

Whistleblower Protection Bill in India: Who pays for it Anyway?

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Abstract- This article showcases the extent to which the Whistleblower Protection Bill, has the potential to bring any good to “common man” in India, given the fact that the more basic goal of universalization of elementary education has not been achieved so far. An analytical approach has been adopted to build a logical sequence for evaluation of many such imported western ideologies of “one size fits all” recipe. The aim of the work is to show how, and why is there an urgency to bring the Bill and assess what it has in store on the country’s common man-(aam aadmi, colloquially). Further, the paper amplifies its case against redundancy of such law, by defining the embedded cultural problems, which have crept into the socio-political milieu; that make it increasingly difficult for a nation like India to embrace with efficacy west-legislated laws. Finally, the paper rests the case by contending, to the remedies and nuances available in India, where danger pronounced on the life and prospects of person making disclosure is completely different from what it is in the First-World nations. The paper shall enable policy makers of the nation to look beyond the shallowness of some very costly decisions and take an objective view of what is in the best interest of the nation.

Keywords- Whistleblower; Developing nation; Political and Legal remedies

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1. INTRODUCTION: EMERGENCE FROM COLONIALISM

For 66 years of Mother India, each day that people of this great nation have woken up thinking they are citizens of a free nation; now are compelled to think if all these years were spent in comatose. Political freedom in 1947, adoption of constitution in 1950, fundamental rights guaranteed to individuals, eleven completed five-year plans, membership of WTO, Nuclear Capability testing, development of long-range indigenous missiles, home-grown satellites orbiting the planet, building world’s third largest railway network, there is little an average Indian would think; that would not make him proud of what his nation has achieved and so it should instill a sense of patriotism, confidence and dignity among those who are educated enough to understand the meaning of these ideals. Question is how many do really understand. Flipping the same coin, 30 percent of Indian population surviving on \$ 1 per day, Global Hunger Index worsening from 22.9 to 23.7 (where India is found performing worse than Sub-Saharan Africa), Gross Enrolment Ratio (GER) at 18.8 percent, Infant mortality rate (IMR) at 44 deaths per 1000 live births, only 2 percent share in global trade are some of the parameters; an average Indian would like to ponder over, after sixty years of Indian independence; provided his struggle for earning his own bread and butter were over. Universalization of elementary education; championing education for all between age 5 and 14 started in 1950s; is universal to what extent can be easily assessed by resorting to some numbers. On one hand the

nation and its custodians talk about establishing India’s prowess in the global geo-political arena, maintaining a stronghold in the international markets, making rupee a stronger currency, so on and so forth; while on other hand the fate of millions is languishing in uncertainty. The economic growth parameters have been fairly stable and rising for the larger part of a decade and a half, the country has this large burgeoning middle class comparable to China and Japan; then what should be able to explain, how few could benefit, others could not; why few could enjoy the benefits of growth, when development could not take place. Seemingly, there is a very strong and pronounced under-current that leads the observer to believe how, plethora of social emancipation schemes could not alleviate the deprived, why right to work did not work, why right to information is not a common man’s right. The answer to this is lack of transparency, accountability and the deep-rooted corruption, one man’s luxuries at another’s impoverishment.

2. CORRUPTION-THE INESCAPABLE TERMITE

Having been a British colony for over 200 years, the nation managed to get its independence only after the Second World War, when Britain could no longer manage to keep dominance over all its colonies. Though politically the nation became independent, the next sixty-five years were reigned by the guardians of the nations; who kept on experimenting at the cost of tax-payers money in a laboratory-like condition, with the coffers and the

