A STUDY OF WHISTLE BLOWER MECHANISM IN CORPORATE GOVERNANCE

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ABSTRACT

A corporation in India has evolved drastically in recent years. Incorporation of company requires huge amount of capital investment. Shareholders expect not only healthy return on investment but also safety of their investment. The responsibility of protecting their interest lies with the management of the company. A conflict of interest between shareholder & the management and many other factors may result out of fraudulent practices. The management should act according to the legislative mandate and take cognizance in any such situation. Whistle blower mechanism is an efficient way to disclose such practices. The research article attempts to explain the concept of Whistle blower mechanism and relation with corporate governance comparing with different counties.

1. INTRODUCTION

1.1 Thus, Corporate Governance is a set of processes, customs, policies, laws that govern the operation of an enterprise. It sets guidelines for directing and controlling the affairs of a corporate body in order to serve and protect the individual and collective interest of all shareholders. It thus refers to the structures and processes for the efficient control of companies in the interest of shareholders. The growing complexity also resulted out of fraudulent practices; which resulted in the Shareholder losing confidence in the mangers of their funds. This calls for a study in the area of Corporate Governance with special reference to whistle blowing mechanism. Corporate collapses like *In Re Enron*(*In re Enron 235 F. Supp. 2d 549,2002 U.S. Dist.)*and The Satyam Computer Services scandal (*Venture Global Engg. LLC v. Tech Mahindra Ltd., (2018) 1 SCC 656*)can be prevented by an effective whistle blowing policy at workplace. Satyam scandal is the latest example of the corporate scandals which could have been averted with timely alerts. Had Satyam provided opportune environment to the whistle blowers the scandal of this magnitude could never happen.

PART – I UNDERSTANDING CORPORATE WHISTLER BLOWER

2. CORPORATE WHISTLE BLOWING

2.1. Whistle blowing basically means raising an alarm at the wrong within or outside the organization, where the interest of many people is at stake. One makes noise only with an intension to alert others of a misconduct or misappropriation. The intension to raise alarm should

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not be to create any kind of panic but only to raise alarm. It is considered very perilous sometimes depends upon the disclosures Whistle-blower makes.[2]

3. WHISTLE BLOWING POLICY FRAMEWORK IN INDIA

3.1 The Companies Act, 2013 and whistle blowing policy

The Companies Act, 2013 under the pressure to eliminate fraud, corporate scandals, secure shareholders interest and to put an effective corporate vigilance mechanism**.**

i. CHAPTER XIV - INSPECTION, INQUIRY, INVESTIGATION; Sections 206-229 of the Companies Act 2013 has incorporated detailed provision.

Section 208 Reports On Inception Made - There will be appointment of an Inspector who is different from the Registrar to inspect records, The Inspector has the power to recommend and conduct investigation in matters as required.

Section 210 Investigation Into The Affairs Of Company - The Central Government may order any investigation in the affairs of the company either on the report of the Inspector or Registrar of the company or by special resolution, which is passed in which the matters of the company needs to be investigated if mentioned and for public interest

Section 211 Establishment of Serious Fraud Investigation Office - The SFIO is now a statutory body that has the power to arrest for offences, which are specified as frauds.

ii. CHAPTER X – AUDIT AND AUDITORS

Section 148 Central Governments to Specify Audit of Items of Cost In Respect Of Certain *Companies.*There is also responsibility on auditors at to act as whistle-blowers and they have to report directly to the Central Government if they have any reason to believe that there is any fraud being committed against the company by any of its officers or any employees.

iii. CHAPTER XII - MEETINGS OF BOARD AND ITS POWER

Section 177 Audit Committee - It is given that every listed company need to establish a vigil mechanism for the directors and employees to report any frauds or misappropriations in the prescribed format.

iv. CHAPTER XI APPOINTMENT AND QUALIFICATION OF DIRECTORS

Section 149 - Company to have Board of Directors - The Schedule IV part iii of Section 149(8) of the Companies Act 2013 sates about professional conduct and behaviour of director

[2]Dr.SingamSunitha, (2015)A Study on Whistle Blowing Mechanism In Corporate India: *IOSR Journal of Business and Management (IOSR-JBM) e-ISSN: 2278-487X, p-ISSN: 2319-7668*

(including independent director), ensures that the company has adequate and functioning vigilance mechanism and the interest of the people using it are not harmed. The director (including independent director), are also given the task for reporting any concern over any wrong or suspected fraud or an unethical behavior for the violation of any code or policy of the company and take Actions for such violation.

