Corporate governance and whistle blowing in India: promises or reality?

Abstract:

Purpose - Purpose of this paper was to analyze the legal provisions relating to the protection extended to the private company employees who blows the whistle. It is a major requirement of the country that Whistle Blowers Protection Act should not only be made compulsory for public sector but it should also be made compulsory for private companies of any size so that illegal activities could be identified and major risk could be avoided. Today private sector is growing rapidly, it has a growth in way of economic resources and private sector is also entering into the public domain by privatization, so exclusion of private sector by the Whistle Blowers Protection Act, 2011 is very dangerous.


Findings - This Act provides a mechanism to receive complaints and inquire into the allegations of corruption or willful misuse of power by the public servants only. Although, this act has not come into existence but on bare perusal it seems to be inadequate and still needs more amendments for efficient outcomes or else the zeal of whistle blowers particularly in a private sector will fade away. The need of exhaustive and complete law is also necessary so that the evils like corruption can be curbed completely and effectively.

Originality/Value - Private sector if included in the above mentioned act, would definitely resolve the problem, but on the same hand it will raise the question of space that needs to be given to private organization. So in concluding remarks author would like to suggest that, to improve the organizational quality of private sector there should be a national...
legislation which should deal with substantial guidelines that needs to be adopted by private companies. There is a significant need to raise the standard of corporate governance in India, only then it could achieve stability, transparency and growth.

Keywords-Corporate Governance, Whistle Blowers, Private sector, Corruption.

Paper type- Research paper.

Introduction-Corporate governance and its need:

Corporate Governance provides the guiding principle as to how the company can be controlled or directed in a manner which can fulfill its goals and objectives. It prescribes certain guidelines that adds to the value of the company and is also advantageous for all stakeholders in the long term. Stakeholders in this case would include everyone ranging from the board of directors, management, shareholders to customers, employees and society. In short Corporate Governance refers to the set of principles by which a company is governed and by which board of directors ensures evenhandedness, transparency and accountability in a company's relationship with all its stakeholders financiers, customers, management, employees, government, and the community.

Good corporate governance standards are essential for the integrity of corporations, financial institutions and markets and have a bearing on the growth and stability of the economy. For a company to be a successful entity, it is vital that corporation should concentrate on both economical and social aspect. It needs to be fair with producers, shareholders, customers etc. Corporations do have the primary responsibilities towards the governance so that, they shall not hamper the society in any manner. Whistleblowers Protection policy would be an efficacious tool for corporate governance, as it will make the corporate accountable to the common mass, which would certainly help the society to nurture.

Since the corporate governance do not only affect the companies growth but it has an
tremendous effect on the society as well, thus it is very crucial to look upon the policy
adopted by Indian Legislature and to look upon the best practices prevailing in the foreign
jurisdiction to curb such malfunctioning.

Corporate governance in India:

Confederation of Indian Industry has been working for the corporate governance movement in India, for many years. In April 1998, Task Force report entitled “Desirable Corporate Governance: A Code” was released by them, which prescribed a series of voluntary recommendations regarding best-in class policies for corporate governance. It is true that most of the code prescribed by Confederation of Indian Industry was subsequently incorporated in SEBI’s Kumar Mangalam Birla Committee Report and then Securities and Exchange Board of India (“SEBI”) vide its circular dated August 26, 2003 has amended the Principles of Corporate Governance i.e. made amendment to clause 49 of the listing agreement. The incorporated principles require the Company to prepare a policy called Whistle Blower Policy which would safeguard the innocent person making the world aware about the malpractices. The very aim of the said policy is to push the employees of the particular organization and to provide them the avenue so that they can bring to the attention of the management any illegal, unethical or improper practices prevailing within the organization. This policy provides for the internal whistleblowing by the employee of the organization, and for their safeguards. These voluntary norms were not seems to be effective and subsequently many corporate fraud took place. Satyam episode has prompted a relook at our corporate governance norms and how industry can go a step further through some voluntary measures. With this in mind, the CII set up a Task Force under Mr Naresh Chandra in February 2009 to recommend ways of further improving corporate governance

3 ‘Corporate Governance Recommendations For Voluntary Adoption’ (cii.in 2009)
vPFukhx566abX9JYSpFRzUNbymhMcSrSpFauMSkqUR0vKQ==/> accessed 14 April 2015.
2015.
standards and practices both in letter and spirit. This particular task force enumerated several recommendations with an objective of establishing higher standards of corporate governance.

