Whistle Blower - Crusader for Combating Corporate Corruption

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Abstract

Not a week passes by without a new scam being unearthed in one or more places in this world. No wonder corruption has emerged as the biggest for Indians. Corruption was something that was always associated with Government sector until early 80's, In today’s business world corruption has permeated at all levels, be it Government sector, high profile IT industry, manufacturing and production houses, Media, R&D, Scientific centres, Educational institutions, Sports, Hospitals and Hospitality industry.

The start of corporate culture in late 80’s combined with the economic, social liberation and emergence of India as a global economic power has led to cut throat competition in the business scenario. Corporate houses look at quick innovative methods to reach the top in order to be known as the most aggressive and successful corporate houses and leaders. But the “sheer greed and desperation to become the industry best in a short time frame” leads to risky, skewy short cut methods, thereby leading to corruption, malpractices and misrepresentation of facts.

Clean Corporate Governance is a must in order to do business and establish the faith of the people in the institutions, industries and government. A mere board resolution, media declaration or vision statement on a piece of paper is not sufficient to fight corruption. It needs strong drive, belief, trust, process, practice, enablers and strong pre/post action support system to facilitate the fight against corruption.

One of the most powerful tools to combat this menace is an internal mechanism called “Whistle Blowing”. Whistle blowing is an effective mechanism to bring to light the irregularities or malpractices that happen within an organization since it comes from an internal source through the employees. Since an employee would be the most knowledgeable person on what irregularities happen within an organization, whistle blowing works best. However there needs to be a well-defined policy, support structure, senior management commitment and a core company value and culture for “Zero tolerance” to corruption or irregularities.

In this paper we discuss different manifestation of corruption in corporate world, how Whistle Blowing helps in bringing out dark realities behind the silicon shields, why and when people resort to whistle blowing, what determines success of Whistle Blowing, perils of whistle blowing and touch upon instances of how whistle blowing has helped in bringing out the inglorious, ignominious, unethical and scandalous that has been happenings within an organization for many years.
Introduction

Money, Fame and Success have driven many reputed business houses and mushrooming young corporate houses to resort to “in “glorious ways to reach the top in their respective industries. This insatiable desire has been the main influential force in the thought process and actions of an individual, leaders, CxO and the organization itself leading to a multiplicative effect which at times causes irreparable or irreversible damage to the image and reputation of the affected party.

Despite globalization and exposure to diverse culture and economy, majority of Indians still live a dark life full of fear and terror, dreading of the protagonist more than the antagonist. Most of the time, we are concerned with the after effects and the turmoil we might have to go through if we get involved. We have no confidence if justice will be delivered righteously. Incidences of corruption due to ineffective control systems and diminishing values have created a dent in the confidence of common man’s and corporate employees.

As long as people are moved by relations, contacts, pressure, greed, fear, etc the lobbying and grouping are going to play a significant role in determining favoritism. Money 'will continue to' be involved as long as there are no better alternatives to it.

Not so long ago, an entire nation watched incredulously as damning confessions and tapes about indiscreet telephone conversations hogged prime time on all the main news channels as indefensible evidence of a government-corporate nexus 2G scam mounted, a crestfallen government caught with its pants down, swung into delayed action to nail the culprits.

Niira Radia, who was once the preferred deal maker for many top notch corporates in India, shot into sudden fame of notoriety in the “in”famous 2G Telecom scam. Niira has certainly added a new twist, of no mean dimension, to the meaning of ‘smartly acquired close connections’ in the world of big money and dubious ambition. Caught right in the eye of the storm, Niira found herself strangulated in a position from where she found it increasingly difficult to wheedle out of. Both sides are now waiting to see which way the pendulum swings and how many skeletons are going to fall out of the closet – the ones who relied on Niira’s exceptional deal clinching and negotiation skills and the insatiable, tainted babus, not to mention the corrupt politicians at whose behest an entire system was short-circuited.