3.2 SEBI AND THE WHISTLING BLOWING POLICY

SEBI stand for The Securities Exchange Board of India on its principles on corporate governance, which is given in the standard listing agreement. **The Non Mandatory requirement – Clause 49 of Listing Agreement** The annexure I D or clause 49 of the Listing Agreement states that the company will have mechanism for employees to report to the management about any concerns or unethical behavior; any suspected fraud or any kind of violence against company code of conduct or any ethical policies. This mechanism will protect against the victimization of employees who will avail this mechanism will also be provided direct access for the Chairman of the Audit committee in any exceptional case. The existence of such mechanism will be communicated within the company. Though it's not mandatory for companies to have whistled blowing policies, but beside that the company will have mandatory requirement to disclose all its report on corporate governance to the extent of the non-mandatory practices. Many companies in India now have started to adopt the practice of taking in and putting into effect whistle-blower policy which is quite an encouraging stand but this policy is either used to uphold the corporate governance standards of the company or for the fear of being regarded as the late entries among the well governed companies group.

3.3 THE WHISTLE-BLOWER PROTECTION ACT, 2011

For protecting the interest of the Whistle Blower, the government of India has passed an Act called Whistle Blowers Protection Act, 2011. It is an Act of the Parliament of India which provides a mechanism to investigate alleged corruption and misuse of power by public servants and also protect anyone who exposes alleged wrongdoing in government bodies, projects and offices. The Act has neither provision to encourage whistle blowing nor deals with corporate whistle blower; it does not extend its jurisdiction to the private sector. But the Situation of whistle-blower is pathetic and depressing.[3]

[3]UmakanthVarottil, India's Corporate Governance Voluntary Guidelines 2009: Rhetoric or Reality, 22 Nat'l L. Sch. India Rev. 1 (2010)

4. DIFFERENCE ANALYSIS OFINDIVIDUALCOUNTRIES

4.1 **The US Scenario**[4]- The False Claims Act of 1863 which was established to offer incentives to individuals who reported companies or individuals defrauding the government. The Act also specifies that the whistle-blower can share in up to 30% of the proceeds of the lawsuit. However the Act imposes monetary penalties on frivolous (bogus) Complaint bywhistle-blowers.

4.2 The Whistle Blower Protection Act, 1989 under these act federal employeesis protected for disclosing waste and fraud. The purpose of the Act is to strengthen the protections available to federal employees.

4.3 The Sarbanes-Oxley Act, 2002 by providing for the substantive corporate governance provisions tried to change the attitude of corporation towards work place crimes. For the first time Whistle Blowing was included as a legislative precept of corporate governance norms. Sections 806, 301, and 1107 of SOX provided additional guidance for whistleblowing.

4.4 Section 806 states that whistle-blowers who provide information or assist in an investigation of violations of any federal law relating to fraud against shareholders or any SEC rule or regulation are protected from any form of retaliation by any officer, employee, contractor, subcontractor, or agent of the company. Employees who are retaliated against will be "entitled to all relief necessary to make the employee whole" (SOX section 806), including compensatory damages of back pay, reinstatement of proper position, and compensation for litigation costs, expert witness fees, and attorney fees. SOX also require audit committees to take a role in whistleblowing and reducing corporate fraud.

4.5 Section 301 Compels audit committees to develop reporting mechanisms for the recording, tracking, and acting on information provided by employees anonymously and confidentially. By mandating policies and protection for reporting wrongdoing, the SOX standards go beyond merely encouraging companies to be more responsive to employee whistle-blowers.

