



# PIDPI RESOLUTION: EVOLUTION AND IMPACT ON WHISTLEBLOWING

## Introduction

*'Whistleblowing' is an act of disclosing information by an employee or any concerned stakeholder about an illegal or unethical conduct or malpractice within the organization. It is a very important tool for Vigilance and other law enforcement authorities to check and prevent wrongdoings.*

According to a study by OECD,<sup>1</sup> encouraging employees to report wrongdoing and to protect them when they do, is essential for prevention of corruption in both the public and private sectors. Employees are usually the first to recognise wrongdoing in the workplace. Empowering them to speak up without fear of reprisal can help authorities to both detect and deter violations. In the public sector, protecting whistleblowers can make it easier to detect passive bribery, the misuse of public funds, waste, fraud and other forms of corruption. In the private sector, it helps identify cases of active bribery and other corrupt acts committed by companies, and also helps businesses prevent and detect bribery in commercial transactions. Whistleblower protection is essential to safeguard the public interest and to promote a culture of public accountability and integrity.

## Evolution of the PIDPI Resolution

The need to institutionalise the system of whistleblowing and protection of informants has been engaging the attention of the government and the civil society at large. The Law Commission of India in 2001, had recommended that, in order to eliminate corruption, a law to protect whistleblowers was necessary. It had drafted a bill as well to address this issue. In 2007, the report of the Second Administrative Reforms Commission also recommended that a specific law needs to be enacted to protect whistleblowers.

The issue of protection for whistleblowers caught the attention of the nation when National Highways Authority of India (NHAI) engineer Satyendra Dubey, a whistleblower, was murdered in November 2003 after he exposed corruption in the construction of highways. While making the complaint, he had requested the authorities that his identity be kept secret. However his representation was forwarded to various concerned departments without masking identity. This led to a public outcry and in response to a PIL, the Honb'le Supreme Court pressed the government to put in place protection mechanisms for Whistleblowers. As an outcome the Department of Personnel and Training (DoPT) in 2004 issued and notified The Public Interest Disclosures and Protection of Informers Resolution (PIDPI).

As per this resolution, the Central Vigilance Commission (CVC) is authorized, as the Designated Agency, to receive written complaints or disclosure on any allegation of corruption or of misuse of office by any employee / officials of the Central Government or of any corporation established by or under any Central Act, Government companies, societies or local authorities owned or controlled by the Central Government.

The designated agency after confirming from the complainant, that he was the person who made the complaint, will, in the first instance make discreet inquiries to ascertain if there is any basis of proceeding further with the complaint. On satisfaction to the effect, it will seek a response from the organization concerned. While doing so, the identity of the complainant shall not be disclosed. After obtaining the response of the concerned organization, if the designated agency is of the opinion, that the investigations reveal either mis-use of office or substantiates allegations of corruption, it shall recommend appropriate action to the concerned Government Department or organization.

If any person is aggrieved on the ground that he is being victimized due to the fact that he had filed a complaint or disclosure, he may file an application before the designated agency seeking redress in the matter, who shall take action, as deemed fit. It may give directions to the concerned public servant or the public authority for such redressal. In case of life threat, either on the application of the complainant, or on the basis of the information gathered, if the designated agency is of the opinion that either the complainant or the witnesses

need protection, the designated agency can issue appropriate directions to the concerned Government authorities.

The Central Vigilance Commission too issued a public notice on Public Interest Disclosures & Protection of Informer (PIDPI) in May, 2004 reiterating the salient points of the Resolution. It informed that it would accept complaints under the resolution and has the responsibility to keep the identity of the complainant secret. It also notified the methodology to be adopted by the public for making complaints under PIDPI, given below:



- i. The complaint should be in a closed / secured envelope.
- ii. The envelope should be addressed to Secretary, Central Vigilance Commission and should be superscribed "Complaint under The Public Interest Disclosure". The complainant should give his/her name and address in the beginning or end of complaint or in an attached letter.
- iii. Commission will not entertain anonymous/pseudonymous complaints.
- iv. The text of the complaint should be carefully drafted so as not to give any details or clue as to his/her identity. However, the details of the complaint should be specific and verifiable.
- v. In order to protect the identity of the person, the Commission will not issue any acknowledgement and the whistleblowers are advised not to enter into any further correspondence with the Commission in their own interest.

The DoPT in 2013 further enhanced the ambit of the Resolution and the Chief Vigilance Officers of the Ministries and Departments of GoI were also nominated as designated authorities to receive complaints under the Resolution.

CVC also revisited some of the provisions of the Notice and issued amendments to further streamline the procedure and make it more effective and more in line with the main objective of the Resolution. In 2018, it issued a circular providing revised timelines for submission of reports. In April 2021, the practice of obtaining an NOC form from the whistleblower has been done away with. In November 2021, it reiterated to the Department of Posts regarding ensuring acceptance of envelopes addressed to CVC and marked as PIDPI without insisting on the name and address on the envelope.

## Whistleblowers Protection Act, 2014

The Whistleblowers Protection Bill was proposed in 2011 which was finally passed in Parliament in 2014. India is a signatory to the UN Convention against Corruption. It encourages states to facilitate reporting of corruption by public officials and provide protection for witnesses against retaliation. The Convention also provides safeguards against victimization of the person making the complaint. The Whistleblowers Protection Bill conforms with these regulations and implementation of the related provisions of the Convention.

However, the Act has not yet come into force, because amendments pertaining to certain safeguards against some disclosures have not been incorporated.

This Act seeks to protect whistleblowers, i.e. persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offense by a public servant. It also has the provision for penalties for people who knowingly make false complaints.

