

WHISTLEBLOWER'S PROTECTION SCHEMES: A COMPARATIVE STUDY

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I. INTRODUCTION

Corruption is a common phenomenon in several countries, only the degree of corruption differs. It is not as if there is corruption only in developing or poorer countries, there is corruption in developed countries too.¹ The legal foundation for exposure of corruption, misconduct or mal-administration by public servant was laid down by the Supreme Court in *R. Rajagopal v. State of Tamil Nadu*.² The case involved the publication of serious misconduct of public servants by a convict who was serial-killer. The case squarely deals with the right to know and the limits of privacy of public servants. The declaration of law by the Supreme Court in this case is of fundamental importance on the subject of exposure of corrupt officials. If the law permits furnishing of information regarding corruption, past present or impending and gives protection to the informants from reprisals, unless the disclosure is proved to be malicious, such a law can play a very useful role. The Supreme Court has accepted in *Dinesh Trivedi v. Union of India*³ that the right to know is part of the fundamental right of freedom of speech and expression guaranteed under Article 19(1)(a). Of course, it will be subject to the reasonable restrictions, as may be imposed by law under Article 19(2).

It is now recognized that while a public servant may be subject to a duty of confidentiality, this duty does not extend to remaining silent regarding corruption of other public servants. Society is entitled to know and public interest is better served if corruption or mal-administration is exposed. The whistleblower laws are based upon this principle. The observations of Supreme Court in the aforementioned cases has made it clear that India needs law to protect whistleblowers, if corruption and malpractice in public offices are to

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¹ Law Commission of India, ONE HUNDRED SEVENTYNINTH REPORT ON THE PUBLIC INTEREST DISCLOSURE AND PROTECTION OF INFORMERS (2001) at 4.

² (1994) 6 SCC 632.

³ 1997 (4) SCC 306.

be kept in check. Such a law will also make rights to free speech under Article 19(1)(a) of the Constitution meaningful.

About one third of all crimes successfully investigated by the police leading to the conviction of the accused involve the use of informers.⁴ Informers provide important information to law enforcement officials which in most cases proves crucial in successful prosecution. To facilitate the investigation and prosecution of accused person before Courts rule must be adopted to give adequate protection to those individuals who are giving the information.⁵ Whistleblower can play a very important role in providing information about corruption and mal-administration. The most important task on the way of enacting a law on this subject is to identify the category of persons who may be termed on 'whistleblowers'. Another aspect is to see the pattern of protection which can be afforded to the whistleblowers. An analysis of existing laws of judicial opinion of different countries may be useful in this regard.

The simplest way to define the term whistleblowers is that it is someone who encounters what he or she perceives to be a wrong doing and disclose it. The term whistle blowing is relatively of recent entry into the vocabulary of public and corporate affair.⁶

In normal circumstances an organization is entitled to total loyalty and confidentiality from its employees. But when there is serious mal-practice or when lives of the people are at stake as in corruption and fraud in defence procurement, whistleblowers should have right not to be punished for doing so. Without whistleblowers we may not get to learn about the problems until it is a time to mourn the consequences.

But there is a very important question, who should come forward because there is no protection of whistleblowers. It is unfortunate for us that corruption is spreading over like epidemic but there is no protection to whistleblower in India.

³ Roger Billingsley, Teresa Nemitz, Philip Bean (eds.), *INFORMERS, POLICING, POLICY PRACTICE* (New Delhi, 2003).

⁴ *Ibid.*

⁵ K. Ashok Vardhan Shetty, *Indian Needs A Whistleblower Protection Act*, *THE HINDU*, May 25, 2003.

⁶ (1857) 26 LJ Ch. (NS) 113.

Position in developed countries is different, most of the countries have laws for the protection of informers. e.g. US Whistleblowers Protection Act 1989 (amended in 1994), Sarbane's Oxley Act 2002, UK Public Interest Disclosure Act of 1998, Australian Public Interest Disclosure Act, 1994, The Protected Disclosure Act, 2000 of New Zealand, South Africa, Canada, Zambia and some other countries also have legislations for the protection of whistleblowers.

II. JUDICIAL PROTECTION TO WHISTLEBLOWERS IN DEVELOPED COUNTRIES

Before the legislature intervened and brought in statutory protection to whistleblowers courts in various countries evolved several principles to protect victimization of whistleblowers.