4.6 In SOX Section 1107, the reach of whistleblowing policies extends beyond public corporations. This section extends protection to any person who reports to law enforcement officer information related to a violation of a federal law. These whistle-blowers are protected from any retaliation by the offender. A violator may be fined and imprisoned for up to 10 years.

4.7 **The Indian Scenario**[5] **-** There was no material provision as regards the policy of Whistle blowers in the Indian legal frame work for corporate whistle blower

[4]Mathias M. Siems, Convergence in Corporate Governance: A Leximetric Approach, 35 J. Corp. L. 729 (2010)

[5]Pnakaj Kumar Gupta; Singh Shallu, Evolving Legal Framework of Corporate Governance in India - Issues and Challenges, 4 Juridical Trib. 239 (2014)

4.8 A major breakthrough was achieved by the amendment to clause 49 of the SEBI's Listing Agreement to include the recommendations of the Narayan Murthy Committee Report on Corporate Governance, 2003. The policy of Whistle Blower was given as a mandatory recommendation.

The Recommendations involved the following dimensions:

1. Personnel who observe an unethical or improper practice (not necessarily a violation of law) shall be able to approach the audit committee without necessarily informing their supervisors.
2. Companies shall take measures to ensure that this right of access is communicated to all employees through means of internal circulars, etc. The employment and other personnel policies of the company shall contain provisions protecting "whistle blowers" from unfair termination and other unfair prejudicial employment practices.
3. Company shall annually affirm that it has not denied any personnel access to the audit committee of the company (in respect of matters involving alleged misconduct) and that it has provided protection to "whistle blowers" from unfair termination and other unfair or prejudicial employment practices.
4. Such affirmation shall form a part of the Board report on Corporate Governance that is required to be prepared and submitted together with the annual report.

However, many of the mandatory recommendations were made non mandatory in the amendment to the Clause 49 of the Listing Agreement, which was to be enforced by April, 2005.

At present clause 49 recommends the company to "establish a mechanism for employees to report to the management concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy. This mechanism could also provide for adequate safeguards against victimization of employees who avail of the mechanism and also provide for direct access to the Chairman of the Audit committee in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organization." This is a mere recommendation and not a mandatory provision which is to be complied with.

4.9 THE WHISTLE-BLOWER PROTECTION ACT, 2011

There is certain lacuna quite apparent in the Act. Firstly the term 'whistle blower' has been given an ambiguous definition. According to the Bill, 'whistle blower' means "any individual making a public interest disclosure". However it is not conclusive, a whistle blower is an employee, former employee or member of an organization who reports misconduct. Thus, a whistle blower is

essentially a 'worker'. A more specific definition with reference to various labour legislations needs to be incorporated in the Act.

Also Section 6(1) of the Bill, which supplies emphasis to the source of the complaint as anonymous complaints are not admissible, can act as potential deterrents to Whistle-blowers for there is a great degree of difference in legislative purpose and legislative compliance in our nation.

The proposed law has neither provision to encourage whistleblowing nor deals with corporate whistle blower; it does not extend its jurisdiction to the private sector.[6]

5. PROTECTION IN THE CASES OF CORPORATE WHISTLER

5.1 Apart from SEBI and the Companies Act 2013; The Whistle Blowers Protection Act, 2011 which provides a mechanism to investigate alleged corruption and misuse of power by public servants and also protect anyone who exposes alleged wrongdoing in government bodies, projects and offices. **The Act has neither provision to encourage whistleblowing nor deals with corporate whistle blower; it does not extend its jurisdiction to the private sector. But the Situation of whistle-blower is pathetic and depressing.**

Till time there has been no proper set of rules provided by legislation specifying what the whistle blowing policy should contain and there is still ambiguity in it. The absence of holistic law clarifies all the vagueness with the establishment of whistle-blower mechanism, which is a major way of achieving efficient corporate governance. Management more concerned about the identity of the whistle blower than the issue, whistle blower uses trade union support and early alerts would diffuse potentially larger disasters.[7]

