AN OVERVIEW OF WHISTLEBLOWING: INDIAN PERSPECTIVE

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Abstract- This paper will examine the following: (a) Whistleblowing Process, (b) Consequences of whistleblowing; (c)Need for building a whistleblower policy(d) Remedies for India to encourage whistleblowing. An individual's decision to report any misconduct occurring in his/her surroundings is a complex phenomenon that is based upon situational and personal factors. Recommendations include: (1) An individual should be encouraged to communicate his/her ethical concerns internally or externally; (2) An individual needs to believe that his/her concerns will be taken or considered seriously; (3) An individual needs to feel that he/she will not suffer any retaliation for their action; (4) An ethical environment should be provided where strict actions are being taken against any misconduct.

Keywords- Whistleblowing, Whistleblower, Retaliation, Misconduct

I. INTRODUCTION

Whistleblowing as a situation seems mystifying and hence, is a difficult procedure that encompasses personal and organizational aspects.

According to Borrie and Dehn (2003) speedy developments in the revolution of the modern organisation is responsible for making it gradually tough for an organisation to have the essential checks and controls in place, and this makes it easier for employers and employees to act in ways that give in their professional honesty.

To be efficient in the combat against immoral conduct in the work place, a wide-spread dedication to eliminate this behaviour is necessary.

The whistleblower seemingly acts to convey an illegal practice to public notice so that those with authority are facilitated to rectify the situation (Khan, 2009).

Whistle blower is described as an individual who reveals important acts of deception, waste, deceit, maladministration or exploitation of power in breaking the country's laws or regulations in either the public or private sector (Lee, 2005).

Anwar, 2003 defined whistleblower as a rebellious spy or responsible corporate civilian who has the audacity to do as their conscience commands. Those who report individual or organizational defilements of federal or state laws to their administrators or the government may encounter major threats, and hence, the individuals, who wish to report alleged wrongdoing should take a great pause while considering the possible outcomes of the decision before informing authorities about the wrong doing (Brewer, 2005).

II. WHISTLEBLOWING PROCESS

A behavioural objective is a subjective possibility that a person allocates to the possibility that a given behavioural substitute will be selected (Ajzen, 1991; Hunt, 1981).

The theory of reasoned action (Ajzen, 1991) recommends that behavioural intention is a right forecaster of actual behaviour.

Due to the realistic unfeasibility of bringing out inquiries of immoral behaviour in the workplace by first hand examination, many research studies of whistle blowing use the intention to report as their operating variable (Victor et al., 1993).

The variable of whistle blowing intention refers to the person' slikelihood of really participating in whistle blowing behaviour. Both contextual and individual factors have been identified in the literature as possible influences on the individual's decision to "blow the whistle" on perceived unethical behaviour (Miceli and Near, 1992).

Key contextual factors believed to impact the whistleblowing judgment comprise: seriousness of the misconduct (Dozier and Miceli, 1985; Miceli and Near; 1984); group customs or norms (Greenberger et al., 1987); and the observed responsiveness of grievance receipts (Keenan and McLain, 1992). Key individual elementsc an embrace religious values (Miceli and Near, 1992), moral standards (Miceli et al., 2001) and the individual's locus of control (Miceli and Near, 1992).

