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## Is India INC. in Need of Independent Whistle Blowers?

- Significant corruption, financial irregularities and scams exist in the corporate sector too despite a relatively strong compliance structure, legal framework and policies. This points out a serious anomaly in our governance system especially with respect to Vigilance and related whistle blowers functions. The corporate sector therefore needs the services of independent professional whistle blowers.

**C**orporate management plays a vital role in shaping the future of the entity as the optimum utilization of all resources hinges upon the efficacy of the management. The core of a successful management lies in its clarity of vision, plan of action and more importantly execution of the plan of action – the real gamut of operations as it were, and it is here that the importance of corporate governance and ethics comes into being. There is no denying the fact, that whereas our policies and systems are good, the implementation system needs to be overhauled. Organizations are managed by Policies, Guidelines and Systems. These are dynamic instruments, and therefore need to be reviewed from time to time to gauge their efficacy to the said organization. This review is all the more necessary when a lapse or an untoward incident takes place. It may happen that the policy is very much sound and in place, but over a period of time wrong practices have come into being, which may be the reasons for the problems that have occurred and therefore corrective steps need to be taken forthwith.

The management needs to be controlled from the customary errors and omissions in the day to day affairs of the company. Sometimes, these errors and omissions are by way of mistake



or error of judgment; sometimes it may be due to negligent or accidental omission and sometimes it may be motivated or forced actions because of not adhering to the prescribed regulations and guidelines. It is difficult to imagine a scenario where the key economic players like public sector bureaucrats or private sector



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top managerial personnel or promoters would not gain from any decision that encourages or sets in motion any kind of economic or business activity. While one should definitely be excused for bona-fide mistakes of error of judgment, in all these situations, an independent and mature professional whistleblower can play a key and vital role in protecting the interests of the entity.

According to Kroll Advisory Solutions, a Risk Management and Consulting Firm, companies in India have encountered the highest number of fraud cases in the world in recent years, and most of these relate to theft of physical assets, information breach, internal theft, corruption and vendor-supplier frauds. Indian companies, however, were more concerned about the theft of physical assets or stocks than bribery or corruption. Though, the number of firms reporting fraud fell from 84% in 2011 to 68% in 2012, fraudulent activities still prevail and the economy is vulnerable to planned frauds. In India, the key challenge remains corruption and bribery-related frauds. Though the number of firms affected by corruption has gone down to 21%, it still remains persistently higher than the global average of 11%. Globally, financial services, infrastructure and manufacturing remain the top sectors most prone to fraud. As per a survey, it's shocking that despite the vulnerability to fraud, only 30% of Indian firms were willing to invest in IT security, considering the increasing number of technology-related frauds. "India is a growth market, so companies lay emphasis on investing in expansion rather than putting the bricks. That will be a concern as we mature over the years." In contrast seventy per cent of Chinese firms, second in line for the number of frauds, are willing to increase the investment in IT security.

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It is the economic downturn, rather than the upswing, which raises sharp focus on issues relating to ethics and corporate governance. The two major reasons for corporate failures have been greed and excess leverage which result in the collapse of governance and to some extent sickness and downfall of the entity. The moot point is whether these two need to be completely done away with? If so, what is the incentive for aggressive growth and competition? If not, how are these to be kept within controllable limits and yet higher growth achieved? Actually business needs a balanced and prudent approach neither too rigid nor too flexible for both the phases namely economic downturn and economic boom.

There is no denying the fact, that investment in IT security, Manual, Policies, Experts and Management Gurus can result in number of action plans in controlling the errors, omissions and frauds, but an independent professional whistleblower like an experienced and mature whole-time legal expert, CSs, CFOs can play a key role and bestow a sharp focus on the adherence of true spirit of ethics and corporate governance, and who can blow the whistle and raise an alarm in time about the wrongdoing/malpractices going on inside an organization.

Whistleblower protection in India refers to provisions put in place in order to protect someone who exposes alleged wrongdoing. The wrongdoing might take the form of fraud, corruption or mismanagement. One who reveals wrongdoing within an organization to the public or to those in positions of authority is called the whistleblower - an informant who exposes wrongdoing within an organization in the hope of stopping it. However at present "the law gives little protection to whistleblowers who feel the public has a right to know what is going on."

