

**CORPORATE GOOD GOVERNANCE AND
WHISTLEBLOWING IN INDIA: A CRITICAL
ANALYSIS**

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ABSTRACT

Since inception of human civilization the effort has been to establish a society which caters to the need of one and all. Thinker Hobbes, Locke and Rousseau had emphasized on social contract theory. Rousseau specifically talks about general will theory in which each individual gives up his own will to see that one person or a group looks after the welfare of the entire society, thus the responsibility may be entrusted to chosen few but they have a moral obligation to rule in the best interest of the people.²¹⁷ Today the members of the comity of nations are founded on the principle of “welfare State” which allows full participation of their respective inhabitants, striving to achieve the common good and in the process affording optimum opportunity and involvement for growth of the individual so as to subserve the societal interests. This has led to the evolution of “**Good Governance**”, as opposed to mere governance, as an umbrella concept encompassing within it a system of governance that is able to unequivocally discover the basic values of the society where standards concern economic, political and socio-cultural issues including those involving human rights, and follows the same through an accountable

and upright administration. But with the emergence of welfare state there is a phenomenal growth in the powers and functions of the state too. When the powers and functions of the state so increases, there arises a danger of abuse of power or excessive use of power by those who act on behalf of the state. We cannot deny adequate powers necessary for competent discharge of its functions to the state. At the same time, it is necessary to provide checks upon the exercise of such power. Power must be exercised strictly within limits drawn by the law.

Lord Acton’s saying that, “Power corrupts and absolute power corrupts absolutely” holds true in the current Indian milieu as corruption has become an inevitable and unavoidable part of our daily life. We have learnt to accept corruption everywhere and in everyone; among our political class, in our bureaucracy, among members of the Judiciary, in educational and medical institutions, and even among our so-called ‘god-men’. We have accustomed ourselves to tolerating corruption everywhere.²¹⁸

The researcher firmly believes that in the world accountability and transparency in public institutions are highly required. Only accountable and transparent institutions can end endemic corruption and promote human rights by making the public functionaries accountable to the common people.

Keywords: whistleblower, corruption, good governance, law

INTRODUCTION

These lines of Chanakya from his work Artha Sastra show up the value of good governance practices in a corporation or company.

Whistleblowing not only help in exposing illegal activities and wrongdoings in organization but also afford an opportunity to employee to discover wrongdoings in the workplace and further rectify those wrongdoings as soon as

1. RafiaNisar, “Governance: With Pro-People Approach” 4 *The Indian Journal of Political Science* 657 (2012).

2. N. Bhaskara Rao, *Good Governance: Delivering Corruption-free Public Services* xx (Sage Publications India Pvt Ltd, New Delhi, 2013).

possible. As for corporate governance it can be considered as a structure, a system, or a means that companies establish to examine the functioning of business, to make firms' policies and to achieve objectives more effectively and successfully²¹⁹.

In order to understand the notion of whistleblowing in relation to corporate good governance, it is significant to know the terms "governance" and "corporate governance". The word governance has been derived from the Latin word 'gubernare', which means to rule or to steer²²⁰. Thus, governance refers to steer or navigate a company in the right path. Corporate governance means a mechanism through which corporations are managed and controlled.

The former President of World Bank, James D. Wolfenshon defined corporate governance as a means of promoting fairness, transparency and accountability²²¹.

The former SEBI Chairman, Mr. M. Damodaran, described corporate governance as a continuing practice beyond the extent of mere legislation. Corporate governance commands practices laid down by the legislation to which companies must pay heed not because of fear of punishment, but because in the want of such practices the company would fail to attain true profitability²²².

The Kumar Mangalam Birla Committee Report on Corporate Governance stated that corporate governance ranges beyond corporate laws. Its primary objectives are not mere completion of the requirement of legislation but warranting the board's pledge to manage the company in a

transparent manner of maximizing long term shareholder value".²²³

In Silver Jubilee National Convention of the Institute of Company Secretaries of India (ICSI), it was observed that corporate governance is not limited to corporate management but it is wider in scope and comprises a fair, capable and transparent administration to satisfy definite purposes. It is a system of constructing, commissioning and controlling of a corporation with an objective to gratify shareholders, creditors, employees etc. and adhering with the legal requirements along with meeting environmental and public requirements when it is practiced under a prescribed system.⁷

Though the concept of corporate governance is complex, the principles based on it are very simple. The basic ingredients or constituents of corporate governance are:- accountability, transparency, fairness, and responsibility²²⁴.

