

ROUNDTABLE REPORT

Whistleblower Policy in India: Relevance & Roadblocks



DLF Crest Clubhouse, Gurgaon

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LIVING DANGEROUSLY IN DENIAL

For long these people who spoke in public have suffered in silence. Today, the corporate whistleblowers in India feel defeated. Clamour for their protection must rise.

THEY are often rebuked and reprimanded. Many lose their jobs. A large number of them face rejections when they seek further employment. Worse, the perpetrators marshal all the power and privileges at their command to demean, discriminate and discredit such courageous men

and women. Lawsuits against these honest and upright individuals are definitely not uncommon. Needless to mention, their family also endures the trauma. Their only fault is that they dare to speak when they see any wrongdoing. Driven by their conscience, they risk their career and life. Just for

the record - more than 40 per cent of frauds globally are discovered by the whistleblowers. Concerns for such righteous people found an echo in the round-table conference held at DLF Crest Club in Gurgaon recently. The topic, 'Whistleblower Policy in India: Relevance and Roadblocks'



seemed to resonate with the experts and delegates. Among those who attended the conference included representatives comprising HR, Legal, Finance, Communication and other compliance officers from some of the leading law firms, consulting organisations and corporate houses. The conference was organised under the aegis of *Straight Drive*, a start up engaged in promoting employee engagement and happiness at workplace.

Some perspectives were in order. The experts noted that the law in its current form was inadequate. As such the Companies Act mandates the listed entities and others that either use public deposit or borrow money worth more than Rs. 50 crore to only disclose that they have a policy in place. Authenticity

of such disclosures is, however, not audited. Independence of members carrying out the enquiry under vigil mechanism, trust of employees in the free and fair trial and protection of whistleblowers from any harassment were some of the issues that the participants discussed and deliberated. Besides, the experts also pointed out that the unorganised sectors, which provided maximum employment, were beyond the purview of the law.

Fearing corporate backlash, many seem to have lost their nerve. Some decide to keep quiet because they are not the impacted parties and others collude with the offenders. Inordinate delay in enquiry and brazen support to those in power further compound the problem. And, the complaints are not restricted

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to financial irregularities, procedural violations or sexual harassment. Largest number of whistleblower cases that remain unattended pertains to disrespectful behavior at workplaces. Apparently, these complaints are completely disregarded because they do not impact the finances.

All is certainly not well. As someone in the conference rightly reasoned, "The real test of the intent comes to the fore when the complaints are about someone at the leadership level." Referring to the tone at the top as the key to effective implementation of the whistleblower policy, the experts highlighted the need for the corporates to develop an ability to listen to the dissent voices. Every complaint should be taken with a premise that somebody

is calling out for help. Ethos, according to them, is the real barrier or enabler.

Sentiment of simmering outrage found expressions at the round-table conference. Drawing a parallel with the ongoing #MeToo movement, the experts felt that the employees of the corporate India would do the same if their voices were not heard. They asserted, "A large number of corporates are sitting on a tsunami of stories about their misconduct and misdemeanor." What worried them the most was that the policy at times became a cover to protect the wrongdoers.

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KEY RECOMMENDATIONS

Evidently, the corporates can no longer duck the litany of charges. They would do well to consider the following suggestions put forth by the experts at the round-table conference:

- Ministry of Corporate Affairs to widen the ambit of the Companies Act to cover entities in the unorganized sectors as well
- SEBI to ensure veracity and authenticity of the disclosures through a foolproof mechanism
- Corporates to appoint a chief ethical officer of impeccable track record to win the trust and support of employees
- Corporates to appoint independent members with a reputation of personal integrity from outside in the enquiry committee with no reporting to anyone in the organization
- Corporates to provide members of the enquiry committee a direct access to the top management
- Corporates to empower the enquiry committee to enforce its decisions without having to take any management approval
- Boards to review the action taken reports on the recommendations of the vigil committees
- Corporates to put a policy framework in place to protect the whistleblowers from any discrimination, humiliation or harassment
- Corporates to introduce a mechanism to protect the dignity and reputation of honest and genuine officers against false charges
- Corporates to educate the employees with authentic data of rewards and punishments to encourage genuine reporting and discourage false reporting
- Corporates to continuously educate its employees on how to access and use the whistleblower policy
- Corporates to shun any practice of harassing the whistleblowers to dispel any fear of retaliation and regain employees trust and confidence
- Corporates to promote a culture of open communications to elicit unfiltered and unadulterated feedback on the prevailing state of affairs

The conference concluded with an overwhelming agreement that it's the top person in the company who sets the agenda for effective implementation of the whistle-blower policy at workplace. The speakers concurred that the time to speak had arrived.

