

Whistleblowing

Meaning of Whistle Blowing:

Whistle blowing is the act of drawing public attention, or the attention of an authority figure, to perceived wrongdoing, misconduct, unethical activity within public, private or third-sector organisations. Corruption, fraud, bullying, health and safety violation, cover-ups and discrimination are common activities highlighted by whistle blowers.

Whistle blowers often face reprisals from their employer, who may suffer reputational damage as a result of the whistle being blown, or from colleagues who may have been involved in the illicit activities. In some cases, reprisals become so severe that they turn into persecution. In some cases, reprisals come from legal channels, particularly if the whistle has been blown for illegitimate reasons.

Protection of whistle blowers is an important focus for the legal system, as is incentivising whistle blowing when there are many reasons stopping employees from doing so. All employers should adopt a whistleblowing policy that encourages employees to draw attention to wrongdoing or risky behaviour. In the case of legal action being taken against a company as a result of internal wrongdoing, having and promoting a strong whistleblowing policy may act in part as a legal defence.

Whistle blower

A whistle blower is anyone who has and reports insider knowledge of illegal activities occurring in an organization. Whistle blowers can be employees, suppliers, contractors, clients, or any individual who becomes aware of illegal business activities. Whistle blower, an individual who, without authorization, reveals private or classified information about an organization, usually related to wrongdoing or misconduct. Whistle blowers generally state that such actions are motivated by a commitment to the public interest. Although the term was first used to refer to public servants who made known governmental mismanagement, waste, or corruption, it now covers the activity of any employee or officer of a public or private organization who alerts a wider group to setbacks to their interests as a result of waste, corruption, fraud, or profit seeking.

Definition of 'Whistle blower'

Definition: A whistle blower is a person, who could be an employee of a company, or a government agency, disclosing information to the public or some higher authority about any wrongdoing, which could be in the form of fraud, corruption, etc.

Eaton and Akers (2007) say whistle blowing in its simplest form involves the act of reporting wrongdoing within an organization to internal and/ or external parties.

According to Daft (2006) “Whistle blowing is the employee’s disclosure of illegal, immoral, or illegitimate practices on the employer’s part”.

According to Hellriegel, Jackson, Staude and Associates (2001) “whistle blower’s as employers to other people or organizations that are capable of their employers to other people or organizations that are capable of taking corrective action”.

Camerer (2001) defines whistle blowing in its most general form as involving calling public attention to wrongful acts, typically in order to avert harm. Similarly, Judy Nadler and MiriamSchulman¹² defines, “whistle blowing means calling attention to wrongdoing that is occurring within an organization”.

Description: A whistle blower is a person who comes forward and shares his/her knowledge on any wrongdoing which he/she thinks is happening in the whole organisation or in a specific department. A whistle blower could be an employee, contractor, or a supplier who becomes aware of any illegal activities.

To protect whistle blowers from losing their job or getting mistreated there are specific laws. Most companies have a separate policy which clearly states how to report such an incident. A whistle blower can file a lawsuit or register a complaint with higher authorities which will trigger a criminal investigation against the company or any individual department.

There are two types of whistle blowers: internal and external. Internal whistle blowers are those who report the misconduct, fraud, or indiscipline to senior officers of the organisation such as Head Human Resource or CEO. External whistleblowing is a term used when whistle blowers report the wrongdoings to people outside the organisation such as the media, higher government officials, or police.

