

Whistle-Blowing

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Satyendra Dubey was the bright son every lower middle-class family prays for. He was, in the best sense of the term, their ticket to the future, their only means to fulfill their aspirations. And Dubey seemed to be all that, a bright, young man with a bright, young intelligence who went to the Indian Institute of Technology, Kanpur. He came out as a civil engineer with idealism intact. He was posted as deputy general manager, National Highways Authority of India (NHAI) to the Aurangabad-Barachatti sector of the PM's beloved Golden Quadrilateral Project. On 27 November, 2003 Dubey was gunned down in broad daylight in Gaya. All children carry their parents' hopes; but for the Dubey's, their world had shattered.

Why was Satyendra Dubey killed? Because he did something all of us should do, but don't.

Meena Kumari-wife of a serving air force personnel -Kashmir Singh- and his daughter (Poonam) are running from pillar to post to get justice for him. She wrote to Prime Minister, Manmohan Singh saying, "My husband (Kashmir Singh) was kept in a dark cell for 28 days and was brought in the light for two minutes when he complained of deterioration in his condition. After coming to know about this incident, when I went to meet him at Hindon, I was not even allowed to meet him." On the other hand, their daughter Poonam, in a separate letter to Prime Minister Manmohan Singh has alleged "While our entire family is under great mental stress and agony, I have lost one year of studies, though I was doing quite well before this incident." Sepoy Kashmir Singh was court marshaled. Why? Something is common between Satyendra Dubey and Kashmir Singh- their idealism.

Satyendra Dubey wrote a confidential communication dated 11 November, 2002 to the PMO claiming that transnational Korean, Russian and Chinese companies collared road-building contracts through pay-offs and then farmed out the jobs to local contractors at knock-down prices, pocketing hefty margins.

Kashmir Singh was subjected to court martial on flimsy grounds i.e. for exposing illicit cutting of trees and using it as firewood to save on LPG cylinders used in the mess, which were illegally sold in the market by few officials.

Both of them were whistle blowers .

The term whistleblower derives from the practice of English bobbies who would blow their whistle when they noticed the commission of a crime. The blowing of the whistle would alert both law enforcement officers and the general public of the danger.

A **whistleblower** is an employee, former employee, or member of an organization, especially a business or government agency, who reports misconduct to people or entities that have the power and presumed willingness to take corrective action. Generally the misconduct is a violation of law, rule, regulation and/or a direct threat to public interest, such as fraud, health/safety violations, and corruption. Whistle-blower exposes wrongdoing, fraud or inefficiency in his or her workplace, where one is not supposed to. The most common type of whistleblowers are :

Internal whistleblowers, who report misconduct to another employee or superior within their company or agency.

External whistleblowers report misconduct to outside persons or entities.

FAMOUS WHISTLE-BLOWERS

Shawn Carpenter is a former Member of the Technical Staff at Sandia National Laboratories who discovered that a sophisticated group of hackers were systematically penetrating hundreds of computer networks at major US defense contractors, military installations and government agencies and looting sensitive information. After informing his superiors at Sandia, he was directed not to share the information with anyone. He voluntarily worked with the US Army and the FBI to address this problem. When Sandia National Laboratories discovered his actions, they terminated his employment and revoked his security clearance.

Richard Convertino is a former federal prosecutor who obtained the first conviction of a defendant in a terrorism case post-9/11. After Convertino testified before the U.S. Senate Finance Committee in September 2003 about the lack of Bush Administration support of anti-terrorism prosecutions post-9/11, Convertino alleges the Justice Department leaked information and violated a court order to publicly smear him in retaliation for his

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whistle blowing. Additionally, the Justice Department indicted Convertino for obstruction of justice and lying, which Convertino alleges is further whistleblower retaliation.

Allan Cutler - the first whistle-blower on the Canadian “AdScam” or sponsorship scandal. Without WB protection, he was fired by the Canadian government.

Joseph Darby - a member of the United States military police who in 2004 first alerted the U.S. military command of prisoner abuse in the Abu Ghraib prison, in Abu Ghraib, Iraq.

