



# **Whistleblower policy- An important framework of corporate governance**

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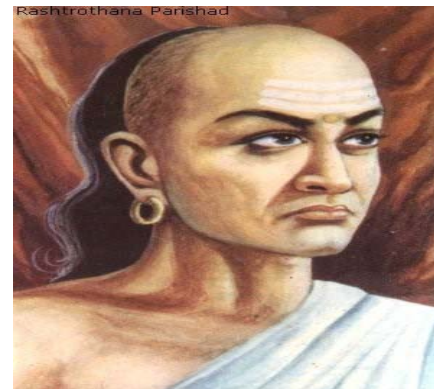
# “Corporate Governance”



- It is a broad concept and has been defined and understood differently by different groups and at different points of time.
- The Cadbury Committee report defines it as “the system by which companies are directed and controlled”.
- It is generally understood as the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in corporations.”

# History of Corporate Governance

- Kautilya's (Chanakya) Arthashastra (around 300 B.C)
  - "In the happiness of the subjects lies the benefit of the king and in what is beneficial to the subjects is his own benefit" – (1.19.34)
- The East India Company introduced a Court of Directors, separating ownership and control (U.K., the Netherlands) in 1600s
- Sir Adrian Cadbury Committee, UK report on Financial Aspects of Corporate Governance in 1992





# Governance Framework

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- I. Supervisory Board
- II. Board Committees -Audit committee, Nomination Committee, Remuneration( Compensation) Committee, Shareholders( Investor grievance) committee
- III. Risk Management Framework
- IV. Internal control Framework
- V. Whistle Blower Mechanism

# Governance Framework...

- VI. Management Information System
- VII. Disclosure of Information and
- VIII. Code of Conduct for all employees



# History of Corporate Governance in India

<b>Year</b>	<b>Name of Committee/Body</b>	<b>Areas/Aspects Covered</b>
1998	Confederation of Indian Industry (CII)	Desirable Corporate Governance – A Code
1999	Kumar Mangalam Birla Committee	Corporate Governance
2002	Naresh Chandra Committee	Corporate Audit & Governance
2003	N. R. Narayana Murthy Committee	Corporate Governance



## SEBI Circulars on Clause 49

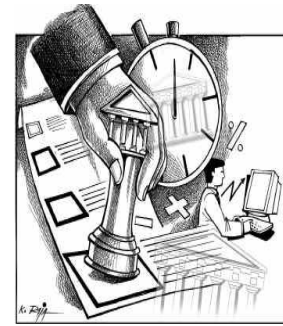
<b>S. No</b>	<b>Circular no</b>	<b>Date</b>
1	SMDRP/POLICY/CIR-10/2000	February 21,2000
2	SMDRP/POLICY/CIR-13/2000	March 09, 2000
3	SMDRP/POLICY/CIR-42/2000	September12, 2000
4	SMDRP/POLICY/ CIR- 03/01	January 22, 2001
5	SMDRP/POLICY/ CIR- 19/01	March 16,2001
6	SMDRP/POLICY/ CIR- 53/01	December 31,2001
7	SEBI/MRD/SE/31/2003/26/0	August 26, 2003

## Recent Amendments to Clause 49

<b>S. No</b>	<b>Circular no</b>	<b>Date</b>
1	SEBI/CFD/DIL/CG/1/2004/12/10	October 29, 2004
2	SEBI/CFD/DIL/CG/1/2005/29/3	March 29, 2005
3	SEBI/CFD/DIL/CG/1/2006/13/1	January 13, 2006



# Applicability of clause 49



- All listed entities having a paid up share capital of Rs 3 crores and above or net worth of Rs 25 crores or more at any time in the history of the company
- For other listed entities which are not companies, but body corporate (e.g. private and public sector banks, financial institutions, insurance companies etc.) incorporated under other statutes, the revised Clause 49 will apply to the extent that it does not violate their respective statutes and guidelines or directives issued by the relevant regulatory authorities.
- The revised Clause 49 is not applicable to Mutual Funds
- Revised clause 49 has come into effect from January 1, 2006

# Bird's eye view of Clause 49



<b>Annexure</b>	<b>Contents</b>
Annexure I	Clause 49 - Corporate Governance
Annexure I A	Information to be placed before Board of Directors
Annexure I B	Format of Quarterly Compliance Report on Corporate Governance
Annexure I C	Suggested List of Items to Be Included in the Report on Corporate Governance in the Annual Report of Companies
Annexure I D	Non-Mandatory Requirements

# Whistleblower



- A whistleblower is an employee, former employee, or member of an organization, especially a business or government agency, who reports misconduct to people or entities that have the power and presumed willingness to take corrective action
- Termed ‘internal’ when an employee airs his complaint internally and ‘external’ when an employee blows the whistle outside the organisation e.g. to media or a regulatory body.

# Origin of the term whistleblower

- From the practice of English bobbies who would blow their whistle when they noticed the commission of a crime.
- The blowing of the whistle would alert both law enforcement officers and the general public of danger



# Famous whistleblowers

Cynthia Coopers



- An internal auditor and consultant who is best known for being the whistleblower who exposed massive accounting fraud at WorldCom in 2002.
- A native of Clinton, Mississippi, Cooper worked as the Vice President of Internal Audit at WorldCom. After conducting a thorough investigation in secret, she informed the audit committee of WorldCom's board that the company had covered up \$3.8 billion in losses through phony bookkeeping.
- At the time, this was the largest incident of accounting fraud in U.S. history.