A. Protection in United Kingdom

In U.K., abundant case law had developed long before parliament stepped in and enacted the Public Interest Disclosure Act, 1998. In the case of *Gartside v. Outram*⁷, a former employee informed the victim of fraud giving detail of the fraud carried out by his employer. The employer's application for an injunction to prevent further disclosure was refused. Wood VC observed thus⁸:

"The true doctrine was that there is no confidence as to the disclosure of inequity. You cannot make the confident of a crime or fraud and be entitled to close-up my lips upon and secret which you have the duplicity to disclose to me relating to any fraudulent intention on your part."

Lord Denning M.R. in *Fraser v. Evans and Others*⁹ stated that no person is permitted to divulge to the world information which he has received in confidence, unless he has just cause or excuse for doing so. Even if he comes by it innocently, nevertheless once he gets to know that it was originally given in confidence he can be restrained from breaking that confidence. But the party complaining must be the person who is entitled to the confidence

⁷ Law Commission of India, ONE HUNDRED SEVENTYNINTH REPORT ON THE PUBLIC INTEREST DISCLOSURE AND PROTECTION OF INFORMERS (2001) at 44.

⁸ 1969 (1) QB 349.

⁹ *Gartside v. Outram* (1856) 26 LJ Ch. at p.114.

and to have it respected. He must be a person to whom the duty of good faith is owed.

Explaining the words of Wood V.C.¹⁰ that 'there is no confidence as to disclosure of iniquity', iniquity here means just cause or excuse for breaking the confidence. The word iniquity as used here is not a principle. It is merely an instance of just cause or excuse for breaking confidence. There are something which may be required to be disclosed in the public interest, in which event no confidence can be prayed in aid to keep them secret.¹¹

In England, whistleblower in public as well as private sectors have been protected by the Courts. In 1968, the Courts refused an injunction to a company. In this case defendant was former sales manager of the plaintiff company. The defendant obtained certain confidential information in course of his employment. The defendants disclosed the information alleging that plaintiff had agreed with other launderers to keep up the prices; that the agreement was contrary to section 6 of the Restrictive Trade Practices Act 1956.¹² The company had put out a misleading circular falsely blaming high prices on the new selective employment tax, when infact increased price would bring substantially extra profits. Dismissing the appeal the court held that exceptions to the implied obligation of a servant not to disclose information or documents received in confidence to any misconduct of such a nature that it ought in the public interest, to be disclosed to proper authority.¹³

In *Lion Laboratories Ltd. v. Evans*¹⁴ the Lion laboratories was manufacturer of intoximeter which was used for measuring the levels of intoxication by alcohol. After some time defendants left that company. They had come out of the company with confidential documents of company. The documents were confidential and indicated doubts as to the reliability of and

¹⁰ *Fraser v. Evans and Others*, 1969 (1) QB 349, (1969) ER-8 ALL.

¹¹ Restrictive Trade Practices Act, 1956, Section 6(1). This part of the Act applies to any agreement between two or more persons carrying on the business within the United Kingdom under which restrictions are accepted in respect of the prices to be charged quoted or paid for goods. Section 9(1) of the Act provides that every agreement to which this part of this Act applies shall be subject to registration thereunder.

¹² *Initial Service Ltd. v. Putterill* (1968) 1 QB 396, (1967) 1 ALL E.R. 145.

¹³ (1985) QB 526, (1984) 2 AL ER 417.

¹⁴ (1988) 3 All ER 545.

accuracy of the instruments. They were going to publish the documents. On the application of plaintiff Lion Laboratories Ltd., injunction was issued in favour of plaintiff. The Court of appeal refused the injunction sought by the laboratories, finding that the disclosure was justified in the public interest to prevent the unjust conviction and permitted the vindication of those who might have been unjustly convicted. The court held that in public interest a confidential information may be disclosed.