PART –II INDIA'S CORPORATE GOVERNANCE

6. CORPORATE GOVERNANCE

6.1 "Corporate governance means that company managers its business in a manner that is accountable and responsible to the shareholders. In a wider interpretation, corporate governance

[6]UmakanthVarottil, India's Corporate Governance Voluntary Guidelines 2009: Rhetoric or Reality, 22 Nat'l L. Sch. India Rev. 1 (2010)

[7]Varun Bhat, Corporate Governance in India: Past, Present, and Suggestions for the Future, 92 Iowa L. Rev. 1429 (2007)

includes company's accountability to shareholders and other stakeholders such as employees, suppliers, customers and local community." [8]

7. WHY CORPORATE GOVERNANCE

7.1 Investors primarily consider two factors before making investment -the rate of return on invested capital and the risk associated with the investment. In lastdecade, the "attractiveness of developing nations for investment" as a destination for foreign capital has increased.

7.2 Although, theinvitation of achieving a high rate of return, however, does not, by itself, guarantee foreign investment; the attendant risk' weighs equally in an investor's decision-making effects.' Good corporate-governance practices reduce this risk by ensuring transparency, accountability, and enforceability in the marketplace.'

7.3 In such a scenario, firms that are "more open and transparent, " and thus well governed, are more likely to raise capital successfully because investors will have "the information and confidence necessary for them to lend funds directly" to such firms. Moreover, well governed firms likely will obtain capital more cheaply than firms that have poor corporate-governance practices because investors will require a smaller "risk premium" for investing in well-governed firms.Also, sound corporate-governance practices enable management to allocate resources more efficiently, which increases the likelihood that investors will obtain a higher rate of return on their investment.[9]

8. HISTORY OF CORPORATE GOVERNANCE IN INDIA

1. PRE-INDEPENDENCE

8.1 When India attained independence from British rule in 1947, the country with an average per-capita annual income was minimal. However, even at that time possessed sophisticated laws regarding "listing, trading, and settlements. "It even had four fully operational stock exchanges. Subsequent laws, such as The Companies Act, 1956further gave proper rights to investors.

8.2 In the decades following India's independence from Great Britain, thecountry turned away from its capitalist past and embraced socialism. TheIndustries Act, 1951was a step in this direction, requiring "that allindustrial units obtain licenses from the central government. The Industrial Policy 1956Resolutionstipulated that the public sector woulddominate the economy.

[8]Mary Curtis B (2006). Whistle Blower Mechanisms: A Study of the Perceptions of "Users" and "Responders". *The Indian Institute of Internal Auditors.*

[9]Praseeda C and LubzaNiharK(2011). On Whistle Blowing and Whistle Blowers – A Diagnostic Approach to Human Resource Management Dimensions of Whistle Blowing Studies.*Corporate Governance- Millennium Challenges.*

To put this plan into effect, the Indiangovernment created enormous state-owned enterprises, and India steadilymoved toward a culture of "corruption, nepotism and inefficiency." As thegovernment took over struggling private enterprises and rejuvenated them, it essentially "converted private bankruptcy to high-cost public debt.

8.3 The absence of a corporate-governance framework exacerbated the situation. Government accountability was minimal, and the few private companies that remained on India's business landscape enjoyed free reign with respect to most laws; the government rarely initiated punitive action, even for nonconformity with basic governance laws, Boards of directors invariably were staffed by friends or relatives of management, and abuses by dominant shareholders and management were commonplace.India's equity markets "were not liquid or sophisticated enough" to punish these abuses. Thus, corporate governance in India was in a dismal condition by the early 1990s.[10]

2. POST-INDEPENDANCE

8.4 In 1992, in India's corporate-governance history, the Indian Parliament created the Securities and Exchange Board of India (SEBI) to "protect the interests of investors in securities and to promote the development of, and to regulate, the securities market." In the years leading up to 2000, as Indian enterprises turned to the stock market for capital, it became important to ensure good corporate governance industry-wide. Additionally, a plethora of scams rocked the Indian business scene, and corporate governance emerged as a solution to the problem of unscrupulous corporate behaviour.