CHARACTERISTICS/ FEATURES OF WHISTLE BLOWING

a) Whistle-blowing is not the same as complaint:

Complaining is not same as blowing the whistle. In most instance complaints involve personal subject matter of the complainant than with others or public interest. Whereas the whistle blowing is concerned with subject matter affecting public interest. Complaints from service users, relatives or representatives would not be classed as whistle blowing. These would need

to be raised using the service's complaints procedure. Employees those who have complaints regarding pay, hours and general grievances would need to raise their complaints using their organizations grievance procedure.

b) It is not a witness of a crime:

Witness of crime is not considered as whistle blowing. The general criminal and civil proceedings and lawsuits include witness of a crime for investigation purpose. But, whistle blower is not mere witness, but much more than witness. Whistle blower may be witness or may not be witness of crime, but having enough information about that crime.

c) It is non-public information:

Information about a company that is not known by the public is known as non-public information. Therefore the matter involved in whistle blowing is considered as non-public information.

d) Substantial importance:

matter of whistle blowing must have substantial importance. The substantial importance is concerned with having or involved worth material facts and figures, the costs of damage/ loss to the public. There cannot be simple matter involved in whistle blowing which causes no harm to public and less or no loss to anyone.

e) Desired changes:

The whistle blower is expecting to stop some activity which causes harm and loss to public and society. Therefore there are some desired changes involved by doing so.

f) Voluntary way:

Whistle blowing is purely a voluntary act of a person and also a group. There is no external force to make an act of whistle blowing, rather its internal force to do so.

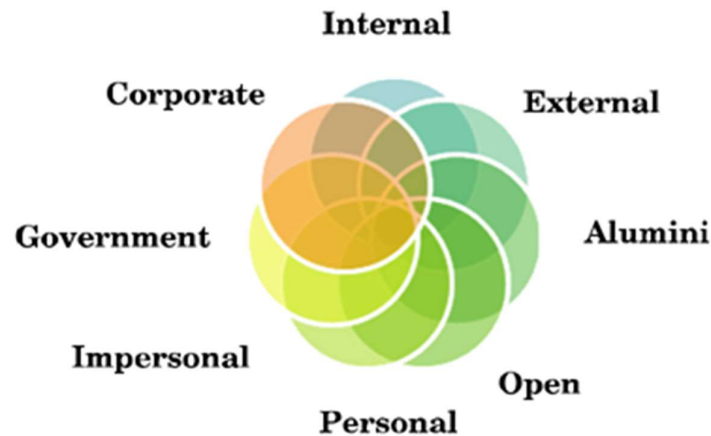
g) Moral protest: Moral:

issues are concerned with the principles or rules of right conduct or the distinction between right and wrong; ethical. The moral protest is fighting against the immoral/ unethical issues. Therefore whistle blowing is considered as moral protest.

h) Public interest disclosure:

A public interest disclosure²⁰ is made when a person discloses to proper authority information that tends to show past, present or proposed future improper conduct by a public body in the exercise of its functions.

TYPES OF WHISTLEBLOWERS



Internal: When the whistleblower reports the wrong doings to the officials at higher position in the organization. The usual subjects of internal whistleblowing are disloyalty, improper conduct, indiscipline, insubordination, disobedience etc.

External: Where the wrongdoings are reported to the people outside the organization like media, public interest groups or enforcement agencies it is called external whistle blowing.

Alumini: When the whistle blowing is done by the former employee of the organization it is called alumini whistle blowing.

Open: When the identity of the whistleblower is revealed, it is called Open

Personal: Where the organizational wrongdoings are to harm one person only, disclosing such wrong doings it is called personal whistle blowing.

Impersonal: When the wrong doing is to harm others, it is called impersonal whistle blowing.

Government: When a disclosure is made about wrong doings or unethical practices adopted by the officials of the Government.

Corporate: When a disclosure is made about the wrongdoings in a business corporation, it is called corporate whistle blowing.

