



# Women Whistleblowers In Law And Practice: A Comparative Case Study Approach

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**Abstract:** *Whistleblowers* are an astounding example where they inspire individuals who ensure that due cognisance is being taken care of something which is unethical, immoral and unlawful. Whistleblowing has been an age-old practice of taking a stance and standing up against any sort of immoral, unethical and unlawful activity in any workplace by its employees. The basic principles of whistleblowing has been an essential and prominent factor in the evolution and development of society, community and humankind. Whistleblowing has not only ensured a safe working constitution for the employees but also safeguards the basic pneuma of humankind. Every individual has a right to work in safe, moral, secure and ethical work environment and the act of whistleblowing mandates such an environ for the employees. The global conventions such as, *United Nations Convention against Corruption, 2003 (UNODC, 2004)*, *Organisation of American States Inter-American Convention against Corruption, 1996*, *The Asia-Pacific Economic Cooperation (APEC)*, *The International Chamber of Commerce (ICC) Guidelines on Whistleblowing (ICC, 2008)* and the *ICC Whistleblowing and Whistleblower Protection Policy (ICC, 2014)*, and the Indian whistleblowing convention, *The Whistle Blowers Protection Act, 2014*, ensures that the works and rights of whistleblowers are protected and that they do not face any form of discrimination and unjust at and outside their workplace. Whistleblowers play an integral part in framing and evolving the principles of a healthy workplace. This paper delves into various fragments of whistleblowing by deliberating the works of select women whistleblowers. The work done by the whistleblowers introduced in the paper would help to understand the significance of *Whistleblowers*.

**Keywords:** Whistleblower, Workplace, Immoral activities, Unethical activities, Unlawful activities.

## 1. Introduction

*"It takes a strong person to stand up for a cause for themselves, but even stronger ones to stand up for others".* Whistleblowers are one such astounding example where they inspire individuals who ensure that due cognisance is being taken care of something which is unethical, immoral and unlawful. Through the span of time and space, whistleblowers have time and again safeguarded the basic principles of healthy, safe, secured and moral workplace.

Whistleblowing has been an age-old practice of taking a stance and standing up against any sort of immoral, unethical and unlawful activity in any workplace by its employees. The very first instance of whistleblowing was recorded in the year 1777, wherein *whistleblowers* have reported mishandling and ill-treatment of British prisoners by the Commander of the Continental Navy, *Commodore Esek Hopkins*<sup>1</sup>. Eloquent with the fact that the commander in question was indeed a powerful figure and had great connection, the *whistleblowers* did in fact documented and raised their concerns against inhumane atrocities the British prisoners were subjected to. After the significant case of whistleblowing displayed by the courageous subordinates of *Commodore Esek Hopkins*, the Continental Congress in the United States issued a resolution enacted in 1778<sup>2</sup> to protect *whistleblowers* from any sort of discrimination and this resolution became the first statutory whistleblowing law paving the path for many such provisions, resolutions and laws.

The basic principles of whistleblowing has been an essential and prominent factor in the evolution and development of society, community and humankind. Whistleblowing has not only ensured a safe working constitution for the employees but also safeguards the basic pneuma of humankind. Every individual has a right to work in safe, moral, secure and ethical work environment and the act of whistleblowing mandates such an environ for the employees. The provisions and laws of whistleblowing all around the world provides the employees with a level of security and confidence that no matter what the circumstances may be their concerns are legitimate and relevant in the workplace.

This paper further delves into various fragments of whistleblowing by discussing the works of select women whistleblowers.

## 2. Overview of Some Global Conventions on Whistleblowing

### 2.1 International Conventions

Despite the fact that no formal definition of *whistleblower* has been adopted, the term defined by *Near and Miceli* (1985) is considered to be the most recognised definition in the academic domain. *Near and Miceli* (1985) have defined *whistleblowers* as “*disclosure given by organisation’s members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organisations that may be able to effect action*”. The *International Labour Organisation* has also defined the term of *whistleblowers* in a similar manner namely, “*the reporting done by the current employees or the former employees of any illegal, irregular, dangerous or unethical practices by employers will be considered as whistleblowing*”.