Sibel Edmonds - a former FBI translator, who was fired in 2002 by the FBI for attempting to report cover-ups of security issues, potential espionage, and incompetence. She has been gagged by the State Secrets Privilege in her efforts to go to court on these issues, including a rejection recently by the United States Supreme Court to hear her case without comment. She is now founder of the National Security Whistleblowers Coalition (NSWBC) that is looking to lobby congress and help other whistleblowers with legal and other forms of assistance.

Daniel Ellsberg - a former State Department analyst who leaked the Pentagon Papers in 1971, a secret account of the Vietnam War and its pretexts to The New York Times, which revealed endemic practices of deception by previous administrations, and contributed to the erosion of public support for the war.

A. Earnest Fitzgerald - Department of Defense auditor was fired in 1973 by President Richard M. Nixon for exposing to Congress the tidal wave of cost overruns associated with Lockheed’s C-5A cargo plane. After protracted litigation, he was reinstated to the civil service and continued to report cost overruns and military contractor fraud, including discovery in the 1980’s that the Air Force was being charged \$400 for hammers and \$600 for toilet seats. Mr. Fitzgerald retired from the Defense Department in 2006.

Bunnatine “Bunny” H. Greenhouse - former chief civilian contracting officer for the United States Army Corps of Engineers exposed illegality in the no-bid contracts for reconstruction in Iraq by a Halliburton subsidiary.

Katharine Gun - a former employee of Government Communications Headquarters (GCHQ), a British intelligence agency who in 2003 leaked top-secret information to the press concerning illegal activities by the United States and the United Kingdom in their push for the 2003 invasion of Iraq.

Cathy Harris - Former United States Customs Service employee. She exposed rampant racial profiling against Black travelers while working at Hartsfield International Airport in Atlanta, Georgia. According to Harris’s book, Flying While Black: A Whistleblower’s Story, she personally observed numerous incidents of Black travelers being stopped, frisked, body-cavity-searched, detained for hours at local hospitals, forced to take laxatives, bowel-monitored and subjected to public and private racist/colorist humiliation. The book also details her allegations of mismanagement, abuses of authority, prohibited personnel practices, waste, fraud, violation of laws, rules and regulations, corruption, nepotism, cronyism, favoritism, workplace violence, racial and sexual harassment, sexism, intimidation, on and off the job stalking, etc., and other illegal acts that occurs daily to federal employees especially female federal employees at U.S. Customs and other federal agencies.

Douglas Keeth - a former executive vice- president at the Sikorsky Aircraft division of United Technologies Corp., who in 1989 accused Sikorsky of improperly charging the Army in advance for work not yet completed. The helicopter manufacturer agreed to pay \$150 million to the federal government to settle the case, and Keeth received a payment of \$22.5 million.

Karen Kwiatkowski - a retired Lieutenant Colonel in the U.S. Air Force who worked as a desk officer in the Pentagon and in a number of roles in the National Security Agency. Has written a number of essays on corrupting political influences of military intelligence leading up to the invasion of Iraq in 2003, and has said that she was the anonymous source for Seymour Hersh and Warren Strobel on their exposés of pre-war intelligence.

S. Manjunath formerly manager at Indian Oil Corporation Ltd (IOCL), and crusader against adulteration of petrol. Shot dead on November 19, 2005, allegedly by a petrol pump owner from Uttar Pradesh.

Christoph Meili - a night guard at a Swiss bank. He discovered that his employer was destroying records of savings by Holocaust victims, which the bank was required to return to heirs of the victims. After the Swiss authorities sought to arrest Meili, he was given political asylum in the United States.

Frank Serpico - A former New York City police officer who reported several of his fellow officers for bribery and related charges. He is the first officer to testify against police corruption.

Russ Tice - a former intelligence analyst for the National Security Agency (NSA), the U.S. Air Force, Office of Naval Intelligence, and the Defense Intelligence Agency (DIA). Most recently is one of the sources used by the New York Times in reporting on the NSA wiretapping controversy. He had earlier been known for reporting suspicions that a DIA colleague of his might be a Chinese spy.

