way is checking what is right and what is wrong and then selecting the right course of action. The golden rule of ethics is "treat others as you would like to be treated". Ethics is essential in business because it promotes good relationships with stakeholders, reduces the level of corruption, and increases the confidence and trust of investors. Ethical business is an index for development. Framing of rules and laws is essential to keep a check on unethical activities but it is not sufficient. Laws alone cannot protect society but ethics can. A recent example of unethical behaviour where the cancer drug Nexavar sold by Bayer in the USA costs \$69,000 whereas the same drug is available in India and produced by Natco Pharma for \$177. The statement given by their CEO supporting the high price of the drug is that it is produced for wealthy western patients who can afford it.

Corporate fraud is one of the major problems in every country. To detect it in advance various mechanisms are used. The Whistleblower policy is one among them. It empowers the complainant to blow a whistle if any wrongdoing one notices. The whistleblower can be a contractor, a present or past employee, or any individual who comes to know about unethical business practices. The whistleblower exposes wrongdoing of business, violation of laws, fraud, and corruption by blowing the whistle. It can be internal whistleblower where reporting of wrongdoing is done to the senior authority of the company, external whistleblower where a complaint regarding wrongdoing is filed to the outsider, government whistle blowing where government officials are informed about wrong practices in the organization, corporate whistleblower, when any wrongdoing is reported in the company and last is third party whistle blowing where an external agency is informed about the wrongdoing.

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Review of Literature

It is the responsibility of human resource management department to provide a trustful and safe voicing space where employees can speak up without thinking of its after effects Meghan Van Portfliet; Muhammad Irfan: Katekeny (2022); Environment of an organisation and national culture affects business ethics perception of employees Natalla Ermasova (2021); conflict of interest should be taken seriously to avoid unethical business; Surabhi Jain, Teena Bagga, Rashmi Aggarwal (2021); when governance is centralised institutional measures should be taken to promote whistle blowing R. Guy Thomos (2020); incentives to whistle blowers and societal, legal and organisational effort has a crucial role in whistle blowing Tatiana Iwai, Luciana Yeung, Rinaldo Artes (2020) There are gaps in programmes that reward whistleblower, whistle is more likely blown when it is found that external factors may do something about it Janica Bollace; Maurico Schweitzer and Samir Nurmohamad (2019); Whistle blowing mechanism should be encouraged to address corruption in public sectors Fawole, Temitope Sarah, Fasua, Henry Kehinde (2017); Different tools can be used by the whistleblower to blow the whistle; Janet Malek Ph.D. (2010); Virtual channels to blow whistle can be useful as it can avoid potential retaliation Hengky Latan, Charbel Jose Chiappetta Jabbour, Anna Beatriz Lopes de Sousa Jabbour (2010)

Research Gap

There is a lack of research on the whistleblower policy applicable in India

Objectives

- To critically understand the Whistleblower policy in India
- To check the use of whistle blowing policy for detecting fraud/unethical business

Research Methodology

Purposive sampling has been used in terms of collecting recent corporate frauds where frauds were detected through whistle-blowing. A secondary source is used for the collection of information and data.

Whistleblower Policy

The policy was formulated and it became effective on November 4th, 2010. The aim of this policy was to provide an opportunity for employees to report unethical behaviour in the Company. Under clause 49 of the company's act, it is made non-mandatory for the listed companies to establish a mechanism of Whistle Blower Policy. For its implementation, there should be an authority to whom the whistleblower will report. The authority must be capable and senior to most people working in the organisation. Further identity of the whistleblower shall not be disclosed. It should also be ensured that there will be no retaliation against the whistle-blower.

Whistle Blower Protection Act 2014

The act protects the whistle-blower who reports an act of corruption or misuse of power by a public servant. The act penalises those who disclose the identity of the complainant. It also penalises the person who knowingly makes false complaints.

The act covers only employees of the central government. The central vigilance commission can only recommend action against public servants it has no power to punish the public servant.

If anyone files a false complaint he may be sentenced to jail for a period of two years. This prevents the filing of false cases.

Whistleblower protection Act (Amendment Bill 2015)

This bill was introduced as an amendment to the whistleblower protection act and was passed in parliament on 18th February 2020. In this amendment, a whistleblower is not allowed to disclose any document which comes under the official secrets Act of 1923. It in this way tries to control the activities of whistleblowers.

Laws at International Level in Support for Protection of Whistle Blower

- African Union Convention on preventing and combating corruption
- Organization of American States Inter-American Convention Against Corruption
- Group of 20
- Organisation for Economic Cooperation and Development
- Asia Pacific Economic Cooperation

- After 2009 it was seen that countries have framed dedicated whistleblower protection laws. In the US reward given to whistleblowers is highly effective.
- In the public sector, whistleblowers play an important role to report unethical issues, fraud, or corruption at an early stage.

