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WHISTLEBLOWER PROTECTION AS A CONSTITUTIONAL RIGHT: A MISSING LINK

~ *Sampurna Samanta*

INTRODUCTION

“Sunlight is said to be the best of disinfectants,” said Justice Louis D. Brandeis¹, but in India, the lives of Satyendra Dubey (2003) and Manjunath Shanmugam (2005) remind us that exposing corruption can be fatal. This article analyses the moral, legal, and institutional development of whistleblowing as a facet of the constitutionally guaranteed rights of free speech and life, as provided in Articles 14, 19(1)(a) and 21. It reviews the inadequacies of the Whistle Blowers Protection Act, 2014², the inaction regarding the Bharatiya Nyaya Sanhita, 2023, and the context of other countries, specifically the USA, the UK, and the UNCAC³. It contends that the lack of protective measures for whistleblowers is a constitutional gap that requires immediate legislative and institutional attention.

Keywords: Whistleblowing, Constitutional Rights, Freedom of Speech, Rule of Law, Corruption, Human Rights, Public Accountability.

WHISTLEBLOWER PROTECTION: THE CONCEPT

The disclosure of information relating to unethical or illegal acts perpetrated by an insider that affects the public is considered as whistleblowing. The OECD states that whistleblowers are

¹ Justice Louis D. Brandeis, “Sunlight is said to be the best of disinfectants,” in *Other People’s Money and How the Bankers Use It* (1914).

² Whistle Blowers Protection Act, 2014, § 4, No. 17, Acts of Parliament, 2014 (India).

³ *United Nations Convention Against Corruption*, Oct. 31, 2003, 2349 U.N.T.S. 41, art. 33, https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf (last visited Oct. 27, 2025).

those that report suspected misconduct, while states are urged to protect such persons from unjust treatment as per Article 33 of the UN Convention Against Corruption (2003). In the legal sense, whistleblowing is considered an act of public conscience and moral autonomy, as guaranteed by Articles 19(1)(a) and 21, Constitution of India. The right to know is a fundamental attribute of democracy as pronounced in *People's Union for Civil Liberties v. Union of India* (2003)⁴. Therefore, whistleblowing represents constitutional citizenship and accountability.

The Whistle Blowers Protection Act, 2014 and its shortcomings, leaves unimplemented and unprotected truth-tellers vulnerable to retaliation and even death-such as the cases involving Satyendra Dubey, Shashidhar Mishra, and Manjunath Shanmugam⁵. The country is at a nexus of administrative and constitutional neglect.

THE ORIGIN

The legal and moral principles of the whistleblowing concept have their origins in the English common law and the initial protections given under the “qui tam” provisions, which allowed private citizens to sue for fraudulent legal claims against the Crown. The 20th century redefined the “whistleblower” to embody moral revelation as opposed to betrayal.

The U.S. False Claims Act (1863) was one of the first pieces of legislation of its kind and was put into place to avoid the loss of government contracts due to fraud in the civil war. This Act was modified in 1986 to include qui tam provisions, the first legal recognition of whistleblowing by allowing whistleblowers to receive payment for a percentage of the funds recovered. This Act fraudulently institutionalised the economic conscience of a society. Subsequently, the 1989 Whistleblower Protection Act and the 1998 Public Interest Disclosure Act in the UK recognised and expanded protections against malicious retaliation. At the international level, the UN Convention Against Corruption (2003) broke new ground by setting out international consensus on protecting people who report corruption. It also includes in its Article 33 a provision requiring States parties to explore introducing measures to protect good

⁴ *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399.

⁵ *Manjunath Murder Case: Supreme Court Awards Life Term to 6 Convicts*, INDIA TODAY (Mar. 11, 2015, 9:02 AM), <https://www.indiatoday.in/india/story/manjunath-murder-case-supreme-court-life-term-awarded-iim-lucknow-243868-2015-03-11> (last visited Oct. 27, 2025).

faith reporting individuals, and the G20 High-Level Principles for the Effective Protection of Whistleblowers (2019) developed practical models towards domestic implementation.