WHISTLEBLOWING AND CORPORATE GOOD GOVERNANCE

The composition of corporate governance includes supervisory board, board committees, risk management framework, internal control framework and whistleblower mechanism. The main intent of corporate governance is to increase shareholder worth, taking into consideration the interests of other stakeholders.⁹ Good governance represents that it is in the interest of a corporation, an institution or an economy to report wrongdoings or irregularities happening in it. This purpose of reporting of wrongdoing (whistleblowing) is not to cause damage to the corporation or institution rather; it is to smooth the progress of the exposure of wrongful acts or omissions of a person or

²¹⁹ Yu HaoYeh, "The Effectiveness of the Whistleblower Protection under Sarbanes –Oxley Section 806 in Corporate Governance, available at: https://kuscholarworks.ku.edu/bitstream/handle/1808/9840/Yeh_ku_0099D_11587_DATA_1.pdf?sequence=1. (Visited on March 2, 2017).

²²⁰ Dr. Uppugunduri Padmavathi, "Do Class Action Suits Improve Quality of Corporate Governance", 4 *IJARCSMS I* (2016).

²²¹ Available at: http://shodhganga.inflibnet.ac.in/bitstream/10603/7932/13/13_chapter%204.pdf. (Visited on December 12, 2017).

²²² Pranav Mittal, "The Role of Independent Directors in Corporate Governance", 4 *NUJS* 285 (2011), available at: <http://nujlawreview.org/wp-content/uploads/2016/12/pranav-mittal.pdf>. (Visited on December 2, 2017).

²²³ Priyanka Kaushik Sharma, *Corporate Governance Practices in India: A Synthesis of Theories, Practices and Cases* (Macmillan Publishers Ltd., United Kingdom, Edition, 2015), available at:

<https://www.palgrave.com/gp/book/9781137519351>.

Ibid.

²²⁴ P.R. Rajasree, "Whistleblowing: Indian Paradigm and Blemishes", available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2258296. (Visited on December 12, 2017). ⁹*Ibid.*

persons that is against the interests or values of organization.

In this era of globalization, where monetary considerations come first over all virtues; it has become a topic of immense importance to protect the public interest from corporate frauds or scandals. Corporate whistleblowing globally is considered as one of the best means to ensure good corporate governance. Whistleblower policy has been regarded as one of the fundamental elements of corporate governance.²²⁵ It can be a means of advancing the indoor organisational environment to prevent or depict illegal activities or fraud and further improve the inner management and efficiency²²⁶.

The UK Committee on Standards in Public Life has featured the part played by whistleblowing both as a tool of good governance and a demonstration of a more transparent culture. The Committee stressed on the important role plays by whistleblowing in dissuading and identifying wrongdoing and in developing public trust²²⁷. It described the significance of whistleblowing to the inner life of organization by laying down that effective whistleblowing is an important element of corporate governance by which illegal activity or wrongdoing is reported either to the internal management or any other outside agency. It is an instrument which promotes good governance and transparent organisational culture.²²⁸

Due to the efforts of whistleblowers more and more corporate wrongdoings are being exposed worldwide.

²²⁵ Whistleblower Policy and the Indian Corporate Governance, *Law Teacher*, The Law Essay Professionals, available at: <https://www.lawteacher.net/free-law-essays/indian-law/whistleblowerpolicy-and-indian.php>. (Visited on January 14, 2018).

²²⁶ David Banisar, "Whistleblowing: International Standards and Developments", available at: https://www.researchgate.net/publication/228124587_Whistleblowing_International_Standards_and_Developments (Visited on March 19, 2016).

²²⁷ Available at: http://www.proceduresonline.com/bolton/asg/pdfs/public_interest_disclosure_act.pdf (Visited on March 2, 2018).

²²⁸ Government of U.K., 10th Report on Getting the Balance Right Implementing Standards of Conduct in Public Life (January, 2005), available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336897/10thFullReport.pdf. (Visited on January 1, 2016).

Whistleblowers are the employees who by using their fundamental right to speech and expression challenge organizational abuse of power or illegality or wrongdoing that is against the public interest. They can reveal the wrongdoing either internally or externally.²²⁹

Whistleblowing can be used as an avenue for upholding and promoting integrity by disclosing truthfully about what is right and what is wrong. It is an approach that includes many things; it asserts rights, protects interests, and influences justice. There is no single definition of the term whistleblowing. So, enacting a clear and precise definition of whistleblowing itself should be a primary constituent of every whistleblowing policy or governance policy in a corporation.²³⁰