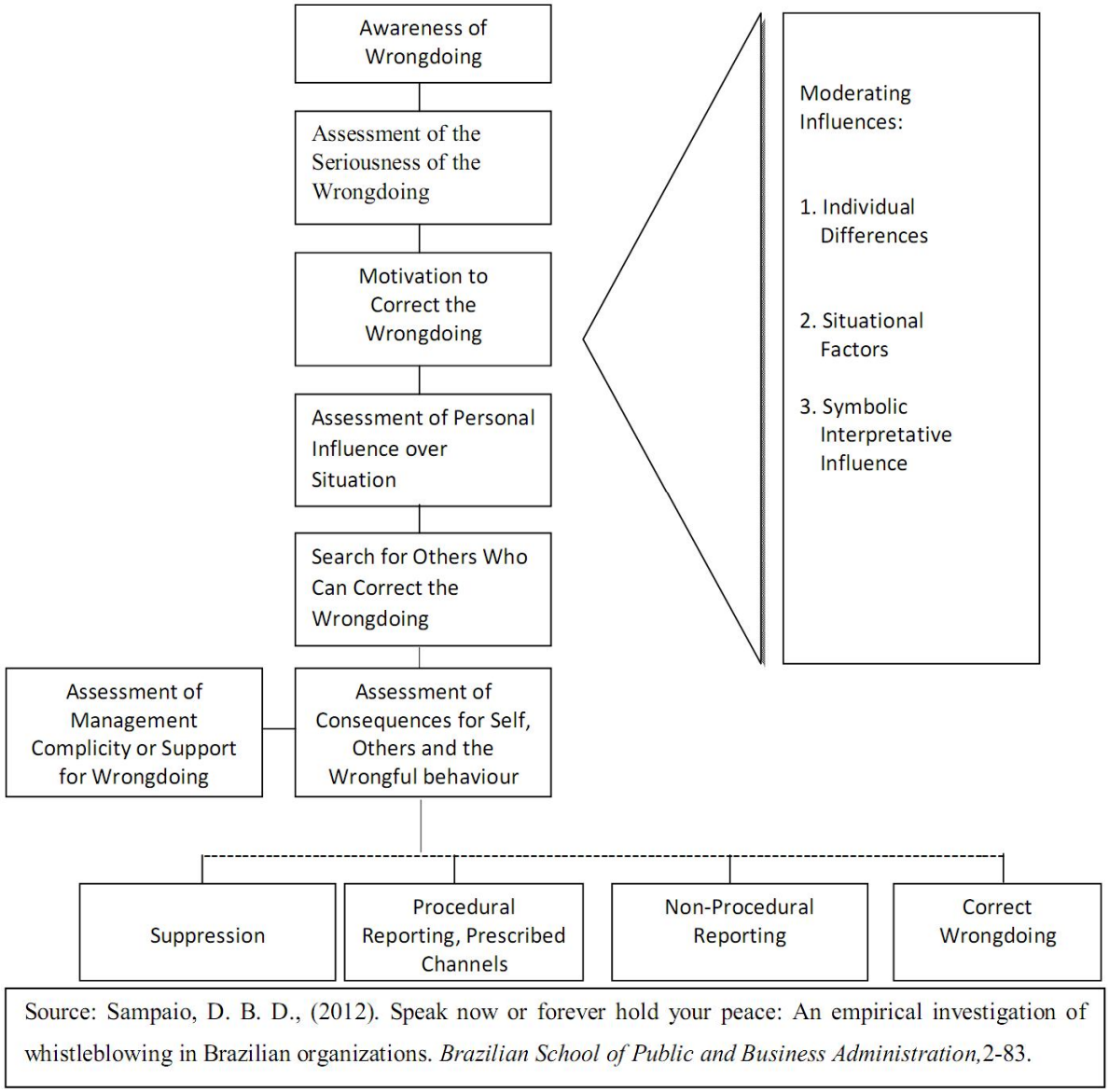


Fig. 1. Interactionist model of whistleblowing, Extracted from Keenan and McLain (1992)

Similarly, many studies over the years have consistently demonstrated that individual,

