

Whistleblowing- Another tricky art, or a slippery slope?



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Whistleblower – Defined

The Webster dictionary defines a Whistleblower as “an employee who brings wrongdoing by an employer or by other employees to the attention of a government or law enforcement agency.” There are several cases in history when individuals have shaken the government and possibly educated and helped humanity to drive some specific activities differently and understand the implications of actions of the government, media, corporates, and even ordinary people.

Snowden’s Legacy

One of the most famous case is Edward Snowden¹ in the USA who leaked classified NSA (National Security Agency) information in 2013, exposing several global surveillance programs. After being charged with violating the Espionage Act, Snowden fled to Russia. Snowden’s revelations have opened our eyes to our vulnerability. Our belief that our data is safe on the internet, has been exposed. The power of the tech giants in the industry as well as the government is now known. What is important is the implications of our actions, our duty to the nation, the humanity and the ease with which both personal information and collection of data is accessed from online sources that were considered safe in the past. *Snowden’s 2013 revelations led to changes in the laws and standards governing American intelligence agencies and the practices of U.S. technology companies, which now encrypt much of their Web traffic for security. Snowden’s ultimate decision to turn his back on his NSA colleagues, spill the agency’s guts, and condemn himself to exile is the story of an ambitious geek smart enough to shoot up through the NSA’s ranks while keeping intact ideals for the internet that were entirely opposed to those of his employer².*

Are those who uncover and communicate the actual truth, protected from any repercussions and or retaliation? Have government entities or corporations enacted laws and provisions to protect whistle-blowers? It is tragic that despite legal provisions, whistle-blowers have almost always incurred the wrath of the “powers” that have been exposed. Snowden himself is living in Russia. Julian Assange, founder, and editor-in-chief of Wikileaks – the organization which leaked millions of classified cables of the US and various other governments is holed up in the Ecuadorian embassy in London to prevent extradition to the USA².

Is the USA secure?

The list of individuals who have gone “public” of a wrongdoing, have been hounded and treated badly. Across the globe all governments have enacted “strong” provisions in their laws and statutes to protect whistle blowers. The USA has by far the best provisions to ensure safety and security of Whistleblowers. In this list of countries, Canada has the dubious distinction of being

consistently on the international ridicule list. Just to compare, in September 2019, a whistleblower accused Donald Trump of engaging in an illegal quid pro quo, the U.S. president and his allies agitated for the identity of the anonymous intelligence officer to be revealed. Thanks to the strength of U.S. whistleblower protections, the complainant’s name remains unknown (later determined to be an official of the CIA).

On the other hand, when open complaints were submitted in 2020 against senior Canadian armed forces officers for sexual harassment, the entire redressal machinery turned a deaf ear. It was only after negative publicity in the Canadian press, did the federal government remove at least three senior generals in separate incidents of sexual misconduct³. The case is being investigated but justice is delayed. The peculiar state in Canada is due to different provincial level provisions for whistleblowers⁴.

There are many in history who have contributed positively. Mark Felt, famously known as “Deep Throat” was instrumental in impeaching President Nixon in the Watergate scandal in 1974. His identity was kept secret till 2005. Edward Snowden has already inspired a Hollywood movie on his actions. Chelsea Manning was responsible for releasing nearly three-quarters of a million classified or sensitive documents to WikiLeaks. She continues to be in prison for the balance of her 35 years jail sentence².

Countries with National Laws protecting Whistleblowers (2017)



- Countries with dedicated national laws protecting whistleblowers:** Albania, Australia, Bangladesh, Belgium, Bosnia, Canada, Ghana, Hungary, India, Ireland, Israel, Jamaica, Japan, Liberia, Luxembourg, Macedonia, Malaysia, Malta, Mozambique, New Zealand, Norway, Peru, Republic of Korea, Romania, Serbia, Slovakia, Slovenia, South Africa, Uganda, United Kingdom, United States, Zambia
- Countries with other national miscellaneous laws or provisions protecting whistleblowers:** Argentina, Armenia, Austria, Brazil, Chile, China, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Iceland, Indonesia, Italy, Kenya, Latvia, Mexico, Montenegro, Netherlands, Poland, Portugal, Russia, Sweden, Switzerland, Turkey

Source: Environmental Law Institute.

Note: This map includes dedicated whistleblower laws, as well as partial whistleblower protections included in criminal codes, laws regulating public servants, and company and securities law. It excludes most other sector laws, including those related to health, safety, and the environment, which represent an additional substantial body of law in the United States. Because no single source consulted has compiled a comprehensive list of whistleblower laws worldwide, there may be additional whistleblower provisions in countries not listed. Countries with dedicated whistleblower laws are indicated in the table.

Why Whistleblowers need to be protected

Governments in many countries have acknowledged that providing protection to whistleblowers is essential. In essence it is understood that whistleblowers are an effective tool to detect crime and wrongdoing; the internal workings of an entity are generally obfuscated to the public and as such to definitively know of any "issues" is hard. However, these individuals are most likely to face threat to their life while facing retaliation for their actions. According to a 2016 OECD report, "Whistleblower protection is the ultimate line of defense for safeguarding the public interest⁵". The European Union provides a high-level protection to whistleblowers. India for example has laws protecting public servants only. As per a 2017 Environmental Law Institute study in the USA, across the world, 59 countries have legislation for the protection of whistleblowers.