WHISTLEBLOWERS: THE KEEPERS OF CORPORATE CONSCIENCE

"There is a Court, higher than the Court of Justice, it is the Court of Conscience, and it is superior to them all. --- -- Mahatma Gandhi Whistleblower protection at present is a topic of much corporate international concern because sooner or later whistleblowers have been described as the "Keepers of Corporate Conscience". The whistleblowing is an essence of conscience keeping and the whistleblowers are the conscience keepers. A conscience keeper has an obligation to blow the whistle (raise an alarm) whenever he finds anything which is not as per standards of conscience.²³¹

The word "conscience" comes from the Latin term "conscientia" which means "coknowledge or knowledge

²²⁹ Hazlina Binti Shaik Md Noor Alam, "Whistleblowing and Corporate Governance: Accidental allies or Lifetime partners, *ICCL*, 2009, available at: http://repo.uum.edu.my/1139/1/Hazlina_binti_Shaik.pdf. (Visited on March 2, 2018).

²³⁰ Ibid.

²³¹ ShivamGoel, "Protection of Whistleblowers in India: A Corporate Perspective", available at: https://www.academia.edu/6174619/Protection_of_Whistleblowers_in_India_Shivam_Goel_NUJ. (Visited on April 4, 2018).

within oneself".²³² The term refers to "voice within" and the "inner light". Conscience is an ability, sense, instinct or judgement of the mind that differentiates right from wrong. In simple terms, it is an individual's system of ethical standards, the intellect of right and wrong in his or her behavior.²³³ The word "keeper" refers to a person who takes care of or manages something or someone, in particular. Thus the term conscience keeper is referred to represent a person who pays attention to when in doubt about ethical principles but not inevitably concurs with.²³⁴

The organizations or corporations are always concerned to eliminate corrupt or inappropriate practices and in this viewpoint, administration in order to promote good corporate governance, formulates policy on whistleblowing. The whistleblower policy is prepared by organizations in order to provide a medium to reveal the wrongdoing and to safeguard those individuals who revealed the wrongdoing.²³⁵ Thus, whistleblowers can work as collective deterrents to immoral or illegal activities in the entire society, thereby increasing its transparency level. Accordingly, the whistleblowers can be viewed as the guardians to the company or the custodians for the corporate. They can also be termed as the keepers of corporate conscience. Therefore, it is an important aspect in corporate governance to create a culture where anybody can reach the authorities without fear or hesitation and report the wrongdoings or illegal activities.²³⁶

²³² Available

at: www.udallasclassics.org/sweet_files/Conscience%20&%20Coknowled ge%20UC.html. (Visited on April 12, 2018).

²³³ Available at: <https://en.wikipedia.org/wiki/Conscience>. (Visited on April 13, 2018).

²³⁴ Anil K Sehgal, "Company Secretary – Conscience Keeper or Whistleblower", page no. 118, available at: <https://www.icsi.edu/docs/40nc/40%20NC-Souvenir.pdf>. (Visited on April 14, 2018).

²³⁵ Prof. R. Balakrishnan, "Role of the Company Secretary with Reference to Whistle Blowing

Policy of an Enterprise, page no. 123, Indian Institute of Company Secretaries of India, 40th National Convention of Company Secretaries (2012), available at: <https://www.icsi.edu/docs/40nc/40%20NC-Souvenir.pdf>. (Visited on April 19, 2018).

²³⁶ Divya Mehta & Sonal Babbar, "Whistleblowers – The New Custodians for the Corporate", 3 IJRS, 450 (2014), available at: <https://www.scribd.com/document/323437337/WhistleblowIndia>. (Visited on April 12, 2018). ²³Supra note 8.

The role of whistleblowers in safeguarding the corporate governance or corporate conscience is very critical. Whenever any kind of mismanagement takes place inside the organization or corporation which is detrimental to public policy or stakeholder's interest, the role of whistleblower comes into play and he is the one who intimates or informs the higher authorities or to the media. Thereby a whistleblower resolves problems which may arise out of such mismanagement and safeguards the interest of stakeholder's. Thus, it can be considered as, the internal organization of a company or an organization or the conscience of the corporation is safeguarded by the whistleblower to a great extent²³.

In order to safeguard corporate conscience, it is important to protect conscience keepers, i.e., whistleblowers.²³⁷ The top five mechanisms which are vital for administering better and effective corporate governance in any institution or organization are:-

- i. Independent Board of Directors.
- ii. Role of Auditors and Audit Committee.
- iii. Whistleblowing.
- iv. Shareholder Activism.
- iii. Fast Track Redressal Forums and Autonomous complaint mechanisms²⁸. A brief analysis of these mechanisms is as follows:-

i. Independent Board of Directors:-

A company or corporation is the common platform of various stakeholders, such as customers, employees, investors, shareholders etc. It is an instrument that can attract huge capital for doing business. Every transaction in company should be just and open to its stakeholders. A company having good corporate governance and an effective Board of Directors attract investors and ensure