Keenan and McLain (1992) developed a thorough model (Figure 1) that comprises of seven stageswhich states that the practice of whistleblowing is initiated by (i) An individual's alertness of the misconduct due to his/her formal or informal responsibilities in the organization; (ii) Further, the observer must evaluate the gravity of the wrongdoing and (iii) stabilise his/her inspirations to take action;(iv) The succeeding phase includes the evaluation of the observer's effectover the situation which may result in (v) Hunting for others who have the capability to stop the misconduct, i.e., selecting to whom the disclosure should be made; (vi) Finally, an individual must consider the outcomes of his/her action for self, for others and for the unlawful behaviour being questioned. (vii) As a consequence, there may be four courses of action, namely: silence, procedural reporting through recommended channels, non-procedural reporting, or direct interference. Kennan and McLain's model also identified the impact of individual, situational and organizational factors – referred to as "symbolic interpretative influence" to highlight the significance of values and social powers – to the decision of blowing the whistle where the latter two variables effect the procedure to a great extent. (Miceli and Near,1984; Near and Miceli, 1996; Mesmer-Magnus and Viswesvaran, 2005; Dasgupta and Kesharwani, 2010; Ahmad, 2011).

III. CONSEQUENCES OF WHISTLE-BLOWING

Camerer (1996) indicated that the ethnicity of the organisation decides whether the whistleblower will be contemplated as a wrongdoer, or as a do-gooder, irrespective of whether the whistle has been blown through internal channels or through external

channelsas a last resort. Dellaportas et al. (2005) cited examples in history where whistleblowers were punished for their activities by some form of persecution, lower performance assessments, downgrading, retaliatory transfers and removal from office. Whistleblowers also face banishment by management and co-workers as menaces, which in turn hampers prospective employment prospects (Dellaportas et al., 2005). Nelson and Trevino (2007) warned employees on determining how to bring up moral worries in order to prevent being branded as somebody with weak assessment. Other dangers the whistleblower may encounter are disciplinary investigations for disobedience, claims of unfaithfulness, all egations of whistleblowing for personal profit, damage to friendships and demise of respect for the culture in whose concern the whistleblower acted (Naude, 2005).

Dellaportas et al., (2005) cautioned that while whistleblowers are reckoned as heroes by the public but within the organisation, they are considered as a traitor who has been disloyal to the organisation and colleagues. Dellaportas et al. (2005) regards the negative effects of whistle-blowing for the organisation, besides bad publicity, as a negative reputation, prosecution, decreased profits and the demoralisation of the workforce. The consequences for both the employee and the organisation are serious, and procedures and practices need to be in place to help in smoothing the process. According to Westman and Modesitt (2004), whistle-blowers may face fierce resistance and extreme levels of disapproval inside the organisation when they attempt to expose unethical and suspicious behaviour. Whistle-blowers may be discredited by transferring them to undesirable duties or shifts. Kaplan and Kleiner (2000) cited that whistle-blowers often face different forms of retaliation, for example by putting the spotlight on the whistle-blower; manufacturing a poor record; being threatened to silence, isolation or humiliation; setting them up for failure; Prosecution; eliminating from their jobs, or incapacitating their careers. According to Carroll and Buchholtz (2000),whistle-blower studies have found that 90% of them experience negative outcomes, and more than half lose their jobs. Many end up taking prescription medicine to ease the stress, while others even cogitate about suicide. In spite of this, Dellaportas et al. (2005) advise that employees should be encouraged to blow the whistle internally and to resolve the problem before it becomes a public scandal. If the employees remain silent they could be labelled accomplices if the wrongdoing is later revealed.

IV. NEED FOR BUILDING A WHISTLEBLOWER POLICY

Whistleblowing in the current global scenario has gained a lot of cognizance because of various cases, Pentagon Papers, Julian Assange and Edward Snowden being the major ones. Daniel Ellsberg, a former United States Military analyst blew the whistle in 1971 by leaking the top-secret Pentagon study, known as Pentagon Papers, of the U.S. government's rationale behind its decisions during the Vietnam War to The New York Times, The Washington Post and other American newspapers. The papers revealed the expansion by U.S. with bombing of Cambodia and Laos, Coastal raids on North Vietnam. Also, the government knew that the war could most likely not be won, and continuing the war would lead to many times more casualties. Ellsberg was charged with espionage, theft and conspiracy which later on was dismissed. [1] The United States Department of Justice prosecuted Julian Paul Assange, the editor-in-chief and founder of WikiLeaks, who collaborated with Bradley Edward Manning, a United States Army Soldier to blow the whistle by stealing and publishing U.S. Military and diplomatic documents in 2010 as a result of which, Manning has been arrested in Iraq since then. Assange will be repatriated to Sweden by the British government under the European Arrest Warrant for questioning in relation to a sexual assault investigation. Since 19 June, 2012, Assange has been granted Diplomatic Asylum inside the Ecuadorian Embassy in London. [2]

