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# Whistle Blowing Exercise in Indian Corporation- Does it really blow?

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## Abstract

Company adopts Whistle Blower Policy to provide appropriate avenues to the employees, contractors, clients, vendors, internal or external auditors, law enforcement / regulatory agencies or other third parties to bring to the attention of the management any issues which are perceived to be in violation or in conflict with the fundamental business principles of the Company. The employees are encouraged to raise any of their concerns by way of whistle blowing. All cases registered under the whistle blower policy of the company are reported directly to the CEO.

There are doubts, whether, in reality the whistle blows? The case of Satyam fiasco in India indicates all about. In the government sector, many a time whistle blows with a low intensity, but, the world cannot afford economic misconduct of such system. It requires strong policy and a strong sense of self governance.

This paper delve on the factors that hinders over the whistle blowing for good governance and also suggest some measure in the light of available demerits of the system.

**Key words:** Concerned individuals, Organizational Response, Zero Tolerance Policy

## Introduction

Martin Luther King Jr. said, “Our lives begin to end the day we become silent about things that matter”. For Indians to understand that is not difficult. Just read ‘My experiments with truth’ by Mahatma Gandhi. Ownership of failure gives you so much price and conviction. Running a company is in fact all experiments of failures. You will learn a lot more by discussing failures. Why don’t you discuss failures in quarterly returns? Because today companies that survive they have had many failures. Can you own up your failures like Gandhi and Obama? No doubt, in the world there only a few who own up failure. In the public, business and corporate context this has becoming a serious matter in India.

## Conceptual Framework on Corporate Governance

Corporate governance means best practices of processes, rules, policies etc which affects the way a firm is heading, or being controlled. Corporate governance also says the relationships

between the many players interested and the goals for which the corporation is governed. Corporate governance is the set of processes, customs, policies, laws, and institutions affecting the way a corporation is directed, administered or controlled. Corporate governance also includes the relationships among the many stakeholders involved and the goals for which the corporation is governed. The principal stakeholders are the shareholders, management, and the board of directors. Other stakeholders include employees, customers, creditors, suppliers, regulators, and the community at large.

Corporate governance has emerged as an important issue both in India and globally. Expectations of stakeholders are extremely high and the scrutiny by regulators and investors incredibly stringent. As a consequence, Indian companies are proactively implementing measures for the same. Going forward, one of the most important challenges for Board members is to build a foundation of trust with management, the investment community, regulatory agencies and the public. The stakes are high and the margin for error is low and while new standards are emerging, one thing remains clear: the responsibility to adopt sound governance practices has been placed squarely on corporate Directors and officers. Indispensable Principles of Corporate Governance:

- o Discipline in operations;
- o Transparency in dealings and disclosures;
- o Accountability to shareholders;
- o Responsibility of company's action;
- o Social Responsibility;
- o Improving group dynamics and harnessing individual talents;
- o Enhancing early-warning mechanisms for critical risks;
- o Mitigating exposure to liability;
- o Building credibility and trust with stakeholders;
- o Embedding sustainability as a corporate value.

## **Mis-Governance in Indian Corporations**

Whatever be the principles embedded in the process of corporate governance, the world can not be free from malaise of mis-governance. The degrees and intensities of mis-governance matter more on perception, position, interpretation, inflections, and situation. However, truth is

truth. In case of corporate governance in India we have many records of good governance as well as mis governance.

A study called 'Early Warning Signals of Corporate Frauds', conducted by the Pune-based India forensic Consultancy Services, a forensic accounting and education firm, from January 2008 to August 2008 has come out with shocking revelations about corporate frauds. The study has revealed that at least 1,200 companies out of 4,867 companies listed on the Bombay Stock Exchange and 1,288 companies listed on the National Stock Exchange as on March 31, 2007, including 25-30 companies in the benchmark Sensex and Nifty indices, have massaged their financial statements. The study investigated 11 sectors, viz. real estate, retail, banking, manufacturing, insurance, public sector undertakings, mutual funds, transport and warehousing, media and communications, oil and gas and information technology. The manufacturing sector, which contributes about 28 per cent of India's gross domestic product, is the one most ridden with fraud mainly due to the peculiar nature of the business and the procedural complexities inherent in this sector. Real estate and public sector undertakings came second. Corporate Fraud in India is Rising, 45% of the 1,000 respondents from leading Indian businesses declared that fraud had increased within their organization (KPMG- Study, **April, 2010**). Nearly one in every 13 corporate houses in India had suffered losses between Rs 40 lakh and Rs 4 crore due to corporate frauds while nearly half had faced such frauds in the last three years. About one in two corporate believes that at present corporate fraud is much more prevalent in India than three years ago. New technologies, new inventions and expansions into new markets have opened the door to various forms of fraud, while the threat has increased mainly because of high attrition. These were some of the major findings of a report on fraud perception among top corporates around the globe by Economist Intelligence Unit (EIU) for Kroll Inc.