²³⁷ Aishwarya Mohan Gahrana, "Keep Conscience Awaken: Blow Whistle", page no. 137, available at: <https://www.icsi.edu/docs/40nc/40%20NC-Souvenir.pdf>. (Visited on April 23, 2018). ²⁸Supra note 20.

investment.²³⁸ A corporation or a company is an artificial being invisible, intangible and existing only in eye of law. It has neither a mind nor a body and thus can't act on its own and it must act through living persons (human beings). These human beings are called the directors of the company. Thus individually they are called directors and collectively they are recognized as Board of Directors.²³⁹

The directors hold a very important position in the corporation. The Board of Director is the brain of the corporation and the corporation does act only through them. They are, in the eyes on law, agents of the company for which they act. They have to display a degree of care, skill and diligence while exercising their powers and functions like agents.²⁴⁰

The Board of Director of a company is the most important pillar on which the whole structure of corporate governance is to be built. To make the corporate governance meaningful, the Board of Directors is desired to adopt a radical change in their perceptions. They have to promote co-ordinance amongst various components, but not for mutual. Directors play an imperative role in corporate governance. They are the backbone of the corporate good governance. They ensure effective compliance of legal and ethical standards²⁴¹.

The role of an independent director is considered to be of a great significance. The guidelines, role and functions and duties etc. are broadly set out in a Code described in a Schedule IV of the Act, 2013. The Code lays down certain critical functions like safeguarding the interest of all stakeholders, mainly the minority holders, harmonizing the inconsistent interest of the stakeholders, analyzing the

performance of management, mediating in situations like conflict between management and the shareholder's interest and etc.²⁴². An independent Director plays an important part in diverse committees to be constituted by a company to ensure good governance. Independent directors are accountable for framing and executing business policies on behalf of shareholders and have to ensure that the business carried out by the company is compatible with all legal requirements.²⁴³

Thus, independent directors are required to acts as conscience keepers of the boards, vigilant watchdogs, protection of the interests of minority shareholders as well as other stakeholders and implementation of regulatory norms.²⁴⁴**ii. Role of Auditors and Audit Committee:-**

The duty of audit committee in the region of corporate governance is to provide assurance that the corporation is in rational conformity with applicable laws and regulations, in performing its functions reasonably, and is maintaining operative controls against employee conflict of interest and fraud.²⁴⁵ The main task of the audit committee is to examine the financial statement of the company, scrutinize inter corporate loans and investments and monitoring the use of funds etc.²⁴⁶

Role of an Auditor:-

The statutory responsibilities of the auditors fundamentally require him to detect, prevent and report the fraud. Auditor has the authority to identify wrongdoer in the organization and give information about him to the company objectively.

²⁴²Yogesh Malhan, "India: Independent Directors – Under the Companies Act, 2013", *available at*:

<http://www.lexology.com/library/detail.aspx?g=45f2cd2e-88a0-46bf-ba56-5b404c2e4681>. (Visited on March 28, 2018).

²⁴³Sumaira Jan and Mohi-ud-din Sangmi, "The Role of Board of Directors in Corporate Governance", 2 *IJIR* 707 (2016), *available at*:<http://www.onlinejournal.in/IJIRV2I5/128.pdf>. (Visited on April 10, 2018).

²⁴⁴ Nikita Hora, Are Independent Directors Really "Independent" in Indian Companies Dominated by Promoters, *LiveLaw.in.*, March 12, 2017, *available at*:<http://www.livelaw.in/independentdirectorsreally-independent-indian-companies-dominated-promoters/>. (Visited on April 4, 2018).

²⁴⁵ Sanjay Ruia, "Corporate Governance: Role of Auditor and Auditing Committee," 2016, *available at*:<https://www.linkedin.com/pulse/corporate-governance-role-auditor-auditing-committee-casanjay-ruia>. (Visited on April 12, 2018).

²⁴⁶ The Companies Act, 2013, Section 177(4).

²³⁸ Indrajit Dubey and Aparup Pakhira, "Role of Independence Director in Corporate Governance – Reference to India", 9 *VI* 50 (2013), *available at*:

http://www.virtusinterpress.org/IMG/pdf/Dube_Pakhira_paper_CB_volume9.pdf. (Visited on April 2, 2018).

²³⁹*Available at*:<https://www.lawteacher.net/...law...law/intangible-and-existing-only-in-contemplation...> (Visited on April 28, 2018).

²⁴⁰*Available at*:http://shodhganga.inflibnet.ac.in/bitstream/10603/104165/11/11_chapter%205.pdf. (Visited on May 5, 2018).

