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Market Watch

The whistleblowers: In the absence of a comprehensive law, here's how employee whistleblowers fare

BY SUMAN LAYAK, ET BUREAU | UPDATED: NOV 24, 2019, 09.54 AM IST

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On September 17, 2018, Abhishek Mishra was driving from Udaipur to Gurgaon along with his parents in his father's new Maruti Ciaz, a car the senior Mishra had bought a month ago with his retirement money. It was afternoon and this stretch of National Highway 8 that connects Mumbai to Delhi via Rajasthan, near Alwar, did not have road dividers.

Out of the blue and in broad daylight, Mishra says, a long trailertruck driving on the opposite lane veered across and hit his car head on. The airbags of the new Ciaz that deployed in the nick of time saved the family. By the time Mishra had got back his bearings and started calling friends and family, the trailer-truck had reversed back and driven off. Mishra's mother had to be hospitalised later in the day for internal bleeding and his father needed multiple surgeries on his face. The car took a month and half of repair work. Mishra, 37, believes this was no ordinary accident. He thinks this was an attempt on his life—a consequence of him turning a [whistleblower](#) against his former employer in Hyderabad back in 2016. This was also not the first rough experience for Mishra. He recalls how in 2016 in Hyderabad, some toughies had turned up as he went about grocery shopping, and advised him to leave the city.

Mishra's story might be an extreme but aggressive pushback and career-damaging consequences are not uncommon for whistleblowers. At a time when a parade of corporate scams has besmirched the reputation of India Inc, the experience of those who have blown the whistle paint a gloomy picture. Many scams might not have reached the scale they did had potential whistleblowers felt secure to come out.



This lack of confidence in the whistleblower mechanisms in Indian companies possibly led the latest round of employee complainants at Infosys to directly lodge their complaints with the US Department of Labor's Whistleblower Protection Program instead.

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Abhishek Mishra, Company: MW High Tech Projects India, Case Brief: Found unethical practices with statutory dues of employees and complained to Indian authorities, leading to ordering of CBI enquiry by the CVC. The company withdrew its Indian operations

The Whistleblower Protection Act 2014, passed by both houses of the Parliament and signed by the President in 2014, is yet to be operationalised and Indian companies operate under the whistleblower norms incorporated in the Companies Act of 2013. Political activists have been protesting the delay in operationalising the Act, but its impact on the corporate world is not adequately debated.

The secrecy and anonymity the Act offers whistleblowers have helped. At companies such as [Infosys](#), Sun Pharma and Yes Bank, this has helped whistleblowers hold the company managements accountable, without imperiling themselves. There has been a sharp increase in the number of whistleblower complaints recorded in 2018-19. The league table of Nifty firms that received the most number of complaints is led by the State Bank of India and [Wipro](#), with the cumulative total number of complaints received for the top 10 companies adding up to 4,552 in 2018-19. It is 30% higher than 2017-18.

However, the path of taking on the management of a company remains a difficult road, especially for an employee who becomes a whistleblower. Often, the first step is to raise issues around sharp corporate practices at internal company forums and a person's identity is not difficult to guess thereafter, when it is raised again anonymously at the board level or outside the company with the authorities. For an employee of a large company with a reputation to protect, life can become very difficult, with loss of opportunities, destruction of a career, and even turmoil in family life due to the uncertainties at work. It becomes a fight between an individual and corporate muscle.

What the **Indian Whistleblower Laws** Provide

The Whistleblowers Protection Act, 2014, allow informants to **keep their identity secret and prevents organisations from initiating action** against them while a probe is pending. The law is yet to be operationalised

Companies Act 2013 has incorporated changes to mandate that certain **companies need to have a whistleblower policy**, with multiple channels to file complaints

Sbi has started a policy for



Amit Tandon, MD of shareholder advisory firm IIAS, says that anonymous whistleblower complaints are an effective way to track corporate malfeasance, but has its dangers. “Intuitively, as an anonymous employee whistleblower, you have to be an unsung hero. If you step into the limelight, you must be prepared for the consequences.”

For three years now, Mishra has been seeking action against his former employer, the Indian arm of a European construction company called MW High Tech Projects India. As head of human resources at the company, Mishra says he came across violations in the way provident fund, employees' state insurance scheme and other statutory benefits were being handled.

When he raised the issues internally, Mishra says he was offered all kinds of deals to not pursue them, but ultimately he was removed from his job. This led Mishra to take up his battle with the company at different levels including the Hyderabad Provident Fund Commissioner, the Union Labour Ministry as well as the [Central Vigilance Commission](#) and the Prime Minister's Office. He also approached the Hyderabad Labour Court to challenge his termination. Barely a month before the “accident” on NH8 in September 2018, Mishra had a victory of sorts when the labour ministry ordered a probe into the mishandling of employee benefits by the company. Earlier this month, on November 5, the Central Vigilance Commission wrote to him saying the case has been referred to the CBI for investigation. Meanwhile, the MW Group has discontinued its India operations.

