

## Can Whistleblowers live 'Happily Ever After?' A Review of Literature on Whistleblowing and its Implications

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**ABSTRACT** - Speech is silver but silence is gold is an age old proverb. But is silence always gold? There are times when cost of silence can be very high and may cost innocent lives too! In such grave situations, some people show the courage to stand up and speak out and save others from wrongdoing and injustice. Whistleblowers are such brave people who blow the lid off malpractices, corruption and wrongdoing happening around them. Whistleblowing refers to reporting of illegal, unethical, immoral or illegitimate practices within an organization to appropriate authorities for a corrective action. The purpose of this paper is to review existing literature on whistleblowing and study what consequences whistleblowers normally face. An attempt has been made to examine the legislation prevalent in different parts of the world for whistleblower protection. It also highlights some prominent cases across the world to suggest the strong need for increasing the legal protection to whistleblowers and some suggestions for effectiveness. As Albert Einstein has rightly said, "The world is a dangerous place, not because of those who do evil but because of those who look on and do nothing!" As such, it is very important to speak up in the face of wrong doing and not just being a silent spectator.

**Keywords** - Whistleblowing, ethics, legislation, protection, whistleblowers, wrongdoing, retaliation.

### I. INTRODUCTION

*"To stand in silence when they should be protesting makes cowards out of men."*  
Abraham Lincoln.

We are living in an era of industrial and information revolution. The growth of corporate culture has brought with it the spread of democratic systems, increased prosperity and wealth, and diversified local economies. But at the same time it has also created extreme degrees of greed, exploitation, corruption and environmental destruction. Strong focus on ethics during testing times of crises and confusion helps the leaders and managers to retain a strong moral compass. In today's business world, ethics are both important and vital if one is to succeed in the long run. The world has seen the shocking and sudden demise of Enron and WorldCom – both brought down by their own officers. Lack of attention to corporate ethics can be fatal for a business concern, with the potential for a single employee to topple even successful business giants. Setting the right leadership values is crucial for good ethics in an enterprise. It has become essential for every progressive company to behave in a socially responsible manner and become good corporate citizen. Organizations have to create a strong corporate culture with major emphasis on ethical and moral conduct of individual employees. Among the myriad organizational behaviours seen in the moral and ethical context, Whistleblowing as a behaviour has generated a lot of interest in recent years. With U.S. National Security Agency's computer technician Edward Snowden's shocking revelations about the extent of state snooping — coupled with the court martial of Army Private Bradley Manning — 2013 was the year of the

whistleblower. These high profile cases also highlighted the miserable plight of the whistleblowers along with the state's enduring efforts to prosecute them as a means to reinforce rank and file obedience. In this era of Information Revolution, the whistleblowing game is changing what information is leaked and who has the opportunity to leak it. However, what has hardly changed are the consequences for those who show the extreme courage to become whistleblowers.

In business organizations or public agencies, whistle-blowing would refer to disclosure to the public by an employee or an organizational member of illegal or immoral behaviour of an employer or an organization that causes or could cause harm to a third party or to the public. (Shaw, 2007). It is 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 (Near & Miceli, 1985; Dworkin, 2002; Silverman, 2008). In simple words, it is the process by which insiders go public with their claims of unfair practices within organizations. Wikipedia defines a *Whistleblower* as a person who raises a concern about wrongdoing occurring in an organization or body of people.

## II. REVIEW OF LITERATURE

People vary about their views regarding whistleblowers. Some see them as heroes while some as traitors. Mostly people see them as selfless martyrs concerned about public welfare while others see them as snitches who are only concerned about personal glory and fame. They may be considered as do gooders or cranks - depending on one's point of view. Whistleblowing is different from other related practices such as in-house criticism or anonymous leaks.

This term originated from the practice of English Cops who would blow a whistle when they saw a crime being committed (Cavico, 2004). Origins of whistleblowing in the United States can be traced to 1863 in response to fraud within the governmental sector. United States whistleblowing legislation traces back to the enactment of the Federal False Claims

Act from efforts to reduce fraud with suppliers to the government during the Civil War (Macey, 2007).