8.5 In 1998, the Confederation of Indian Industry (CII), "India's premier business association, unveiled India's first code of corporate governance However, since the Code's adoption was voluntary, few firms embraced it. Soon after, SEBI appointed the Birla Committee to manner a code of corporate governance.

8.6 In 2000, SEBI accepted the recommendations of the Birla Committee and introduced Clause 49 into the Listing Agreement of Stock Exchanges. Clause 49 outlines requirements vis-a-vis corporate governance in exchange-traded companies.

8.7 In 2003, SEBI instituted theMurthy Committee to scrutinize India's corporate-governance frameworkfurther and to make additional recommendations to enhance itseffectiveness.SEBI has since incorporated the recommendations of theMurthy Committee, and the latest revisions to Clause 49 became law onJanuary 1, 2006.[11]

[10]HikhaPatheja (2015). System of Whistle Blowing in India.*International Journal of Scientific Research, Vol. 4(7),.361-362.*

[11]Varun Bhat, Corporate Governance in India: Past, Present, and Suggestions for the Future, 92 Iowa L. Rev. 1429 (2007)

3. THE CURRENT STATE OF CORPORATE GOVERNANCE IN INDIA

8.8 Corporate governance reform in India has focused primarily on the "role and composition of the board of directors. Each of the three sets of recommendations (the CII Code recommendations from 1997, the Kumar Mangalam Birla Committee recommendations from 2000, and the Murthy Committee recommendations from 2003) has advanced a sophisticated understanding of corporate governance in this respect.

8.9 While the CII Code was silent on the financial-literacy levels expected of directors,the Murthy Committee recommended that companies train their "Board members in the business model of the company as well as the risk profile of the business parameters of the company.

Another notable recommendation of the Murthy Committee was that the Audit Committee be comprised entirely of "financially literate non-executive members with at least one member having accounting or related financial management expertise." The Birla Committee, in contrast, required only that the "majority and chair" of the audit committeebe independentand that at least one director be well-versed in finance.

8.10 The SEBI laws that took effect on January 1, 2006, are based in part on the Murthy Committee's recommendations and represent a substantial improvement over the laws that previously were in effect.

8.11 The new laws require that when the "Chairman of the Board is a non-executive director, at least one-third of the Board should be comprise of independent directors," and when "the chairman is an executive director, at least half of the Board should be comprised of independent directors. The definition of independent directors is sufficiently strict.Further, the law mandates that "two-thirds of the members of the audit committee shall be independent directors. Finally, every firm must "submit a quarterly corporate-governance compliance report to the stock exchanges.

8.12 The new laws are a welcome addition to India's corporate-governance arena and likely will address a number of concerns identified by theInformation and Credit Rating Agency a Moody's affiliate, in its February 2005 survey of Indian firms.The survey discovered that in ten companies, "independent directors accounted for just twenty-five percent to thirty-three percent of the board strength."The selection of independent directors, in keeping with traditional staffing norms, was largely through friends and relatives. Thus, the boards of directors were not independent in a meaningful sense.'The survey also found that the financial literacy of the individuals comprising the audit committees was unsatisfactory.

8.13 The Organisation for Economic Co-operation and Development 2004 Corporate Governance Country Assessment painted a similarly mixed picture-while India's corporate-governance structure met several key requirements, it did not succeed in ensuring participation of institutional investorsor safeguarding the rights of minority shareholders.

8.14 Thus, while the new law that took effect on January 1, 2006 considerably improves prior law, it falls short on a number of key criteria. It creates no official requirement for whistle-blower protection, it does not address the problem of institutional-investor apathy in India, and it does not require director retraining, to name just a few shortcomings.[12]

9. LEGAL FRAMEWORK IN INDIA

9.1 **The Confederation of Indian Industry Code -** Confederation of Indian Industry constituted committees to examine corporate governance issues, and recommend a voluntary code of best practices to be adopted by the Indian companies (private sector, the public sector, banks and financial institutions that are corporate entities), a code by CII carrying the title