Another whistleblowing case of Snowden is a perfect example of the need for whistleblower protection act across the globe. Edward Joseph Snowden, who worked for the CIA and the NSA, while still being employed leaked the details of several top-secret United States and British government mass surveillance programs to a British national daily newspaper "The Guardian" in May 2013. His disclosures rank among the most significant breaches in the United States history. On June 14, 2013, Snowden was charged by the U.S. Federal prosecutors with espionage, theft of government property, unauthorized communication of national defence information and wilful communication of classified intelligence to an unauthorized person. Prior to the publication of his disclosures, Snowden immediately flew to Russia to receive a temporary asylum and is now residing in an undisclosed location. He has been variously called as a hero, a whistleblower, a traitor, a dissident and a patriot. [3]We have stuck to the definition of whistleblowers being those who expose corruption and irregularities within the system they are part of. The list below includes only these people starting with the most legendary whistleblowers of them all.As of August 2012, India did not have a law to protect whistleblowers; however, the Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010 was approved by the cabinet of India as a part of drive to eliminate corruption in the country's bureaucracy. While the Bill vows to act

against those "victimizing" complaints, it doesn't outline Penalties or punishments for federal officials found guilty of doing so. Another major loophole is the inability to file complaints anonymously. Though the Bill strongly recommends that the identity of the complaint be concealed, it permits the CVC (central Vigilance Commission), under certain circumstances to disclose the complaint's identity to the head of the government department under scrutiny.The proposed law does not deal with corporate whistleblowers, though as per the recommendations of the second Administrative Reforms Commission, the scope of the proposed law could be enlarged to deal with corporate whistleblowers too.[4]

[1, 2, 3](Grand, 2013. 5 Famous whistleblowers who shaped history. www.policymic.com. Accessed on 19th August, 2013 at 4pm.)

[4] (The Nashville Network (TNN), 2010. India doesn't have a law to protect whistleblower. The Times of India. Accessed on 7th August, 2013.)

Table 2. Indian Whistleblowers and the Episodes

YEAR	WHISTLEBLOWING EPISODES IN INDIA
Treta Yug	Vibhishan, younger brother of the king of Lanka, Ravana, informed Lord Ram about the whereabouts of Sita and joined Ram's army to fight against his own brother. Later he was made the king of Lanka.
2002	32-yr-old NHAI's project director Satyendra Kumar Dubey spotted huge financial irregularities in handling of Golden Quadrilateral. On November 11, he had send anonymous letter to the PMO telling the PM how many contractors had "submitted forged documents to justify their technical and financial capabilities" to win bids for the contract and also requests PM not to reveal his identity. Letter was forwarded along with the CV to the Ministry of Road, Transport and Highways. On November 27, Dubey was shot dead in Gaya. Case was presented as that of robbery by CBI.
2005	IIM graduate & Marketing manager in Indian Oil Corporation, Manjunath Shanmugam detected petrol adulteration racket at IOC's outlet Mittal Automobile in Lakhimpur Kheri. He ordered shutting down of two pumps in the area. Pumps got reopened in a month. Shanmugan conducted a surpise raid on November 19. His bullet-ridden body was found in his car's backseat that night. Main accused & owner of the pumps, Pawan Kumar was arrested along with other eight accused.
2008	Member of Right to Food Campaign and of VikasSahyog Kendra in Palamau, Lalit Mehta accessed NAREGA expenditure records revealing details of high-level corruption in NAREGA by middlemen, contractors & government officials. Mehta got killed on May 14, day before planned Social Audit of NAREGA workers was to be held.
2010	Employee of Malabar Cements Limited, a PSU, V. Saseendran wrote to Chief Minister of Kerela, Industries Minister and Vigilance Director informing them about rampant corruption in the loss-making company. He alleged that the Managing Director's secretary was leaking vital company information. In 2007, Saseendran was prime witness in audit reports stating the company registered a loss of Rs. 400 crore because of rampant corruption. January 2011, he and his two sons were found hanged in their house at Palakkad, Kerela.
2013	Indian Administrative Service officer Durga Shakti Nagpal went to Kadalpur village following a complaint of illegal construction of a mosque on government land. Bhati, UP State Agro Industrial Corporation Limited chairperson, planned this mosque plot, and trapped Nagpal. He gave the money and told villagers there was no need to take permission to build a mosque. After the demolition, Bhati told chief minister, Akhilesh Yadav about the facts which resulted in Nagpal's suspension on July 28, 2013.She was targeted due to her campaign against illegal sand-mining.