Appointment of Independent whistleblowers will definitely transform the existing Corporate Governance Culture. It can also revolutionize the corporate control system by reducing or controlling financial scams which may also reduce the chances of siphoning of public / borrowed funds by unscrupulous promoters at the disposal of company's management. It can also reduce in creation of vanishing companies.

A whistleblower is a person who tells the public or someone an authority about alleged dishonest or illegal activities (misconduct) occurring in a government department or private company or organization. The alleged misconduct may be classified in many ways; for example, a violation of a law, rule, regulation and/or a direct threat to public interest, such as fraud, health/safety violations, and corruption. Whistleblowers may make their allegations internally (for example, to other people within



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the concerned organization) or externally (to regulators, law enforcement agencies, to the media or to groups concerned with the issues).

The term 'whistleblower' comes from the whistle a referee uses to indicate an illegal or foul play in a sport of game like Football/Hockey. US civic activist Ralph Nader coined the phrase in the early 1970s to avoid the negative connotations found in other words such as "informers" and "snitches". The term whistleblower derives its origin from the practice of English (policemen), who would blow their whistles when they noticed the commission of a crime. The whistle would alert other law enforcement officers and the general public of danger.

One of the first laws that protected whistleblowers was the 1863 United States False Claims Act (revised in 1986), which tried to combat fraud by suppliers of the United States government during the Civil War. The Act encourages whistleblowers by promising them a percentage of the money recovered or damages won by the government and protects them from wrongful dismissal.

Whistle blowing can be defined as 'the release of information by a member or former member of an organization that is evidence of illegal or immoral conduct in the organization or conduct in the organisation, which is not in public interest. Whistle blowing has become a widely accepted practice world around. However, the corporate world in India is yet to seriously incorporate this practice in their corporate governance practices.

Whistle blowing is the process of informing the authorities about the illegal or immoral or unethical conduct of business in an organization. Precisely, whistle blowing is an action taking place within an organization. The reporting of an incident in an organization by an external agency or even the employee is not whistle blowing. There are certain basic differences between whistleblowing activity and reporting. Whistle blowing policy will

never give an automatic protection to any organisation from wrong doings. The effectiveness of the system mainly depends upon how the wrong doings become costly to the performer of the act.

## Consequences of being Honest Whistle blowers

"Whistle blowing is an open disclosure about significant wrongdoing made by a concerned citizen totally or predominantly motivated by notions of public interest, who has perceived the wrongdoing in a particular role and initiates the disclosure on her or his own free will, to a person or agency capable of investigating the complaint and facilitating the correction of wrongdoing", [William De Maria]

Whistle blowers frequently face reprisal, sometimes at the hands of the organization or group which they have accused, sometimes from related organizations, and sometimes under law. Ideas about whistle blowing vary widely. Whistle blowers are commonly seen as selfless martyrs for public interest and organizational accountability; others view them as "tattle tales" or "snitches," solely pursuing personal glory and fame. Some academics such as Thomas Alured Faunce feel that whistle blowers should at least be entitled to a rebuttable presumption that they are attempting to apply ethical principles in the face of obstacles and that whistle blowing would be more respected in governance systems if it had a firmer academic basis in virtue ethics.

It is probable that many people do not even consider blowing the whistle, not only because of fear of retaliation, but also because of fear of losing their relationships at work and outside work. Because most of the cases are very low-profile and receive little or no media attention and because whistle blowers who do report significant misconduct are usually put in some form of danger or persecution, the idea of seeking fame and glory may be less commonly believed. Discrimination of whistle blowers has become a serious issue in many parts of the world. Although whistle blowers





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are often protected under law from employer retaliation, there have been many cases where punishment for whistle blowing has occurred, such as termination, suspension, demotion, wage garnishment, and/or harsh mistreatment by other employees. For example, in the United States, most whistleblower protection laws provide for limited "make whole" remedies or damages for employment losses if whistleblower retaliation is proven. However, many whistleblowers report there exists a widespread "shoot the messenger" mentality by corporations or government agencies accused of misconduct and in some cases whistleblowers have been subjected to criminal prosecution in reprisal for reporting wrongdoing or unceremoniously fired or separated from the business firm. Lack of adequate protection to the complainants reporting the corruption or wilful misuse of power or wilful misuse of discretion which causes demonstrable loss of Public Funds with the connivance of top management. Instances of Satyam or Enron scams are fresh in human memory.