Whistleblowing in India gained attention markedly after the 2003 Satyendra Dubey murder case. Dubey was a project engineer in the National Highways Authority of India. He was murdered after writing to the Prime Minister about the corruption in the Golden Quadrilateral project. This case led to protests all over the country and also to the Public Interest Disclosure and Protection of Informers (PIDPI) Resolution of 2004⁶, which allowed the Central Vigilance Commission (CVC) to accept complaints about corruption. This, however, was still not backed by law. It was only a decade which saw the passage of the Whistle Blowers Protection Act of 2014, a slow in coming legislative response which put in place a report mechanism for issues of corruption and use of power. But what we did see was also a slow implementation of the Act which in turn saw political inaction and bureaucratic delay. In 2015 a put forth amendment bill⁷ which had as a draft to do away with reports related to 10 categories which in effect nullified the essence of the Act. Thus, while the global legal community moved toward recognising whistleblowing as a human rights imperative, India's approach remained procedural, partial, and politically cautious, failing to elevate whistleblower protection⁸ to a constitutional plane.

WHISTLEBLOWER PROTECTION: RECENT EXAMPLES IN INDIA

The irony of life for anyone in India who has decided to come forward as a whistleblower or testify against the powerful is that while the judiciary upholds transparency as a constitutional value, corrupt and abusive powers that are exposed still risk harassment, suspension or death. At least 85 whistleblowers have been killed (since 2005), and more than 400 have suffered retribution. RTI networks reveal 99 killed, 180 attacked and 187 threatened since the RTI Act, 2005. The murder of engineer Satyendra Dubey in 2003⁹ following his exposure of corruption on the Golden Quadrilateral project and that of Manjunath Shanmugam in 2005 after he sealed

⁶ Public Interest Disclosure and Protection of Informers (PIDPI) Resolution, No. 004/VGL/26, Central Vigilance Commission (2004).

⁷ Whistle Blowers Protection (Amendment) Bill, 2015, No. 154-C, Acts of Parliament, 2015 (India).

⁸ PRESS INFORMATION BUREAU, *Government Action on Whistleblower Protection Framework* (2024), <https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1555628> (last visited Oct. 27, 2025).

⁹ *Satyendra Dubey Murder: Three Get Life Imprisonment*, TIMES OF INDIA (Mar. 10, 2010, 3:23 PM), <https://timesofindia.indiatimes.com/india/satyendra-dubey-murder-three-get-life-imprisonment/articleshow/5731910.cms> (last visited Oct. 27, 2025).

a petrol pump dispensing adulterated fuel were red flags indicating systemic failure. Yet, similar tragedies followed. ‘NREGA samrat’ Lalit Mehta (2008) was lynched for exposing NREGA fraud in Jharkhand, Satish Shetty (2010) – a land scams whistleblower and Shehla Masood (2011) who noticed illegal mining activity.

The threat is not only corruption but ideological and institutional violence. Amit Jethwa (2010) was killed for his activism against illegal mining, and Narendra Dabholkar (2013), Govind Pansare (2015) and Gauri Lankesh (2017)¹⁰ were assassinated for challenging extremist beliefs. During the Vyapam scam (2013–2015), there were 35–40 mysterious deaths of whistle blowers and investigators. Landmark cases like Sohrabuddin Sheikh, Best Bakery and Jessica Lal bear out how intimidation’s impact yields hostile witnesses - 92 in the case of Sohrabuddin Sheikh, more than 30 in the case of Jessica Lal leading to acquittals while faith kind of withers away. Such atrocities notwithstanding, India’s legal safeguards are symbolic. The Whistle Blowers Protection Act 2014 is still unnotified and toothless while the Witness Protection Scheme 2018 is implemented on an ad hoc basis.