machinery of the nation. In the first three decades nation became self-sufficient in production of food grains and some growth took place on the industrial front but the process in which it was achieved brought with itself a baggage of miseries attributable to License Raj¹. Therefore, the journey from British Raj to License Raj was no blessing either. License Raj practically ensured that corruption actually nests in the roots of every single sector of economy. What came as the offspring of this License Raj was the fact that pockets were created in the country--pockets of prosperity, pockets of abject poverty; which not just changed the economic scenario but also the socio-political fabric of the nation. Those who wanted to work hard and take the nation ahead were allowed the opportunity, if and only if, they either had a strong political affiliation or deep pockets to satiate the hunger of corrupt officials from top to bottom. Though our immediate interest is to showcase, how the whistleblower bill is going to be another step in facilitating a very small and specific interest group (which may be some MNCs vested interest) that may be at the cost of life of common man; the deeper interest is to portray that such policies, rules, regulations, laws have never been enacted to do something better for the nation. They have been brought to facilitate the presence or functioning of vested interests of stronger nations, firms or individuals which have found it rather inexpensive to bribe corrupt office-bearers, eager to impoverish the common man.

3. DID THE NATION REALLY EMERGE?

While, officially, the territory and waters were vacated by the imperial powers, but the interest remained in continuing to get raw material sourcing and final products sale markets. And so the prophecy of globalization was sold; and the nation went gaga over it. What was hard for this little-literate and largely uneducated nation to realise, was that the colour of those iron-chains of captivity had changed. Rule through ideological transplant, rule through language and cultural transfusion, rule through globalization. A nation consolidating its position, growing at times, stumbling at other times, found it really hard to resist the idea of huge economic growth that came in the same bundle as globalization. Out of all of these, what is of interest to present work is international acceptance of definition and perspective of whistleblowing. Before doing so, the work proposes to highlight some achievements of so called philosophy of breaking the international "boundaries" and single global village. As in June 1991, when an opportunity was afforded in the name of bailout package, under the IMF conditionalities; the nation was made to undergo an economy-wide restructuring, which was nothing more the a road which facilitated the access of western world into the deepest layers of the country. Though, it addressed the Balance of Payment problem; the growth rate petered out after a while. As if that was not enough, next panacea brought at the behest of few lobbying groups was membership of WTO and then

special economic zones; championed as a pain-reliever of all economic problems when the underlying agenda was to have, large MNCs establish their safe-havens and enjoy tax-benefits. Let's look at them one by one.

3.1 CASE I: TRIPS-BASMATI AND INDIA

Every member nation of WTO has been mandated to provide product and process patent (TRIPS), from the day WTO came onto existence i.e. 1st January, 1995. Classic example of new form of colonization; where the developing countries were first roped into the bowl and then squeezed to extract maximum possible benefit out of them. Mulik and Crespi(2011) report the losses suffered by India in a period of 1970-2005 by lower export earnings of Basmati Rice, which is traditionally India and Pakistan's geographical indication (GIs), but patents for 3 variants of basmati rice were granted to RiceTec Inc. ,a USA-based company; which by virtue of huge R&D managed to bring out three variants of Basmati Rice. India's export earnings from Basmati Rice fell from 52.36 percent to 10.57 percent in United Kingdom and from 35.62 percent to 15.89 percent in Kuwait.

3.2 CASE II : SPECIAL ECONOMIC ZONES

Special Economic Zones (SEZs) were bought imported, sounded exotic, looked great; but delivered only compounding miseries. Economic Intelligence Unit (EIU,2005) places high tariffs and taxes, red tape and strict labour laws as biggest deterrents to foreign investment in India. So, by making the country legislate the SEZ Act, 2006 which allowed the foreign investors (read western-nations) to by-pass these tough labour laws, enjoy tax-benefits from 100 percent to 50 percent over 15-years; where existing rate of corporate tax for foreign companies was as high as 40 percent. In the name of affording them sops, so that they could achieve economies of scale by operating in India's SEZs; the architects of the blueprint conveniently closed their eyes towards the outcome for their own nation. While, there is no single reliable figure which confirms the monetary loss incurred by the nation; the memories of poor and bleeding farmers of Nandigram (West Bengal) continue to haunt the nation. Needless to mention, that because of such "global" policies, the nation remained and continues to be a victim of the economic hegemony of the western nations. Oceans if ink would have been spent thereafter, trying to explain how fertile land was forcible procured from farmers, to develop SEZs on them; how industries from all over the country relocated into those SEZs only to take advantages of the liberal economic policy. And how those deserted industrial areas, would have contributed to more unemployed workers, "ready to migrate lot", becoming another axis of dissatisfied workers of the nation; was not at all of any concern to those who were behind SEZ legislation.