Weak internal control systems, eroding ethical values and a reluctance on the part of the line managers to take decisive action against the perpetrators are cited as the most vital underlying reasons for frauds being on the rise," the report said. Corporate fraud may be on the rise, at the same time, to reduce there are rules and policies to protect from the corporate frauds are also increasing day by day. In this backdrop whistle blowing policy is a relatively recent emergence in the spare of corporate governance.

## **Whistle Blowing Policy Framework in India**

The Securities and Exchange Board of India ('SEBI') vide its circular dated August 26, 2003 has amended the Principles of Corporate Governance incorporated in the standard Listing Agreement. The amended principles, *inter-alia*, require the Company to formulate a policy called **Whistle Blower Policy**. The object of said policy is to encourage the employees of the organization to bring to the attention of the management any irregularity, corporate misconduct or unethical or improper practices prevailing within the organization and its redressal. While the government still has to bring out a comprehensive whistle-blower policy, the Securities and Exchange Board of India (SEBI), the market regulator, included guidelines for companies in an amendment to Clause 49 of the listing agreement in August 2003. Under the guidelines:

- An employee wanting to report a fraud or malpractice in his organization has direct access to his company's audit committee and can approach it without seeking the consent of his superiors
- The company will send a circular or other correspondence to all its employees informing them that they enjoy this right; it will also protect them from harassment such as termination of services or otherwise discriminate against them
- The company will confirm that it has adhered to the above practice in its annual report, in the Board report on Corporate Governance.

Under the aegis of government of India Corporate Governance Voluntary Code 2009 has been Published by Ministry of Corporate Affairs, Government of India, New Delhi.

## Exercises of Whistle Blowing

Report of the Confederation of Indian Industry, Task Force on Corporate Governance made recommendation for voluntary adoption. The Task Force recommends institution of a mechanism for employees to report concerns about unethical behaviour, actual or suspected fraud, or violation of the company's code of conduct or ethics policy. It should also provide for adequate safeguards against victimization of employees who avail of the mechanism, and also allows direct access to the Chairperson of the audit committee in exceptional cases.

In the Heritage Food (India) Ltd whistle blower policy, mentioned that an employee of the company who discloses in good faith any unethical & improper practices or alleged wrongful conduct to the Head of Department or in case it involves managerial personnel to the managing director and in exceptional cases to the audit committee in writing. The whistle blower's role is as a reporting party, he/she is not an investigator. Although the Whistle Blower is not expected to

prove the truth of an allegation, he needs to demonstrate to the audit committee, that there are sufficient grounds for concern.

In the preface of Whistle Blower Policy in Maruti Suzuki India Ltd mentioned that Clause 49 of the Listing Agreement between listed companies and the Stock Exchanges, inter-alia, provides, a non-mandatory requirement, for all listed companies to establish a mechanism called “whistle blower policy” for employees to report to the management instances of unethical behaviour, actual or suspected fraud or violation of the company’s code of conduct or ethics policy.

HCL has adopted a whistle blower policy to provide appropriate avenues to the employees, contractors, clients, vendors, internal or external auditors, law enforcement / regulatory agencies or other third parties to bring to the attention of the management any issues which are perceived to be in violation or in conflict with the fundamental business principles of the company. The employees are encouraged to raise any of their concerns by way of whistle blowing. All cases registered under the whistle blower policy of the company are reported directly to the CEO (HCL, Corporate Governance Report 2009-10).