If that construes a victory, also giving him hope for justice for families of affected workmen, Mishra says it has left him a broken man. He lives alone in Gurgaon today. His wife and two daughters, aged four-and-a-half and seven-and-a-half, now live in another city in a different state. Despite degrees from IE Business School, Spain, and [Cornell University](#), US, Mishra has not found full-time employment since. “Only thing I can tell you is that family life also goes for a toss.”

Dim Prospects

The biggest issue in the life of a person who has raised ethics issues with the top management of a company is finding future employment. Mishra himself survives doing odd assignments and projects. Finding another job becomes tough as background checks usually go back to the former employer.

Even at a senior level, there is a problem.

Sarvesh Mathur, 62, the former chief financial officer of [PwC](#) India, also did not find a job after he raised issues within the consultancy in 2011 about how funds were brought into India from PwC's global organisation. Mathur, a veteran of Tata Tele and Alcatel, says he was first forced to resign from PwC, and then was sacked with retrospective effect, two months after he had ceased to be an employee of the company. At this point, Mathur complained about violation of Foreign Exchange Management Act by PwC with the authorities. It led to a penalty by the Enforcement Directorate of ₹230 crore on PwC in September 2019. PwC plans to challenge it in court. In 2017, Mathur also filed a couple of defamation cases against PwC.

Mathur says he understands why a person, who has been terminated, doesn't find another job easily. “You become an untouchable. And if I was on the other side of the table, my attitude would have been the same. No one wants to take a risk and hire a person whose services have been terminated, although wrongfully.”

Mathur says he takes up whatever assignments that come his way. "Apart from the money, you also have to keep yourself engaged. There are emotional issues; there are psychological issues."

Today, Mathur says he is fighting the cases against PwC to prove to his family that good guys do not always come last. "My kids have now grown up; they go to court with me, and help me in my battle," Mathur says, and points out that he might have been able to send his daughter to study abroad if he had not complained and retained his job. A PwC spokesperson, while refusing to comment on the specifics of the case, said the company has robust policies to address complaints by internal and external parties and a part of them are to protect the complainant against retaliation.



Rajan Nair; Company: Cadbury India Case Brief: Found unethical practices and complained to US SEC and Department of Justice and Indian excise authorities. Excise demand for taxes and fines exceed ₹1,000 crore. Settled one case with SEC

Another now well-known case has been that of Rajan Nair, 52, the former head of security (read compliance) at what was [Cadbury India](#) (the company was taken over globally by Kraft and now is known as Mondelez India). In 2010, allegations surfaced about how the company used improper practices to build a second unit in Baddi without permissions in place to take the advantage of a tax benefit scheme. An investigation by EY identified malpractices in 2011.

Nair says that after he sensed a lack of traction from the top management to report this non-compliance issue, he reached out to the Securities and Exchange Commission (SEC) and the Department of Justice in the US and the Central Vigilance Commission (CVC) and Directorate General of Central Excise Intelligence in India.

The Central Excise Commissioner asked Cadbury to pay ₹342 crore as taxes along with a penalty of ₹231 crore. The company appealed and it is pending at the Customs Excise and Service Tax Appellate Tribunal. Mondelez International settled the bribery case at the SEC paying \$13 million without denying or admitting charges.

Nair faced the job problem full on after he quit Cadbury in 2013. "I was one of the top guys in Fraud, Risk, Security & Compliance. But after this, my career of 20 years went out of the window." He says prospective employers came up with different excuses to refuse him a job, like "you are over-qualified" or "we won't be able to match your CTC" or "you are too senior".

Nair, who has relocated overseas for consulting work while his family remains in India, says he expected the professional doom that followed. His grievance today is about how the matter still lingers in CESTAT awaiting a final settlement and a September 2017 CVC directive to the Central Bureau of Investigation for registering a case is yet to be acted upon.

ET Magazine reached out to Mondelez India over phone and emails, but no response came. Emails sent to M+W Group through the company website remained unanswered.

David vs Goliath

Other, lesser-known whistleblowers have similar tales to narrate. Take for instance Rajat (name changed) who worked as a regional head for a Thrissur-based private sector bank in Thiruvananthapuram. After raising issues with unethical practices by one of the directors of the bank, Rajat was transferred to Vijayawada. Rajat wrote letters to the bank's audit committee and the Reserve Bank of India. Even though he found a sympathetic ear in the bank's chairman, the director, whom Rajat had named, launched a probe against him. The sympathetic chairman, before his retirement, managed to end all probes against Rajat but also advised him to leave the bank. After

quitting, no one was ready to hire him. It took him almost a year to find a job with a lower profile at a small non-banking finance company.