As a reaction to this many private organizations have formed whistleblower legal defense funds or support groups to assist whistleblowers: two such examples are the National Whistleblowers Center in the United States and Public Concern at Work in the UK. Depending on the circumstances, it is not uncommon for whistleblowers to be hated by their co-workers, discriminated against by future potential employers, or even fired from their organization. This campaign directed at whistleblowers with the goal of eliminating them from the organization is referred to as mobbing. It is an extreme form of workplace bullying wherein the group is set against the targeted individual.

Most whistleblowers are internal whistleblowers, who report misconduct on a fellow employee or superior within their company. One of the most interesting questions with respect to internal whistleblowers is why and under what circumstances people will either act on the spot to stop illegal and otherwise unacceptable behavior or report it. There is some reason to believe that people are more likely to take action with respect to an unacceptable behavior, 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 whistleblowers, however, report misconduct on outside persons or entities. In these cases, depending on the information's severity and nature, whistleblowers may report the misconduct to lawyers, the media, law enforcement or watchdog agencies, or other local, state, or federal agencies. In some cases, external whistleblowing is encouraged by offering monetary reward.

Under most US federal whistleblower statutes, in order to be considered a whistleblower, the federal employee must have reason to believe his or her employer has violated some law, rule or regulation; testify or commence a legal proceeding on the legally protected matter; or refuse to violate the law.

## Legal protection

Legal protection for whistleblowing varies from country to country and may depend on any of the country of the original activity, where and how secrets were revealed, and how they eventually became published or publicized. Over a dozen countries have now adopted comprehensive whistleblower protection laws which create mechanisms for reporting, investigate reports, and provide legal protections to the people who informed them. Over 50 countries have adopted more limited protections as part of their anti-corruption, freedom of information, or employment laws.

## Whistle blowers Procedure

Whistle blowers Procedure Policy in an organization should strive for a culture of openness, integrity and reliability with ethical behavior and compliance with laws and regulations of the land. The Whistle blowers Procedure provides the employees with rules on how to report violations of the Code of Conduct and other policies. Reports made by the employees are treated confidentially and are promptly investigated without any risk of recourse for the employee.

'Conscience keeping' or 'whistle blowing' is a part of ethical culture in the organization. Conscience keeping is broader aspect and includes whistleblowing also. The manner of implementing the same can be through implementing appropriate controls, by bringing ethical culture in the organization. There have been instances both positive and negative in respect of Whistle Blowing indicating that in some cases whistleblower succeeded, while in many cases they become victim for being honest. CSs & CFOs have a key role in bringing ethical climate in the Corporate World.

## Whistle blowers are important stakeholders

Corporate Governance refers to a set of systems/procedures,





policies, practices and standards put in place by a corporate to ensure that relationship with various stakeholders is maintained in transparent and honest manner. Whistleblowers are important stakeholders as they can work as a tool for authorities to get information of deviant behaviour or practices in organizations.

The term `whistleblowing' is relatively a recent entry into the vocabulary of public and corporate affairs, although the phenomenon itself is not new. It refers to the process by which insiders go public or to top Management with their claims of malpractices by, or within, organizations – usually after failing to remedy the matters from the inside, and often at great personal risk to themselves. Sometimes the cost of such valiant efforts is just too high to pay. The big question here is that in an organization where although lots of people work, who will take chance against the possible risk involved? Who would blow the whistle about the wrongdoing/malpractices going on inside an organization? It's not only about just raising alarm, it is more about the impartiality and courage to start with.

## Institution of mechanism for Whistle Blowing

In corporate parlance, whistle blowing is a mechanism for employees to raise a concern about wrongdoing occurring in an organization or body of people, such as suspected fraud or violation of the company's code of conduct or ethics policy. However it is also essential to have adequate safeguards against victimization of employees who avail the mechanism.

No one will ever agree that whistleblower needs protection against retaliation/misbehavior by superiors. At the corporate level, the companies can provide protection to whistle blowers by establishing a well documented "Whistleblower Policy" and ensuring its effectiveness practically. Just making a documented policy is not sufficient to develop confidence among the employees; examples should be set by taking action against the wrongdoing reported.