The **Challenger** incident, in which the NASA crew perished after management failed to address the concerns of the shuttle engineers, provides one tragic example of the consequences that can befall organization that do not respond appropriately to internal whistle-blower (Miceli and Near, 1988). Instead of escalating the issue, the engineers remained silent and allowed the Challenger to launch, only to tumble back to earth 73 seconds later and kill all of its passengers. No one blew the whistle (Boisjoly, Curtis & Mellican, 1989; Radin, 2007).

The **Ford Pinto** debacle represents a noteworthy, tremendously public, product defect case. The situation began during the 1960s when Ford Motor Company began selling defective Pinto cars. Competition was intense and Ford was hesitant to do anything that might jeopardize its market position. Even when it was determined that faulty design of the Pinto fuel system could lead to explosions upon impact during car collisions, Ford opted not to notify purchasers, to correct the design, or to do anything that might jeopardize its financial position. There is evidence that managers calculated the risk of potential harm and placed a dollar value on the potential loss of life. Ford managers decided that it was less expensive to pay that anticipated cost than to fix the automotive part. Employees apparently did not feel comfortable contradicting their managers. It was not until the late 1970s that the NHTSA demanded a recall of Ford Pintos. On June 7, 1978, Ford recalled 1.5 million cars (Wills, Swanson, Satchi & Thompson).

It is clear from all the above mentioned cases that if managerial gatekeepers do not act upon information properly and promptly, it is only through the actions of whistleblowers that organization and their stakeholders can be protected. Whistleblowing is of vital consequence to the global workplace (Caux Roundtable, 2004).

In 1971, **Daniel Ellsberg**, a former Marine and Vietnam War veteran, who was working as an analyst at the Rand Corporation, 'blew

the whistle' on a top-secret Defence Department document on the Vietnam War, which came to be known as the **Pentagon Papers**. Claiming to be driven by his conscience, Ellsberg revealed to the *New York Times* and the *Washington Post* how successive U.S. Presidents had dragged the country into an immoral and unwinnable war, and had lied to Americans about its course and outcomes. His disclosure played a major part in turning the tide of public opinion against the Vietnam War. The U.S. Government responded by prosecuting Ellsberg on 12 charges, leading to a total sentence of 115 years if convicted. A smear campaign was launched against Ellsberg; burglars were engaged to break into his psychiatrist's office in the hope of finding something defamatory; his phone was tapped; thugs were engaged to physically attack him; and the trial judge was influenced with the offer of the post of FBI Director. When these plots were exposed, the Judge had to abandon the trial and acquit Ellsberg. *The Guardian* subsequently named Daniel Ellsberg "the most important whistleblower of the past half century."

**Dr. Stephen Bolsin**, a former anaesthetist at the U.K.'s Bristol Royal Infirmary, (1988-95) blew the whistle on a large number of unnecessary deaths of children occurring during heart surgeries due to the incompetence of the hospital's surgeons. Ostracized by other doctors, Dr. Bolsin was forced to immigrate to Australia in 1995. But his disclosure led to enquiries by the General Medical Council and the government; the debarment from future practice of two surgeons and the hospital chief in 1998; and also several far-reaching reforms in the National Health Service (NHS). It also acted as a catalyst for the enactment of the U.K.'s Public Interest Disclosure Act of 1998.

**Jeffrey Wigand**, Vice president of research and development at tobacco company Brown & Williamson, on February 4, 1996 stated on the CBS news program *60 Minutes* that the company intentionally manipulated the level of nicotine in cigarette smoke to addict smokers. He spoke about the company's knowledge of nicotine's addictive properties, its reckless use of harmful additives, its

quashing of research on safe cigarettes, and a variety of other abuses. He was the central witness in the U.S. government's lawsuit against the tobacco industry, which eventually led to the \$246 billion federal tobacco settlement. Wigand claims that he was subsequently harassed and received anonymous death threats. He was portrayed by Russell Crowe in the 1999 film *The Insider*.

In December 2002, **Time Magazine** lauded three whistleblowers as heroes by naming them collectively as '**Person of the Year**'. They were **Sherron Watkins of Enron, Coleen Rowley of the FBI and Cynthia Cooper of WorldCom**. These persons showed bravery to expose how American corporations and government agencies really operate. As a result of their efforts, the general public came to know about the serious malpractices and manipulations which would not have come to surface otherwise.

