

Whistle blower: Alone vs. system

POOJA GARG

ASSISTANT PROFESSOR IN COMMERCE, SACHDEVA GIRLS COLLEGE GHARUAN

Abstract

After hearing the word Whistleblower, the picture that comes in to our mind is of a person blowing the whistle hard to prevent something wrong. But is it possible to blow the whistle so easily? Or do you think it costs something?

Keywords

Whistleblower, whistle blowing, system, public sector, private sector

Introduction

All the business houses are expected to do their business in a fair manner. The business organizations are to be abiding by the law of the country in which they are operating as they are being watched by someone. All the contracts, rules and regulations, laws and legislations must be followed by the organization. They must disclose a true, fair and transparent picture of the organization to the stakeholders at the end of the accounting period.

But sometimes the organizations indulged in the unfair practices in order to earn more and more profits. These wrongdoings may or may not be known to the outsiders but surely by the insiders. And when the person who is known to the wrongdoings of the organization, comes forward and shares his knowledge on such unfair practices of the organization with the higher authorities or the public, is known as the whistle blowing. The person is our hero – Whistle Blower.

Meaning

A whistleblower is a person who may be an employee of a company, or a government agency, who disclose the information to public or some higher authority about any wrong doing in the organization. The wrongdoing may take the form of fraud, corruption or any illegal or unethical activity which misleads the public. The whistleblower either may be insider (employee, worker etc.) or outsider (supplier or contractor) who becomes aware of any illegal or unethical means.

Types of whistle blowers:-

- **Internal whistleblowers**—These are the whistleblowers who report the misconduct, fraud or indiscipline to the senior officers of the organization such as Human Head Resources or CEO.
- **External whistleblowers**—These are the whistle blowers who report the wrongdoings of the organization to people outside the organization such as media, higher government officials or police.

Whistleblower, however, take the risk of facing stiff reprisal and retaliation from those who are accused of wrongdoing. Whistleblower can face legal action, criminal charges, social stigma and termination from any position, office or job.

The System

System here refers to the organizations/group against which the employee blows the whistle. It can be of two types

- Private sector, and
- Public sector

Whistle blowing in both the systems can vary the results depending upon the factors. However, whistle blowing in the public sector organization is more likely to result in criminal charges and possible custodial sentences. A whistleblower who chooses to accuse a private sector organization is more likely to face termination and legal and civil charges.

Why the term whistle blower?

Back in the 19th century, whistle was used to alert the public or a crowd about a bad situation, such as commission of a crime or breaking of rules. Also, in sports, referees used whistle to indicate an illegal or foul play and to warn the players. An 1883 story in the Janesville gazette called a policeman who used his whistle to alert the citizens about a riot. By the year 1960, journalists began to use the word “whistle blower” for people who reveal some wrongdoing. And eventually the word evolved.

Effects of whistle blowing:

On whistle blower–Whistle blower usually face termination, suspension, demotion, wage garnishment or harsh mistreatment by other employees, harassment, ostracism or blacklisting. Ostracism is a common experience which is faced by the whistleblowers- bosses shun the whistleblower and so do most other workers because of the fear for their own jobs. As validation by peers and supervisors is vital for every employee self-esteem.

On the system– whistle blowing also affects the system in a negative way. It may cause financial turmoil and public relation problems for the system. This may lead to the loss of profits and lower value of shares of the company. Ultimately it will destroy the goodwill of the organization. The future of the organization gets endangered.

By attacking a whistleblower, system may lose its talented employee. There may be extensive legal or compensation costs. Attacks against whistleblowers send a powerful message to other employees: speak out and you too will suffer. The result is often greater acquiescence to managerial directives. And this may be the biggest cost of all to be faced by the system.

Whistle-blowing behavior can also bring legal or market-related consequences for the organization. Of course, if the organization and its managers knowingly participate in or endorse any illegal or unethical activities, they might expect to face fallout if word gets out.

Employees in an organization that do not participate in or have no awareness of such activities are typically affected if the company faces legal claims or public backlash.

Why do whistle blower blows whistle

Many whistleblowers trusted the system, so they don't spoke out. But when they spoke out: they expected to be treated seriously, perhaps even lauded for their efforts. Indeed, many thought they were just doing their job: reporting a discrepancy in accounts, pointing out a conflict of interest, reporting on a hazard at work. They assumed person in authority would look into the matter, decide whether their concerns were valid and, if so, take appropriate action. Often they do not think of themselves as whistleblowers.

When, instead, they come under attack of the system, it shakes them to the core of their being: because the system turns against them for being public-spirited and their world is turned upside down. The system turns out to be unfair rather than just which is psychologically devastating. Some of the reasons can be:

Unlawful Behavior: Unlawful behavior by the employees made the reason of Whistle-blowing in the organization. Any kind of illegal activity which may lead to causing harm to any member of the organization can be termed as unlawful behavior. So, a whistle must be blown for the unlawful behavior of any employee.

Immoral behavior: Every employee should follow the ethical and moral behavior. It means the behavior is immoral because the employee is not following the guidelines of the organization. Unethical and immoral activities give a reason for whistle blowing.

Wasteful behavior: The main policy of every organization is to optimally utilize the available resources. Employees should not waste the resources and use them in an optimum manner. So, when an employee has a wasteful behavior and does not use the company's resources efficiently, the whistle is being blown.