Recently an amendment⁵ has been made to clause 49 of the listing agreement which made adoption of whistleblowers protection policy mandatory for the listed companies. The securities & Exchange Board of India (SEBI) has issued directives that all listed companies have to put in place a vigil mechanism to report fraud by employees and directors before 1 October, 2014. The independent directors and the audit committee are mandated to ensure that the vigil mechanism is ‘adequate’ and ‘functional’. The auditors are duty bound to report instances of fraud to the central government within a stipulated time frame.⁶ Still unlisted companies are out of its ambit. Subsequently different Indian companies have adopted whistle blower policies to provide appropriate safeguards to their employees. It provides avenues to the internal or external auditors, or other third parties, so that they could bring any issues which are perceived to be in violation or in conflict with the fundamental business principles of the Company to the attention of the management. These policies empower the person to have direct access to his company’s audit committee without seeking consent of his superiors by which person would be able to report the malpractices to the committee. It also provides provisions to safeguard the innocent person from any kind of harassment. There are so many companies who have incorporated the whistleblowing policy in their governance. This could be for a number of reasons. An efficient whistleblowing administration deters unlawful activity; facilitates the exposure of misconduct without fear of retaliation; helps identify delinquency early on and thereby prevent substantial grave disasters. Whistleblower protections policies are also an imperative element of in-house controls, ethics and compliance programme, which could exhibit to shareholders and law enforcement authorities that an organization has made efforts to thwart, detect and deal with dishonest behavior.⁷

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⁶Dr. N V Paranjape, Right to information law in India (1st, LexisNexis, India 2014) 1
The Heritage Food (India) Ltd whistle blower policy\(^8\), has been adopted with a purpose to provide an opportunity to employees and an avenue to raise concerns and to access in good faith the Audit Committee, to the highest possible standards of ethical, moral and legal business conduct and its commitment to open communication, in case they observe unethical and improper practices or any other wrongful conduct in the Company, to provide necessary safeguards for protection of employees from reprisals or victimization and to prohibit managerial personnel from taking any adverse personnel action against those employees.

The Wipro Company has adopted an Ombuds process policy\(^9\) where Chief Risk Officer is the Chief Ombudsperson who works with designated ombudsperson. The process ensure confidential and anonymous submissions regarding (i) questionable accounting or auditing matters, the conduct of which results in a violation of law by Wipro or (ii) substantial mismanagement of company resources (iii) Any instance of sexual harassment or any other form of discrimination.

Wipro employees are motivated to report unethical accounting matters, any reporting of fraudulent financial, any practice that results in violation of the company's code of business conduct and ethics, to management. This policy also incorporated the provision to protect the whistleblower from discrimination, retaliation or harassment of any kind.

Tata motors has also adopted the whistleblowers policy which states that “Every employee of a Tata company shall promptly report to the management, and / or third-party ethics helpline, when she / he becomes aware of any actual or possible violation of the Code or an event of misconduct, act of misdemeanor or act not in the company’s interest. Such reporting shall be made available to suppliers and partners, too. Any Tata employee can choose to make a protected disclosure under the whistleblower policy of the company, providing for reporting to the chairperson of the audit committee or the board of directors or specified authority. Such a protected disclosure shall be forwarded, when there is reasonable evidence to conclude that a violation is possible or has taken place, with a covering letter, which may bear the identity of the whistleblower. The company shall ensure


protection to the whistleblower and any attempts to intimidate him/her would be treated as a violation of the code”

In spite of the substantial guidelines regarding whistleblowers protection, we have witnessed failures of different companies, as there is no substantial legislation in this regard. Substantial and efficacious policies are required which will definitely send a well-built message to the employees that the management is fervent to curb the corruption and to prevent the illegal activities.

Two examples of private sector whistleblowers relate to the USA which sadly cannot be replicated in India unless the whistleblower protection law is extended to it as well. The spunky Enron woman Sherron Watkins was its finance head whose conscience was sufficiently troubled to expose her employer as well as auditor of the company. Sherron Watkins had grown increasingly concerned about accounting fraud at Enron where she is a vice-president in finance. She decides to write a memo to outline her concerns. Over the next several days she writes a number of memos outlining those concerns, proposing solutions and predicting consequences. Dinesh Thakur was a former employee of Ranbaxy Laboratories who exposed his ex-employer not in India but in the USA perhaps enticed by the irresistible prospect of hitting the pay dirt -- he got $48.5 million from out of the $500 million Ranbaxy had to fork out to the US government for endangering the lives of its people through production of drugs in India in unhygienic conditions. This clearly shows that even private organisation do have the role in public life, which requires a proper attention.