WHISTLE BLOWING-KEY ISSUES

The following are some of the key issues relating to whistle blowing discussed:

a) Disclosure of wrong doing:

Whistle blowing is an act by employee. The act is disclosing of wrong doing. Information is about possible or actual, important wrongdoing in an organization that threatens the public's well-being. Important wrongdoing is different from a trivial one by the 1) number of people affected; 2) the seriousness of the consequences for them; or 3) the amount of money involved.

b) Type of wrong doing:

Most of wrong doing incidents are theft, fraud and corruption, harassment, discrimination, environmental hazards, breaches of policy, misconduct, workplace safety, bullying other unethical behaviour.

c) Whistle blower:

Whistle blowers are defined as persons who sound an alarm from within the very organization in which they work aiming to spotlight, neglect or abuses that threaten the public interest. Former employees, home workers, seconded individuals, independent contractors and individuals responsible for the management of an organisation (for example directors) can blow the whistle. The individual who exposes a wrongdoing is not a journalist or ordinary citizen; he or she must be a member or former member of an organization.

d) Whistle blowing hotlines:

Whistle blowing takes place using various hotlines such as telephone, post, email, web services, fax, SMS.

e) Whistle blowing procedure/process:

The process of whistle blowing differs depending on the nature of wrong doing and type of organization. There is a systematic way of reporting wrong doing and investigation to be taken. There should be proper channel for effective whistle blowing which forms the best whistle blowing procedure. Sometimes the employee may be in confusion with respect to whom to report wrong doing, will it be considered seriously by them and affects serious investigation and action. There may be formal whistle blowing procedure provided by the organization. But not all organizations provides for it.

f) Types of whistle blowing:

Internal whistle blowing:

Most whistle blowers are internal whistle blowers, who report misconduct on a fellow employee or superior within their company. One of the most interesting questions with respect to internal whistle blowers is why and under what circumstances people will either act on the spot to stop illegal and otherwise unacceptable behaviour or report it. There is some reason to believe that people are more likely to take action with respect to unacceptable behaviour, within an organization, if there are complaint systems that offer not just options dictated by the planning and control organization, but a choice of options for absolute confidentiality.

External whistle blowing:

External whistle blowers, however, report misconduct on outside persons or entities. In these cases, depending on the information's severity and nature, whistle blowers may report the misconduct to lawyers, the media, law enforcement or watchdog agencies, or other local, state, or federal agencies. In some cases, external whistle blowing is encouraged by offering monetary reward.

g) Confidentiality:

The confidentiality of whistle blower is very essential in an effective whistle blowing procedure. Generally the person receiving the disclosure would be expected to use their best endeavours to keep the whistle blower's identity secret.

h) Protection:

The procedure should record the protection that will be given to employees who make a disclosure. Examples include protection against:

- Retaliatory action by the employer;
- Discrimination/victimization under the Human Rights Act 1993; and
- Criminal or civil liability arising from the disclosure (unless the whistle blower was personally involved in the serious wrongdoing).

i) Demographic Influences:

Several demographic factors might be expected to be associated with the likelihood of blowing the whistle. The demographic factors such as age,

gender, income level, religion, education level etc., may have association with whistle blowing.

j) Whistle blowing policy:

The organizations having whistle blowing policy work and perform far better than those who don't have. The purpose of this policy is to provide a framework to promote responsible and secure whistle blowing. It protects employees wishing to raise a concern about serious irregularities within the company.

k) Whistle blowing rewards:

Whistle blowing rewards are considered as anti-corruption act by many countries and thus encourage whistle blowing activity among employees by rewarding them. They feel whistle blowing can decrease the cost of wrong doing and thereby increase the stability of organization by cost savings. There are exceptions, however. A public official who reports an act of corruption in connection with his duties may not eligible for the reward.

l) An Ethical Dilemma:

In practical terms, if someone is concerned about corruption or serious wrongdoing in or by an organization, they have three options. These are:

- To stay silent.
- To blow the whistle internally or with the responsible person.
- To blow the whistle internally or with the responsible person.