## Corporate Governance Voluntary Guidelines 2009

"Citizens never support a weak company and birds do not build nests on a tree that does not bear fruits". Minister Salman Khurshid quoted Arthshastra while introducing Corporate Governance Voluntary Guidelines 2009 (CGV Guidelines). These guidelines being recommendatory in nature, focus on fairness, transparency, accountability and responsibility by Indian corporates. CGV Guidelines are a set of standard practices which may be voluntarily adopted by the public companies, and big private companies.

## Whistle blower Policy – A Good Governance Initiative by the Government/ Regulatory Agencies

The concept of Whistleblower Policy has been established in India through non-mandatory requirements of Clause 49 of Listing agreement. These provide that-

- the company should ensure the institution of a mechanism for employees to report concern about unethical behaviour, actual or suspected fraud, or violation of the company's code of conduct or ethics policy.
- the company should also provide for adequate safeguards against victimization of employees who avail of the mechanism and also allow direct access to the Chairperson of the Audit Committee in exceptional cases.

Further the Department of Public Enterprises' Guidelines on Corporate Governance in Central Public Sector Enterprises (CPSEs) 2010, also provide for establishment of a mechanism for whistleblower policy and state that once established, the existence of the mechanism may be appropriately communicated within the organization. The Companies Act, 2013 also contains provisions in respect of Vigil Mechanism (Whistleblowing) which will enable a company to evolve a process to encourage ethical corporate behaviour, while rewarding employees for their integrity and for providing valuable information to the management on deviant practices. Section 177 of the new Act provides for the establishment of vigil mechanism in every listed and prescribed class of companies and it also provides that companies shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the Chairperson of the Audit Committee in appropriate or exceptional cases. The establishment of such mechanism shall





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be disclosed on the website of the company and in the Board's Report of the Company.

ICSI National Award for Excellence in Corporate Governance also elicits information on the establishment of Whistle blower Policy/mechanism by the companies participating in the Corporate Governance Award.

Various companies in India and abroad have adopted Whistle blower Policy which lays down the complaint process, redressal mechanism and confidentiality thereunder. It has been observed during the evaluation process that over the years a good number of companies have formulated their 'Whistle Blower Policy' as a measure of preventing fraud and unethical behavior within the organization and the number of these companies has increased over the years.

## Role of Professionals

Whistle blowing as an internal control mechanism in the hands of Audit Committee and Board of Directors, ensures detection of any fraud or any concern which might put the company's reputation at stake. Whistle blowing policy will never work as an automatic protection to any organization from wrong doings. The effectiveness of system mainly depend upon how the wrong doings reported have been acted upon while providing sufficient protection to whistle blowers.

The Board is responsible for encouraging whistle blowing in the organization. Where the employees are not confident of the process of whistle blowing mechanism of the company they would resist from being a part of the process. Professionals like Company Secretaries being a bridge between the company's management and the Board have enormous responsibility on the one hand in establishing the whistle blower mechanism in the company and on the other hand to develop the confidence of employees in that mechanism so that they can freely report any unethical practices,

fraud or concern noticed in the company. The professionals should ensure that the policies of the company are working in a right direction and implemented properly, if any changes required, the matter should be reported to the top management immediately.

## What is the ideal Policy towards Whistle blowers?

In normal course, corporates should not tolerate discrimination of or retaliation against anyone who, in good faith, makes a report of suspected misconduct or wrongdoing. When they voice their concerns truthfully and accurately, ideally they may do so without fear of negative consequences. If any one suspect that an act of retaliation has occurred—against any employee, supplier or Whistle blowers—one must be encouraged to do its proper report to appropriate resource for an effective remedial action. Any employee who reports misconduct or wrong doing, which the employee believes to be true, will be given protection for such reporting. This protection means that such reporting will not discharge, demote, suspend, threaten, harass or in any manner discriminate against any employee in the terms and conditions of employment.

Professional Whistle blowers should be fair and should not allow prejudice or bias, conflict of interest or influence of others to override objectivity. They should perform professional services with due care, competence and diligence and has a continuing duty to maintain professional knowledge and skill at a level required to ensure that a client or employer receives the advantage of competent professional service based on up-to-date developments in practice, legislation and techniques. True review could also reveal that the problems have occurred in spite of the policy in place, and which means that the policies would need to be modified or amended as the case may be in the best interest of the organization.