*Whistleblowing* is considered a method that keeps a check on the illegal, immoral or illegitimate practices that might occur in an organisation and which could lead to issues like corruption. To ensure and keep an eye

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<sup>1</sup> The Whistleblowers of 1777 - The Origins of National Whistleblower Day - National Whistleblower Center, National Whistleblower Center (2020), <https://www.whistleblowers.org/news/the-whistleblowers-of-1777-the-origins-of-national-whistleblower-day/> (last visited Nov 21, 2020).

<sup>2</sup> The Whistleblowers of 1777 - The Origins of National Whistleblower Day - National Whistleblower Center, National Whistleblower Center (2020), <https://www.whistleblowers.org/news/the-whistleblowers-of-1777-the-origins-of-national-whistleblower-day/> (last visited Nov 21, 2020).

on all sorts of corruptions, following legal provisions have been introduced by the international governing bodies:

- *United Nations Convention against Corruption, 2003 (UNODC, 2004)*, aims to promote and strengthen adequate measures in preventing and combating corruption, and its corresponding Resource guide ensures good practices in protection of the reporting persons (UNODC, 2015) who happen to be whistleblowers in such situations;
- Organisation of American States Inter-American Convention against Corruption, 1996, focuses on promoting and strengthening development of “systems for protecting public servant and private citizens who, in good faith, report acts of any sort of corruption, including protection of their identities, in accordance with their Constitutions and the basic principles of their domestic legal systems”;
- The Asia-Pacific Economic Cooperation (APEC) in the year of 2004 in Santiago adopted the Commitment to Fight Corruption and Ensure Transparency, and the APEC Course of Action on Fighting Corruption and Ensuring Transparency. In year of 2007, APEC decided to adopt its Anti-corruption Code of Conduct for Business, which ensures that the internal security and accessibility channel through which if any of the employees and others raise any concerns and report suspicious situation in confidence then their rights will be protected. In 2014, APEC also adopted the Beijing Declaration on Fighting Corruption, which also focuses on its commitment to the protection of whistle-blowers by the member States;
- The International Chamber of Commerce (ICC) Guidelines on Whistleblowing (ICC, 2008) and the ICC Whistleblowing and Whistleblower Protection Policy (ICC, 2014) also encourage the companies to establish an internal reporting mechanisms that promote whistleblowing and protect whistle-blowers from any form of retaliation.

These international conventions among many others lay emphasis on protecting people and promoting act of rightful whistleblowing among employees of all sorts of organisations.

## **2.2. Indian Conventions**

The term *whistleblowing* in India has been explained under the Companies Act, 2013. The act has identified whistleblower's action as aimed at drawing the attention of the stakeholders of the company to the various instances of unethical practices of the organisation. The central law of India has also recognised the term whistleblowing when it comes to receiving complaints or allegations concerning public servants. A whistleblower could be any person who decides to report the wrong practices and produces sufficient amount of evidence about an organisation.

India has a separate legislation to protect the right of whistleblower's as well. The *Whistle Blowers Protection Act, 2014* focuses on protecting the whistleblowers from any form of injustice when they incidentally happen to be reporting any immoral, illegal or unethical activity of their respective organisation. The act also provides protection to their identity and ensures strict norms of confidentiality and secrecy to prevent any form of victimisation.

### 3. Case Studies of Selective Women Whistleblowers

#### 3.1. Kathryn Bolkovac

Whenever there is a global common concern or issue threatening the basic principles of humankind, the United Nations has always come forward as the problem-solving body for all. The principles for which the global peace making body stands for has inspired and encouraged the young minds of all times. So, when misconduct is reported within the constraints of the global peace-making body, it leaves a question mark on our ever-evolving society and community as a whole.