In 2010 **Bradley Manning**, a US Army intelligence analyst, released the largest set of classified documents ever, mostly published by WikiLeaks and their media partners. The material included videos of the July 12, 2007 Baghdad airstrike and the 2009 Granai airstrike in Afghanistan; 250,000 United States diplomatic cables; and 500,000 army reports that came to be known as the Iraq War logs and Afghan War logs. Manning was convicted of violating the Espionage Act and other offenses and sentenced to 35 years in prison.

**Edward Snowden** was an American computer specialist, former contractor for the National Security Agency (NSA). He came to international attention when he disclosed thousands of classified documents to *The Guardian* and *The Washington Post* in June, 2013. The leaked documents revealed operational details of global surveillance programs run by the NSA and the other Five Eyes governments of the United Kingdom, Australia, Canada, and New Zealand, with the cooperation of a number of businesses and European governments. The release of classified material was called the most significant leak in US history by Pentagon Papers leaker Daniel Ellsberg. He is

considered a fugitive by American authorities who later on charged him with espionage and theft of Government property. He now lives in an undisclosed location in Russia. India also had its share of prominent whistleblowers from V.P. Singh to Manoj Prabhakar to S.Dubey. These people brought to light the various scandals in different areas like Government, sports etc. But the sad part is that there is hardly any protection to whistleblowers in India and most of them have ended up paying with their lives!

An engineer, **Satyendra Dubey**, was murdered in November 2003; Dubey had blown the whistle in a corruption case in the National Highways Authority of India's Golden Quadrilateral project.

Two years later, an Indian Oil Corporation Manager, **Shanmughan Manjunath**, was murdered for sealing a petrol pump that was selling adulterated fuel.

A Karnataka official **SP Mahantesh**, said to be a whistle-blower in controversial land allotments by societies was murdered in May 2012. Mahantesh was working as Deputy Director of the audit wing in the state's Cooperative department and had reported irregularities in different societies involving some officials and political figures.

In terms of personality of whistle-blower, prior studies found that persons of higher professional status may be more likely to blow the whistle because they receive greater levels of support from outside the organization (Perucci, Anderson, Schendel and Trachtman, 1980). Also, women are more likely than men to be an external whistle-blower (Gutner, 2002). In the wake of Enron, Tyco, Siemens, WorldCom, Parmalat and many more corporate scandals that have rocked the early years of this millennium, whistleblowing has become a focal point of attention for corporations and their stakeholders. There is a lot of concern surrounding whether those individuals who are in a position to prevent potential harm, i.e. the insiders, have the support, voice and protection to enable them to do so (Dworkin, 2002). Studies also indicate that the 'whistle' often remains silent outside the United States, particularly in non-

western countries. It can be attributed to local culture and societal norms (Martens and Crowell, 2002). Till date not much scholarly attention has been paid to global policies on whistleblowing (Keenan, 2007).

### III. OBJECTIVES OF STUDY

This paper is an attempt to:

- i. conduct a brief review of existing literature on whistleblowing,
- ii. study the consequences of whistleblowing in previous cases,
- iii. overview the existing legislation for whistleblower protection in some countries and make suggestions.

### IV. METHODOLOGY

This paper relies primarily on secondary data and information available in the general media and published journals. Prominent whistleblowing cases were studied and analysed to find out how well or badly whistle blowing has worked against official abuse, fraud and unethical conducts that endanger the public interest. Study of the existing legislation for whistleblower protection in major countries of the world was also made to find out what legal cushion is available to whistleblowers and how effective those legislations are.

### V. LEGISLATION FOR WHISTLEBLOWER PROTECTION

The legal environment has a primary influence on a worker's decision to report or not to report perceived wrongdoing because of her or his analysis of the potential for retaliation, among other factors (Magnier, 2002). It is imperative to have the right kind of legal provisions to encourage whistleblowing by employees. Many countries have devised and adopted a variety of laws and procedures for protecting and encouraging whistleblowing as discussed below:

U.S.A.

The US has dozens of whistleblower laws at the state and federal level designed to achieve other health, safety or welfare objectives. The three principal acts, however, are the Whistleblower Protection Act 1989, the Sarbanes-Oxley Act (SOX), and the False Claims Act.