Professional Whistle blowers are expected to be 'Watch Dogs'. They can at best be accused either of 'Lack of application of mind' or of consciously or otherwise overlooking the "slip" that has taken place. But not necessarily initiating the actual wrong doing conspiracy, collusion or fraud as such. It has to be understood that they, whistle blowers cannot work as investigators as they are very much part of the decision making process in the company and dependent on the promoters for their selection, continuity and growth in the organization. Whistle blowers have a key role to play and have an important/sacred responsibility, and therefore they need not get unduly overawed or paranoid by size of the company or any extraneous situation that they are faced with. Whistle blowers need to bring their special expertise and experience on corporate issues to the Board, and always, to keep "Broad Stakeholder Interest" in mind. Professional whistle blowers need to set and follow policies pertaining to "conflict of interest" and must be "above Board" and totally independent.





Whistle blower function or vigilance is not a stand-alone activity. It has to be seen as part of the overall risk management strategy of an organization wherein the structures, systems and processes are built in such a manner so as to prevent leakages which adversely affect productivity and profitability. A number of organizations both in public and private sector are re-engineering their processes by leveraging information technology. It will be in the organizational interest that when they are reorganizing business processes they should identify the likely risks like fraud, corruption, other malpractices and build in the required risk management tools in the new processes. Recently a write-up has appeared in the Economic Times under the heading "Fuel for e-commerce at HPCL". This article explains how HPCL has networked all its petrol pumps in and around Mumbai for the purposes of inventory control and supply chain management. The same process also indirectly helps in curbing adulteration and under measurement. These malpractices are in turn connected with corruption. The system automatically detects any tampering with the fuel dispensers. It enables the company to monitor every outlet. Similarly providing global positioning system on the tankers for transporting fuel, the management can detect diversion of tankers to dubious destinations. This technology while providing solution for efficient supply chain management also helps in risk management thus strengthening the internal vigilance. There is need to integrate vigilance activity as a part of overall risk management strategy which in turn has to be integrated in the main stream operations of organizations.

Whistle blower function has to be looked upon as one of the essential components of management. It is as important a segment in an organization like Finance, Personnel, Technical and Marketing. If the whistle blower mechanism is effective in an organization, it will certainly ensure the functioning of the other segment like Finance, Personnel, Technical and Marketing in an efficient way. It has therefore to be given a rightful place in the management. Though the 'whistle blower function' is liked neither by an honest officer nor a dishonest officer, yet its absence will be harmful to the organization. It is like a bitter pill. For the health of the organization, the bitter pill has to be administered. Like a bitter pill the whistle blower function will taste sour. But in the long run, it will be for the good health of an organization.

The whistle blower function is not something external. It should be accepted as an essence of management. It connotes watchfulness. It is not the purpose of whistle blowers to wait for lapses to be committed and then try to conduct post mortem. One should understand that preventive vigilance is more important than punitive vigilance. In short, management should be interested in preventive vigilance measures. If adequate attention is paid to preventive vigilance side, many vigilance cases will not arise.

Periodically, corporates realize that the present state of corporate governance indicates that we fall short on most of the criteria of good governance. It is paradoxical that while in terms of advanced parameters like strength of financial markets, business

sophistication and technological readiness India scores very high but, in terms of whistle blower's function and vigilance, we fare poorly. This highlights a serious anomaly in our governance system especially with respect to whistle blowers' function. Significant levels of corruption, financial irregularities and scams exist in India despite the existence of a relatively strong compliance structure, legal framework and policies.

## The Whistle Blowers Protection Bill, 2011

Commonly known as the Whistle blower's Bill, it seeks to establish a mechanism to register complaints on any allegations of corruption or wilful misuse of power against a public servant. The Bill also provides safeguards against victimisation of the person who makes the complaint. The Bill seeks to protect whistle blowers, i.e. persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offence by a public servant. The Bill prescribes penalties for knowingly making false complaints.

## Key Issues and Analysis

The Bill aims to balance the need to protect honest officials from undue harassment with protecting persons making a public interest disclosure. It punishes any person making false complaints. However, it does not provide any penalty for victimising a complainant.