*Kathryn Bolkovac* was a former Nebraska police officer when she joined in the humanitarian works of the United Nations Police Task Force in 1999 in post-war Bosnia. She was an employee of a private military contractor *DynCorp* that at the time was representing the United States State Department. *Kathryn Bolkovac* became a human rights investigator and joined the works of United Nations for the Bosnian community. Working as a human rights investigator, *Kathryn Bolkovac* came across numerous instances of promotion of forced prostitution and sex-trafficking among her fellow employees. She discovered that the employees of the global peace serving body, that was supposed to protect and crack down the pre-existing prostitution rings of Bosnia, was in fact a part of the heinous and condemnable practice. *Kathryn Bolkovac* upon realising the true practices that were going on among the employees reported and blew the whistle on such practices. She wrote an email to her superiors in the United Nations and the *DynCorp*, accounting for the entire practices being followed by some of her colleagues and employers. She was able to amass and gather sufficient form of documents and evidence that she later on presented to the superiors of the said organisations.

Having been a prominent whistleblower in the United Nations organisation, *Kathryn Bolkovac*, later on, faced unlawful repercussions of her actions resulting in her demotion after a few weeks of reporting the misconducts and her further dismissal from her employment. She was fired from her position based on falsified timesheets by *DynCorp* which was later on challenged by her. *Kathryn* filed a case against the *DynCorp* company with the Southampton employment tribunal in 2001 challenging her dismissal from her employment and of her reporting the inhumane and wrongful activities of her fellow officers under the Public Interest Disclosure Act 1998. *Kathryn Bolkovac* won the case in 2002 and was awarded more than £100,000<sup>3</sup> as a compensation. The tribunal found the charges against *Kathryn Bolkovac* for her dismissal unfair, her act of emailing and reporting about the misconducts of her fellow officers was protected under the Public Interest Disclosure Act 1998 hence, resulting in her dismissal as unlawful and unfair. Moreover, the evidence provided for her dismissal by the company at the time was considered insufficient by the tribunal, as well.

Since then, *Kathryn Bolkovac's* work in the field of human rights has contributed to various significant changes. Her work in her book *The Whistleblower* has also played a significant role in framing and protecting whistleblowers all around the globe as well. The book is considered to have served as a crucial reminder to

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<sup>3</sup> UN whistle blower awarded £100,000, The Independent (2020), <https://www.independent.co.uk/news/world/politics/un-whistleblower-awarded-100000-129458.html> (last visited Nov 21, 2020).

a document released by the United Nations in March 2010 titled “*Sexual Exploitation and Abuse*”. Along with that United Nations also published in 2003 a bulletin of a zero-tolerance policy for all UN personnel and published numerous other initiatives that have been implemented over the years with respect to protecting and abolishing all forms of sexual assaults.

### 3.2. *Coleen Rowley*

The repercussions of any terrorist attack or inhumane activity that leaves its footprints on the minds of the humanity is insurmountable. It leaves its undying mark on the present and the future generations of humankind. It at times becomes impossible to overcome and move on from such heartbreaking and desolating events. The infamous attack of 9/11 left a similar kind of impact on the simple being of our humanity. The 9/11 attacks simply ruffled up the basic pneuma of our being. Therefore, it becomes a difficult task to comprehend when one comes across an instance where this calamity could have been avoided altogether.

It takes more than courage and bravery to risk one's career and become a whistleblower for your brethren, nation and humanity. The former retired agent of Federal Bureau of Investigation *Coleen Rowley*, made a similar tough call by reporting back to the Director of Federal Bureau of Investigation in 2002 after the attacks of 9/11 in United States of America.

*Coleen Rowley* was a special agent for the Federal Bureau of Investigation and worked in several of their offices. In the year of 1990, Ms. Rowley joined the offices of Minneapolis as the Chief Division Council. While working as Chief Division Council, *Coleen Rowley's* office received information about a suspected terrorist *Zacarias Moussaoui*. Some flight instructors contacted her office in the mid-August of 2001 to raise their concerns about *Zacarias Moussaoui's* paid flight lessons that were paid in larger amounts of cash. At that point of time, *Moussaoui* was already adjudged as a potential terrorist threat. *Moussaoui* was sojourned in custody due to lapsed visa and during that period of time Rowley's team was able to confirm his connections to the radical fundamentalist Islamic groups and to *Osama Bin Laden* in collaboration with the French Intelligence Service. *Coleen Rowley* immediately reported back to Federal Bureau of Investigation about the findings and requested for a search warrant to examine *Moussaoui's* computer to gather further information.