Till early 80’s corruption was considered to be rampant only in Government sector. However in the post liberalized economy and mushrooming of many corporate, corruption has come to stay in almost every organization in one form or the other. However a significant percentage of the corruption still involves a government agency with or without a corporate nexus in one way or the other due to the nature of the transaction. Corruption manifests in different forms as the below table indicates.

| Company to Government     | 40.0% |
| Company to Company        | 20.0% |
| Company to Customer       | 12.5% |
| Company to Employees      | 12.0% |
| Employees to Employers    | 5.0%  |
| Company to Tax authorities| 10.5% |
People all over the world have become frustrated at the levels of corruption that has taken the corporate world by storm. People are many times mute witness to the injustice, sufferings and deprivations due to corruption.

In order to bring about a semblance of sanctity to corporate governance, United Nations added its “10th Principle against Corruption” and set a strong directive to all states to ensure that they demonstrate that core values, such as respect for the rule of law, probity, accountability, integrity and transparency must be safeguarded and promoted as the bedrock of development. The Convention offers a comprehensive set of standards, measures and rules that can strengthen their legal and regulatory regimes, covering both public and private sector to prevent and control corruption, focusing on public procurement, management of public finances, enhance accounting and auditing standards in this sector.

Large off-the-books payments to public officials or intermediaries can throw a company’s finances into turmoil. Over a period of time, companies that spend their resources on financing corrupt deals rather than investing in the development, manufacturing and marketing of quality products and services lose their competitiveness, thus relying more on bribery as a means of maintaining their market share. In modern corporate world corruption manifests in one or more of the following areas:

- Financial frauds / misappropriation of funds
- Tax evasion in global engagement model
- Human resource management and Recruitment
- Procurement / Facilities management
- Promotion and Performance Appraisal
- Violation of Immigration norms and procedures and other statutory norms
- Claims and settlements / Reimbursement of corporate perks and benefits
- Intellectual Property Rights (IPR) / Patent violation and misuse

Recent distrust in people is on the accounting and auditing practices amongst Indian companies which exhibits a lot of Window dressed balance sheets in order to gain high market credibility.

The “Satyam scam of Ramalinga Raju” bought the much famed, hyped and fastest growing IT sector into the tainted world of scams, frauds and corruption. Satyam’s case is that of sheer drive and determination of its promoters to reach the pinnacle of IT services industry in double quick time, to garner greater visibility and grab more business, but, in an unethical manner.

The recent corporate battle between Oracle and Google on Android operating system, Apple iPhone and Samsung Galaxy in IPR infringement / Patent violation in order to attain supremacy and market share on the high end mobile market has led to dirty tricks and marketing gimmicks to promote their products.

The below chart indicates the various factors that contribute to the increasing instance of frauds in corporate world clearly giving an indication on where to focus on.
Corporate governance is perhaps the single most effective mechanism to limit the ability of private sector companies to participate in corruption. Good corporate governance establishes a system where companies are unable to provide bribes covertly and are easily held accountable for wrongdoing. Corporate governance ensures that managers act in the interest of a company, board members exercise good judgement, investors receive correct, timely and relevant information and decision-making is not done behind closed doors. By making companies transparent and by holding decision makers accountable for their actions, corporate governance makes it hard for companies to provide bribes or other company resources to Government officials in exchange for services. A bribery deal puts shareholder money at risk without any certainty of obtaining something in exchange. Ultimately, all forms of corruption lead to misuse of corporate assets, even if the immediate purpose of the transaction is to save the enterprise.

Indian corporate sector is battling corruption and at the same time looking for playing a greater role in improving the system to ensure a thriving business environment in India. The corporate sector has also demanded a structured and effective detection and reforms mechanism to bring corruption under control.

It is true that under normal circumstances, employees are bounded by Confidentiality clauses pertaining to client and internal transactions, policies, shareholders and stakeholders. But when there is serious malpractice or when people's lives are at stake — in defence deals; deaths of innocent persons; toxic leaks from a chemical factory; adulteration in food or malpractices in hospitals, non-adherence to flight safety standards; creative accounting and false declarations by a company; cheating and plagiarism in scientific research, the overriding interest may lie in protecting the employee’s and public's right.