In the famous case of *Attorney General v. Guardian Newspaper Ltd. and Other (NO)*¹⁵, also known as Spycatcher No.2, Peter Wright, a former member of British Security service, had obtained highly classified information. He proposed it to some newspapers and it was published. The Attorney General brought action against the newspaper seeking permanent injunction restraining them from publishing information obtained by Peter Wright. The Attorney General contended that Peter Wright owned a duty to the Crown not to disclose information obtained by him and the publication of such information by him and newspaper was in breach of confidence. The court did not grant an injunction restraining the publication of confidential information acquired by Peter Wright. The court stated that it would not grant injunction if it could be shown that the publication of information would not be contrary to the public interest. It was incumbent on the Crown to show not only that the information was confidential but also that it was in public interest that it should not be published.

B. Judicial Protection in USA

In the United States of America protection to whistleblowers is a matter of public policy. Free speech in USA has been guaranteed by the first and fourteenth amendments.¹⁶

The Courts in USA have long recognized the importance of informer to the criminal justice system. Informers often provide the police with vital information which could not otherwise be discovered. The importance of protecting whistleblower's identities has been described as an ancient and hollowed protection which played a vital role in law enforcement.¹⁷

¹⁵ *Supra* note 1 at 57.

¹⁶ *R. v. Leipert*, 1997, 112 ECC (3d) 385 (SCC).

¹⁷ (1976) 17 Cal. 3d 425.

In *Tarasoff v. University of California*¹⁸ the court held that a doctor has duty of confidence with his patient and only in the most extreme circumstances could a doctor be relieved from observing the strict duty of confidence imposed upon him by reason of his relationship with his patient.

Similar views have been adopted by Australian Courts and the Courts of New Zealand.

III. STATUTORY PROTECTION OF WHISTLEBLOWERS

A number of countries primarily the developed ones have enacted whistleblowers protection legislation. It would not be out of place to discuss the salient aspects of American and English legislative experiences framework of which have been adopted by some other developed countries as well.

A. Protection in USA

On January 28, 1986 the Challenger tragedy took place. Through the testimony of a Whistleblower appearing before the presidential commission, it became clear that the evening before the launch, engineers for National Aeronautics and Space Administration (NASA) had pleaded with NASA officials not to launch the shuttle, predicting the failure that caused the explosion. These engineers were overruled by the management of Morton Thiokol and NASA official. Subsequently, one of these engineers ensured that presidential commission and congress received an account of the decision to launch. For this candour the engineer faced retaliation from the officials. The challenger tragedy, opened an important stage in protection of Whistleblower in United States. Not only Congress enacted Whistleblower Protection Act of 1989 strengthening the Whistleblower protection for federal employees but state legislature have also passed many Whistleblowers statute for federal employees.¹⁹

US Whistleblower Protection Act 1989 (amended in 1994) provides that the identity of the informants should not be disclosed without his consent unless such exposure is felt necessary because of danger to public health or safety or imminent violation of any common law by whistleblower.

¹⁸ Report G. Vaughan, Thomas Devine, Keith Henderson, *The Whistleblower Statute Prepared for the Organisation of American Statute and the Global Legal Revolution Protecting Whistleblowers*, 35 THE GEORGE WASHINGTON INTERNATIONAL LAW REVIEW, 2003 at 857.

¹⁹ Section 1212 g (1) and (2), Whistleblower Protection Act 1989.

The Act provides that burden of proof would be on employer. It provides that the special counsel may not respond to any inquiry or disclose any information from or about any person unless individual consents the office. The only exception of it could be expected to cause grave damage to national security.²⁰

The Office of Special Council (OSC) was established to aid a whistleblower in having his or her disclosure investigated, in preserving anonymity in so far as possible and in preventing retaliatory action against the whistleblowers. Office of Special Council (OSC) is a remedial agency whose mission is to defend individual victims of merit system violation. The complainant makes the complaint to the OSC about the wrongful act. The OSC's primary purpose is protecting employees generally, and whistleblowers in particular, from prohibited personal practice.²¹

The Act of 1989 is only a draft on the Civil Service Reform Act, 1978, which provided substantial protection to federal employees. The Act of 1989 fortifies the Act of 1978 with additional safeguard. It is based on congressional finding that "protecting employees who disclose governmental illegality, waste and corruption is a major step towards more effective civil service. It lays down an elaborate scheme with the office of special council at the apex to protect the whistleblowers".²²

On March 29, 1996 the Organization of American States (OAS) adopted the Inter-American Convention against corruption. Article III of the Convention protects a public servant and private citizens who in good faith report acts of corruption.²³

²⁰ Section 1211, *id.*

²¹ A.G. Noorani, *Speak of No Evil*, HINDUSTAN TIMES, February 10, 2004.