Linda Tripp - former White House staff member who disclosed to the Office of Independent Counsel that Monica Lewinsky committed perjury and attempted to suborn perjury, and President William J. Clinton committed misconduct, by denying the Clinton-Lewinsky relationship in the Paula Jones federal civil rights suit.

Frederic Whitehurst - Chemist, Federal Bureau of Investigation, was the FBI Laboratory's foremost expert on explosives residue in the 1990's, and became the first modern-day FBI whistleblower. He reported lack of scientific standards and serious flaws in the FBI Lab, including in the first World Trade Center bombing cases and the Oklahoma City bombing case. Dr. Whitehurst's whistleblower disclosures triggered an overhaul of the FBI's crime lab following a report by the U.S. Department of Justice Inspector General in 1997. Dr. Whitehurst filed a federal lawsuit claiming whistleblower retaliation, and he reached a settlement with the FBI worth more than \$1.16 million. Whitehurst now directs the FBI Oversight Project of the National Whistleblower Center.

Jeffrey Wigand - former executive of Brown & Williamson who exposed his company's practice of intentionally manipulating the effect of nicotine in cigarettes on the CBS news program. Famously known as the man who blew the whistle on Big Tobacco and almost single-handedly revealed the health dangers of smoking to the public.

Andrew Wilkie - Australian intelligence officer at the Office of National Assessments who resigned in March 2003 over concerns that intelligence reports were incorrectly claiming Iraq possessed weapons of mass destruction.

REACTIONS TO WHISTLE BLOWERS

Ideas about whistleblowing vary widely. Some see whistleblowers as selfless martyrs for public interest and organizational accountability; others view them as 'dobbers' or "snitches", solely pursuing personal glory and fame. Because the majority of cases are very low-profile and receive little or no media attention and because whistleblowers who do report significant misconduct are usually put in some form of danger or persecution, the latter view is generally less held.

Persecution of whistleblowers has become a serious issue in many parts of the world. Although whistleblowers are often protected under law from employer retaliation, there have been many cases where punishment for whistleblowing 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 wide-spread "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.

As a reaction to this, many private organizations have formed whistleblower legal defense funds or support groups to assist whistleblowers; one such example in the UK is *Public Concern at Work*. Depending on the circumstances, it is not uncommon for whistleblowers to be ostracized 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.

THE LAW

The U.S. Whistleblowers Protect Act of 1989 (amended in 1994) protects public interest disclosures by federal employees. An Office of Special Counsel (OSC) was created to aid whistleblowers in the investigation of their disclosures and prevention of retaliatory action against them. It has had only modest success due to a series of hostile judicial rulings undercutting the protection afforded by the Act. More than 40 States have passed similar or even stronger legislation in respect of State employees.

After the spectacular collapse of Enron and WorldCom, U.S. Congress passed the Sarbanes-Oxley Act of 2002 granting sweeping legal protection to whistleblowers in publicly traded companies. Anyone retaliating against a corporate whistleblower can now be imprisoned for up to 10 years. The Department of Labour (DoL) is required to complete its adjudication of whistleblower cases within 180 days, failing which the whistleblower may either elect to stay with DoL or seek a *de novo* trial in court. Remedies include reinstatement, back pay with interest, compensatory damages, special damages, attorney fees and costs.

The U.K.'s Public Interest Disclosure Act of 1998 is a unique piece of legislation providing protection to employees in the public, private and non-profit sectors, including those working outside the U.K. Under the law, employment tribunals have power to 'freeze' a dismissal and make unlimited compensation awards.

South Africa has followed the U.K. example in providing protection to employees of all organizations through its Protected Disclosures Act of 2000.

A number of countries such as Australia, Canada, South Korea, Argentina, Russia, Slovakia, Mexico and Nigeria have enacted or are in the process of enacting whistleblowers protection legislation (but only to government employees).