The U.S. Whistleblowers Protect Act of 1989 (amended in 1994) protects public interest disclosures by federal employees. An Office of Special Counsel (OSC) was created to aid whistleblowers in the investigation of their disclosures and prevention of retaliatory action against them. It has had only modest success due to a series of hostile judicial rulings undercutting the protection afforded by the Act. After the spectacular collapse of Enron and WorldCom, U.S. Congress passed the Sarbanes-Oxley Act of 2002 granting major legal protection to whistleblowers in publicly traded companies. Anyone retaliating against a corporate whistleblower can now be imprisoned up to 10 years. The Department of Labour is required to complete its adjudication of whistleblower cases within 180 days. Remedies include reinstatement, back pay with interest, compensatory damages, special damages, attorney fees and costs.

The Federal False Claims Act was designed to stop fraud against the government and was passed during the US civil war under the administration of Abraham Lincoln. Regarded as the single most successful whistleblowing legislation in the country, the False Claims Act works by providing the whistleblower between 15 to 30 per cent of the government's total recovery, the percentage depending on the extent to which the whistleblower took the action that enabled the recovery to take place.

U.K.

The U.K.'s Public Interest Disclosure Act of 1998 is a unique piece of legislation providing protection to employees in the public, private and non-profit sectors, including those working outside the U.K. Under the law, employment tribunals have power to 'freeze' a dismissal and make unlimited compensation awards.

CANADA

Canada has very few laws which pertain directly to whistleblowing. The federal

government enacted the Public Servants Disclosure Protection Act in 2007. The intent of this act is to protect most of the federal public service from reprisals for reporting wrongdoing. However, this Act has been extensively criticized as setting too many conditions on whistleblowers and for protecting wrongdoers.

EUROPEAN UNION (EU)

Only six countries in Europe have any type of dedicated whistleblower legislation – United Kingdom (UK), Norway, Netherlands, Hungary, Romania, and Switzerland. Of these six countries, only two, UK and Norway, have dedicated whistleblower protection laws that extend to all workers, in both the public and private sectors, including contractors and consultants. The other EU countries either have very limited or basically no legal protection for whistleblowers specifically.

INDIA

Whistle Blowers Protection Bill was approved by the Cabinet of India as part of a drive to eliminate corruption in the country's bureaucracy and passed by the Lok Sabha on 27<sup>th</sup> December, 2011. The Bill was passed by Rajya Sabha on 21<sup>st</sup> February, 2014 and received President's assent on 9<sup>th</sup> May, 2014.

A number of countries such as Australia, South Korea, Argentina, Russia, Slovakia, Mexico and Nigeria have enacted or are in the process of enacting whistleblowers protection legislation (but only to government employees). However, there are some countries where whistleblowing is considered a negative phenomenon and is discouraged. In countries like Australia, Germany, Malaysia and South Africa, it is considered as a sin to tattle on a colleague. It involves a potential risk of grave consequences and social stigma and disincentives for whistleblowers in these countries.

AUSTRALIA

It is a cardinal sin in Australia to 'tattle' on a colleague (Lambert, 2005). Being labelled a 'dobber' in Australia is a serious insult and dobbing is considered a betrayal in a culture where 'mateship' is often omnipotent and speaking out has strong social disincentives (Trott, 2004).

## JAPAN

Social norms regarding family and relationships are responsible for absence of a strong culture of whistleblowing in Japan. Workers are discouraged from questioning management decisions and are expected to show unbounded loyalty to superiors and co-workers (Dworkin, 2002). In Korea, China and in some Japanese traditions, there are extraordinary psychological pressures against whistleblowing (Boettcher, 2007).

## GERMANY

In Germany anything that resembles turning friends or neighbours or colleagues against one another is resisted. Certain pockets of German people continue to feel the legacy of World War II and Nazi Germany (Gibeau, 2006). Even though the purpose of whistleblowing is very different, reporting structures still encounter considerable resistance because of Germany's particular history.

## SOUTH AFRICA

Like Germany, South Africa also suffers from a history of an authoritarian regime that made use of state informers. Whistleblowing is therefore viewed unfavourably in many parts of South Africa. Hostility towards these informants was historically so high that they often faced public death if caught or suspected of reporting (Martens & Crowell, 2002a; Martens & Crowell, 2002b). However, now South Africa has followed the U.K. example in providing protection to employees of all organizations through its Protected Disclosures Act of 2000.