# Famous whistleblowers

- Sherron Watkins



- was Vice President of Corporate Development at the Enron Corporation.
- helped to uncover the Enron scandal in 2001.
- she wrote a concerned internal email message to Enron CEO Kenneth Lay warning him of potential whistleblowers in the company and pointing out that there were misstatements in the financial reports. Her memo did not reach the public until five months after it was written.

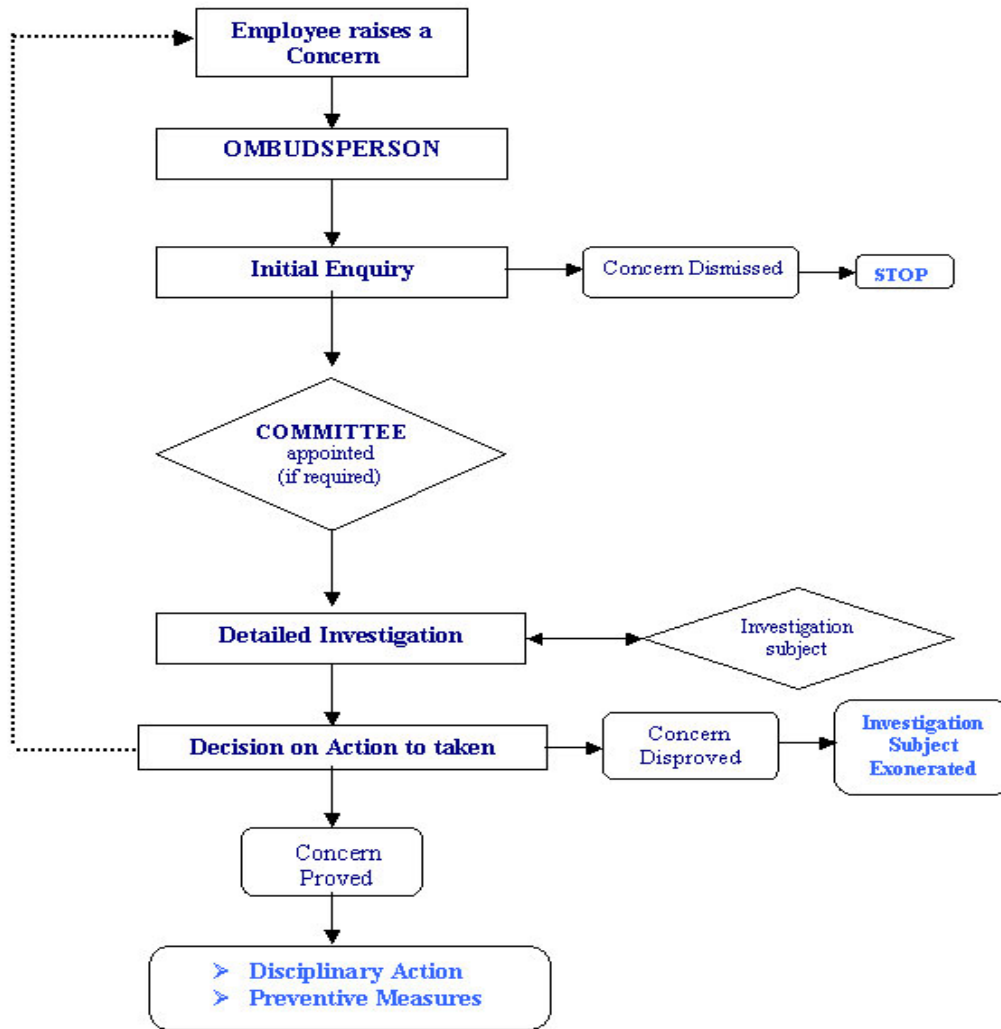
# Famous whistleblowers

- Satyendra Kumar Dubey



- project director at the National Highways Authority of India (NHAI).
- Accused employer in letter to the then Prime Minister Atal Behari Vajpayee.
- was assassinated in Gaya, Bihar for fighting corruption in the Golden Quadrilateral highway construction project.

# Process flow





# Legal protection for whistleblowers

- The United States of America incorporated provisions for protection of the whistleblower in Sarbanes Oxley to prevent discriminatory practices against employees who went against the management and reported corporate malpractices





# Indian Scenario

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Non- mandatory requirements as per Annexure ID of Clause 49

“The company may 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



# Whistleblower policy-Purpose

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intended to cover serious concerns that could have a large impact on the company  
such as actions (actual or suspected) that:

- May lead to incorrect financial reporting
- Are not in line with applicable company policy
- May be detrimental to the image of the organisation
- Violate the accepted values of the organisation
- Are unlawful
- Amount to serious improper conduct (including any kind of harassment)



# Whistleblower policy-Purpose....

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- If an employee discovers information which he/she believes shows serious malpractice, impropriety, abuse or wrongdoing within the organisation then this information should be disclosed internally without fear of reprisal
- No employee should feel at a disadvantage for disclosing legitimate concerns
- To build and strengthen a culture of transparency and trust in the organisation.
- To initiate disciplinary action against false allegations

# THANK YOU