²⁴¹*Available at*:http://shodhganga.inflibnet.ac.in/bitstream/10603/7932/13/13_chapter%204.pdf. (Visited on May 6, 2018).

An independent auditor can play his role efficiently and support good governance²⁴⁷.

iii. Whistleblowing:-

Whistleblowing has an important role in realizing corporate governance practices. As more and more corporate wrongdoings are being exposed around the world, a small, but ever growing group (whistleblowers) must be thanked to bring such matters to light. Whistleblowers are employees who exercise free speech rights to confront organizational misconduct or unlawful activity that deceive the public faith. Their disclosure can be made either internally or externally.²⁴⁸

Whistleblowing can be used as a pathway for maintaining and promoting integrity by speaking truthfully about what is right and what is wrong. It is an approach that merges many things, it asserts rights, protects interests, and influences justice and rights wrongs.²⁴⁹

It promotes good corporate governance, which is indispensable to a corporation's growth. As a result of increased interest in whistleblowing, the media and public focus on corporate governance continues, and directors of all types of businesses are being asked to demonstrate a clear commitment to their legal and ethical responsibility in governing their companies²⁵⁰.

A healthy and comprehensive whistleblowing mechanism includes a policy framework, a reliable complaint-reporting mechanism, a well prepared and realistic response strategy, creation of awareness among its management and employees, and requires them to be trained in the requisite process. Such a mechanism not only provides all the stakeholders of a business a platform on which they can report their genuine concerns, but also creates a genuine

source of information that helps its management discovers various lapses in its processes²⁵¹.

The Companies Act, 2013 has made it compulsory for certain categories of corporations to set up a vigil mechanism for their directors and employees in order to inform legitimate concern in the recommended way.²⁵² Clause 49 of the SEBI Listing Agreement also has similar provisions. Non-compliance with these regulations could lead to fines and penalties⁴⁴.

iv. Shareholder Activism:-

Shareholder activism is deemed to be a collection of positive efforts on the part of shareholders to alter corporation behavior or governance rules²⁵³. It denotes the pursuit of shareholders of public corporation to bring about an objective change in the operations of the company in many ways. Shareholder activists are generally known as investors who, disappointed with some facet of a company's administration or functioning, attempt to carry about change within the company.²⁵⁴

Indian corporate arena has witnessed several honest efforts in order to enhance shareholder participation in the governance of the company. The Companies Act, 2013 has introduced Section 108 read with Companies (Management and Administration) Rules, 2014 which provides for electronic voting in certain companies. It provides that every listed corporation or a corporation having more than one thousand shareholders shall introduce voting rights to its members by electronic means. Further a member has the

²⁴⁷Prof. Hetal Pandya/ Vyas, "Corporate Governance: Role of Auditor and Auditing Committee", 1 *IJIM* 1 (2013), available at: <http://ipasj.org/IJIM/Volume1Issue2/IJIM-2013-07-08-001.pdf>. (Visited on April 14, 2018).

²⁴⁸*Supra* note 14.

²⁴⁹*Ibid.*

²⁵⁰*Ibid.*

²⁵¹ Whistleblowing: the Pillar of Sound Corporate Governance, available at: [http://www.ey.com/Publication/vwLUAssets/EY-whistle-blowing-pillar-of-sound-corporate-governance/\\$FILE/EYwhistle-blowing-pillar-of-sound-corporate-governance.pdf](http://www.ey.com/Publication/vwLUAssets/EY-whistle-blowing-pillar-of-sound-corporate-governance/$FILE/EYwhistle-blowing-pillar-of-sound-corporate-governance.pdf). (Visited on April 23, 2018).

²⁵² The Companies Act, 2013, s. 177(9) & (10).

²⁵³ Umakanth Varottil, "The Advent of Shareholder Activism in India", 1 *JoG* 583 (2012), available at:

<https://www.scribd.com/document/309700722/The-Advent-of-Shareholder-Activism-in-India>. (visited on April 23, 2018).