**Strong Corporate Governance to combat Corruption**

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Whistle blowing – the Cornerstone of Corporate Governance

In this paper we talk about ‘Whistle Blowing’ as one of the most effective Corporate Governance tools to combat corruption. The term ‘whistle blowing’ is a relatively recent entry into the vocabulary of public and corporate affairs, although the phenomenon itself is not new. In olden days Government offices had a suggestion or complaint box for anonymous users to provide information without disclosing their identity.

Experts define whistle blowing as the disclosure by organizational members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organizations that may be able to affect action. While the reporting of sensitive issues may be part of the individual's role within the organization when the individual finds it necessary to reveal such findings to organizational members outside the normal chain of command, it is also considered whistle-blowing through internal channels. Whistle blowing also encompasses situations where individuals go out of the organizational hierarchy and make information available to public or other external authorities to get a positive action.

A whistleblower is defined as someone who exposes wrongdoing, fraud, corruption or mismanagement.

In many cases, this could be a person who works for the government who would report misconduct within the government or it could be an employee of a private company who reports corrupt practices within the company.

No doubt, audit committees, ombudsman, vigilance commissions, regulating agencies, media, civil society, and courts all play a role in deterring government and corporate transgressions to some extent. But however formidable their investigative skills are, that initial inside information provided by a whistleblower is crucial.

Why Whistle blowing

Whistle blowing occurs for various reasons ranging from Self perseverance to concern over doing the right thing. It is crucial to the accountability of corporate stakeholders. It is an essential safety valve in safe guarding the company from malpractices or corruption. Whistle blowing is about reporting a valid malpractice through keen observation and providing right level of information to support your observation. It is a governance tool encouraging responsive and responsible governance practices. The key driver for a whistle blower to report any discrepancy should be to rectify any gaps or misuses in order to safe guard the image of the company.

It leads to accountability and helps defuse the resentment and opportunities for corruption. It is used to enforce and foster equal treatment. It is one of the efficient ways to regain societal control over the large organizations that increasingly dominate the society.

However many times people think that they can gain publicity or brownie points by reporting malpractice without proper verification or study of the facts and data.
For example, in India, the Factories Act and the Minimum Wages Act strictly regulate the use of child labour in factories and industrial enterprises. However, employers evade their statutory obligations by contracting work out to so-called master craftsmen who employ children within their homes without fear of prosecution.

**Frameworks on whistle blowing effectiveness**

Various acts and laws have been brought in to ensure that employees are protected from any form of ill treatment and retaliation. In the context of the role of the whistle blower as a crusader in corruption it is important to understand that the information revealed is critically important and essential to promote accountability in the internal management of the organization. It is a sign of an early warning to the employer that something is wrong and should be corrected prior to things going out of control, hence the legislation and the management needs to find ways to enhance their role in exposing the corruption, fraud and mismanagement in the organization and at the same time find effective and efficient mechanism in preventing harm to the career and interest of the individual at the work place.

Here the focus should be on the information and not the person who made the disclosure the need of the hour is an effective process and an efficient trustworthy follow up mechanism to ensure the proper investigation of the disclosures. It is found that the whistleblowing legislation in the countries is generally fragmented, weakly enforced and there is no single, comprehensive legislative framework in place to protect the whistle blowers from the hurdles they would face for disclosing the information.

For example, in the US, Whistleblowers Protect Act of 1989 protects federal employees who make public interest disclosures.

Also the fall of Enron and WorldCom initiated the Sarbanes-Oxley Act of 2002 which gives high degree of protection to the whistle blowers of publicly traded companies.

Quite interestingly in India, there are no legislations to protect the interests of whistle blowers. Considering various aspects, it is important that the employees are given freedom and support to point out corrupt practices in the organizations. This culture of openness would help to prevent the humiliating falls as happened in the case of Enron or WorldCom.