Money laundering in British Columbia, Canada

Money Laundering in casinos in British Columbia, Canada is an ongoing case being investigated by the RCMP. Peter German, a retired investigator with the RCMP released an explosive report in 2019, which shook the Canadian political, legal, business and the law enforcement circles. While in service, German had constantly submitted reports which did not move the government machinery. *German's findings of 2019 drove home just how deeply money laundering had permeated not only B.C.'s gambling industry—an estimated \$100 million in dirty money had passed through the province's casinos—but also other industries where large sums of cash are still commonly accepted⁶.* The horrific truth is that all this financial crime continues to remain unpunished. The Canadian provincial governments as well as the federal government move at a snail's pace to implement urgent and immediate decisive actions. What is this inaction leading to? Gang wars, killing and bizarre shootings even in crowded shopping malls leading to death of innocent bystanders.

Corruption in corridors of power has been an open secret, we know it is there, we just do not know the extent of this malaise. Most of the players involved are ruthless in their endeavors to add to their wealth. There is no stopping them to collude with the corrupt, the mafia, drug dealers and in some cases terrorists too. The end goal is more money. President Donald Trump did not hesitate to extort a foreign leader to commit election interference on his behalf, which constituted a betrayal of his oath of office and therefore warranted opening a formal impeachment inquiry⁷. The fallout from the work Whistleblowers do, is retaliation, threat to life and in most cases counter claims to discredit the whistleblower. Legislation enacted by some nations are still considered inadequate for the protection of whistleblowers. There is a need to develop the whistleblower-protection programs to offer the same personalized protection that witness-protection programs offer witnesses at risk of retaliation.

Failings in the National Health Service in the UK

Let me take you to other cases where individuals continued their crusade to highlight the wrongdoing rampant in an organization. Julie Dawn Bailey CBE was a central figure in the Stafford Hospital scandal in the United Kingdom. The failings in Stafford Hospital are considered one of the biggest scandals in the history of National Health Service (NHS) of the United Kingdom⁸. The standard of care was so appalling that it led to deaths of several hundred patients. It is said that the hospital had become driven by targets and cost-cutting leading to distress and suffering, which were "unimaginable". In a report

published in 2013 by an independent inquiry chaired by Sir Robert Francis QC. The findings stated failings of NHS from the top to the bottom. It is not understood how NHS failed the trust and faith of the people. In 2015, Sir Robert Francis released the report titled "Freedom to Speak⁹", recommending developing a comprehensive, supportive and open culture to encourage staff and patients to raise any issues regarding patient care and safety. The current whistleblowing policy in NHS addressed the need of a standardised way for the organisation's support staff who raise concerns guided by this report. The policy proposed a system of internal Freedom To Speak Up Guardians, who should 'watch over the process', and 'oil the wheels'. Regrettably, the internal Guardians proposed by Francis have no specific powers and no formal role in core processes. They are only facilitators and invigilators. A robust policy exists; how much is the policy followed in letter and spirit is still of concern.

In addition to internal Guardians, Francis proposed a national office, now known as the National Freedom To Speak Up Guardian. Francis' primary reason for the creation of this office was to undertake external whistleblowing case reviews. Francis did at least expect the National Guardian to make recommendations about redress for individual patients and staff who had been harmed as a result of poorly handled whistleblowing

The NHS in the UK has several examples where whistleblowers are often not believed or even threatened. Harold Frederick Shipman, an English general practitioner is the most prolific serial killer in modern history. Dr Linda Reynolds¹⁰ concerns were initially ignored. The police didn't believe her and closed all inquiries. Later in 2000, he was found guilty of the murder of 15 patients under his care; his total number of victims was approximately 250.

Dr Steve Bolsin¹¹ joined the Bristol Royal Infirmary in 1988 from another specialised unit at Great Ormond Street Hospital in London. He raised concerns about mortality in the Bristol paediatric heart surgery scandal. He was reported being ostracised and threatened by senior figures in the Trust hospital. Later, a public inquiry in 2001 found gross irregularities and clinical incompetence of the surgeons. Dr Bolsin then decided to leave the UK to work elsewhere. He and his family moved to Australia where he has made a successful career for himself. Dr Ian Paterson¹² carried out so-called cleavage sparing mastectomies for breast cancer without patients' consent, which were not accepted practice and fraudulently performed unnecessary surgery by deceiving patients and colleagues for years. Whistleblowers were repeatedly ignored. It took several years before he was sentenced to 15 years imprisonment in May 2017. This was a colossal NHS governance failure.

Other cases in the UK and Bangladesh

Howard Stephen Jeremy Wilkinson is a British whistleblower whose actions helped to unearth the 2018 Danske Bank money laundering scandal¹³. His disclosure was part of his reporting that was published in 2018. The money laundering started from 2007 and continued till 2014. It was revealed that a Danske Bank branch located in Estonia had been involved in the suspected laundering of up to \$235 billion U.S. dollars. Bangladesh has arrested Rozina Islam who reported the corruption and inefficiencies of the government in handling the Covid pandemic. The journalist has been accused of stealing documents which unearthed the corruption in the health ministry.