²² *Supra* note 18.

²³ Section 806 of the Sarbane's Oxley Act 2002 is amended by inserting after Section 1514, the following :

- (a) Whistleblower Protection for Employees of Publicly Traded Companies – No company with a class of securities registered under Section 12 of the reports under section (15 U.S.C. 781), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 780(d)) or any officer employee contractor, sub-contractor, or agent of such company may discharge, demote, suspend, threaten, harass or in any other manner discriminate against an employee in the terms and conditions of employee because of any lawful act done by the employee -
 - (i) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably

In addition to Whistleblower Protection Act, 1989 there is another Act called Sarbane's Oxley's Act of 2002²⁴ which contains protection for corporate whistleblowers. In USA privacy is the rule and exposure is the exception.

B. Protection in United Kingdom

The UK's Public Interest Disclosure Act, 1998 is the outcome of Nolan Committee Report 1995. The Act provides protection to the employees in public, private and non-profit section including those working outside the UK, but this Act does not cover the army and police.

The workers who blow the whistle will be protected²⁵ if the disclosure is made in good faith and is about -

- i) a criminal act;
- ii) failure to comply with legal obligation;
- iii) miscarriage of justice;
- iv) a danger to health and safety; or
- v) any damages to the environment.

Any attempt to cover up any of these could also be covered by the disclosure.

This Act includes three types of disclosure²⁶

- i) **Internal Disclosure:** this type of disclosure is made to the employers which include manager and director will be protected if the

believes constitutes a violation of section 1341, 1343, 134 or 1348 any rule or regulation of Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by –

1. a Federal regulatory or law enforcement agency;
 2. any Member of Congress or any committee of Congress; or
 3. A person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or
- (ii) To file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of Section 1341, 1343, 1344 or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal Law relating to fraud against shareholders.

²⁴ Sec. 43 B, Employment Right Act, 1996

²⁵ C.23, Public Interest Disclosure Act 1998.

²⁶ Art.1, §43 (C) (2), *id.*

whistleblower has an honest and reasonable suspicion that malpractice has occurred or likely to occur.²⁷

- ii) Regulatory Disclosure: it is a disclosure made to a prescribed person, such disclosures are protected where the whistleblowers pass the test for internal disclosure and where they honestly and reasonable believe that the information and allegations are substantially true.²⁸
- iii) Wider Disclosure: It is a disclosure made to the police, the media, members of Parliament and non-prescribed regulators.²⁹

If they are reasonable in all circumstances and are not in personal gain they will be protected. The whistleblower must, however, meet one of three preconditions for such disclosure to get the protection. These conditions are³⁰ -

- i. he reasonably believed that he would be victimized if he had raised the matter internally or with a prescribed regulator;
- ii. he reasonably believed that evidence was likely to be concealed or destroyed; or
- iii. the concern has already been raised with the employer or a prescribed regulator.

The reasonableness of the disclosure contemplates the identity of the person to whom the disclosure is made, the seriousness of the conduct reported, whether the conduct will continue or reoccur or whether disclosure would require a breach of confidentiality.³¹

Where the whistleblower is an employee and has been sacked he may within seven days, makes claim to Employment Tribunal and seek interim relief so that his employment continues or deemed to continue until the full hearing. Where the disclosure of the information is itself a crime, it breaches the Official Secrets Act, 1989 and the disclosure is not protected.³²

²⁷ Art. 1, §43 (F), *id.*

²⁸ Art. 1, §43((G)(3), *id.*

²⁹ Art. 1, §43(G) (2), *id.*

³⁰ Art. 1, § §43 (G) (3) (a) – (d), *id.*

³¹ Art. 1, § §43 (F) (3) (e),(f), *id.*

³² Section 4, Public Interest Disclosure Act, 1994.