9.2 "Desirable Corporate Governance" was released. It was the first institutional initiative in Indian industry. The committee was driven by the conviction that good corporate governance was essential for Indian companies to access domestic as well as global capital at competitive rates. The first draft of the code was prepared by April 1997, and the final document (Desirable Corporate Governance: A Code), was publicly released in April 1998. The code was voluntary, contained detailed provisions, and focused on listed companies. The code requires the following disclosures:

1. Listed companies should give data on high and low monthly averages ofshare prices in a major stock exchange where the company is listed; greater detail on business segments, up to 10% of turnover, giving share in sales revenue, review of operations, analysis of markets and future prospects.

2. Major Indian stock exchanges should gradually insist upon a corporate governance compliance certificate, signed by the CEO and the CFO.

3. If any company goes to more than one credit rating agency, then it must divulge in the prospectus and issue document the rating of all the agencies that did such an exercise. These must be given in a tabular format that shows where the company stands relative to higher and lower ranking."

[12]Pnakaj Kumar Gupta; Singh Shallu, Evolving Legal Framework of Corporate Governance in India - Issues and Challenges, 4 Juridical Trib. 239 (2014)

4. Companies that default on fixed deposits should not be permitted to accept further deposits and make inter-corporate loans or investments or declare a dividend until the default is made good.[13]

9.3 **Kumar Mangalam Birla committee Report and Clause 49 -** While the CII code was well-received and some progressive companies adopted it, it was felt that under Indian conditions a statutory rather than a voluntary code would be more purposeful, and meaningful. Consequently, The SEBI appointed committee, known as the Kumar Mangalam Birla committee's recommendations led to the addition of Clause 49 in the Listing Agreement. Listed companies largely made compliance of provisions of Clause 49 mandatory.. There commendations have been classified as mandatory and non-mandatory.[14]

Mandatory recommendations include - (a) *accountability* of the board of directors to the shareholders, (b) *composition of the board*- to include independent directors (c) Nominee directors - institutions should appoint nominees on the boards of companies only on a selective basis where such appointment is pursuant to a right under loan agreements as where such appointment in is considered necessary to protect like interest of the institutions. The committee also recommended that a non-executive chairman should be entitled to maintain a chairman's office at the company's expense and also allowed reimbursement of expenses incurred in performance of his duties. Audit committee should meet at least thrice a year. One meeting must be held before finalization of annual accounts and one necessarily every six months. The quorum should be either two members or one third of members of audit committee, whichever is higher and there should be a minimum of two Independent directors. It has also specified powers, functions and remunerations of the audit committee. Among the non-mandatory recommendations, the committee emphasizes that the progressive standards of governance applicable to the full board should also be applicable to the audit committee. Board of a company should set up a qualified and independent audit committee.[15]

9.4 **Naresh Chandra Committee Report**

The department of company fairs also constituted on August 21, 2002 a high level committee, popularly known as Naresh Chandra committee, to examine various corporate governance issues and recommend inter-alia amendments to the law involving the auditor client relationships and the role of independent directors.

[13]Nimisha Bhargava, Mani K.Mandala (2015). An overview of Whistle Blowing: Indian perspective", *International Journal of Innovative Research in Science, Engineering and Technology, Vol. 4(2), 334-339*

[14]Pnakaj Kumar Gupta; Singh Shallu, Evolving Legal Framework of Corporate Governance in India - Issues and Challenges, 4 Juridical Trib. 239 (2014)

[15]*Ibid,*

The Committee submitted its report in December 2002. It made recommendations in two key aspects of corporate governance: financial and non-financial disclosures: and independent auditing and board oversight of management. The committee submitted its report on various aspects concerning corporate governance such as role, remuneration, and training etc. of independent directors, audit committee, the auditors and then relationship with the company and how their roles can be regulated as improved. The committee stingily believes that "a good accounting system is a strong indication of the management commitment to Governance[16]