The proposed law has no requisites for the reinforcement of whistleblowing (fiscal incentives), doesn't deal with commercial whistleblowers and doesn't cover its jurisdiction to the private sector (an eccentric blunder, after the scam at Satyam). The Bill, if approved, would serve as the country's first law to guard whistleblower. In recent years, episodes of harassment, intimidation and violence have been reported by whistleblowers across the country.

This has discouraged citizens from speaking out against wrongdoing in public sector. The Bill would create a legal framework to investigate and prosecute cases of corruption involving government officials. On top of that, the Bill would empower the CVC, an autonomous body appointed to check corruption, to guarantee police protection to whistleblowers if deemed necessary. Anyone who fears retaliation can seek protection under the Bill. All government employees except those serving in the northern state of Jammu and Kashmir, in the armed forces and in the Prime Minister's office, can be investigated on allegations of corruption under the Bill. Approval of the Bill would also empower the CVC to receive,

investigate and act on complains filed by whistleblowers.[5]

CONCLUSION AND REMEDIES FOR INDIA

Researches on the impact of retribution on whistleblowing have revealed mixed outcomes (Miceli and Near, 1988; Near et al., 2004). Bok (1980) enumerated various types of retribution against whistleblowers such as over burdening with work, demotion, giving work deprived of accountability, work that involves new abilities or qualifications, ordering whistleblowers to take psychiatric fitness-for-duty check-ups. Retribution may also come in the form of bullying to silence the whistleblower or dissolution of employment (Mesmer-Magnus and Viswesvaran, 2005; Parmerlee et al., 1982).

[5] (Rana, 2013. Fact Sheet: Whistleblowers Bill. The Wall Street Journal, India. Accessed on 7th August, 2013 at 4pm)

The measures of reprisal may differ in terms of their rigorousness or intensity, thereby leaving the probable whistleblowers to assess not only the conceivable vengeance but also the potency of such measures while determining to whistleblow. To comprehend the power of retribution, an employee's rank and status in the organization is also vital (Near and Miceli, 1996). Thus, fresh employees may comprehend any kind of retaliation as further intimidating to them as compared to experienced and high status employees, as the second group is expected to have easy admittance to another employment.

Although a person's choice to whistleblow is expected to be influenced by vengeance contrary to such an act, therefore, following suggestions can be taken into account while framing the policies:

(1) Amoral surroundings should be made available where stern actions are taken against any wrongdoing;
(2) An individual should be inspired to convey his/her ethical apprehensions internally or externally;
(3) An individual needs to have faith that his/her worries will be contemplated seriously;
(4) An individual needs to feel that he/she will not undergo any retribution for their deed;
(5) The term "Victimization" and "bullying" must be clearly defined in the Whistleblower Protection Act of India

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