C. Statutory Developments in Other Countries

Countries like Australia, New Zealand and South Africa have also enacted whistleblowers protection legislations. In Australia the Public Interest Disclosure Act, 1994, provides the protection to the whistleblowers. The Act provides that if a person finds that there is malpractice, he can disclose it to the appropriate authority.³³ If reference under the Public Interest Disclosure Act 1994 is made to Ombudsman then he will exercise his power to investigate the matter.³⁴ If information given by informant is wrong and recklessly given then he will be penalized.³⁵ This section is in conformity with the decision in *Theophanous v. Harold and Weekly Times Ltd.*³⁶

The Protected Disclosure Act, 2000 of New Zealand contains provision which are similar to those in Australian Act 1994 with certain modifications.

According to the Act of 2000 if any retaliatory action is taken by the employer such as dismissal or any action other than dismissal the said employee may apply for redress under the provisions of the Employment Control Act, 1991.³⁷

The Act provides immunity from civil and criminal proceedings where a person has made a protected disclosure to appropriate authority.³⁸

The identity of the informant will be kept secret unless he gives consent or it is necessary for effective investigation or to prevent a risk to public health or to public safety.³⁹

South Africa has followed the UK scheme and provided protection to employees of all organization through its Protected Disclosure Act, 2000.

International Labour Organization Convention, 158 on Termination of Employment provides that any complaint filed by employee against his employer or participation by him in proceeding against employer who is

³³ Section 12, *id.*

³⁴ Section 34, *id.*

³⁵ 1994 (68) ALR 713.

³⁶ Section 17, Protected Disclosure Act, 2000 of the New Zealand.

³⁷ Section 18(1), *id.* The subsection applies despite any prohibition or of restriction on the disclosure of information under any enactment, rule of law, contract oath or practice

³⁸ Section 19, *id.*

³⁹ Article 5(c), International Labour Organization Convention, 158.

involved in violation of Laws or regulations to the competent administrative authority should not be a ground of his dismissal from employment.⁴⁰

IV. PROTECTION OF WHISTLEBLOWERS IN INDIA

In India, an Act to protect Whistleblower is necessary for reducing corruption and increasing merit based clean governance and also for providing official protection and recognition to those who expose corruption. Though there is Act to Prevent the corruption viz. Prevention of Corruption Act 1988 but there is no legislation giving protection to person who disclosed corruption in public interest.

It is appropriate to state here that a letter was sent by Mr. N. Vittal, the then Chief Vigilance Commissioner, to the Law Commission requesting to draft a Bill encouraging public servant to disclose corrupt practices of public functionaries. The commission after indepth study and taking into consideration similar legislation in other countries and keeping in view needs and circumstances of our country prepared 179th Report on "Public Interest Disclosure and Protection of Informer". The Public Interest Discloser (Protection of Informers) Bill 2002 was tabled in the Parliament but could not be passed.⁴¹

Salient Features of the Pubic Interest Disclosure (Protection of Informers) Bill, 2002

The Bill provides that any person can make disclosure about the disclosable conduct of public servant to competent authority for taking action against that public servant.

"Disclosable Conduct"⁴² means such conduct as a public servant may

⁴⁰ Law Commission of India, ONE HUNDRED SEVENTYNINTH REPORT ON THE PUBLIC INTEREST DISCLOSURE AND PROTECTION OF INFORMERS (2001).

⁴¹ Section 2(d), Public Interest Disclosure (Protection of Informers) Bill, 2002.

⁴² Section 2(e), *id.* It provides that mal-administration includes any action taken or purporting to have been taken in the exercise of administrator or statutory power or discretion.

- i. where such action is unreasonable unjust oppressive or discriminatory
- ii. where there has been negligence or undue delay in taking such action
- iii. where there has been reckless excessive or unauthorized use of power in taking such action.
- iv. where such action amounts to breach of trust

engage in or has engaged or is engaging or proposes to engage which amounts to

- i) abuse or misuse of power or discretion vested in him; or
- ii) an attempt to commit or commission of an offence under the Prevention of Corruption Act 1988, the Indian Penal Code, 1860 or any other law for the time being in force; or
- iii) mal-administration.⁴³

The Competent Authority in relation to Minister means any authority notified by the president of India on this behalf. In case of any other public servant it means the Central Vigilance Commission constituted under the Central Vigilance Commission Ordinance 1999.

The Bill provides that any disclosure of information revealing the disclosable conduct shall be a public interest disclosure for the purpose of this Act, and it shall be made in good faith and the person making it shall solemnly affirm that he reasonably believes that the information disclosed and any allegation contained therein is absolutely true.⁴⁴

It also provides that the name of the person making the disclosure shall be disclosed to the public servant.