It is opined that the legal framework within the management should focus on the following points to create an efficient mechanism:

- Encourage moral identity
- Framing anti-retaliation policy
- Creating awareness of the organizations policy on whistle blowing through orientation
- Identifying employees who possess the attributes of finding wrong doing and provide special training, highlighting the organization process in handling whistle blowing
- Try to provide incentives and reward building schemes for such acts
- Once the issue has been expressed, focus should be on disclosure and not on the person
- Conduct a detailed and fair investigation
- Implement a corrective measure process
• Provide multiple channels to make employee feels comfortable to express
• Make it illegal to "discharge, demote, suspend, threaten, harass or in any manner discriminate against" whistleblowers
• Establish criminal penalties leading to imprisonment for executives who retaliate against whistleblowers
• Require board audit committees to establish procedures for hearing whistleblower complaints
• Allow legal support to order company to rehire terminated employee with no court hearing
• Give a whistleblower the right to a jury trial, bypassing months or years of administrative hearings

Responsibility of whistle blower

• Check the motivations to make sure there is not a conflict of interest. In some cases, whistle blowers do profit financially or professionally by going public with a claim.
• Potential whistleblowers should check that they have exhausted all possible means of complaint before going public.
• Would-be whistleblowers have an ethical responsibility to make sure they are not guilty of the same infraction they are reporting and must be able to report with a clear conscience.
• Having detailed evidence about the claim is another ethical responsibility of whistle blowing.
• Before going public, potential whistleblowers need to ask themselves whether or not their actions prevent serious harm to an individual. Going public about a boss's irritating but harmless habits is not ethical whistle blowing.

Mind map of Whistle blower

It would be intriguing to explore what makes some employees blow the whistle against wrong practices and corruption in the organization, how it impacts the organization and the whistleblower, and what organizations can do to create an environment which helps employees to prevent organizationally and socially undesirable practices.

The ones who report are ones:

- Who come forward to report a genuine malpractice and ensure that corrective actions are taken before the information goes public.
- Who have access to sensitive information and understand the nature of irregularities
- Organization culture encourages them to do so and protects them
- Someone who is frustrated or victim of some injustice done or denied facilities to him/her
- Personal vendetta leading to fall out

The ones who do not report is due to the following reason

- Employees have the fear of retaliation, outlawed or adverse effects including that of threat to life or job or reputation
“Not in my area” attitude unless and until they are impacted by the events or practices.
- Availability of sensitive information only to a select few
- Lack of confidence in organization culture / history of non-resolution of similar instance
- Lack of formal policy, supporting structure or transparency in management
- Management is aware of it and/or it is a management decision to resolve

On the flip side, an increasing number of people are using this technique to gain popularity and brownie points with their management – which if allowed to happen freely can be dangerous for the organization in short to medium term.

**Success and Benefits of whistle blowing**

From the management point of view the important aspect would be keeping the issue from getting out of control, avoiding criticism from public and preventing image loss. Responding at the right time to issues and encouraging people to bring out problems concerning the functioning and governance of the organization would be critical here.

In the case of Enron and Worldcom - someone internally noticed unethical practices and spoke out. While the investors lost large sums of money, future investors were protected, current investors were saved from further loss, and the transgressors were prosecuted and punished.

**Successful whistle blowing requires**

- Strong commitment and leadership from the board and senior management
- Develop a culture in encouraging the employees to raise their concerns both internally and through the firm’s whistle blowing procedures
- Consider whistle blower as a witness and facilitator and not a complainant
- Employees awareness of the responsibility of a whistle blower.
- To encourage employees to bring ethical and legal violations they are aware of to an internal authority so that action can be taken immediately to resolve the problem
- To minimize the organization's exposure to the damage that can occur when employees circumvent internal mechanisms

**Where Whistle blowing fails**

- A lack of trust in the internal system
- Unwillingness of employees to be "snitches"
- Misguided union solidarity
- Lack of proper data and facts to justify the corruption or irregularities
- Belief that management is not held to the same standard
- Fear of retaliation or Fear of alienation from peers or branded disloyal
- Fear of job loss or even repercussion of being framed of wrong charges
- Done with the intention of personal vendetta or gain brownie points
Recognizing and Protecting the Whistle Blower