Subsequently, *Coleen Rowley* observed that due to the lack of cooperation between the intelligence agencies involved, the hands of her team were tied when they aimed to obtain a probable cause warrant for *Moussaoui's* computer a month before the infamous 9/11 attack in the United States of America.

Although, *Moussaoui* later on pleaded guilty for conspiring to commit various inhumane atrocities even though he initially denied any ties of his with the 9/11 attack, confessing that he did have plans for a separate attack of his own. Nevertheless, *Coleen Rowley* wrote a memorandum to the then Federal Bureau of Investigation Director, *Robert Mueller*, of her entire experience, detailing about all the mishandling of the evidence and intelligence data her team had gathered and later that year she also testified before the Senate explaining all the circumstances.



*Coleen Rowley's* concerns and her issue with the incorporation of the intelligence agencies was met with a considerable deal of high powered support along with the beguiling interest of the media and fuelling congressional proceedings and investigations. Her issues also gained the attention of the Special Staff of the 9/11 Joint Intelligence Committee. *Rowley* strategically used the attention to increase awareness of Federal Bureau of Investigation's systematic inability to address such sensitive concerns, that needs to be given due attention and diligence. She enforced upon the organisation to correct their system of inaction, unwieldy paperwork, tangled-up bureaucracy, a working-environ labeled as "*risk adverse culture*" by her.

*Coleen Rowley's* constant work and her aim of spreading awareness about the system led to revamping and restructuring of the entire intelligence communities and agencies. *Rowley's* whistleblowing led to a heightened awareness among general public of United States of America, since the attacks of 9/11 in matters concerning national security. Reports even suggested that a rise in the official whistleblowers was also observed and according to Public Employees for Environmental Responsibility the number of official whistleblowers rose from 380 in the year of 2001 to 535 in 2003<sup>4</sup>.

### 3.3. *Karen Silkwood*

*Karen Silkwood* in the early 1970s worked as a chemical lab technician and analyst at the plutonium fuels production plant Kerr-McGee in Crescent, Oklahoma in United States of America. While working at the plant, *Silkwood* started to become concerned about the safety procedures for the employees working at the plutonium plant. She considered that the quality of control failures and the lack of safety process put the employees at the plant at a risk of radioactive contamination that could lead to multiple health hazards for individuals working in such unprotected conditions. Along with that *Karen Silkwood* was also a member of the Oil, Chemical and Atomic Worker's Union and later on testified before the U.S Atomic Energy Commission.

In the course period of her employment, *Silkwood* was working at a three-day period in November 1974. During that duration, *Ms. Silkwood* got contaminated with the plutonium chemical. Having been exposed to the chemical element on November 5, *Karen Silkwood* observed that she indeed showcased the signs of her contamination and these signs kept on occurring till November 7 when she reported directly to the health physics office of the plant<sup>5</sup>. There again she was found still being contaminated with plutonium and along with that her apartment and her possessions were also found to be polluted with plutonium. She was asked to undergo series of tests in New Mexico to determine the severity and extent of her contamination<sup>6</sup>. When she reported back to work on November 13, *Ms. Silkwood* was reassigned to a different project<sup>7</sup>.

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<sup>4</sup> Socialstudies.org (2020), [https://www.socialstudies.org/system/files/publications/articles/se\\_6906313.pdf](https://www.socialstudies.org/system/files/publications/articles/se_6906313.pdf) (last visited Nov 21, 2020).

<sup>5</sup> Ajph.aphapublications.org (2020), <https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.74.5.516> (last visited Nov 21, 2020).

<sup>6</sup> Ajph.aphapublications.org (2020), <https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.74.5.516> (last visited Nov 21, 2020).