ASPECTS OF WHISTLE BLOWING - POSITIVE AND NEGATIVE Positive Aspects:

The whistle blowing act has some positive aspects. These positive aspects reflect the benefits, advantages, significance, importance and good side of whistle blowing. The following factors explain about the positive aspects of whistle blowing.

a) Whistle blowing is an anti-corruption tool: It minimizes fraud and misconduct can be corrected.

b) It ensures effective system of internal control:

Whistle blowing can play an essential role as a preventive and detective control, if the organization explicitly incorporates reporting mechanisms that disclose incidents of wrongdoing into its internal control structure.

c) It is a good corporate governance practice:

The organization promotes transparent structure and effective, clear communication among all levels of employees. This can protect organizational clients. Organizations contain many stakeholders such as share holders, directors, managers, employees, vendors; consumers. Each of these groups has a vested interest in the health and long term success of the corporation. Each group seeks to secure its own success through the activity of the corporation. Each group seeks to do this in a fair and equitable way. The only stakeholders that really know what is happening within a corporation are the employees. So it is in the hands of the employees to protect the interest of various stakeholders. Whistle blowing gives all stakeholders, but most importantly employees, the opportunity to keep the corporation ethical and also to keep fellow employees honest. The end of the evil practices in the organization is possible by the effective whistle blowing. If no one questions the bad behaviour, it will continue and as a result cause even more damage to the organization itself and public.

d) It is a risk management strategy:

It's better to hear the wrongful act at its initial stage, so the solution could be found at the earliest in preventing further damage to the organization in long run.

e) It may result in change in public policy

Negative Aspects:

The act of whistle blowing even has some negative aspects. These negative aspects reflect drawbacks, disadvantages, harms and bad/ugly side of whistle blowing. The following factors explain about the negative aspects of whistle blowing.

a) Employees take advantage of whistle blowing for personal benefit:

employee with greed can misuse the whistle blowing mechanism for personal benefit. The benefit may include personal grudge, power, position, and money .

b) Lack of support for whistle blowing:

If the entire organization does not have positive attitude towards whistle blowing, then employees may fear speaking up. The lack of organization support for internal whistle blowing may result in external whistle blowing, causing serious damage to goodwill of the organization.

c) Stress, termination and mistrust:

Whistle blowing causes stress, termination and mistrust on part of the employees. These results are retaliatory acts by their employers. The employers may retaliate against their employees for blowing the whistle causing them heightened stress and discomfort in job. In most cases the employers terminate their employees for the act of whistle blowing. It develops mistrust on employees about their organization . The added stress by whistle blowing act can cause several health problems and fractures in relationship. Ruined careers, stress-related illness, and even broken marriages are the impact of whistle blowing.

d) Disrupt the team spirit:

Whistle blowing makes people suspicious of one another, which may disrupt the team spirit and co-operation within the companies. This affects the operations of company in long run. Whistle blowers suffer from emotional self-accusation. After knowing both positive and negative aspects of whistle blowing, one can say that positive outweighs negatives, if negatives treated effectively. Whistle blowing benefits, if there is clear procedures, actively and effectively maintained, reduce not only harassment and reliability liability but also the likelihood of punitive damages.

Legal protection for whistle blowers in India

The Government of India has been considering adopting a whistle bower protection law for several years. In 2003, the Law Commission of India recommended the adoption of the Public Interest Disclosure (Protection of Informers) Act, 2002. In August 2010, the Public Interest Disclosure and Protection of Persons Making the Disclosures Bill, 2010 was introduced into the Lok Sabha, lower house of the Parliament of India. The Bill was approved by the cabinet in June, 2011. The Public Interest Disclosure and Protection of Persons Making the Disclosures Bill, 2010 was renamed as The Whistle Blowers' Protection Bill, 2011 by the Standing Committee on Personnel, Public Grievances, Law and Justice. The Whistle Blowers' Protection Bill, 2011 was passed by the Lok Sabha on 28 December 2011. and by the Rajya sabha on 21 February 2014. The Whistle Blowers Protection Act, 2011 has received the Presidential assent on May 9, 2014 and the same has been subsequently published in the official gazette of the Government of India on May 9, 2014 by the Ministry of Law and Justice, Government of India.