## **Whether WB Successful in India**

The evidences of whistle blower policy in Indian companies are not in dearth. However, there are looming questions on implementation, also on the rate of success Whether whistle blowing is successful India must be answered in the context of conflicting cultural norms of corporation, which make it likely that whistleblowers will encounter hostility and alienation. As Terance Miethe explains in his book, *Whistle blowing at Work*, many people see the whistle blower as a "snitch," or "a lowlife who betrays a sacred trust largely for personal gain." This attitude was illustrated by an arbitrator in a 1972 case, who told the employee that you cannot "bite the hand that feeds you and insist on staying on for the banquet." Among others, Peter Drucker, the famed management guru and anti-whistleblower, viewed whistle blowing as "informing," illustrating yet another instance of the animus whistle blowers have to expect from advocates of loyalty to the organization first.

On the flip side, whistleblowers such as Frank Serpico and Karen Silkwood are seen as "saviors" who ultimately helped create important changes in organizations. This approach to whistle blowers as guardians of public accountability is often taken by consumer advocates such

as Ralph Nader. Given this dichotomy, whistle blowers may well encounter difficulties when they appeal internally or go public with information that may damage their companies.

To review the success of the whistle blowing exercise in Indian corporation is a contestable question. What opinion do the experts hold need to serious scan to contest? The following are the comments and opinions hold by the various experts on whistle blowers-

1. The rule of the vigilance is not to take any cognizance of or action on anonymous or pseudonymous complaint, as nobody comes forward to prove the allegation and the allegation must be proved beyond any doubt. So, nobody can blame any authority if no action is taken on any anonymous complaint. Of course, some people make anonymous complaints just to have fun. But, the question arises, why people do resort to the use of anonymous route of whistle blowing, rather than coming openly? In fact, whistle blowing system proves to be a system of reporting the police, whose members themselves are involved, and the reporter would gets exposed if he tries to report the flaw openly and would get the target of their ire and harassment through alternative routes. However, it is but natural that the corporate directors won't take any note to the whistle blowing system seriously, as no serious accounting breach is usually made without being in their own knowledge. In fact, whistle blowing system proves to be a handy tool for them to gauge the system as to what extent any employee has become aware of their own malpractices or unethical practices, normally made through others. On the other hand if the matter comes through the audit committee, there is a good reason for them to deploy significant resources, i.e., misuse of resources in a justifiable way and still be able to make an eye wash. In fact, the resources are lavishly deployed to make people feel, as if the corporate directors are very serious about the matter, while their efforts are to hush up the matter some how or the other and the manpower deployed for investigation are normally their own tutored henchmen to twist the things to make a very easy and safe escape. Evidently, corporate organizations do not take care of the whistle blowers allegations seriously, rather, if you try to watch seriously, they try the system smartly to their advantage to make their safe escape out of the allegations by side tracking the issues. *(PS Dhingra, CEO & Vigilance & Transformation Management Consultant, Dhingra Group of Management & Educational Consultant).*

2. I doubt that there are too many whistle blowers in industry! Nor do companies encourage whistle blowing. Most private organizations become big through quite a bit of manipulation, most of it unethical; very early on, newcomers to the company learn that honesty is not valued; the more honest among them will leave rather than try and fight the system; others will learn that silence is golden! A few may fight, but once their life is at stake, how many will want to become martyrs? Whistle blowing should be encouraged, but more important is that the media plays its role well enough to report wrongdoings. (K. Narayanan, Sr. GM)
3. This whistle blowing mechanism is, just a systemic element, **to reduce or to alleviate corruption** & run the company profitably. Bottom-line increase means an incentive to it's employees in the **form of bonus** etc. Whistleblower mechanism can work out provided the informer should be assured that his information should be confidential & not be spread to any other persons for his security reason. More over there should be minimum criterion for whistle blowing that all silly matters should not be entertained but only serious & critical matters. (Arun Kumar K. *Security/Equity Research Analyst, Thomson Reuters*)
4. As far as India is concerned unless corruption exists in the system this type of step will not only be unsuccessful but will be misused....!! (Urvish Pankajkumar Subodh).
5. In India, the corporates speak about integrity, which exists in name only. HR departments are just showcases that bring a few pretty faces to the company, without any power to take good decisions (neither will , perhaps). We worship the corrupt persons, provided they have been able to build big business empires. (Shyam S, *Project Leader/Managing Consultant, A leading EDA firm*)
6. An HR department of a company is something similar to whistleblower section only. But does it really work? It cannot. After all everybody is dependent upon the company for his salary, and career prospects. And bigger companies almost always run through various groups involved in various forms of complex politics. It's always risky, for an individual no matter dependent (for salary, designation, career) or acting as an independent body (but lesser in earning power as compared to the company) to tip off a company about it's real situation. But yes, an independent body of individuals, who earn according to the number of complaints got by employees, may