Percentage of Employees who Reported Misconduct in the year 2020

Name of the country	Percentage
Mexico	85%
Brazil	79%
France	83%
Germany	78%
Spain	76%
United Kingdom	82%
China	77%
India	97%

Source: ILO; Technical meeting on the protection of whistle-blowers in the Public Sector

Whistleblower Policy in Denmark

It is one of the best whistle-blower policies in the world. It covers all government and nongovernment organisations employing 50 or more. There shall be an internal system of whistle-blowing where employees can raise their voices. Complaints can be filed orally or in writing. There is also an external system of whistle-blowing where complaints can be filed without filing it internally. The external whistle-blowing platform can be used by also those employees of the organization having less than 50 employees. In case of the whistle-blower suffered detrimental treatment it will be the duty of the employer to prove that it was not retaliation due to whistle-blowing. Within three months the whistleblower will get feedback on his complaint.

Cases of Whistle Blowing

- Arvind Gupta shareholder of ICICI bank and an activist blew the whistle regarding deals between Videocon Group and NuPower Renewables Limited in 2016. He complained about conflict of interest and corporate misbehavior in giving loans and considerations received by the owner of Newpower Deepak Kochar the husband of Chanda Kochar. At the time the complaint was filed in 2016 it received no attention but it was restored when after an inquiry charges were published in the newspaper. In 2017 84% of the loan given to Deepak Kochar was declared as a nonperforming asset. The court found Chandra Kochar guilty.
- The case of Whistleblowing in Ranbaxy USA branch by former employee Dinesh Thakur where he exposed doubtful activities related to the manufacturing of medicines by the company. Ranbaxy was fined for false claims and distributing adulterated drugs for \$500 million. The complainant filed a complaint under a whistle blowing policy in the USA. Dinesh Thakur director of Project and information management quit his job in 2005 when the senior management at Ranbaxy refused to act on complaints filed by him.
- In the year 2002 in Enron (commodity and service Company) case a whistle was blown internally by Sherron Watkins to report unethical accounting practices to manipulate financial statements. She wrote a letter to the top management about the possible risk of the collapse of Enron in the future. Enron faced stiff competition in the energy trading business so it used dubious accounting practices to hide its problems. Many Enron executives were found guilty and sentenced to prison.
- World Com scandal. It was a leading telecom company in 1990 in the USA. It showed accounting fraud by showing expenses of a revenue nature in the balance sheet as an asset resulting in the manipulation of accounts to show a good picture of the company as it is growing rapidly. An internal complaint was received from John Stupka accounts receivable manager working at WorldCom. The company underreported line cost and inflated revenue by 1 billion dollars. It further reduced the amount kept in reserve by \$2.8 billion and showed it on the revenue side. The company also showed operating expenses worth \$3.85 billion as long-term capital investment. These all showed the company as profitable at \$3.8 billion in the year 2001

- The chief financial officer of construction giant Carillion blew the whistle on accounting issues. To meet financial targets the staff manipulated accounts. KPMG was fined \$17.27 million over the Carillion scandal.

Conclusion

To conclude it can be said that People are less informed about the use of the whistle-blower policy and they will blow it only when they feel that some corrective action will be taken after whistle-blowing. In order to make business ethical there must not be conflict of interest. Business interest must be given priority.. It is important to maintain the confidentiality of the whistle-blower. There shall be an effective reward system for whistle-blowing around the world like in the United States. SEBI recently increased rewards to whistleblowers from 1 crore to 10 crores under the prohibition of insider trading is a good step to control insider trading. In India, only public employees are protected under the whistleblower protection Act whereas, in Japan and South Korea, both private and public employees are protected. In order to make it successful there shall be support from the top management. Employees working in the company should be given the training to use this policy. The power of the central vigilance commission is recommendatory in nature in case of fault find via whistle-blowing. Strengthening the protection of whistleblowers will increase reporting of fraud by blowing the whistle.

Limitations of the Study

In the research paper, it is not explored which companies are voluntarily using mechanisms to report fraud or unethical work.

Author's contribution

The whistleblower amendment Act 2015 requires suitable changes to empower whistle-blowers. Based on the recommendation of the committee constituted by SEBI under the chairmanship of Shri N.R. Narayana Murthy it shall be made mandatory for every listed company to have a mechanism of whistleblower policy which is optional at present. It will give voice to the sufferer.

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