Case in Japan

Let us look at Japan. Masaharu Hamada¹⁴, a corporate whistleblower, working in the Japanese medical device maker Olympus Corp, underwent an eight-year courtroom battle ending in early 2016 with a financial settlement and a promise from the company to stop harassing him. A whistleblower protection law was enacted in Japan



in 2004, but its implementation has not always been reliable, nor have whistleblower awards been substantial. In March 2016, a U.S. whistleblower that faced retaliation by the same company was awarded \$51 million for his role in holding it accountable. Iceland on the other hand is considered a role model in embracing the tenets of a strong legislation and “showcasing whistleblowing as a legally and socially protected right”. Post Iceland’s human engineered 2008 economic crisis four bank executives responsible were prosecuted based on the information provided by whistleblowers. This approach indicated that whistleblowing was an act of loyalty to the country¹⁵.

Other countries

Denmark on the other hand did not find the need to implement any legislation for whistleblowers. Saudi Arabia due to its monarchical structure does not support whistleblowing as it directly comments on the government actions – and the government in this case is headed by the monarchy. Switzerland’s secretive banking system has had an unfortunate affect towards implementation of any credible whistleblowing measures. Brazil’s 2013 anti-corruption laws have not been successful. South Africa introduced Protected Disclosures Act in 2000 to demonstrate the spirit of whistleblowing. However, one condition in the law was to report the complaint internally first. This was not consistent with the protection of anonymity, oversight, and disclosure channels¹⁶.

What should be done?

There is no doubt that responsible journalism and contribution of ethical community leaders, are critical players in protection against corrupt practices and swindling of government and / or corporate funds. They individually or collectively provide the correct information with the intent to expose, provide indisputable evidence with professional ethics and skill, and either initiate or support legal, political and penal action against the perpetrators. The media and community leaders have a direct impact on the quality of information for people in arriving at an opinion. The freedom to publish or vocally communicate is an effective tool in the fight against corruption and exposing malpractices. Some countries misuse the executive powers to harass honest and professional journalists.

Surprisingly not all rich nations have a strong legislation and a protection system for whistleblowers. In some others, the country’s cultural norms, ethnic values and beliefs, historical practices drive legislation and leave the whistleblowers to fend for themselves. The political scenario, corruption, the industries, industry state relationships have a strong influence in the behaviour of administrative systems handling information submitted by whistleblowers. The future is either protection or prosecution. This future dictates the actions of the whistleblowers. Whistleblowing is an effective tool to expose corruption, fraud and wrongdoing. The reality is legislation is not effective when it is opposed by culture nuances.

Greed is a part of human nature. Immoral and criminal acts to amass wealth are a consequence of this greed. Whether it is corrupt individuals or corporations or governments, they are all a cancer on democracy, humanity, and society. Whistleblowers are potential cures for such “ailment” when the official structure to handle such malaise aids the criminals and the unscrupulous. We know some whistleblowers have lost their careers, some others have lost their lives and families. Some gave up and few did not. This should not be acceptable to us – they let the public know out of a sense of justice and for the betterment of society. Anonymity is their protection and weapon. It is my opinion that they need help from organizations which support whistleblowers, reputable lawyers, technologists who are exceptional in their skills and journalists known to have integrity.

Where are we?

Progress in many countries has been made. Barriers continue to remain. The importance of creating legislation with provision of external reporting needs to be understood in principle and spirit. The balance between legislation and cultural practices must be viewed against the loyalty to the country. Actions of the Whistleblowers must be treated as legally and socially protected right. Provision should also be in the law to punish misuse of whistleblowing provisions. The provision a whistleblower is always looking at is anonymity and safety to life. While many countries have made progress in adding new protections, studies continue to show major weaknesses in whistleblower protection. “Breaking the Silence” noted that whistleblower programs in many G20 countries suffered from “the lack of protected external disclosure channels, a lack of protection for anonymity, and a lack of dedicated oversight to receive and investigate disclosures.”¹⁶

What should be done is the establishment of reward laws, which will serve as an incentive to people who take the risk of going against the powerful, corrupt and dangerous. What is also absent is the provision of no retaliation against the whistleblower. Understanding process or action or decision may be wrong, however, if the intention of the information provider is noble and to protect the larger population, country in particular, the individual must be encouraged and engaged in submitting what they think is a “wrongdoing”. Not many countries have progressed in the robust policy to reward and protect against retaliation. The New Whistleblower’s Handbook¹⁷ is a step-by-step guide on actions to be taken for protection and support provided by legislation and the country.

The role of whistleblowers has been recognized. The protection for whistleblowers has now become a part of international law subsequent to United Nations accepting Convention Against Corruption¹⁶. This Convention in 2018 was signed by 140 nations and formally ratified, accepted, approved, or acceded by 137 nations, including the United States. Support for Whistleblower protection has also seen respectable growth. There is more work to be done and a long journey ahead.

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