## VI. IMPLICATIONS OF WHISTLEBLOWING

*"If you must sin, sin against God, not against the bureaucracy. God may forgive you, but the bureaucracy never will!" - U.S. Admiral Hyman Rickover*

Whistleblowers are normally subjected to hostility and retaliation in the form of intimidation, harassment, reprisal, dismissal and violence by their fellow colleagues and superiors and in the worst circumstances, even death. Jeffrey Wigand, the one-time tobacco executive who blew the whistle on Brown and Williamson Tobacco Company paid dearly for

going public. He was fired. Amid lawsuits, countersuits, and an exhaustive smear campaign orchestrated by the company, Wigand lost his family, his privacy, and his reputation. Unable to find a corporate job after his stint at B& W, he took a job at DuPont Manual High School, in Louisville, where he taught science and Japanese for \$30,000 a year -- one-tenth of his former salary (Salter, 2007). In his own words, he states, "I never expected death threats against me and my family. I never expected to find a bullet in my mailbox. I never expected a 500-page dossier that was part of a campaign to ruin me."

Since Sherron Watkins of Enron fame lost her job, her main livelihood has been giving speeches at management congresses and proceeds from a book she has co-authored about her experiences at Enron and the problems of the US corporate culture (Ackman, 2002).

One researcher has shown that 68% of whistleblowers will have difficulty finding employment. Whistle blowers who survive on the job are likely to face horrendous hostile environment at work. Almost all are put on a black-list which denies them any access to sensitive information about the company, and limits their performances and possibility for advancement (Glazer & Glazer, 1989).

Lubalin and Matheson (1999) conducted a survey of two groups: one comprising of the whistleblowers and one of the individuals accused but acquitted of scientific misconduct. Their paper was an attempt to examine how well the system works to protect both sets of participants in the cases of alleged misconduct. It was found that substantial minorities of both sets face no major adverse outcomes in the beginning when the allegations are made and pursued. However, during this time the whistleblowers report more severe negative consequences as compared to those accused. In the long run, both groups report little impact on various aspects of their career. The accused, but acquitted, apparently face worse outcomes than the whistleblowers in various spheres of their personal lives such as mental health, physical health, self-esteem and self-identity.

Lewis and Uys (2007) compared the relative success of two major whistleblower protection legislations in U.K. and South Africa i.e. the Public Interest Disclosures Act, 1998 of U.K. and the Protected Disclosures Act, 2000 of South Africa. They concluded that the most important feature of the relevant laws in both the countries is that they recognise and highlight the need to protect the interests of the workers who disclose in the public interest. Although the legislation provisions are important primary steps but a lot more needs to be done. It made important suggestions and proposals for reforms in the existing legislation.

Qusqas and Kleiner (2001) undertook a study on the difficulties that the whistleblowers face when they try to find employment later on, especially in the public sector. Some case studies were studied as evidence. They recommended that the best solution to the problem is preventing the need for whistleblowing in the first place by building an atmosphere of trust and confidence.

Foder (2014) suggested that as per government reports, many federal employees in the United States feel reluctant to blow the whistle as they fear that it makes them vulnerable to retaliation. As per a 2010 survey by Merit Systems Protection Board, that hears appeals about official actions taken against federal employees, almost 30% of respondents felt that if they blow the whistle, their life may become more difficult. Nearly 11% employees said that they had personally witnessed illegal or wasteful activities at their workplace. The most important thing was to establish a strong organisational culture and climate that encouraged employees to report problems. Only 7% of the whistleblowers were given any credit by the management. Almost one third of them were threatened with or actually faced dire consequences such as reprisal in form of firing, demotion, suspension or transfers to unfavourable locations. Mc Donald and Kathy (2000) conducted a study to examine the professional consequences of whistleblowing in nursing. A descriptive survey was designed

for a group of 95 respondents which included 70 respondents as whistleblowers and 25 were non-whistleblowers. They observed that there were severe professional reprisals if nurses reported misconduct. Official reprisals included 4% cases of demotion, 11% reprimand and 9% referrals to psychiatrist. Professional reprisals were also received by them in the form of threats (16%), rejection by peers (14%), being treated as a traitor (14%) and pressure to resign from the job (7%). Roughly, 10% reported that they felt that their career had come to a standstill. Almost 70% of whistleblowers and 64% non-whistleblowers experienced stress related physical problems such as restlessness, fatigue, insomnia, headaches and increased smoking. Roughly 94% of whistleblowers and 92% of non-whistleblowers suffered stress induced emotional problems like anxiety, anger and disillusionment. As far as physical health issues were concerned, both whistleblowers and non-whistleblowers suffered a similar percentage. However, non-whistleblowers suffered a greater degree of emotional health issues such as guilt, unworthiness and shame.