Provided that if the person making disclosure requests that his identity should not be disclosed to the public servant named in disclosure and if the competent authority is satisfied that such request may be accepted in public interest or for the safety of such person, it shall make necessary direction in that behalf after recording its reason.⁴⁵

From above section it is clear if disclosure concerns a matter of great sensitivity the authority can ignore the request of the whistleblower unless he is satisfied that the public interest or safety of such person requires disclosure. In short the privacy is the exception disclosure is the rule, where as in USA privacy is the rule exposure is the exception.

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- v. where such action involves the conduct of a public servant which would result in wastage of public fund or cause loss or prejudice to the state or is prejudicial to public interest in any manner or
 - vi. where such action is outside the authority of law or amounts to violation of system or procedure.

⁴³ Section 3, *id.*

⁴⁴ Section 5(3), *id.*

⁴⁵ Section 10, *id.*

The Bill provides that no person shall be victimized by initiation of any proceeding on the ground that such person had made disclosure.⁴⁶ But if the disclosure made is false, or frivolous, the person making the disclosure shall be punished.⁴⁷

This Bill was tabled in parliament around two and half years ago but could not be passed. Due to Supreme Courts intervention it became important to give some sort of protection to the informers. Accordingly, a Resolution No. 89 published on 21st April 2004 was notified in which Central Vigilance Commission (CVC) is authorized to inquire into the aforesaid complaints and take requisite action. If the identity of the informant is disclosed the person revealing the identity shall be punished by CVC.⁴⁸

V. RELEVANCE OF THE WHISTLEBLOWER PROTECTION

The protection of whistleblower is necessary because whistleblower helps in eradicating the corruption. Instances of the whistleblowers being

⁴⁶ Section 16, *id.* Any person who makes any disclosure which was false to his knowledge or reckless or malicious shall be punishable with imprisonment for a term which may extend up to three years and also to time which may extend up to fifty thousand rupees.

⁴⁷ GOI resolution No. 89 dated 21.4.2004 and a corrigendum resolution No. 98 dated 29.4.2004 provides that the Central Vigilance Commission (CVC) is hereby authorized, as the Designated Agency, to receive written complaints or disclosure on any allegation of corruption or of misuse of office by any employee of the Central Government or of any corporation established by or under any Central Act, Government Companies, societies or local authorities owned or controlled by the Central Government. The disclosure or complaint shall contain as full particulars as possible and shall be accompanied by supporting documents or other material.

If the complaint is accompanied by particulars of the person making the complaint, the designated agency shall take the following steps:

- i) The designated agency will ascertain from the complainant whether he was the person who made the complaint or not.
- ii) The identity of the complainant will not be revealed unless the complainant himself has made the details of the complaint either public or disclosed his identity to any other office or authority.
- iii) After concealing the identity of the complainant, the designated agency shall make, in the first instance, discreet inquiries to ascertain if there is any basis of proceeding further with the complaint. For this purpose, the designated agency shall devise an appropriate machinery.

⁴⁸ THE HINDU, 25th March 2003.

fired, demoted or punished in other ways while the organization denies, ignore or quietly buries the disclosure are universal.

Former Dr. Stephen Boslin at the UK's Bristol Royal Infirmary, who blew the whistle on large number of unnecessary deaths of children occurring during the heart surgeries due to incompetence of hospital surgeons was later he was forced to leave the country.⁴⁹

In the case of *N.K. Singh v. Union of India*⁵⁰, N.K. Singh was haunted out of the CBI and sent to BSF because he blew the whistle against the private secretary of former Prime Minister Chandrashekhar, C.B. Gautam. He had revealed that C.B. Gautam had called the CBI director to ask the CBI team to go to the Ashram of Chandraswami, N. K. Singh refused and summoned him to CBI head Quarter instead. He was transferred which order be assailed before the Central Administrative Tribunal (CAT), Principal Bench, New and sought stay of the said order. The CAT did not come to his rescue. Even the Supreme Court rejected his special leave to appeal against the over of CAT, Principal Bench, New Delhi.