Barriers to whistle-blowing

Lawful Liability: The whistleblowers have a lawful responsibility towards the system and the community. The sense of responsibility is very high because the whistleblowers have to detect the misconduct in the organization and thus information passes on to the higher authorities. This is the liability which creates the barrier against the whistle blowers.

Denial of employees: Nobody wants to be watched every time and everywhere. Everyone wants their freedom of privacy during working hours. This denial by employees also creates a barrier to the whistleblower in the organization.

Benefits of Whistle-blowing

Rise in the security of the organization: When a whistleblower is there in the organization, then the security of the organizations simultaneously increases because of that employee will

feel that there is a continuous watch on their activities and if any misconduct is done, it will be detected.

Enhance employees' ethical behavior: Whistle-blowing emphasizes on ethical behavior of the employees. So, when an employee will feel that they are being watched by someone continuously, then they will behave in ethical manner.

Less fraud and ill practices: Whistle-blowing policy makes it sure that there shall a less number of fraud in the organization. Continuous supervision leads to the less fraud and ill practices in the workplace.

Why protection is required for whistle Blowers

Shehla Masood, a businesswoman who was shot and killed near her house on Aug. 16, 2011, after availing herself of India's Right to Information Act 2005, in order to expose the local corruption.

Masood was one of several whistle-blowers, who were killed or attacked in India before the approval of the country's whistle-blower protection bill. Her story demonstrates the considerable threat of reprisal for whistleblowing.

Satyendra Dubey, was a civil engineer and employee of National Highways Authority of India. He was assigned with the Prime Minister's Golden Quadrilateral project. He was Incharge of releasing the funds for the project. It was then, when he found out the sloppy project reports and huge amount of advance had already been released to the contractors. He took the matter to the higher authorities and blows the whistle, but they ignored his request. And he was found shot dead in Gaya in 2003.

A Karnataka official SP Mahantesh, said to be a whistle-blower in controversial land allotments by societies was also killed in May 2012. He was working as Deputy Director in the state's Cooperative department and had reported some wrong doings in different societies which involve some officials and political figures.

Because of the consequences which were faced by the various whistle blowers there was a need of law which could protect them.

The Companies Act and Whistleblowing

In the lightof numerous scandals and syndicated corruption through Private and Public Sector organisations alike, it was obvious to have certain changes in the Business world. Changes were required in different Acts and provisions of Law governing the business. One such important step was the enactment of The Companies Act 2013, which has put more focus on eliminating loopholes through strict compliance and vigilance methods.

Various sections of the Companies Act 2013, includes framework of inquiry, investigation and inspection. These provisions increases identification of wrong doings by an external agent and thus the agent can play an important role to become an external whistle-blower and can report about the unfair practices of the organisation.

Securities & Exchange Board of India (SEBI) and Whistleblowing

SEBI – The regulatory body for managing the Public Limited companies, following its provisions to strengthen corporate governance standards in India, amended the Principles of Corporate Governance by incorporating clause 49 of the listing agreement which mentions the formation of Whistle-blower Policy for companies. However it is not mandatory to put a policy in place, although numerous companies have adopted the policy wholeheartedly as it improves the compliance and standards of governance – on the other hand it is mandatory to disclose adoption of policy and number of cases reported under such policy along with the number of cases resolved or pending.

Whistle Blowers Protection Act, 2011

Whistle Blowers Protection Act, 2011 is an Act of the Parliament of India which provides a mechanism to investigate the alleged corruption and misuse of power by public servants and also protects the individual who exposes alleged wrongdoings in government bodies, projects and offices. The wrongdoing might be in the form of fraud, corruption or mismanagement.

The Act was approved by the Cabinet of India and passed by the Lok Sabha in December 2011. It became an Act when it was passed by the Rajya Sabha in February 2014 and received the President's assent in May 2014.

The bill aims to protect the honest officials from harassment with protecting persons making a public-interest disclosure. It outlines penalty for false complaints. However, it does not sanction for attacking a complainant. Directorate of Income Tax Intelligence and Criminal Investigation is one of the only agencies empowered for the protection of whistle blower.

Salient Features of the act

- The Act seeks to protect whistle blowers, i.e. person who makes a public interest disclosure related to any act of corruption, misuse of power, or criminal offense.
- Any public servant or any other person including a non-governmental organization may make such a disclosure of unfair practices to the Central or State Vigilance Commission.
- Every complaint has to include the identity of the complainant.
- The Vigilance Commission shall not disclose the identity of the complainant except to the head of the department if he thinks it necessary. The Act penalizes person who disclosed the identity of the complainant.

Criticism

Following are specific points of criticism for this act:

- It only covers central government employees. It does not cover state government / private bodies.
- No provisions of incentives are provided for whistle blowing.
- It does not cover the corporate whistle-blowers.

- Powers of CVC is limited to making recommendations only. It cannot impose penalties.
- Victimization is neither defined nor covered properly.

Conclusion:

Even after passing various acts and bills, whistle blowers doesn't get any kind of security or justice over their duty. If the corporate sector or other organisation does their actions in more ethical manner, then there will be no requirement of whistle blower and whistle blowing.

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