PROTECTING WHISTLE BLOWERS IN INDIA

During the past decade, scams, swindles, and rip-offs have become a regular feature of the Indian political and corporate landscape, costing taxpayers, investors and banks thousands of crores of rupees. Enactment of a Whistleblowers Protection Act is even more necessary for India than it was for the U.K. and the U.S. Together with the Freedom of Information Act (which received Presidential assent on January 19, 2003), it can be a potent tool for promoting good governance in the country. What we lack at the moment are public interest groups like the Government Accountability Project and the National Whistleblower Centre in the U.S., and the Public Concern at Work in the U.K., to lobby for whistleblowers' rights and defend employees against retaliation.

The Ministry of Personnel, Public Grievances and Pensions notified a resolution, empowering the Central Vigilance Commissioner (CVC) to act on the complaints of whistle-blowers and to protect them. Through the resolution, the government authorized the CVC to act as the 'designated agency' to receive written complaints of corruption or misuse of office and recommend appropriate action. The jurisdiction of the CVC in this regard is restricted to any employee of the Central government or public sector companies. Personnel employed by State governments will not come under its purview.

The CVC has announced that it has the responsibility of keeping the identity of the complainant secret, even though it cannot stop the complainant himself from disclosing his identity or making the complaint public. Therefore, it asked the would-be complainants to comply with certain requirements:

- The complaint should be in a closed/secured envelope;
- The envelope should be super scribed "Complaint under The Public Interest Disclosure" and the complainant's name and address should not be written on the envelope, but in an attached letter along with the complaint;
- The Commission will not entertain anonymous complaints;
- The text of the complaint should be carefully drafted so as not to give any details or clue about the complainant's identity. However, the details of the complaint should be specific and verifiable;
- Whistle-blowers are advised not to enter into any correspondence with the Commission seeking acknowledgement, which it will not issue, as a precaution; however, the Commission will get in touch with the complainant if any clarification is required. The CVC, under the resolution, is also expected to ascertain from the complainant whether he or she was the person who made the complaint.

THE CVC, however, warned that it could take action against complainants making motivated or vexatious complaints. The resolution says that in case the designated agency (the CVC) finds the complaint to be motivated or vexatious, it shall be at liberty to take appropriate steps. However, the resolution is silent on how the agency would find out whether a complaint is motivated or vexatious, or what "appropriate steps" it would take against the complainant in such cases.

The resolution admits that the government is examining The Public Interest Disclosure and Protection of Informers' Bill, 2002, drafted by the Law Commission and annexed to its 179th report. Section 16 of the draft Bill is more specific: "Any person who makes any disclosure which was false to his knowledge or reckless or malicious, shall be punishable with imprisonment for a term which may extend up to three years and also to fine which may extend up to Rs.50,000." But neither the Law Commission's report nor its draft Bill throws any light on how the designated authority can find out the genuineness of the complaint. The report, on the contrary, adds that it will not be constitutionally or even otherwise permissible to punish a person merely because the facts and allegations mentioned in the disclosure could not be proved in the inquiry conducted by the 'competent authority'. It is possible to suggest that the draft Bill and the resolution have granted the "designated authority" unjustifiable discretion in this matter, which could discourage a potential whistle-blower.

Based on the experiences of other countries, the Indian legislation should draft a Law based on following points:

- With the consent of the required number of State governments, Parliament should try to enact a single Act for all employees working in any tier of government (including employees of any instrumentality of government whether autonomous or semi-autonomous), and also for employees working in any form of organization in the

private and voluntary sectors. Employees of contractors, sub-contractors and agents of an organization; applicants for employment, former employees and overseas employees; attorneys and auditors should also be covered.

- The Official Secrets Act should be overridden to provide for a public interest defense and the 'gagging clauses' in employment or severance contract should be declared void in respect of public interest disclosures.
- It is a moot point whether the Act's protection should be extended to members of the armed forces, the secret services and the police.
- What constitute 'public interest disclosures' need to be clearly defined. The protection should apply to specific disclosures only involving an illegality, criminality, and breach of regulatory law, miscarriage of justice, danger to public health or safety and damage to environment, including attempts to cover up such malpractices.
- The whistleblower must reasonably believe that his information about a malpractice is substantially true, and must act in good faith. Those caught making anonymous or pseudonymous leaks should not be protected. The period of limitation for filing a complaint must be sufficiently long.
- The Act must encourage employees to raise the matter internally in the first instance and mandate organisations to establish suitable mechanisms for this purpose. Where it is not reasonable to raise the matter internally, or where attempts to remedy the matter from the inside have been unsuccessful, employees who make an external disclosure in a specified way should also be protected.