²⁵⁴ Stuart L. Gillan, "The Evolution of Shareholder Activism in the United States", available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=959670. (Visited on April 21, 2018).

right to vote at any general meeting of the corporation by electronic means.²⁵⁵

Further, by way of Section 245, the Companies Act, 2013 has set up the concept of class action which was not in existence in the Act of 1956²⁵⁶. This Act enables minority shareholders to file a class action suit against decisions of the board which might be contrary to the Articles or Memorandum of the corporation or which seems to be violating the provisions of the Companies Act. Further, Section 188 of the Companies Act, 2013 requires all related party transactions to be supported by shareholders through special resolution²⁵⁷. Thus, minority shareholders can blow the whistle against the decision of the board which might be contrary to the principles of the company or which violates the provisions of the Companies Act, 2013 and can file a class action suit against the same.

v. Grievance Redressal Process and Independent complaint mechanisms:-

There will be occasion when an investor has a grievance against the company in which one is a stakeholder. It may be that one has not received the share certificates on allotments or on transfer; it may be that one didn't received the dividend/ interest warrant or refund order. While one should approach the company in that regard, one may not be satisfied with the company's response thereto.²⁵⁸ In such case two more avenues are available to investors to seek redressal of his complaint i.e.- (a)Complaints with Consumers Dispute Redressal Forums;

(b)Suits in a Court of Law.⁵¹

Thus, interests of whistleblowers are protected through grievance redressal process and independent complaint

²⁵⁵ CS M. Kurthalanathan, "E-voting under Companies Act, 2013 & Rules, 2014", 2014, *available at*: <http://taxguru.in/company-law/evoting-companies-act-2013-rules2014.html>.(Visited on April 23, 2018).

²⁵⁶ The Companies Act, 2013, s. 245.

²⁵⁷ The Companies Act, 2013, s. 188.

²⁵⁸ A.C. Fernando, "Corporate Governance: Principles, Policies and Practices", Dorling Kindersley (India) Pvt. Ltd., 2009, *available at*: https://books.google.co.in/books?id=al6zP7foCSEC&printsec=frontcover&source=gbs_atb#v=onepage&q&f=false.(Visited on April 25, 2018).

mechanisms and further it promote good governance in the company.

INDIAN COMMITTEES ON CORPORATE GOVERNANCE VIS-A-VIS WHISTLEBLOWING

Corporate governance has played a very important role in the current fiscal condition of India. Although corporate governance procedures, all over the world can be traced back to as early as 1961, India failed to keep pace with others. The major initiative taken place in India is the reform of Securities and Exchange Board of India (SEBI) in the year 1992 with an objective to manage and regulate stock trading, but it steadily formed various corporate governance rules and policies. Another major effort was the formation of Confederation of Indian Industry (CII) in 1996, which established the set of laws for Indian corporations as to initiate the act towards corporate governance. Later on two

Committees Kumar Mangalam Birla and Narayan Murthy under Securities and Exchange Board of India have provided recommendations for enacting the best practices on corporate governance. By considering these recommendations, Clause 49 was added as part of Listing Agreement for the corporations listed on the Indian Stock Exchange.²⁵⁹ However later on due to various scandals [Enron (2001)²⁶⁰, Satyam (2009)²⁶¹, WorldCom (2002)²⁶² etc.] compelled the government to amend the Clause 49 in order to include and overcome the concerns that caused

²⁵⁹ Ruchi Kulkani and Balasundram Maniam, "Corporate Governance – Indian Perspective", 5 *IJTEF*⁴⁷ (2014), *available at*:<http://www.ijtef.org/papers/399-A10004.pdf>.(Visited on April 24, 2018).

²⁶⁰ Enron Corporation was a Houston based Commodities energy and service corporation. The Corporation kept huge debts off the balance sheets and as a result shareholders lost \$ 74 billion, thousands of employees and investors lost their retirement accounts, and many employees lost their jobs. *Available at*:<http://www.accounting-degree.org/scandals/>.(Visited on May 4, 2018).

²⁶¹ The Satyam Scandal was a corporate scandal affecting India based company Satyam Computer Services in 2009, in which Chairman Ramalinga Raju confessed that he had manipulated the accounts of Rs. 14,162 crore in several forms. *Available at*: https://en.wikipedia.org/wiki/Satyam_scandal.(Visited on May 6, 2018).

²⁶² The WorldCom was U.S. based Telecommunications Company. The Company inflated assets by as much as \$ 11 billion, leading to 30,000 lost jobs and \$ 180 billion in losses for investors by underreported line costs by capitalizing rather than expensing, and inflated revenues with fake accounting entries. *Available at*:<http://www.accounting-degree.org/scandals/>.(Visited on May 6, 2018).

these corporations to collapse and shatter the financial system of the respective nations.²⁶³

The Confederation of Indian Industry (CII) Committee Recommendations (Rahul Bajaj Committee), 1996:-

The Confederation of Indian Industry (CII) took a special step for corporate governance in 1996. This step was taken by the CII due to public fear in respect of the protection of small investors, the encouragement of transparency within corporation. The purpose of introduction of this is to create public trust and promote a code of corporate governance in Indian corporations.²⁶⁴ Later on a National Task Force was established to prepare draft guidelines. It submitted the Code of Corporate Governance in 1997 at the National Conference and Annual Session of CII.²⁶⁴ It recommended that the board of the company should meet every two months and annual plans, budgets, labour problems etc. should be placed before the board.²⁶⁵ Further, corporations that omit on fixed deposits should not be allowed to take further deposits and make inter-corporate loans or investments until the omission is cleared²⁶⁶.