Or take the example of 40-year old hotelier Sumit Yardi, whose career as a young brand manager at the Indian arm of a British multinational was cut short a decade back when he questioned practices by the chief executive officer. While his own boss was sympathetic, the CEO turned vindictive after he was forced to apologise after a probe by the headquarters. At the age of 30, a bachelor and with no family to support, he could quit his job, move to Goa and become a hotelier.

However, things can be very different under different laws and jurisdictions. Take the case of Dinesh Thakur, who took on Ranbaxy (now merged with Sun Pharma) about its lax reporting regime with the US Food and Drug Administration back in 2004. Thakur, then a director at Ranbaxy India, used US laws and ended up getting paid `244 crore — his share of the fine that the company finally had to pay. He says he could not have done this in India (see interview).

Things are nowhere as rosy in India. Whistleblowers are never able to fully depend on the state and government machinery to safeguard them. Think about the misery of the Vyapam whistleblowers in Madhya Pradesh or the 84 Right to Information activists who have been killed. Even when whistleblowers are senior government officers, consequences are not very different. One needn't think beyond IAS officer Ashok Khemka, who has been transferred repeatedly for his tendency to expose graft, in whichever department he works in. Or take the case of Ramon Magsaysay award winner Sanjiv Chaturvedi, the former chief vigilance officer of All India Institute of Medical Sciences, who was left without an assignment after he took on corruption at the premier hospital.

In India, it becomes a virtual "David versus Goliath" battle, says Mathur. When Mishra would turn up at the Hyderabad Labour Court to fight his termination by MW High Tech Projects, the courtroom would be packed with lawyers hired by the company.

Sometimes, 10-15 lawyers who had come in from all over India would be in the courtroom while Mishra argued his own case. After the collision on NH8, Mishra approached the Supreme Court without the help of a lawyer or a senior counsel. Mishra managed to catch the eye of Justice Kurian Joseph, who gave him a patient hearing and then asked two designated senior advocates to help him.



Sarvesh Mathur; Company: PwC India Case Brief: Raised issues around how funds were transferred from PwC global network to Indian arms. Complained to ED after being terminated. PwC had to pay a fine

Mathur, too, fights his own cases, and has taught himself the relevant laws needed to take on PwC in the two defamation cases that are on at two high courts. Or imagine Rajan Nair submitting 120 handwritten pages to the authorities to support his complaints. Nair also decided to give an interview in 2017, coming out of anonymity. "There was a constant fear that led me to speak out and come out in

public. I felt being in the open will be my insurance.”

This lack of confidence in Indian authorities and the whistleblower mechanisms in Indian companies possibly led the latest round of employee complainants at Infosys to directly lodge their complaints with the US Department of Labor’s Whistleblower Protection Program instead.

Founder trustee of Investor Protection Council Arvind Gupta, himself an active investor whistleblower, feels such strategies are not helpful. Gupta wrote to ICICI Bank’s board about the conflict of interest of its former managing director Chanda Kochhar, who allegedly granted loans to Videocon while her husband had business ties with that company. The complaint led to Kochhar’s termination in 2018. He says: “Secret complaints, with inadequate material evidence, simply end up hurting the company’s share price. I would ask whistleblowers to approach investor bodies like ours, and we can then put our name and face to the complaints.”

Arpinder Singh, emerging markets head of forensics and integrity at EY, which has helped many Indian companies set up whistleblower hotlines and processes, says it is a two-way street. “Companies must get a chance to look at complaints internally before they go out. For that, the management needs to give confidence to employees, that their anonymity will be maintained and they won’t be victimised.”

Recent Cases:

Infosys: Whistleblower complaints have rocked the company in recent years. The latest one, alleging “unethical practices” by top officials, was probed by the board and found to lack enough evidence

Sun Pharma: Sebi has ordered a forensic audit of the company following whistleblower complaints alleging lapses in corporate governance

Yes Bank: In November, auditors of Yes Bank requested for a special audit of whistleblower complaints alleging irregularities in operations and potential conflict of interests with regard to the founder

PNB: The scam at the bank perpetrated by Nirav Modi and Mehul Choksi was revealed by Bengaluru-based investor Hariprasad SV

ICICI Bank: Investor Arvind Gupta complained about the link between Deepak Kochhar, husband of then ICICI Bank MD Chanda Kochhar, and Videocon and the treatment of a related NPA account at the bank

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