

# CITIZENS WHISTLE BLOWERS FORUM

*a forum against corruption*

## PRESS RELEASE

The issue of encouraging whistle blowers in various public authorities to blow the whistle on the corruption, misfeasance and malfeasance, that they come across within their departments has become an important issue as corruption has got recognition as one of the most serious problems affecting governance. Several countries have put in place laws/notifications/rules to encourage whistleblowers to blow the whistle. Several countries have created independent authorities to entertain complaints from whistleblowers and have them investigated in order to take action against officers of various public authorities involved in corruption/misfeasance/malfeasance. Such authorities have also been given the power and responsibility to offer appropriate protection to whistleblowers, either from physical threats or from administrative victimization. In some countries, incentives by way of rewards have also been offered to whistleblowers as a percentage of public revenue saved as a result of their whistleblowing.

In India, this issue came to the fore with Satyendra Dubey's case who was murdered after he complained of corruption in the National Highway Authority of India. The Supreme Court at that time asked the Government that pending the enactment of a law regarding whistleblowers, the government should put in place some system for examining complaints of whistleblowers for independent investigation and for their protection. Pursuant to this, the government issued an administrative notification in May 2014 designating the Central Vigilance Commission (which by this time had been given functional autonomy from the government as a result of the orders of the Supreme Court in the Jain-Hawala case) as the nodal authority to entertain whistleblower complaints, get them investigated and recommend appropriate action against officers found guilty and also for protecting the whistleblowers from physical harm or administrative victimization.

### Chairman

Justice A.P. Shah

(FORMER CHIEF JUSTICE DELHI HIGH COURT)

### Other Founder Members

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Mr. E. A. S. Sarma

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(SENIOR ADVOCATE & PIL ACTIVIST)

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(FORMER CHIEF INFORMATION COMMISSIONER)



Despite this mechanism having been created, it has not proved very effective and has now ceased to inspire public confidence about its efficacy. One important reason for this is the fact that the CVC does not possess its own independent investigative machinery to investigate whistleblower complaints received by it. It thus normally refers the complaints to the CVO of the same department against whose senior officers the complaint has been received. The CVO is a middle-level officer of the same department and is thus subject to the disciplinary control of his own seniors against whom the complaint has been received. He therefore finds it difficult to hold his own superior officers guilty of misconduct/ corruption. He therefore normally sends a report to the CVC without even getting the response of the whistleblower, on the basis of the explanation offered by his superior officers and on that report the CVC closes the complaint, again without sending the explanation of the officers to the complainant.

All this has resulted in a situation where, while thousands of whistleblower complaints have been received by the CVC, in hardly any case has it found officers guilty and recommended action against them or protected whistleblowers from administrative victimization, which is what normally happens to such whistleblowers. In fact, the CVC on a misunderstanding of the Whistleblower Notification says that it cannot interfere in the disciplinary proceedings against the whistleblowing officer, even when such proceedings are directly a result of the whistleblowing.

On top of all this, there are also serious complaints about the kind of people being appointed to the CVC. There have been successive challenges in court to the officers being appointed to man this important integrity institution, one of which resulted in the quashing of the appointment of a previous CVC. The complaint is that the selection committee comprising the Prime Minister, Home Minister and the Leader of Opposition usually do not want to see robust and independent people manning this important integrity institution, which also has supervisory jurisdiction over the CBI, and would rather have weak and pliable people placed there.



Meanwhile, the parliament finally passed a Whistleblower Protection Act in 2014, which also received the Presidents assent and was duly gazetted. However, since the Act was to come into force on a date(s) notified by the government, the government taking advantage of this has failed to notify the Act even three years after the Act was enacted. This Act is a significant improvement over the Whistleblower Notification, though it again makes the CVC as the nodal authority for whistleblower complaints without creating a more credible authority, or making the selection process of the members of the CVC more credible and transparent. The government however now says that it is waiting to amend the Act before notifying it. The amendment proposed is to emasculate the Act itself by providing that a whistleblower must not provide information which is exempted under the Right to Information Act, and therefore if a whistleblower gives any information about corruption or misconduct to the CVC, which an ordinary citizen would not be able to get under the RTI Act, such whistleblower would be liable for prosecution under the Official Secrets Act! This will kill the whole object of the Whistleblowers Act itself which is to encourage whistleblowers to inform the nodal authority about corruption/malfeasance/misfeasance in his department.