### ***Evaluation of the Process of Appointment of Independent Directors & Whistle blower Professionals and Reasons for Appointment of Independent Whistleblowers by the lenders***

In accordance with SEBI Regulations, an independent director must be a qualified and independent person in accordance with the Company's Corporate Governance Policy established by the Board. An independent director must be capable of undertaking his or her duties, giving opinions and reporting performance results as delegated by the Board, free and clear of the control of the Company's management or major shareholders including related persons or close relatives. But, it's almost well evident that though Independent Directors must be actually Independent but when the process of appointment is always dependent on kindness, confidence & decision making of Promoters, then, these Independent Directors or Home directors who are normally relatives/friends of promoters with no specialized knowledge in the respective industry, or Public Sector Undertaking (PSU) directors including civil servants/IAS Referred by ministers or Retired Civil Servant who add little value to company. Other class is Celebrity directors who are people of name & fame includes sportsperson, movie star who also do not add value to the Company except either adding Brand Value to some extent or glamour to the said Company. One other category is Value director who may be Technocrats, Management Gurus or Financial Wizards, usually referred by promoters only, are paid highly and intermittently bring some value to the Company. These Independent Directors may



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be *de jure* independent but *de facto* they are not independent or rarely these independent Directors are independent because the appointment process is always dependent on affirmative vote and decision making of Promoters.

In fact, corporate governance is very subjective in regard to appointment of independent directors. But the so called independent directors, appointed by promoters, be interested or dare to take promoters' intentions for outside opinion? But almost all audit committees have promoters as members and most independent directors are incompetent to ask the right questions? But the quality of independent directors will be really independent, if the promoter is going to hire him? The same cardinal principle would also be applicable if we really need independent whistle blowers. It is high time in the overall interest of corporate governance that in the case of corporates using public funds in excess of Rs 500 crore or more, like any kind of financial subsidy, subsidized land parcels, public deposit, loans from Banks, FIs, FII's, then, the whistle blowers must be appointed by the respective lenders and some other appropriate body, if needed, with unanimous concurrence of promoters or in consultation with the promoters of the respective Company.

On the same pattern, if appointment of professional whistle blower like Company Secretary cum Compliance Head or CFOs is actually dependent on decision making of Promoters or Board of Directors or Audit Committee, then it is definitely a debatable point whether independent director or whistle blower who must be neutral, disinterested and independent in his role, can in fact perform his duty as such or not. Normally, whistle blowers are

reporting for their day to day functional role to either promoters or Board of Directors or Audit Committee. It is difficult to expect independence from whistle blower when his economic dependence and career growth is directly associated with the overall confidence and satisfaction of his bosses/master i.e. Promoters or Board of Directors or CMD of the Company.

As long as a whistle blower is dependent on the promoters for his monetary compensation or career growth, one cannot expect dependent professionals appointed for the purpose of vigilance or whistle blower function to remain totally independent. In order to have the services of independent whistle blower to be in reality and in right spirit, compensation system and controlling system need to be delinked from Promoters and be made as autonomous as possible on the lines of Constitutional body like the Central Vigilance Commissioner.

Now, it's high time and demand of the day, that appointment process of professional whistle blowers should be strategically reviewed and modified on the model prevalent for the appointment of Lender's Counsel or Engineers or autonomous institution like Central Vigilance Commissioner (CVC). In the case of large project financing, Lender's Counsel or Lender's Engineers are usually appointed in consultation with the Promoters of the respective company. In accordance with the law of the land, even appointment of Central Vigilance Commissioner and the Vigilance Commissioners is made by the President on the recommendation of a Committee consisting of the Prime Minister, the Minister of Home Affairs and the Leader of the Opposition in the House of the People (Lok Sabha). CVC is an apex body for exercising general superintendence and control over vigilance administration, through the Government. It is an autonomous body and work independently.

Hence, the Government or lenders should consider changing the existing practice of appointment of professional whistle blowers by the Promoters or Board of Directors to Joint Committee of Promoters and Lenders in order to have true independence in the fiduciary duty of these whistle blowers. As long as these, whistle blowers are economically dependent on their master i.e. Promoters, it's difficult to bring about a fair and transparent honest actions from these new generation pillars of Corporate World. At least in the case of large or Mega projects and in cases of companies having borrowed public funds in excess of Rs 500 crores or more, professional whistle blowers must be appointed primarily by the respective Lenders and some other appropriate body and if needed, in consultation with the Promoters of the respective Company. In the case of Ultra-Mega Projects, the whistle blower's function, can be performed through a Risk or Whistle blower Committee comprising of few Independent professional whistle blowers. Project Financing can be reviewed on periodical basis to start with. Progressively, the mechanism of appointment of independent professional whistle blowers must be extended to Listed Companies with a market capitalization in excess of prescribed limits. Such whistle blowers