- help a company's owner, to understand where really the structure of company laid down by him, is standing. (*Vishwas Gagrani, Game Development, Freelance*).
7. I don't think so, and in the wake of a big satyam fraud, corporate organizations should take care of these things even more carefully. Corporate organizations are required to provide anonymous whistle-blowing channels to their employees. Anonymous reporting channels are intended to protect organization from financial fraud and also any other malicious activity that is happening in the organizations, even in the case of workplace harassment one can use these channels, and how these whistle-blowing channels allow employees at major corporations to report fraudulent accounting and auditing matters without fear of retaliation from management. But, without any action taken against them, whistle blowers are scared to report any fraudulent activities, as they will become the target in future from those people... (*Darshana Sawant, HR Manager, Leading IT services company*)
  8. In most cases the hunter becomes hunted, hence most people want to play safe to safeguard their post and position. Those who come forward should be encouraged and should be given required protection. But, in most cases the value of malpractices at the top level is higher and is being shielded, since in most cases it is not by a single person. (*S.Baalu , Consultant, Daspan Industries Ltd.*)
  9. Whistle Blowers are Corporate Conscience Keeper, but still in the vulnerable state. *Report of the CII Task Force on Corporate Governance 2009-10 reads at the point number -16, that 'clause 49 has recommended that companies establish a mechanism for employees to report to the management concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics. Even though companies have adopted and communicated the existence of a whistle-blowing policy, we have not seen any success on this front in corporate India. The Task Force pondered over what organizations can do to create an environment which helps employees to prevent undesirable practices. It was felt that adoption and encouragement of the policy should be made mandatory for all listed companies. This is bound to send a positive signal to employees that the management is willing and able to prevent any illegal activity and also ensure that there is a process by which the individuals can expose the problem to the appropriate authority who can take action.*

The employees would need to be oriented towards the company's ethics policy. HR Department can play an effective role in the process by assigning ombudsmen, providing special telephone numbers and email IDs. Since whistleblowers need to be provided high degrees of protection, the listing agreement should consider providing statutory protection from dismissal or wrongful termination for acting as a whistleblower. There are adequate precedents in other jurisdictions for such laws and these could be examined. Fostering a culture which promotes and supports institutionalization of whistle blowing policy shall deter corrupt practices and help in preventing corporate disgrace and debacles.

All quotes incorporated above speaks about the actions and curative measures those need to be taken into account for making whistle blowing scheme success. Hence, ministry, and professional bodies as well as practitioners need to address these issues.

## **Conclusion**

Let the governors, stakeholders live by not remain silent about things that matter. Let Indians to understand the spirit of 'My experiments with truth' by Mahatma Gandhi, on ownership of failure so that management can reap the price and conviction. Let directors do learn from the running a company through its all experiments of failures publicly. Let the self governance through learning from failure and discussion failures become the moral compass which would indicate about the aligned transparency. Why don't the board members of any company discuss failures in quarterly returns? National foundation for corporate governance should work on it seriously to achieve its inherent missions to make significant difference to Indian Corporate sector by raising the standard of corporate governance in India towards achieving stability, growth, self disclosure, transparency building in corporate practice. Because today companies that survive they have had many failures. Would the corporate managers own up their failures like Gandhi and Obama? If we would not blow our whistle through the ownership of failure than the any whistle blowing mechanism wouldn't work? To increase intensity of whistle blowing for good governance education and HRD can play a vital role.

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