The Whistleblower amendment bill has already been rammed through the Lok Sabha by the government. It has not yet been passed by the Rajya Sabha. We hope that the members of the Rajya Sabha would have better sense than to support such a retrograde amendment.

In these circumstances, whistleblowers are either no longer approaching the CVC, or finding no response from the CVC. They sometimes approach media persons or public interest lawyers if they see some possibility of those issues being taken up either in the media so as to expose them, or in the Courts for any credible investigation/action.

Meanwhile, despite a massive anti-corruption movement which led to the enactment of the Lokpal Act in 2013, till today, no Lokpal has been appointed, which has left a vacuum in place of the apex integrity institution in the country.



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The government is also not willing to let go of its administrative control over the CBI with the result that the CBI often continues to act as the parrot of the government as the Supreme Court had recently characterised it. Consequently, there is still rampant corruption in most public authorities in the country. This underlines the urgent need for a credible whistleblower authority.

On top of all this, the Cabinet has reportedly approved an amendment to the Prevention of Corruption Act, which has at least 2 highly retrograde amendments: It seeks to provide that even investigations under the Prevention of Corruption Act would require prior sanction from the government. This would cripple Corruption investigations especially in high places, since in most cases, the sanctioning authority would not sanction investigation against itself or their own people.

The lack of credible anti corruption and whistleblower institutions is leading to serious compromises in good governance which had been promised by this government. Though the government has been inviting foreign investment, no credible foreign company would invest in a climate of rampant corruption.

There is also considerable corruption in the private sector. One form of this is when private companies bribe public servants to get contracts etc. But often it manifests itself in the management cheating the shareholders and creditors of the companies, by siphoning out funds of the company by over/under invoicing etc as we have seen in the Satyam, Kingfisher, Sahara cases. The UN Convention against Corruption, ratified by India, provides that countries shall also put in place laws and institutions to check corruption in the private sector as well. It also requires laws to deal with domestic corporations bribing foreign authorities like the US Foreign Corrupt practices Act. These are also major gaps in India which require immediate attention.

For some time now it has been felt that in the absence of a credible public authority, for entertaining whistleblower complaints, there should at least be a credible body of citizens who may inspire public confidence and the confidence of whistleblowers so that they can approach such a body with the



information that they have and that such a body could then, after examining the complaints, taken appropriate action by way of taking up the matters with the authorities concerned or in the courts by way of public interest litigation or at least by way of bringing it to public notice and informing the people of the country. We had therefore come together to create such a Citizen's Whistleblowers Forum for the purpose of encouraging whistleblowers who may be in possession of vital information showing corruption/malfeasance/misfeasance in their departments and whose complaints have either not been redressed or who feel that their complaints are not likely to be redressed by the authorities in place, could send them to the Citizen's Whistleblowers Forum (CWF).

The members of CWF are as follows:

1. Justice (Retd) A.P. Shah (Chairperson)
2. Admiral (Retd.) L Ramdas (Vice Chairperson)
3. Ms. Aruna Roy (Member)
4. Mr. Wajahat Habibullah (Member)
5. Mr. E A S Sarma (Member)
6. Mr. Jagdeep S Chhokar (Member)
7. Mr. Prashant Bhushan (Member Secretary)

Note: Justice Santosh Hegde who initially also a member has recently opted out due to his preoccupations and his inability to attend meetings of the Forum.

The CWF calls upon the whistleblowers to send complaints to the Forum, which the Forum will carefully examine the complaints and thereafter take such action as it considers appropriate for getting issues raised in the complaints addressed through appropriate authorities and also bring them into public domain wherever desirable. The Forum will protect the identities of the whistleblowers if they so desire.

The complaints could be sent by email to: [citizenswhistleblowerforum@gmail.com](mailto:citizenswhistleblowerforum@gmail.com). We also have a website: [citizenswhistleblowerforum.org](http://citizenswhistleblowerforum.org)

The Forum also calls upon the government to:



- a) immediately notify the Whistle Blowers Protection Act, 2011,
- b) to frame rules under the Act to further the purpose of the Act,
- c) drop the proposed retrograde amendment to the Whistleblower Act,
- d) drop the proposed amendments to the Prevention of Corruption Act,
- e) immediately appoint the Lokpal under the Lokpal and Lokayuktas Act and,
- f) place CBI under the administrative control of the Lokpal
- g) enact a law to effectively deal with corruption in the private sector as well as corruption of Foreign public servants by individuals and corporations in India