<sup>7</sup> A Ajph.aphapublications.org (2020), <https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.74.5.516> (last visited Nov 21, 2020).

After her own exposure to the chemical element, *Karen Silkwood* became all the more determined to gather as much evidence as she could find to report the issue and her concerns for lack of safety procedures for the employees. During this period, *Karen Silkwood* focused on assembling data that showcased that Kerr-McGee indeed displayed a conduct of negligence in maintaining the plant's safety. On her way to a meeting with a *New York Times* reporter, carting a folder that was full of documents and reports of her findings that the Kerr-McGee indeed showcased a pattern of negligence towards the safety of the employees when it came to handling the chemical, *Karen Silkwood* was met with an automobile accident that led to her unfortunate demise. She was never able to make to the meeting and it was reported that the folder full of the evidence was never found<sup>8</sup>.

Karen Silkwood's work in spreading the awareness about such negligence led to the making of a film and the publication of a book that showcased her work to the public. Her concerns were able to spread awareness among the employees and the public as well in regard to handling and working with such kinds of chemical elements.

### 3.4.Linda Tripp

The unlawful abuse of power and position could lead to some serious repercussions. The perfect example of this was the impeachment of Bill Clinton in 1998. *Linda Tripp* played a vital role in the impeachment proceedings of the *President of the United States of America*. *Linda Tripp* was a government employee who worked at the White House. *Ms. Tripp* started working as mid-level federal employee at White House under the Republican administration of *George H.W. Bush* but stayed for quite some time for the early part of the Clinton administration.

At the time of her employment, *Tripp* befriended the young Monica Lewinsky, who was interning at the White House during that period of time. As friendship between Linda Tripp and intern Monica Lewinsky ensued further, the latter started to confide in *Ms. Tripp*, her co-worker, about her relationship with the then President *Mr. Bill Clinton*. When *Ms. Linda Tripp* discussed her conversations with a book agent, *Lucianne Goldberg*, about a persisting ongoing relationship of *Ms. Lewinsky* with the President *Mr. Bill Clinton*, the book agent advised her to record her phone calls with *Ms. Lewinsky*<sup>9</sup>.

As *Ms. Tripp* started assembling the recordings between *Ms. Monica Lewinsky* and her, the proceedings for impeachment of the then President *Mr. Bill Clinton* were also underway. *Ms. Linda Tripp* decided to turn in the recordings to the special prosecutor who was investigating *Mr. Clinton* at the time as a proof and also received immunity from her prosecution when the word about her possession of such incriminating evidences got out as recording someone's personal communication without informed consent is illegal and untenable. The recordings became the prime focus during the prosecutor's inquiry. The tape recordings asserted the fact

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<sup>8</sup> The Nuclear-Safety Activist Whose Mysterious Death Inspired a Movie Time, <https://time.com/3574931/karen-silkwood/> (last visited Nov 20, 2020).

<sup>9</sup> NPR Choice page, Npr.org (2020), <https://www.npr.org/2020/04/08/830157124/linda-tripp-clinton-sex-scandal-whistleblower-dead-at-70> (last visited Nov 21, 2020).

that *Mr. Clinton* and *Ms. Lewinsky* did indeed have a relationship, an observation in dire contradiction to denial from both the concerned parties.

As the proceedings and inquiry of *Mr. Clinton's* impeachment proceedings progressed, the fact of unlawful abuse of power on *Mr. Clinton's* behalf towards *Ms. Monica Lewinsky* soon became quite evident to the House. *Mr. Clinton*, having been charged with the fact that he was lying under oath and was party to obstruction of justice, lead to the impeachment of then president from the White House. Proving the unlawful act and abuse of power by the then President *Mr. Bill Clinton* would have been a difficult and complex task had it not been for *Ms. Linda Tripp's* contribution towards righting the wrong and bringing to light such blatant and flagrant abuse of power. It is extremely essential to understand the fact that any form of misuse of power and resources will indeed have repercussions and that no one has the power to escape it. Although, *Ms. Tripp's* contribution in saving the nation by making everyone aware of the fact of misuse of office in Nation's highest corridors of power through her recordings was met with various mixed opinions, she has always said that the unfortunate fact of being a whistleblower is that one is not always appreciated. Nonetheless, her contribution did in fact set the wheels of change in motion bringing in a change in mind-set to observe dignity and grace of power.