The Vohra Committee Report (1993) had already given the warning of this unholy (inedible except under sedation) political, bureaucratic and criminal chanta- we are yet to listen. With no institutional checks and balances, impartial oversight, and enforceable mandate to serve the interests of the people, India’s transparent future remains a riddle wrapped in a mystery inside an enigma: Whistleblowers have become victims in a nation that is determined to punish those who bring truth to power. 107 RTI activists have been killed, 182 were assaulted, 188 harassed or threatened and seven committed suicides since the implementation of the RTI Act in 2006, as per CHRI

In 2025, journalist Rajeev Pratap’s body was discovered in Uttarakhand’s Bhagirathi River¹¹, apparently silenced for reporting on government corruption-just like Gauri Lankesh and Mukesh Chandrashekhar. But there are no safeguards for whistleblowers under the Bharatiya

¹⁰ *Indian Journalist Gauri Lankesh Shot Dead at Her Residence*, REUTERS (Sept. 6, 2017, 6:40 AM), <https://www.reuters.com/article/us-india-murder/indian-journalist-shot-dead-at-her-residence-idUSKCN1BG2VG/> (last visited Oct. 27, 2025).

¹¹ *Uttarakhand Journalist Found Dead in River Had Internal Injuries, Postmortem Says*, INDIAN EXPRESS (May 22, 2025, 8:15 AM), <https://indianexpress.com/article/india/uttarakhand-journalist-found-dead-in-river-had-internal-injuries-postmortem-says-police-form-probe-team-10281063/> (last visited Oct. 27, 2025).

Nyaya Sanhita (BNS), 2023: though Sections 227 and 301–306¹² discuss corruption and intimidation, they fail to include provisos that protects individuals exposing misconduct. Hence, until India ensures comprehensive witness protection, political accountability, and timely justice, the sacrifice of its whistleblowers will remain a haunting reminder that speaking truth to power can still cost one's life.

WHISTLEBLOWER PROTECTION: THE ANTI-THESIS OF HUMAN RIGHTS

Every time there is an act of revenge against a whistleblower it is a blow to individual as well as collective bravery which also breaks the human right to truth at the heart of democratic answerability. When a whistleblower is put out of action through transfer, termination or death, society is denied its right to know - a basic tenet which Article 19(1)(a) of the Indian Constitution stands for.

Globally, Article 19 of the Universal Declaration of Human Rights (UDHR 1948)¹³ and Article 19(2)¹⁴ of the International Covenant on Civil and Political Rights (ICCPR 1966)-also ratified by India-acknowledges the right to the freedom of seeking, receiving, and communicating information. Also, Article 12 of the United Nations Declaration on the Rights of Human Rights Defenders (1998) stipulates that States must safeguard people who reveal information on corrupted practices and human rights abuses. In *State of Uttar Pradesh v. Raj Narain* (1975)¹⁵, the Supreme Court declared that the people have the right to know every public act, and in the case of *Vineet Narain v. Union of India* (1998)¹⁶, the Supreme Court included independent mechanisms to combat corruption as a prerequisite of the anti-discrimination principle in Article 14. Current gaps in whistleblower laws today violate Articles 14, 19(1)(a) and 21, as in the case of *Maneka Gandhi v. Union of India* (1978)¹⁷ where any restraint on liberty must be “just, fair and reasonable.” It also violates Article 23 of the UDHR and Article 7 of the ICESCR which protect rights to safe, dignified work. India's non-notification of the Whistle Blowers Protection Act, 2014, and continued attacks on RTI activists illustrate a structural human rights

¹² Bharatiya Nyaya Sanhita, 2023, §§ 227, 301–306, No. 45, Acts of Parliament, 2023 (India).

¹³ *Universal Declaration of Human Rights*, G.A. Res. 217 A (III), U.N. Doc. A/810 (Dec. 10, 1948), art. 19.

¹⁴ *International Covenant on Civil and Political Rights*, Dec. 16, 1966, 999 U.N.T.S. 171, art. 19(2).

¹⁵ *State of Uttar Pradesh v. Raj Narain*, AIR 1975 SC 865.

¹⁶ *Vineet Narain & Ors. v. Union of India*, (1998) 1 SCC 226.