As things stand today in India, the chances of enacting such legislation may seem remote. But whistleblower protection measures are gathering a momentum of their own around the world, aided partly by spectacular government and corporate scandals. It is just a question of time before we shift from our present culture of zero tolerance of whistle blowing to a culture of zero tolerance of whistleblower retaliation.

BIBLIOGRAPHY

- The Editorial 'Blowing The Whistle On Animal Experimentation', The Stanford Daily, March 2, 2006.
- Dubey Ranjeev C. 'Legislating For Whistle-Blowers', Business World, 29 March 2004.
- Venkatesan V. 'Defending The Whistle-Blower', Frontline, Volume 21 - Issue 12, Jun. 05 - 18, 2004.
- Anderson Robert Morris, Perrucci Robert, Schendel Dan E, Trachtman Leon E; 'Divided Loyalties: Whistle-Blowing At Bart', Science And Society, A Purdue University Series In Science, Technology And Human Values.
- 'Lessons On Whistle-Blowing' the Times Of India, October 7, 2001.
- 'Nigeria: Protecting The Whistle-Blowers', RTI India, Aug 2007.
- Shetty K. Ashok Vardhan 'India Needs A Whistleblowers Protection Act', The Hindu, 25 March 2003.
- Kathrikayan Aparna 'Whistle Blowing Dilemma', The Hindu, 29 June 2005.
- Dharker Anil, 'Whistle-Blowing, A Casualty', The Hindu, 14 Dec 2003.
- Dhavan Rajeev, 'Whistles, Stings And Slaps', The Hindu, Dec 2003.
- Raghavan B. S., 'Whistle-Blowing Or Ratting?' The Business Line, Dec 2005.
- 'Court Marshaled For Whistle Blowing?' The Tribune, September 2007.
- WwW.Wikipedia.Com.
- Martin Brian, 'Whistleblowing And Nonviolence' *Peace And Change*, Vol. 24, No. 3, January 1999, Pp. 15-28.
- Lichtblau Eric, 'Whistle-Blowing Said To Be Factor In An F.B.I. Firing', The New York Times, June 2004.

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LIMITATIONS

The study is restricted to processing division of the Jaipur Dairy Plant where in the line staff was surveyed on the basis of close-ended questionnaire.

SCOPE FOR FURTHER RESEARCH

The study can be extended to procurement and marketing divisions also. The study can also be extended across different regions of the country to understand geographical differences if any, in attitude of workers' towards training.

BIBLIOGRAPHY

1. http://en.wikipedia.org/wiki/Marx's_theory_of_alienation.
2. http://books.google.co.in/books?id=gn-XCVBhgJgC&pg=PA123&lpg=PA123&dq=Boeke+theory+of+dualism&source=web&ots=8aC9e_GJrR&sig=8ouTCeJkIbFsKK3Ye99IHicLeNk&hl=en&sa=X&oi=book_result&resnum=3&ct=result.
3. http://en.wikipedia.org/wiki/Learning_curve.
4. Alexander, S; Edwards, R; Smart, N.W.. New Managerial Thinking: Factors affecting training and development at work; Industrial & Commercial Training, 1994, Vol 26 Issue 1-3, p28-32.
5. Wong, Cecilia; Marshall, J Neil; Alderman, Neil; Thwaites, Alfreds. Management training in small and medium sized enterprises: methodological and conceptual issues. International Journal of Human Resources Management, Feb 97, Vol. 8. Issue 1, p44-65.
6. Kontoghiorghes, Constantine. Factors Affecting Training Effectiveness in the Context of the Introduction of New Technology- A US case study. International Journal of Training & Development, Dec 2001, Vol. 5, Issue 4, p248.
7. Business Research Methods; ICMR; Factor Analysis; Sept 2005, p178, 238-239, 246-250, 254.
8. Quantitative Methods; IUP; April, 2004, p403.