## Whistleblowing in CPSUs

To improve governance, transparency and accountability in the functioning/working of CPSEs, Department of Public Enterprises (DPE), Government of India, in June 2007 introduced guidelines on Corporate Governance



for Central Public Sector Enterprises (CPSEs). These guidelines were voluntary in nature and implemented for an experimental period of one year i.e. 2008-09. Based on the experience gained, DPE further issued guidelines in May, 2010<sup>2</sup> which were mandatory and applicable to all CPSEs, covering critical areas like composition of Board of Directors, composition and functions of the Board committees like Audit Committee, Remuneration committee, details on subsidiary companies, disclosures, reports and the schedules for implementation. DPE has also incorporated Corporate Governance as a performance parameter in the MoUs of all CPSEs.

The guidelines suggest establishment and disclosure of Whistleblower policy for employees by all CPSUs and affirmation that no personnel have been denied access to the audit committee. As envisaged in the "listing agreement" of SEBI, the Audit committee of the CPSUs is to monitor the functioning of the Whistleblower mechanism. As per section 4.3 (v) of the guidelines, commensurate with its role, the Audit Committee should be invested by the Board of Directors with sufficient powers, which should include the powers to protect the Whistleblowers.

## Whistleblowing Mechanism in Private Sector

The legal framework in India pertaining to whistleblowing, protection of whistleblowers and its enforcement has largely been geared towards listed companies. The Companies Act, 2013, has made it mandatory for certain classes of companies to establish mechanisms to receive complaints related to such grievances or concerns raised by Directors or employees of a company. The Companies Rules 2014 provide guidelines for the implementation of the Act.

The Securities and Exchange Board of India (SEBI) requires the listed companies to have incentive-based whistleblower policies that also reward employees for reporting insider trading which may be taking place within the company. It also recently strengthened this monetary incentive, with the aim of empowering whistleblowers and reiterating its resolve against insider trading.

These systems are further supplemented by the Companies (Auditor's Report) Order, 2020, which aims at enhanced financial transparency in the running day-to-day affairs of a company, through increased cooperation/ collaboration with auditors, and an emphasis particularly on whistleblower complaints and their disposal through this mechanism.

Though there have been several instances of unlawful practices being exposed by employees in private listed companies, the implementation of the whistleblowing regime is still inconsistent in the private sector. While some leading private sector organizations allow anonymous complaints and are putting in place processes to safeguard the identity of the whistleblowers, there is no institutionalized mechanism for the same. There is a need for a more focused policy making in these areas.

On Jan 18<sup>th</sup> 2021, Hon'ble Vice-President, Shri M. Venkaiah Naidu suggested that all corporates should encourage whistleblowing mechanism and provide adequate safeguards for the protection of whistleblowers.<sup>3</sup>

While delivering address at the Convocation at the Institute of Company Secretaries of India (ICSI), he stressed on upholding the principles of transparency, integrity and honesty at all times and reflecting them in every business activity.

## PIDPI in other Countries

Several countries across the globe are increasingly developing legal frameworks to protect whistleblowers. Many countries have adopted Whistleblower Legislation in the last two decades. Legal protection for whistleblowers varies from country to country. About a dozen countries have adopted a comprehensive Whistleblower Protection Legislation and have created mechanism for disclosure of wrong doings and providing legal protection to the informants. Other countries have adopted a more limited form of protection as part of legislation pertaining to freedom of information, employment laws and other anti-corruption legislation.

The United States was among the earliest countries to bring about such a legislation. The Whistleblower Protection Act of 1989 was enacted to protect federal employees who disclose "Government illegality, waste, and corruption" from adverse consequences related to their employment. This act provides protection to whistleblowers who may be penalised by getting demotions, pay cuts, retrenchment etc. UK was also among the early ones and the Public Interest Disclosure Act was formulated in 1998.

In Canada, the Public Servants Disclosure Protection Act which came into force in April 2007 applies to most of the public sectors, that is covering about 4 lakh public servants. This also provides protection from reprisal of public servants who have disclosed wrong doing and those who have cooperated in investigations. There is the office of the 'Public Sector Integrity Commissioner' of Canada whose stated goal is to enhance public confidence in Canada's federal public institutions and in the integrity of public servants.

In Australia, however, there are different whistleblower protection laws in different states of Australia.

In the case of European Union, the European Parliament has approved a 'Whistleblower Protection directive' for public and the private sectors including journalists in all its member states. Whistleblowers are also protected from criminal prosecution and corporate law suits for damages.

In Switzerland, the Swiss Code of Obligations has provisions relating to obligation on employees to report irregularities to their employer and to the authorities.

Countries like Ghana, South Korea and Uganda have recently adopted whistleblower laws. Nigeria has formulated Whistleblowing policy in 2016. Legislation on the same is being considered in Kenya and Rwanda.

Many international NGOs are also advocating for stronger and more comprehensive legal rights and protections for whistleblowers.

It is seen that several countries have already put in place laws to protect whistleblowers or are in the process of doing so. However, the level of protection and the way in which the law operates differs from country to country. Though a lot is being done globally to encourage whistleblowing and protect informants, more can be done to mainstream anti-corruption mechanisms and promote open organisational cultures.

## Conclusion

The Central Vigilance Commission during the Vigilance Awareness Week 2021 laid great emphasis on the PIDPI resolution and its effective implementation. A concerted campaign was conducted to generate awareness among public of this provision. This mechanism can prove to be a very effective tool for promoting a culture of transparency and honesty in organisations. ■

## References:

1. Organisation for Economic Co-operation and Development (OECD) Study on Whistleblower Protection Frameworks: Compendium of Best Practices and Guiding Principles for Legislation.
2. Department of Public Enterprises OM No. 18(8) /2005-GM dated 14th May 2010.
3. [pib.gov.in/press release dated 18th January 2021](http://pib.gov.in/press release dated 18th January 2021).

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