¹⁷ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

absence that compromises both citizen's right to truth, as well as the State's constitutional obligation to cease doing so.

WHISTLEBLOWER PROTECTION AND THE LAW IN INDIA

The Indian Constitution's framework has incorporated equality, accountability, and procedural justice in the Rule of Law. No one is above the Law, and every power exercised must comply with justice and legal provisions. Whistleblowers are the personification of these ideals since they expose violations of legal rights and public equity. When they are punished instead of receiving safeguards, the harm is not just personal, but constitutional-an injury to the Law. In *Indira Nehru Gandhi v. Raj Narain (1975)*¹⁸, the Supreme Court stated that arbitrariness is the opposite of the Rule of Law.

Refinements of this doctrine were accomplished in *E.P. Royappa v. State of Tamil Nadu (1974)*¹⁹ and *Maneka Gandhi v. Union of India (1978)* where Article 14 is positioned as a steadfast guardian against the capriciousness of the State. Therefore, victimisation of any whistleblower is institutional capriciousness, and violations of fundamental fairness. Absence of protections is not a case of administrative inaction, but a denial of legality. Judicial activism has sustained this demand. In *Vineet Narain v. Union of India (1998)* concerning the "Jain Hawala" scandal, the Court ordered the establishment of an independent Central Vigilance Commission (CVC), and the CBI's insulation from executive control, stating that the Rule of Law requires that institutions stand. In *Subramanian Swamy v. Manmohan Singh (2012)*²⁰, a court found that executive inaction about prosecution sanction was a breach of Article 14.

The issue of State failure to protect whistle blowers which in many instances have been assailed and, in some cases, killed for coming out with the truth of corporate political corruption. In *Nandini Sundar v. State of Chhattisgarh (2011)*²¹, the Court condemned State sponsored vigilantism which it said is against the tenets of the Rule of Law. State's inaction in these matters is a violation of what the constitution stands for. The Right to Information Act, 2005 is also a consequence of this constitutional heritage. In *C.B.S.E v. Aditya Bandopadhyay (2011)*²², the Supreme Court called information "the oxygen of democracy", locating the aspiration to

¹⁸ *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299.

¹⁹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

²⁰ *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221.

²¹ *Nandini Sundar v. State of Chhattisgarh*, (2011) 7 SCC 547.

²² *C.B.S.E. v. Aditya Bandopadhyay*, (2011) 8 SCC 497.

know in Article 19(1)(a). Whistleblowing is the most assertive form of this right. However, more than 100 RTI activists have been killed since its enactment in 2005²³, notes the Commonwealth Human Rights Initiative (CHRI 2024)²⁴, testifying to the gap between constitutional principles and their practice.

As articulated by the recent rulings of the Madras and Allahabad High Courts (2024) and other High Court justices, whistleblowers' protection falls under the right to free speech and civic engagement within the frameworks of Articles 14, 19(1)(a), and 21. However, the establishment of formal safeguarding procedures has been accomplished only in a piecemeal manner. The 2004 Public Interest Disclosure and Protection of Informers Resolution empowered the CVC to receive complaints confidentially, laying the foundation for the 2014 Whistle Blowers Protection Act. This Act established procedures for the disclosure of whistleblowers and the penalties for doing so, guaranteeing safeguarding. However, the Act remains un-regulated, and the 2015 Amendment Bill significantly weakened the Act's spirit by excluding disclosures to the Official Secrets Act, 1923.

Intelligence agencies, the armed forces, and the private sector are not covered by the Act, and there are no feedback or enforcement mechanisms. Thus, the security the Act promises is mostly token. The 2013 Lok and Lokayuktas Act aimed to strengthen the oversight mechanisms on anti-corruption, but in the case of *Common Cause v. Union of India* (2018)²⁵, it came to light that less than 10% of the complaints made it to prosecution. The *Bharatiya Nyaya Sanhita* (BNS), 2023 and *Bharatiya Nagarik Suraksha Sanhita* (BNSS), 2023 further aggravate the disproportionate imbalance. Offenders are granted protections and the active statutory protections and compensations for the whistleblowers remain non-existent.