At present India does not have any law to protect whistleblowers, though a bill for the purpose is in the pipeline. The issue of protection for whistleblowers caught the attention of the entire nation when National Highways Authority of India (NHAI) engineer Satyendra Dubey was killed after he wrote a letter to the office of then PM A B Vajpayee detailing corruption in the construction of highways. Despite seeking anonymity the letter was forwarded to concerned departments without masking his identity. Dubey’s murder led to a public outcry at the failure to protect him. In 2004, the Supreme Court pressed the government into issuing an office order, the Public Interest Disclosures and Protection of Informers Resolution, 2004 designating CVC as the nodal agency to handle complaints on corruption.

Over a year later, Manjunath Shanmugham, an IIM graduate and a sales manager of the IOC, was brutally murdered on Nov 19, 2005 for exposing the racket of adulteration of petrol and the mafia behind it. This brought renewed focus on need for a law to protect whistleblowers but five years after the last episode, there is still no law in India.

When Time magazine editors named WorldCom's Cynthia Cooper and Enron's Sherron Watkins two of their People of the Year for 2002, they were acknowledging the importance of internal whistleblowers, employees who bring out wrongdoing in their own organizations.

Perils of Whistle blowing

Galina Starovoitonova, independent MP in Russia, one of the most respected and loved democratic reformers, exposed corruption in Russian Parliament, showing how members of the legislature were making deals with organized crime, even appointing them as parliamentary assistants to exempt them from traffic laws and to obtain other perks. She also threatened to expose corruption at the highest levels of the St. Petersburg municipal politics. In November of 1998, two people shot her at close range in the stairwell of her St. Petersburg apartment building.

Amarnath Pandey was returning home at his suburban town in Uttar Pradesh when a motorcycle-riding gunman suddenly appeared and fired at him. The bullet luckily grazed his ear. It was his second brush with death. A week earlier, a lorry tried to run him over. His mistake - his RTI application tried to track the use of funds of the Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA), a project that supposedly guarantees a hundred days of wage-employment yearly to rural households whose adult members volunteer to do unskilled manual work. The petition exposed the collusion between the government official and village head of Ghorawal block in Sonebhadra district of Uttar Pradesh in embezzling funds from the project, and helped the government recover three million rupees from the officials involved.

It is evident from these case studies that whistle blowing is not for the faint of heart. Instances of the whistleblower being fired, demoted or punished in other ways while the organization denies, ignores or quietly buries the disclosure are universal. Apart from the social pressure against turning one's boss or colleagues in, there is the legal bar in the form of the Official
Secrets Act and Conduct Rules in the public sector or ‘a non-disclosure agreement’ in the corporate sector by which employees are gagged from disclosing matters to the public on pain of incurring criminal or civil liability for any breach.

However in a corporate world the risk of life is not too high but there are other aspects that come into play like risk of losing job, promotions or growth opportunities or reduced responsibilities. In extreme cases the company would come up with fictitious charges being framed against the whistle blower and he could end up losing the job or landing up in jail for falsification of facts and data and causing disrepute to the organization.

**Conclusion**

There is a lot of awareness on good Corporate Governance and Whistle blowing in the recent years with a lot more companies keen to main a clean image in terms of corruption. However due to the highly competitive market and business scenarios, increasing pressure on top executives to outperform, malpractices, irregularities will finds its way into the system. But a very strong policy on Whistle blowing with a increased confidence of protecting the employees who act as whistle blowers to maintain a strict Zero tolerance in the interest of the reputation of the company would act as a major deterrent to prevent such corruption scenarios. Companies will have to train managers and executives on how to encourage openness, not unlike the sexual harassment training of a decade ago.

Putting processes in place will not be quick, but it is certainly necessary given the increased public scrutiny of corporate behavior.

Corporate Governance would have scaled the pinnacle of Transparency and Righteousness on that day when an employee is able to freely, without any inhibition or fear of retaliation or loss report any malpractice or irregularity or corrupt practices with the intention to correct the system and restore the sanctity of the work environment. We all live in hope to see that day, which as of today is still many years away.

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