should not be construed as nomination of whistle blowers by lenders or other Government Agency but must be considered as change in Reporting System of whistle blowers from the existing Promoter Group/CMD/ Board of Directors to new model of Joint Reporting to Joint Group of (i) Promoters Group/CMD/ Board of Directors; (ii) Lender's/FIs/FFIs/Debenture Trustees and (iii) and some other appropriate body. During the day to day affairs, the Whistle blowers may continue to report functionally to the existing Promoter Group/CMD/ Board of Directors and administratively & strategically on periodical intervals to Lender's/FIs/FFIs/ Debenture Trustees etc. If these safeguards are taken in time, in order to ensure effective Corporate Governance in regard to the appointment of Whistle blowers then there would be ample rationale in reducing financial scams like Satyam, Western Paques, Home Trade, Modern Suitings, Mahadev Leasing, DSQ Software, Enron, Uniport Computer and so on. It may be surprising to note the fact that during the period 2001- 2011, 786 companies have got listed in the Bombay Stock Exchange, but during the same period, 2,800 companies have disappeared from the bourses? Investors can neither buy nor sell shares of any of these scam tainted Companies. Stocks that were investor favourites in the late 1990s — DSQ Software and Pentafour Products — are no longer traded because trading has been suspended by the Exchanges. Pyramid Saimira Theatre — a company that saw its initial public offer in 2006 getting oversubscribed 15 times— too figures in said category of Delisting of Shares. This is just a tip of the iceberg; just a small indication of a bigger problem; a problem is much bigger than it seems on ground level. Financial Health & Scams can become much worse, if prudent decisions are not taken in time to transform the vigilance or controlling systems in the business entities.

If the mechanism for the appointment of whistle blowers is modified and above safeguards and precautions thereto are implemented in true spirit, in addition to reduction or controlling financial scams, it may also reduce the chances of Siphoning of Public / Borrowed Funds by unscrupulous promoters at the disposal of Company's Management and Vanishing Companies.

## Benefit from Independent Whistle blower Professionals in ensuring proper End-use of Funds

In cases of project financing, the lenders seek to ensure end use of funds by, *inter alia*, obtaining certification from the Chartered Accountants for the purpose. In case of short-term corporate/ clean loans, the Lenders uses other mechanism of 'due diligence' through legal counsels & law-firms. From Business point of view, the lenders to the extent possible, sanction and disburse loans to those borrowers whose integrity and reliability are above board, but on a number of occasion greed and unethical Corporate Practices

of the promoters persuaded them to siphon Borrowed Funds. The Banks and FIs, therefore, should not depend entirely on the reports or certificates issued by the Chartered Accountants but strengthen their internal controls and the credit risk management system to enhance the quality of their loan portfolio, through the supplement support of Independent Whistle blowers.

As long as professional whistleblower is appointed by Promoter Group/CMD, as one of the functional head he would remain more loyal to his employer (promoter) than to the Lenders or protection of Public Interest.

## Compensation for Independent Whistle blowers

In order to get the services of an independent professional whistle blower for the Corporates having external stake in excess of Rs 500 crore or more, compensation system could be modified in one of following manner through :-

- i some Government Recognized Fund or Banker's Risk Fund may be created on the line of Investor Education and Protection Fund (IEPF); or
- ii direct debit from the respective Loan Account with the Lending Institution; or
- iii some other mechanism, where the Independent Whistle blower Professional is not dependent on the Promoter for his monetary compensation, etc.

## Conclusion

Independent whistle blowers should not become a policeman or dignified inspector or bottleneck in the business establishment and obstruct the growth of the respective Corporate but he must become a facilitator to the business process by becoming a Vigilance Agent and Watchdog of Business Interest. He should not compete with the existing Business Processes but become a complimentary to existing business processes and Statutory Audit Process. All these procedures could work well only, if there is a total commitment and honesty on the part of management in implementing them. Let us therefore dedicate ourselves to be honest to implement the Vigilant and Whistle blower procedures effectively to make business undertakings function in an effective way so that they could reach commanding heights in the economic and social development of the country. 