Judicial creativity has attempted to fill this void. In *Mahender Chawla & Ors. v. Union of India*²⁶ & Ors. (2018), the Supreme Court institutionalised the Witness Protection Scheme, 2018²⁷, declaring it “the law of the land” under Articles 141 and 142 until Parliament enacts a

²³ FRONT LINE DEFENDERS, *Targeted Attacks Against Right to Information Activists in India* (2024), <https://www.frontlinedefenders.org/en/statement-report/targeted-attacks-against-right-information-activists> (last visited Oct. 27, 2025).

²⁴ CHRI, *RTI Activist Killings Report Summary* (2024), [CHRI - Commonwealth Human Rights Initiative](#) (last visited Oct. 27, 2025).

²⁵ *Common Cause v. Union of India*, (2018) 16 SCC 267.

²⁶ *Mahender Chawla & Ors. v. Union of India & Ors.*, (2018) 11 SCC 700.

²⁷ BUREAU OF POLICE RESEARCH AND DEVELOPMENT & DEPARTMENT OF JUSTICE, *Witness Protection Scheme, 2018* (2018),

statute. Based on Law Commission²⁸ and Home Ministry inputs, it categorises threats (A, B, C) and provides relocation, identity protection, anonymity, and district-level protection cells-embedding witness and whistleblower safety into the criminal justice process. Earlier, in *Zahira Habibullah Sheikh v. State of Gujarat (2004)*²⁹ - the “Best Bakery case”- the Court condemned witness intimidation, recognising protection as intrinsic to a fair trial under Article 21.

Sakshi v. Union of India (2004) reported in which the Court issued advanced procedural sensitivity to witnesses, in the case of *Nandini Sundar* the Court reaffirmed the State’s duty to protect those that blow the whistle on official excesses. Also develop parallel protective measures did the corporate governance do. The *Kumar Mangalam Birla (1999)*³⁰, *Naresh Chandra (2004)*³¹, and *Narayana Murthy (2003) Committees*³² reported, which stressed transparency, which in turn led to the formation of Serious Fraud Investigation Office (SFIO, 2003) and Clause 49 of the Listing Agreement. The Companies Act of 2013 which came into effect via Sections 177(9)(10)³³ which put in place a requirement that listed companies must have in place vigil mechanisms which are to be run by audit committees. Also Rule 7 of the Companies (Meetings of Board and its Powers) Rules of 2014 and Regulation 22 of SEBI (LODR) of 2015³⁴ which require disclosure and non-retaliation.

Regulators like SEBI, RBI, and IRDAI have put in place confidentiality provisions, at the same time PSUs such as IFCI, GIC Re, and Sanofi India have internal whistleblower systems in place. At the International stage, Article 33 of the U.N. Convention Against Corruption which India ratified in 2011 -- and which has also been pushed by the OECD in 2021³⁵ and G20 in 2019

<https://bprd.nic.in/uploads/pdf/202402200805128576713WitnessProtectionScheme.pdf> (last visited Oct. 27, 2025).

²⁸ MINISTRY OF LAW AND JUSTICE, *Law Commission of India Report on Witness Protection (Report No. 277) (2017)*,

<https://lawcommissionofindia.nic.in/reports/Report277.pdf> (last visited Oct. 27, 2025).

²⁹ *Zahira Habibullah Sheikh & Anr. v. State of Gujarat*, (2004) 4 SCC 158.

³⁰ KUMAR MANGALAM BIRLA COMMITTEE, *Report on Corporate Governance (1999) (India)*.

³¹ NARESH CHANDRA COMMITTEE, *Report on Corporate Audit and Governance (2002) (India)*.

³² NARAYANA MURTHY COMMITTEE, *Report on Corporate Governance (2003) (India)*.

³³ Companies Act, 2013, §§ 177(9)–(10), No. 18, Acts of Parliament, 2013 (India).

³⁴ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 22 (India).