13 S Murlidharan (n ).
Exclusion of private sector from the ambit of The Whistleblowers Protection Act, 2011:

It is a foremost requirement of the country that Whistle Blowers Protection Act should not only be made compulsory for public sector but it should also be made compulsory for private companies of any size including nonprofit organization as well, so that illegal activities could be identified and major risk could be avoided. Today private sector is growing rapidly; it has a growth in way of economic resources as well. We cannot ignore the substantial presence of private sector in the country as it is also entering into the public domain by privatization.

So giving exemption to the private sector corporations under Whistle Blowers Protection Act, 2011 is very perilous, since it would not only affect the corporations but it will have a substantial negative impact on the society as well. Whistleblowers are the guardian of the company therefore it is the dusty of the corporate to provide reflexive environment to them.

The private sector in India is vibrant and growing - accounting for a large share of the country's gross domestic product (GDP). Around 25 percent of the GDP can be attributed to public procurement with the private sector being a main supplier of goods and services. Recognizing the emerging and growing role of the private sector, also the role and impact of corruption within the sector, it has been increasingly debated. In this chapter author would be analyzing the need for implementation of whistleblowing protection by all the private companies and organizations.

The private sector is no more a victim of corruption in India. Instead, it is instrumental (in effecting it) and hand-in-glove with public officers. Collusive corruption, where officials from public sector undertakings join hands with the private sector, is greatly present in the Indian business environment, particularly in the power, mining and oil sectors. In the present scenario, tough competition exists everywhere which leads to more fraudulent

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practices, illegitimate practices and corruption in the public as well as private sector as certain companies adopt illegal and unethical practices to gain competitive edge over the other competitors.

The Preamble of The Whistleblowers Protection Act, 2011 has excluded private sector from its ambit as the primary object is to safeguard the public sector only. It is an act to establish a mechanism to receive complaints relating to disclosure on any allegation of corruption or willful misuse of power or willful misuse of discretion against any public servant and to inquire or cause an inquiry into such disclosure and to provide adequate safeguards against victimisation of the person making such complaint and for matters connected therewith and incidental thereto.¹⁶

The Committee under the chairmanship of Jayanthi Natarajan was constituted to deal with several issues pertaining to The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010. Committee heard the presentation of the Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions on the provisions of the Bill in its meeting held on 29th September, 2010. The Committee also heard the views of stakeholders/NGOs in its meetings held on 14th and 15th February, 2011. The Committee further held in-house discussion on the Bill on the 28th April, 2011. One of the vital memoranda of the committee was to discuss the exclusion of corporate sector from the ambit of the bill. Although this issue has been forwarded to government but government gave a vague response and stated that at this stage, it may not be possible for the CVC to handle complaints of private sector.¹⁸

Private sector does contribute a lot in the Indian economy and the country cannot afford the misconduct of such system as it will definitely affect the people at large. Private sector is not at all immune from the unethical practices and scandals. There may be plethora of cases in private sector which includes bribery, embezzlement which are even capable to hamper the economy of a country. Many countries, organizations have adopted different policies, rules and guidelines to safeguard the whistleblowers or we could say they have set the parameters

¹⁶ The Whistleblowers Protection Act, 2011 preamble
¹⁷ Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice
¹⁸ 'Forty sixth report on the public interest disclosure and protection to persons making the disclosures bill, 2010' (Rajya Sabha 2012)
to protect the whistleblowers so that innocent person would not be victimized. Certain Indian companies do have policies to safeguard the whistleblower which ultimately leads to build the reputation of company itself.