### 3.5. Evaluation of the Case Studies Comparatively

There are certain recurring themes that keep emerging and are common during the course of these case studies. Firstly, after coming forward, all the women whistleblowers were faced with immense backlash from the society. *Katherine Bolkovac* was fired on fabricated allegations, *Karen Silkwood* was killed under suspicious circumstances, *Coleen Rowley* was ostracized, and *Linda Tripp* was publicly demonized in spite of the key role that she played. All of these cases are leading to a common theme of resistance from within the institution and acts of retaliation, regardless of the industry or the nation in question.

Secondly, their whistleblowing was not just about reporting specific misbehaviour, it was about challenging the whole cultures of silence, complicity, and the abuse of power. Whatever the case may be, these women revealed the systems, and not just the individuals.

Thirdly, all these cases also indicate that the repercussions were frequently worse for a woman whistleblower who was working in a traditionally male dominated society, such as the military, the intelligence community, the energy and the politics. This further raises a question in our minds that *whether institutional misogyny contributed to making the response to their revelations worse?*

## 4. A Feminist Legal Perspective on the Gender Aspects of Whistleblowing

Answering the above question, we see that whistleblowing is often described in neutral legal or institutional terms, however, gender plays a powerful, and sometimes invisible role in how the whistleblowers are treated and perceived. From a feminist legal theory, the experience of women whistleblowers is shaped by the intersection of power, gender expectations, and institutional hierarchies.

Most commonly, the female whistleblowers are branded as emotional, traitorous, or attention- seeking epithets which is less commonly attached to the male whistleblowers. Women frequently become the subject



for character assassination, victim-blaming, and challenges are raised on their credibility. Looking at the case studies above, especially that of *Linda Tripp* and *Karen Silkwood*, the media and public rhetoric grew intensely personal and sensationalized, which gave way to mirroring more fundamental prejudices surrounding how women's speech is disciplined and delegitimized.

Legal protection of the whistleblowers such as the *Whistleblowers Protection Act, 2014* in India and the *Public Interest Disclosure Act, 1998* in the UK are gender- neutral in their wordings. However, the apparent neutrality of this language may hide the particular risks and social punishments to which women are often exposed. A reform which is attuned to gender would recognize that punishing whistleblowers is not just legal or professional but is frequently social, reputational, and heavily gendered.

The feminist legal theory suggests us to look at these women not only as victims but as agents. They act against institutional passivity and claim responsibility, often at high personal cost. identification of the gendered characteristics of their whistleblowing leads us to realize why the stories are important, not only as legal incidents, but as acts of resistance against uneven structures.

## 5. Conclusion

The work done by the whistleblowers mentioned above helped shape and remodel the entire administration process. The courage exhibited by the whistleblowers has played an integral part in ensuring that principles of a healthy workplace are observed and adhered to. All of these women stood up not just against unethical or illegal acts but ultimately against the systemic failures that led to the acts taking place. They intervened in powerful organizations, personified uncomfortable truths, and stepped into an orbit of accountability.

This is not to suggest that whistleblowing is without repercussions. For women, the repercussions are often even more significant and wage beyond reputational harm, they experience social rebuke, including shaming, disenfranchising behaviours, and powerlessness from the peers.

The cases offered truths about the contours of existing legal protection. These legal protections do very little to minimize the backlash or restore the individuals' reputational social- standing. Additionally, the protections are typically gender- neutral and fail to consider the conditions for women and the additional vulnerabilities they face at some stage during the whistle- blowing process.

If these cases taught us anything, it is that the systems for legal protections should be revised or at least revolve beyond the bare minimum. Legal systems should build proactive protective systems before the harm takes place, develop systems of anonymous reporting, de-contextualize risks for gender-categories, and, above all structure institutions that value integrity over silence.

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