³⁵ ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD), *Principles for Transparency and Integrity in Lobbying (2021)*, <https://www.oecd.org/corruption-integrity/lobbying/> (last visited Oct. 27, 2025).

requires that persons reporting corruption be protected. India's partial compliance with this is an indication of its ongoing struggle to instill transparency and accountability. Thus, from Raj Narain to Vineet Narain, Indian judiciary has seen citizens in the role of legal watchdogs which whistleblowers personify.

Yet, the gulf between judicial recognition and legislative enforcement persists. Without statutory anonymity, compensation, and private-sector inclusion, the framework remains incomplete. Whistleblowers continue to face violence and intimidation even as they uphold constitutional integrity. True fidelity to the Rule of Law demands not only punishment of the corrupt but protection of those who reveal the truth. Unless whistleblowing is constitutionally recognised as a protected civic act, the new BNS–BNSS–BSA framework will remain cosmetic-punishing corruption while silencing conscience.

RECOMMENDATIONS

India's very fractured system of whistleblower protection is in need of a total overhaul based on constitutional morality and institutional integrity. Whistleblowing must be put forth as a constitutional right in the Preamble and in Articles 14, 19, and 21. The Whistle Blowers Protection Act of 2014 did well but in terms of scope is very narrow and also has not been implemented it needs either replacement or in depth reform. We need a new law which includes all, that which extends to private entities, NGOs, and public private partnerships. Also this new law must put in place a Statutory Whistleblower Protection Authority (WPA) that is charged with the task of granting physical protection, relocation, and financial aid. There should be set timelines for inquiries. Also, we must make retaliation which may take the form of harassment, dismissal or threats into a cognisable and non-bailable offence under the Bharatiya Nyaya Sanhita of 2023 which will see to it that there is a minimum of three years' imprisonment which in turn will be subject to the supervision of High Court.

There is judicial recognition of whistleblowing as a form of free speech under Article 19(1)(a) and 21 of the Constitution. This was upheld in the case of *Subramanian Swamy v. Union of India* (2016), which recognised as protected free speech, speech that is in the interest of the public. Reforms in Criminal Laws should also include this. For instance, under a proposed new Section 359-A of the BNS, the BNS could criminalise threats or harm to whistleblowers, punishable with imprisonment for 7 years. The Bharatiya Nagarik Suraksha Sanhita (BNSS), should also be amended to exclude such cases from the prior sanction requirement. A national

Whistleblower Commission (NWC), similar to the NHRC, should be developed to investigate and coordinate with the CBI, CVC³⁶, Lokpal³⁷, and publish annual reports to Parliament. Online or digital retaliation including defamation should be criminalised, and social media intermediaries should be mandated to remove such content within a 24-hour time frame.

Media organisations have to preserve the identity of whistleblowers, who ought to be supported through a National Transparency and Accountability Fund (NTAF) for civil society groups and journalists' associations. By the time whistleblower ethics are embedded as part of civil service, and corporate training we would see India shift finally from punitive tolerance to proactive protection-achieving the vivacious Rule of Law in letter and spirit.

CONCLUSION

Whistleblowers are the conscience of democracy; they are the voice which upholds Articles 19 and 21 the right to protest and the right to live with dignity. In India that role is tenuous as we see in the case of Satyendra Dubey to many that lost their lives for RTI. The government's failure to put forth the Whistle Blowers Protection Act, 2014 into practice is a constitutional failure which goes beyond simple apathy. As the Supreme Court pointed out in *Tehseen Poonawalla (2018)*³⁸, this is a matter of the rule of law which we are failing at. Protection of whistleblowers is not a gesture of charity but is integral to justice - for each silenced voice democracy itself dies.

³⁶ PRESS INFORMATION BUREAU, *Central Vigilance Commission Annual Report (2023)*, <https://cvc.gov.in> (last visited Oct. 27, 2025).

³⁷ Lokpal and Lokayuktas Act, 2013, No. 1, Acts of Parliament, 2014 (India).

³⁸ *Tehseen S. Poonawalla v. Union of India*, (2018) 9 SCC 501.