3.3 CASE III: DABHOL POWER PLANT

An ambitious project approved by the ruling congress party in Maharashtra, Dabhol Power plant was collaboration between Maharashtra State Electricity Board(MSEB) and Enron International, Bechtel and GE.

Enron chose Maharashtra because Maharashtra was one of the only states, where the State Electricity Board was making profits and this reduced the financial risk for Enron as the Board could pay for the electricity generated and secondly there was a huge unfulfilled demand for power in the state. The terms of the contract were orchestrated in a manner that, one, the price per unit charged by Enron for the electricity generated, was by all means higher than the price charged by comparable projects; which ultimately MSEB was unable to pay. Secondly, MSEB gave a guarantee to Enron, that the former would pay latter plant maintenance charges even if no electricity was purchased by the former. And to further, this guarantee was backed by government of Maharashtra. What remains to be still comprehended is the fact, why such special treatment was offered to a company, which was not even domestic? Was the state or its agents in a hurry to become the first model state of the country to have allowed 100 percent Foreign Direct Investment(FDI) in power or were there some ulterior motives which led to overlooking glaring problems with what was revealed in Enron's bankruptcy. And the fact of the matter remains that despite all the environmental, escalated prices generated by the project, the state continues to loom with deficiency of electricity, not to mention the inordinate delays in project completion and electricity generation.

3.4 CASE IV: WHISTLEBLOWER PROTECTION BILL

In this nation of million hungry souls, there are few who are able to go past the level of esteem needs to the next level of self-actualisation as per Maslow's hierarchy of needs(1943); those conscientious to stand up for what is right. Problem is; even those few find their voice silenced. Transparency and accountability are the two pillars that make for good governance in any nation or organization. While granting fundamental rights enshrined in the constitution of the country, if there was one duty, which the framework would want to entrust to its citizens- would be that of reporting the wrongdoing and that too without fear. Fear; of losing a job, harassment by superiors at job, harassment by officials, ostracisation from society, workplace; loss of prestige, life and most -importantly self-respect. Fear can never foster any growth or development and should it persist in any system; the self-destruction of the system is inevitable. And thus came the process of whistleblowing and whistleblowers. Whistleblowers, people who herald deceitful, corrupt, illegal, dangerous and unethical activities by government or private organisations. Whistleblowers are most of the times unsung heroes, who persevere under persecution and in nations like India, lay their lives for upholding the virtuosity. Present work contends with the opinion of Banisar (2006) regarding whistleblowers

It treats whistleblowing as a means to promote accountability by allowing for disclosure by any person of information about misconduct while at the same time protecting whistleblowers against sanctions of all forms. It recognizes that whistleblowing relates to internal and

external disclosures and should apply to all organisations, public and private.

Exploitation of masses on racial and cultural dimensions for long have been the hallmark of India, because it is very easy for political machinery and corrupt bureaucrats to sweep under the carpet important issues like poverty, health and education under the garb of temple construction and mosque demolition. Instigating idle minds and hungry stomachs, so that real issues never surface is historically commonplace in India. And therefore, various extremist and fundamentalist groups which have dug their roots deep into the cultural fabric of the nation are considered messiah by masses.