9.5 Narayana Murthy Committee report on Corporate Governance

The fourth initiative on corporate governance in India is in the form of the recommendations of the Narayana Murthy committee. The SEBI analysed the statistics of compliance with the clause-49 by listed companies and felt that there was a need to look beyond the mere systems and procedures if corporate governance was to be made effective in protecting the interest of investors. The committee was set up by SEBI, under the chairmanship of Mr. N. R. Narayana Murthy, to review Clause 49 i.e. implementation of corporate governance code by listed companies and suggest measures to improve corporate governance standards. Some of the major recommendations of the committee primarily related to audit committees, audit reports, independent directors, related party transactions, risk management, directorships and director compensation, codes of conduct and financial disclosures.[17]

10. DIFFERENCE ANALYSIS OF INDIVIDUAL COUNTRIES

10.1 **DIFFERENCES BETWEEN U.K., U.S., AND INDIAN LAW-** It may be expected that the legal rules of the three common law countries would be particularly close to each other, and quite different from French and German law.

10.2 **Observations -** Indian and U.S. law have always been very different. From an Indian perspective, U.S. law is even more different from Indian law than French law in all forms. By contrast, Indian and U.K. law share some similarities, particularly with respect to shareholder and creditor protection; and for shareholder protection there has even been some further convergence since the early 1990s.

10.3 **Explanations -** At least today, the common-law origins of U.S. law matter only to a minor extent. With respect to shareholder protection, the likely explanation is that the regulatory competition of U.S. corporate law has led to divergence of U.S. and U.K. law. For instance, there are differences in the powers of their regulatory authorities, the extent of mandatory law, the availability of appraisal rights, the rules on derivative suits, and the regulation of takeovers. With respect to creditor protection, the decisive event was the1978 reform of U.S. insolvency law, which moved U.S. law away from U.K. law. Although the common origins of the relatively low

[16] *Ibid,*
[17] *Ibid,*

worker protection in the United States and the United Kingdom can still are seen today, there has also been some development in the differences between U.S. and U.K. law. These are mainly attributed to changes in U.K. law, because the conservative government reduced worker protection in the 1980sand early 1990s. Which was to some extent reversed by the Labour government in the late 1990s.

For the Indian law on shareholder and creditor protection, it can still be seen that India's modem law derived from the United Kingdom. However, with respect to share holder protection there has been some divergence until the mid-1990s. This was due to the Common law influence of company law in the United Kingdom, the improvement of shareholder protection by the U.K. Companies Act 1985, and the corporate governance codes of the 1990s.

10.4 In recent times, the United Kingdom and India have come closer again, mainly due to the introduction of corporate governance norms in India based on the U.K. codes. With respect to creditor protection, the formal similarity between the United Kingdom and India needs to be treated with caution, because qualitative research has found that creditors have not been well protected in India. In particular, judicial delays seriously impede creditor protection, because on average it takes up to 20 years for a case to be resolved. Recent reforms, however, aim to improve creditor protection in India, for instance, by empowering banks and financial institutions to enforce security interests extra-judicially. Worker protection is very different in India and the United Kingdom. This is mainly a result of socialist politics in the aftermath of India's independence. There are no particular similarities between India and the United States in any of the three areas of law. The different political and legal climates supersede any similarities between their common law origins. Finally, it may have been expected that the law of India, as a developing country, is quite different from the laws of the other four countries. That is not the case, however, because in almost all of the "differences figures" India displays intermediate scores.

10.5 As a result, in some respects the classification of the United Kingdom, the United States, and India as belonging to the same legal origin can still be justified today. There are similarities between the protection of shareholders and creditors in the United Kingdom and in India, and between the protection of workers in the United Kingdom and in the United States. However, the differences in all other categories make it clear that the ties of the common law family have weakened. A likely reason is that politics matter. Political events have often driven changes in the differences of worker protection, and the situation of the United States as an outlier can be explained by political factors. A further explanation may be that only in the three origin countries like United Kingdom, Germany, and France are there complementarities between legal institutions and indigenous economic ones, which can lead to an "institutional lock-in" that is difficult to shift. In contrast to this, there is no reason to expect a similar degree of

complementarily in transplant countries, which makes fundamental changes in the law more likely.[18]