In the year 2007, 2nd Administrative Reforms Commission \(^{19}\) made various recommendations related to whistleblowing and for the safeguards of whistleblowers which have not been incorporated in the act. One of the major recommendations proposed by the commission was to include acts of whistle-blowing in the private sector and to prescribe penalties for victimising complainants, but these recommendations were not added by the act and private sector were left excluded from its ambit. Apart from various domestic authorities, international authorities have also suggested to include private sector into the ambit of whistleblowers protection policies. The 2009 OECD Anti-bribery Recommendation calls on Parties to ensure that whistleblower protections are in place for both public and private sector employees.\(^{20}\) Similarly the Council of Europe Criminal Law Convention on Corruption\(^{21}\), the Council of Europe Civil Law Convention on Corruption\(^{22}\) and the Inter American Convention against Corruption\(^{23}\) make provisions and do not expressly distinguish between private and public sector employees in their call for Parties to require or consider adopting whistleblower protection measures. Number of globally recognized anti-corruption organizations also promotes the voluntary adoption of whistleblowing measures, including the Business Principles for Countering Bribery,\(^{24}\) the ICC Rules of Conduct to Combat Extortion and Bribery,\(^{25}\) the World Bank Integrity Compliance Guidelines,\(^{26}\) and the World Economic Forum Principles for Countering Bribery.\(^{27}\)


\(^{21}\) Council of Europe Criminal Law Convention on Corruption (1999), Article 22

\(^{22}\) Council of Europe Civil Law Convention on Corruption (1999), Article 9

\(^{23}\) Inter-American Convention against Corruption (1996), Article III, s 8

\(^{24}\) Business Principles for Countering Bribery (2003), Section s 5

\(^{25}\) ICC Rules of Conduct to Combat Extortion and Bribery (2005), Article 7

\(^{26}\) World Bank Group Integrity Compliance Guidelines (2010), s 9

\(^{27}\) World Economic Forum Partnering against Corruption Initiative (PACI) s 5.5
Parliamentary assembly of Council of Europe in their draft resolution has given some guidelines principle for the better protection of whistleblowers, in point number 6.1.2 of the draft; they have specifically mentioned that legislation should cover both public as well as private sector. G-20 Anti Corruption plan has laid down guidelines and best practices that need to be adopted by the member states to make whistleblowers protection policy strong. In this action plan, they have stated that Public and private sector employees should be afforded protection, including not only permanent employees and public servants, but also consultants, contractors, temporary employees, former employees, volunteers, etc.

**Legal protection to private sector: Position in U.S & U.K:**

In United Kingdom, situation is very much lucid. Public Interest Disclosure Act 1998 applies to a “worker” in both the public and private sectors, and extends protection to contractors. Recently in 2014 the UK Supreme Court found that even members of an LLP partnership are “workers” under the Act.

In United States the Sarbanes-Oxley Act, 2002 was enacted subsequent to the scandals of the early 2000s involving Enron, WorldCom and other public companies. Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) in 2010 following the global credit crisis that began a few years earlier. Both statutes offer protections for employees who face retaliation for “blowing the whistle” on corporate misconduct, and Dodd-Frank also provides enhanced monetary incentives to the employees who do so.

United State Supreme Court in Lawson v. FMR LLC, stated that Sarbanes-Oxley’s Anti-Retaliation Provision “shelters employees of private contractors and subcontractors, just as it shelters employees of the public company.” Lawson involved claims of retaliation by two

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28 The protection of whistle-blowers, 2009  
30 Public Interest Disclosure Act, 1998 s 43k  
31 Clyde & Co LLP and another v Bates van Winkelhof [2014] UKSC 32  
33 Lawson v. FMR LLC, 134 S. Ct. 1158 (2014)
former employees of private companies that managed and advised publicly-held mutual funds. The defendants argued that private company employees were not sheltered by Sarbanes-Oxley act because the phrase “an employee” should be interpreted as “an employee of a public company.” Court rejected the argument, noting that “Congress installed whistleblower protection in the Sarbanes–Oxley Act as one means to ward off another Enron debacle,” a purpose served by an interpretation that protects employees of private companies that contract with public companies.34

Indian legislation:

There exist two provisions in the Indian legislation which requires listed private sector companies to have whistle blowers protection policy. In The Companies Act, 2013, every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed35. The vigil mechanism under sub-section (9) shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases: Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board’s report.36 Clause 49 of listing agreement made it compulsory to establish a mechanism for employees through which employees can report to the management concerns about unethical behavior, actual or suspected fraud or violation of the company’s code of conduct or ethics policy. The mechanism must provide for adequate safeguards against victimization of employees who avail of the mechanism. The mechanism must also provide, where senior management is involved, direct access to the Chairman of the Audit Committee.37

Many companies have adopted the policy for good governance but that will not suffice the need of good governance for sure as legislation doesn’t require them to abide by substantial


35 The Companies Act, 2013 s 177(9)
36 The Companies Act, 2013 s 177 (10)
37 Clause 49 of listing agreement
guidelines and companies are given free hand to adopt any guidelines, for instance some of the private companies have made a policy for protection to whistle blowers but they have mandated this policy for permanent employees only for instance Micro Housing Finance Corporation Ltd\textsuperscript{38}, Ricoh India Limited\textsuperscript{39} that means protection would not be given to temporary employees or employees appointed on contractual basis.