Internationally, the role and importance of whistleblowers has only magnified with the passage of time. More so, in the developed nations where the "punishment" for whistleblowing is not like an open bounty on the whistleblower's head. Also, whistleblowers like Sherron Watkins (Enron) and Matthew Lee (Lehman Brothers) did not face the threat of life or prospects of not winning breads for their families; because the state machinery ensures the basics for everyone. In India, law is different for different individuals, depending upon the size of pocket, where social ostracisation, mental and physical harassment, violence are easy; where it can take up to years for court trial to begin and still longer for court to pronounce a verdict. In such circumstances, affording an equal opportunity to domestic counterpart of a foreign law, is a tall order. Whistleblower bill, which is pending for its nod from Upper House of the Parliament, is incomplete in so many respects like, it applies only to organisations under the aegis of Central Government, and no other private or state government organisations are covered or the public has not been afforded an opportunity to submit its opinion. Lokayukta, or public ombudsman, who is supposed to find and investigate, the wrongdoings in state, public and government offices; is clipped in its powers to only investigate the wrongdoing and not initiate any action against the same, in most of the states in the country. So, the comparison spells, when domestic law is found extremely wanting, the nation or more specifically certain interest groups are looking to follow the footsteps of their western counterparts. Why? Is the action, really intended to address some problem at hand, or is there a deep rooted conspiracy. Once again, after having achieved greater acceptance norms in form of higher limits of foreign direct investment (FDI-automatic and approval route) in various sectors in India, the next target was to achieve lower levels of corruption, because corruption is considered bad for business (Maria,2005). And for getting rid of corruption, effective reporting of corruption is required and hence the entire rhetoric on whistleblowing. Not that whistleblowing did not take place when the legislation did not exist or that whistleblowers will actually find safer havens, zero harassment after the enactment of the said law. Next part of the literature is devoted to understand how whistleblowers have been treated and what is the attitude of the state towards whistleblowing?

4. SILENCE OF THE LAMBS

On 27th November, 2003, Satyendra Dubey, 32, an IES, working as Associate Project Engineer, National Highway Authority of India (NHAI) was assassinated in Gaya, Bihar; while he was on his way back to his guest house from railway station. His crime—he had blown off the whistle about loot of public money and poor implementation of a part of Golden Quadrilateral Project which he was overseeing. Prior to writing a letter to the Prime Minister's Office on 11th November, 2002; he had taken up the matter with his immediate seniors. Though explicitly requesting anonymity, while investigations were underway; Dubey's name was not protected and the file containing his complaint was circulated to a number of offices. In a country like India, this was like issuing a public contract on his life. Narendra Kumar, 30, an IPS officer, posted as Sub Divisional Police Officer at Morena, Madhya Pradesh, was killed on 8th March, 2012, as he tried to stop a tractor carrying illegally quarried stone, but the driver ran over him. Ashok Khemka, 48, another conscientious Haryana-cadre IAS officer has been transferred 44 times in his 22-year tenure in office; for uncovering the shoddy deals at his workplace. Last but not the least is the furor generated by suspension orders of Durga Shakti Nagpal, 28, another IAS officer; who was suspended for taking on the illegal sand mining mafia and raising a voice against them. There is a reason why examples of only those individuals, who are employees of the Central Civil Services of the nation have been picked up. They are the crème de la crème of the nation in terms of their role and importance in running the country effectively. If such a treatment can be meted out to them, justice cannot be delivered to them and the price they pay for blowing a whistle is their own life, then it is not difficult to imagine what happens to a common man. There are numerous other cases where whistleblowers lost their lives, harassed and ostracized, are indicators that what seems to be the face of it might only be the tip of the iceberg. More critically, the effort is to bring the reader to realize that what is considered as an effective law for protecting whistleblowers in the western world may be a complete misnomer in India. Reasons for the same are very instinctive; as in many of the developing nations, rule of law is variable for haves and have-nots, the state created anti-corruption agencies are more or less puppets in the hands of state, the faith of masses in disclosure as an effective tool for eradicating corruption is absent.

This work rests its case by concluding that Whistleblower Bill is like a precious stone in the crown of a monarch which look amazing, but have little functional value for the common man.

Notes: License Raj or Permit Raj refers to the elaborate licenses, regulations and accompanying red tape that were required to set up and run businesses in India between 1947 and 1990.

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