PART –III ROLE OF WHISTLE BLOWER IN CORPRATE GOVERNANCE

11. WHISTLE BLOWER IN CORPRATE GOVERNANCE

11.1 Corporate Governance Is An Essential Not Only For The Smooth Functioning Of The Corporation Itself But Also Earning The Trust From The Shareholders And Investors And It Is The Responsibility Of The State To Ensure The Interest Of Public Even In The Matters Of Public Finance And Vigilant Over Corporate Crimes Like Fraud & Misappropriation. There Are Ways That Can Improve Corporate Governance

11.2 Such As Reforms of the Boards of Directors, Increasing the Independence Requirement - Redefining India's Corporate The Laws In Order To Facilitate Sound Corporate-Governance Practices In India. i.e... Liberalizing India's Capital Markets, Implementing More Robust Bankruptcy Laws, and Expanding the Legal Rights of Whistle-Blowers

11.3 Also, the Whistle blowing policy can be extremely beneficial for any organization. The wrong doings of an organization when remain unblown leads to a brand disruption and the company incurs financial loses. Appropriate whistle blowing legislation needs to enforce it and support a culture of openness, commitment and integrity. The main tings required for a whistle blowing policy to be perfect are that it should have all the anonymity of information in which the whistle-blower feels safe and secure. Secondly, the purpose of whistle blowing is to remove unethical practices, which are harming the economy and morality and didn't swallow the bitter pill of the extra burden of frivolous complains. Lastly, it should be said that whistleblowing policies should be inclined towards the desires of treating the employees fairly. Initiating both ways of communication will not only clear the communication channel but also eliminate doubts, which will generate trust.

PART –IV CONCLUSION & REMARK

12. CONCLUSION

12.1 Since the concept of corporate law evolved it took almost a century to remove the lacunas created by the Separate Legal Entity Theory for Corporations and Companies. The separation of power between the shareholder and directors, the fiduciary relationship of the directors with company and the shareholders, gave the directors a Wide scope of fraud with an ever available

[18]Mathias M. Siems, Convergence in Corporate Governance: A Leximetric Approach, 35 J. Corp. L. 729 (2010)

defense of "Indoor Management". Corporate Governance Norms came as a saviour for protecting the shareholder & creditor and also the public interest. Scandals like Satyam would have been protected. Thus, to maintain the balance proper codified law must be introduced

12.2 Whistle-blower has already been described as courtesy of Corporation. Though this policy forms the non-mandatory provision of the Listing Agreement, if one follows the legal and economic implications of not having such a protection for its employees, ultimately is disadvantageous to the company for a director's fraud directly affects the company's market value, of which Satyam Fraud is a clear example.

However, in the absence of a mandatory provision for Whistle-Blower, such a policy by a company should be so formed so as to consider all the scopes necessary not only to protect the Whistle-blowers but also to inculcate among the employees a commitment to their work and fearlessness in conduct when exposing employees at higher pedestal. As it is always said, Norms of Corporate Governance are not merely to be complied with but have to be adopted as day-to-day practice of the Company. For this purpose, clear definition of Whistle-blowers, non-retaliation clauses, confidentiality and due process should be ensured.

Whistle-Blower Policy would result in reporting of the frauds which earlier used to go unreported thereby ensure greater protection to the investors. Also the contention of frivolous complaints can be take care of by imposing heavy penalty on malicious or insignificant complains.

13. RESEARCHER'SREMARK

13.1 The company is a separate legal entity and the power and interest of shareholders and Directors are different. Ensures interest of both, even necessary for the Smooth functions of the Corporation and Shareholder & investors won't lose their interest in the corporation. For the obvious reason whistle-blower plays crucial role in ensuring the same. However, there factors diluting this helper hand such as frivolous complaints & Doctrine of Indoor Management, in such circumstances the problem of frivolous complaints should be taken care of by imposing heavy penalty on malicious or insignificant complains. To protect indoor management balance between internal management and corporate governance should be maintained, Whistle-blower can be used as a tool to ensure that.

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