Kumar Mangalam Birla Committee Report (1999):-

The Securities and Exchange Board of India (SEBI) constituted a committee on Corporate Governance on 7 May, 1999. The Kumar Mangalam Birla was its head. The objective of this committee was to promote and lift the standards of corporate governance and to draft a Code for the same.²⁶⁷

The Committee divided the recommendations into two categories, i.e., mandatory and non-mandatory.²⁶⁸ The mandatory recommendations are applicable to those listed companies whose paid up share capital is three crore or more than three crore. It includes provisions regarding board of directors, audit committee, shareholders and management.²⁶⁹ The non-mandatory recommendations are dependent on the desire of the company. It includes provisions dealing with role of chairman, shareholder's right, remuneration committee and postal ballot.

The Securities and Exchange Board of India (SEBI) considered and adopted the recommendations of the Kumar Mangalam Birla Committee on Corporate Governance on 25 January, 2000.²⁷⁰

3 Report of Naresh Chandra Committee on Corporate Governance, 2002:-

The Department of Corporate Affairs constituted a committee in 2002, in order to examine the existing provisions of corporate auditing and independent directors. The committee was headed by Naresh Chandra. This Committee takes further the recommendations of the Kumar Mangalam Birla Committee and submitted a report on

'Corporate Audit and Governance'. The Committee recommended various provisions relating to appointment of auditors, setting up of disciplinary machinery for auditors, independent directors and their training and establishment of corporate serious fraud office.²⁷¹

Protection to Whistle Blowers:-

The recommendation provided that legislation should introduce the whistleblower perception by affording safeguards to persons who report offences by corporations, mainly offences relating to fraud. The whistleblower must

²⁶³ Rajesh Kumar Gupta, "Corporate Governance Mechanisms in India: A Case Study of Selected Firms From Ten Sectors", 4 *KIJECEM* 289 (2017), available at: <http://www.kaavpublications.org/journals/journal-1/article/article-1586.pdf>. (Visited on April 21, 2018).

²⁶⁴ Himachalam Dasaraju and Kota Sreenivasa Murthy, "Corporate Governance Mechanism and Issues in Emerging Economics – A case of India in Global Scenario", 1 *IJMBS* 100 (2011), available at: <http://www.ijmbs.com/13/himachalam2.pdf>. (Visited on April 12, 2018).

²⁶⁵ *Ibid.*

²⁶⁶ *Supra* note 50.

²⁶⁷ IAS Point, Key Recommendations of Kumar Mangalam Birla Committee Report (August 15, 2016), available at: <https://www.gktoday.in/academy/article/key-recommendations-of-kumarmangalambirla-committee-report/>. (Visited on June 12, 2018).

²⁶⁸ Kumar Mangalam Birla Committee, Report on Corporate Governance (1999), available at: <http://www.nfcg.in/UserFiles/kumarmbirla1999.pdf>. (Visited on April 28, 2019).

²⁶⁹ *Ibid.*

²⁷⁰ *Supra* note 50.

²⁷¹ *Ibid.*

be protected from detrimental terms and conditions of employment and from harassment. Further, if such employee gives evidence in such a case where he himself has taken part in the commission of offence, then the cooperation should take measures to mitigate the penalty to which he may otherwise be liable²⁷².

Further, in Chapter XIII: Restructuring and Liquidation, the Committee suggested that-

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In respect of potentially insolvent companies, it is imperative that selfregulatory actions be required to be adopted by a corporation to safeguard the interests of diverse stakeholders, defend assets and take up such other actions as may be required to control insolvency. This would facilitate whistleblowing on impending insolvency.²⁷³

SEBI Committee on Corporate Governance, 2017:-

The Securities Exchange Board of India (SEBI) constituted a Committee on corporate governance on June 2017 having Mr. Uday Kotak as its chairman. The objective of this committee is to enhance the values of corporate governance of listed companies in India.²⁷⁴

The report of the Committee consists of XI Chapters and it was submitted on Oct. 5, 2017. Chapter X of the Report deals with Leniency Mechanism. The report pointed out that while SEBI presently has a consent structure for certain classes of breaches, there is no definite law in the regulatory framework that authorize SEBI to award leniency (in the form of lessening in/ remission of penalty or exemption from prosecution) including to shield a whistleblower who is suspected in breach of applicable securities laws.