Another matter which compelled the Government to give protection to whistleblower under in the Resolution No. 89 was passed was death of Satyendra Dubey who was an engineer working in Golden Quadrilateral Construction in Bihar. He gave certain information to Prime Minister Office that the work is not being properly done due to collusion of mafia and officers. He also wrote the Prime Minister office that his name should not be disclosed. He wrote again to the chairman of National Highway Authority that his identity had been leaked to the authorities concerned. Ultimately he was killed.⁵¹

It is evident from these cases that protection to whistleblowers is necessary. If there is no protection no one would come forward to blow the whistle against corruption. If only the government had acted on 179th Report of the Law Commission on the Public Interest Disclosure and Protection of informer which was submitted in December 2001, Satyendra Dubey would not have died.⁵² There is no reason why we should not have a law to protect whistleblowers. Following measure are recommendations which need to be

⁴⁹ (1994) 6 SCC 98.

⁵⁰ Aditi Datta, *Whistleblower in East and West*, THE HINDU, Feb.3, 2004.

⁵¹ *Supra* note 21.

⁵² Section 2, US Whistleblower Protection Act, 1989.

incorporated in the legislation over and above these contained in the Bill of 2002 :

- i. Civil servants must be ensured greater protection against arbitrary transfer and suspension.
- ii. If there is an agreement between employer and employee that any information related with the corruption should not be disclosed, such an agreement should be declared void in respect of public interest disclosure.
- iii. The Act's protection should be extended to the member of armed forces, the secret service and police.
- iv. Section 5(3) of Public Interest Disclosure Bill should be amended and privacy must be made rule and disclosure of identify should be exception.
- v. Some encouragement must be provided to the whistleblower, like they should be awarded.
- vi. Public interest disclosure about high dignitaries must be protected.
- vii. There should be fast track mechanism for adjudication of the cases.
- viii. If whistleblower requires transfer he should be transferred to another office during the period of inquiry, so that he could not be harassed by his boss.
- ix. The law relating to whistleblower protection should focus more on the information disclosed by whistleblowers and not upon the identity of whistleblowers themselves. Selflessness or even good motive should not be necessary for protection if the information is credible and significant for the public welfare.

VI. CONCLUSION

Whistleblowers and their links with treachery and corruption are not a new phenomenon. The ethics relating to the use of whistleblowers has been subject of comment and debate throughout time. The whistleblowers play an important role in eradicating the corruption. The persons working in the department know better as to who is corrupt in their department but unfortunately they are not bold enough to convey the said information to the higher authorities for fear of reprisals by those against whom complaints are made. If adequate statutory protection is granted to Whistleblowers there can be no doubt the government will be able to get more information regarding corruption and mal-administration in various public offices. Such provisions exist in England, Australia, New Zealand, United State of America, South

Africa and some other developing counters, but unfortunately there is no such provision in India.

U.S.A. Whistleblower Protection Act, 1989 states that the congress has found that federal employee who made disclosures serve public interest by assisting the elimination of fraud, waste and unnecessary government expenditure and it is necessary to protect the employees who disclose the government illegality and corruption.⁵³ The U.S.A. Whistleblower Protection Act, 1989 is strengthened by new laws such as Sarbane's Oxley Act of 2002.

In Australia, Andrew Wilkins was rewarded for exemplary courage, who blew the whistle against corruption.⁵⁴ But in India, in the case of N.K. Singh and Satyendra Dubey the central 'governments' failure to protect the Whistleblowers discouraged the thousands of potential informs from giving information about corrupt officials, which information would have certainly served public interest.

Recently the Supreme Court in the case of *Dinesh Trivedi v. Union of India*⁵⁵ observed that citizens have right to know about the affairs of the Government. Supreme Court has also accepted that right to know is part of fundamental right of freedom of speech and expression guaranteed under article 19(1)(a) of the Constitution. According to 179th Law Commission Report any statute enabling complaints to be made by public servant or persons or NGOs against other public servants and grant of protection to such complainant in public interest and will not affect the right of privacy.

Protection to whistleblower in public interest shall become a reality in India without further delay. The Bill drafted by law commission needs to be improved upon so that privacy of informer could be maintained. By according protection to whistleblower we are actually trying to protect Indian society and its cherished values of having corruption free governance.

⁵³ *Supra* note 50.

⁵⁴ 1997 (4) Section 306.