#### VII. SUGGESTIONS FOR ENCOURAGING WHISTLEBLOWING

A survey by the Ethics Resource Center (ERC) found that the presence of a strong and ethical corporate culture can dramatically reduce corporate misconduct and increase the likelihood of reporting. In fact, while 98% of employees observed misconduct in weak cultural environments, only 24% of employees in strong cultures observed the same – well below the national average. The ERC concluded that the —strength of the enterprise-wide ethics culture is the single factor with the greatest impact on misconduct (Ethics Resource Center, 2007). Developing a strong, ethical, corporate culture depends heavily on communication, commitment and leadership. There is a dire need of effective ethical leaders in organizations. Several ways that companies can help decrease the fear of retaliation and

encourage reporting have been suggested (Glazer, Glazer 1989):

1. Providing ample avenues for employees to report concerns- Examples of multiple means include reporting via telephone, email, reporting in person to members of management. Another reason to provide multiple avenues for in-person reports is to avoid requiring employees to report to the person responsible for the purported misconduct.
2. Anonymity- The option of anonymous reporting provides those employees who fear retaliation with a safer option of reporting, and it also conveys to employees the company's seriousness about encouraging reporting and preventing retaliation.
3. Publicizing the availability and importance of reporting- It fosters a climate of openness. Companies could publicize by hanging posters, providing written policies and training materials, and briefings by management and in company newsletters.
4. Support of leadership- It is critical that an organization's leadership clearly and consistently articulate its support for reporting and its condemnation of retaliation.
5. Reporting up policy- Companies should provide guidance to management regarding what types of concerns or issues must be reported up to corporate headquarters.
6. Prompt and fair confidential investigations- In order to encourage employees to report, companies should investigate reports promptly and appropriately including maintaining confidentiality to the extent reasonably possible.
7. Discipline- When companies fail to discipline those employees found to have violated their policies in a reasonably consistent manner, employees may perceive reporting to be futile.
8. Rewards- Companies that reward employees who try to prevent further misconduct will be viewed as more ethical by external stakeholders. The rewards can be monetary or non-monetary.

## VIII. CONCLUSION

As globalization strains the ability to control operations around the world, internal reporting systems play an increasingly integral role. However, setting up internal reporting mechanisms is merely the first step. The real challenge lies in ensuring that people are willing and able to use them. The act of whistleblowing requires great courage and is not for the faint-hearted. It might land you on the cover page of Time Magazine or on the road! It is a dilemma situation but one should be true to one's own moral code and values. On one side, whistleblowing is the ultimate act of justice, standing up for what's right. On the other side, it can be seen as the ultimate betrayal. Being a whistleblower often comes with harsh consequences, yet what is even more dangerous is a society whose citizens are afraid to speak the truth. Whistleblowers should not be tortured or punished like traitors. They should be celebrated and rewarded like Heroes: People who do the right things for the right reasons. Like Edward Snowden, the famous U.S. whistleblower said, *"I am neither a Traitor nor a Hero. I am an American."* Injustice anywhere is a threat to justice everywhere. Martin Luther King, Jr. has very rightly said, 'He who passively accepts evil is as much involved in it as he who helps to perpetrate it.' People who value their privileges above their principles soon lose both. Truth will set a person free, but first it will make him miserable. Eventually, whistleblowers have their heads held high, despite the price they have paid, because freedom is priceless! They put their career, happiness, peace and even their life at stake for making the toughest choice, i.e. the choice of voice versus silence. It becomes the duty of everyone to protect and reward them and not torture them. There is a lot of scope for research in this field so that one can come up with an effective whistleblower protection policy and make suggestions for improving the existing whistleblower legislation.



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