²⁷² Dr. Jamshed J. Irani, Report on Company Law (2005), available at: <http://www.primedirectors.com/pdf/JJ%20Irani%20Report-MCA.pdf>. (Visited on July 24, 2018).

²⁷³ *Ibid.*

²⁷⁴ SEBI, Report of Mr. Uday Kotak Committee on Corporate Governance (2017), available at: http://www.sebi.gov.in/sebi_data/attachdocs/oct-2017/1507200012576.pdf. (Visited on July, 12, 2018).

The Committee recommends that there should be a leniency mechanism. It provides that a leniency programme prompts the wrongdoer to step forward and reveal breaches and help the regulatory agencies by obtaining compassionate treatment and protection against victimization. Presently, the Competition Commission of India is empowered to award leniency to cartel members provided they unveil true, complete and crucial information. The Committee held that SEBI may be authorized to award leniency and tender protection against victimization to whistleblowers in certain cases. Any such authority would have to be supplemented by rules and regulations concerning to the situations to be fulfilled for receiving advantages under the leniency programme and protection against victimization, the process for the minor penalty or decrease in liability, and protection of whistleblowers. The Committee has also provided the draft provision which to be introduced in the SEBI and SCRA.

at the policy has been inflicted upon them against their will by the apex administration.²⁷⁵

BENEFITS OF A WHISTLEBLOWER POLICY:-

The enactment of the whistleblower policy in a corporation may be beneficial to it in a number of ways. E.g.:-

- (a) It serves as a tool to recognize danger about which the corporation may not be acquainted about the time of its occurrence.
- (b) It serves as a tool to present an opportunity to workers to report the wrongdoing,
- (c) It serves as a tool to emphasize that if the workers don't feel safe to report wrongdoing internally, they can go for wider disclosure.²⁷⁶

²⁷⁵ *Supra* note 112.

²⁷⁶ *Ibid.*

(d) It is a means to foster good governance by encouraging workers to disclose fraudulent activities of co-workers or top officers to appropriate authority. Further it is essential to promote organizational values of openness in the workplace.¹²⁵

Thus, the corporations should formulate the whistleblowing policy for the reporting of the wrongdoing and protection of whistleblowers. It will be beneficial to both, i.e. the corporation and the workers. SUM UP

It is really important for a society to eradicate unlawful, unethical practices in order to make social and economic system sound. Whistleblower law provides us with the guidelines and the procedures to report such issues against any company or institution. Clear understanding of law is important in order to have a uniform policy to protect the whistleblowers. Now after the introduction of Companies Act, 2013 and revised clause 49 of the Listing Agreement, it is binding for listed corporations to have a whistleblowing mechanism. The annual reports of the corporations show that to have ethical governance in their company they employ such policies that gives an opportunity to the employees to report. As the Whistleblower Protection Act, 2014 is only confined to public sector, it is necessary to extend this to private sector also in order to protect those who expose corruption, fraud in any company or institution.

It is always in the interest of the organization to eliminate corrupt and inappropriate practices. So the apex management has a duty to endorse good corporate governance by enacting policy on whistleblowing and establishing machinery for receiving complaints. Whistleblowing policy is a document which is enacted by corporations worldwide which offers a medium of communication for employees. The whistleblower policy is established by corporations to protect those employees who report the wrongdoing. The corporation enacts a policy on whistleblowing and this policy document clearly provides for an inner policy to the workers of the corporation and other stakeholders.¹²⁷

Good corporate governance practices are an integral part of the corporation that seeks to produce long term value to all its shareholders and other stakeholders. It is powerful fundamentals and moral action in a corporation that can aid in conquering huge crises. Observance of good corporate governance procedures should not be treated as regulatory obligation but rather as an occasion and value suggestion for corporation. Efficient whistleblowing actions are integral ingredient of good governance. A vigorous and easily accessible culture is one where people are confident to disclose the wrongdoing, convinced that they can make the disclosure with no unfavourable actions, convinced that the authority will pay attention to their disclosure and convinced that suitable action will be applied on their disclosure. This is to the advantage of corporations, employees and society at large. Enterprises or corporations throughout the world should put in place, in line with international governance practices, a mechanism through which employees may disclose the corrupt or illegal activities and violation of code of conduct and ethic of corporation with no fear of reprisal. The proper whistleblowing policy document and machinery established under that document could eventually encourage workers to report their concerns or disclose the illegal activity to their employers. Moreover, the employer or top administration would be in a position to hear them and ultimately both employers and workers could play their positive role in creating an efficient risk management system within the corporation. However, a whistleblowing policy enacted by the corporation can be effective only if it promises the requisite protection against discrimination or victimization of the whistleblowers.

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