Although companies have been asked to formulate the policy regarding whistleblowers protection but this doesn’t necessarily mean that they would be adopting an efficacious policy to curb the corruption.

They have been given few optional guidelines for formulation of the policy, which means there are credible chances of manipulation in the policy, for instance there can be a poor communication network within the organization which could hamper all the procedure, i.e. employee will not be able to disclose the concerns internally.

Unlisted companies are out of the ambit of clause 49 of listing agreement i.e. they are not bound to follow the guidelines prescribed by clause 49 of listing agreement. Private companies do have these policies on ‘paper’ and they have also incorporated the guidelines given by clause 49 of listing agreement but has done nothing more than that.

**Measures:**

There are only two ways to achieve the good governance i.e. either to have the mandatory compliance policy for private sector or to include the private sector in the ambit of the Whistle Blowers Protection Act, 2011.

**Whether the protection to private and public sector could be based on same law?**

This question can be answered in a different ways, for instance one could say that one national policy would be easy and effective for governing both the sectors, i.e. all aspects of


whistleblowing will be dealt by the single national policy, however on the other hand it could be very difficult to deal with this problem by one single policy as this will be very problematic in dealing with the complaints of whistleblowers. If such policy is adopted then anyone could provide information about any unlawful activity, which would be next to impossible to handle.

Private sector if included in the ambit of the above mentioned act, would definitely resolve the problem of corruption but on the same hand it will bring one major question i.e. whether we are empowering government to interfere in the matters of private companies?. On the other hand effective rules can be made by labor or company laws which would give them effective policies. Although clause 49 of listing agreement requires listed companies to have such policies but then, again major questions will arise such as, would it solve the purpose of eradicating corruption, what would be the manner in which they should disclose the information, what would be the possible disincentive of disclosing the information within the company, what would be efficacious manner in which it should be adopted.

Companies could be made bound to adopt these guidelines such as:

1. Committee of Independent members of the board of directors should be made and all the complaints should be made to them, which mean involvement of independent board of directors.
2. Independent board should select an independent person, so that any employee could easily approach to that person.
3. There should be provision for reward for the whistleblowers so that they would be encouraged.
4. Whistleblowers that made legitimate complaints should not be expelled from their job without prior approval of independent members of board of directors.

**Whether internal or external whistleblowing will work?**

Internal whistleblowing refers to the situation where employee of the organization brings to the notice of their supervisor about any illegal, unethical practices going on in the organization, whereas external whistleblowing means giving information to any third party
i.e. media, N.G.O’s etc. regarding malpractices going on in the organization. These questions needs to be resolved otherwise the very objective of the act will not be achieved.

On one hand if an offence is being committed within the organization without the knowledge of senior management, then senior managers can be made the recipients of the whistleblowers disclosure. However, the whistleblower must be aware that they are being disloyal to colleagues and that the senior managers may recognize the disloyalty as a greater offence than the behaviors being complained of.

Where the whistleblowers fears such an internal response they are made likely to blow the whistle externally and this may cause much more damage to the organization. External whistleblowing is not a accepted act as it will unquestionably bring some unconstructive effects on the company. Company could face serious issues like, many of the stakeholders will have ill effects and company will lose its trustworthiness. Company will lose its share value as majority of the people will look into the matter as an ethical dilemma. Subsequently it is the company which has to bear to lose.

On the other hand internal exposure allows organizations a chance to fix harms before they expand into full-blown scandals (Barnett 1992). Internal disclosure may create a mutual ethical atmosphere where employees are encouraged to report unethical behavior (Barnett et al 1993). Only when internal disclosure produces an inadequate result will there be a need for external whistleblowing. The previously conflicting pressures of loyalty to the firm and loyalty to society may be brought together. The importance of providing adequate responses to internal complaints must be recognized as a key factor in avoiding external reporting (Miceli and Near 1994). The whistleblower may believe that disclosure will prevent disruptive practices and also protect the organization from public embarrassment that could follow if the offence were to be publicly reported in the future. Internal disclosure does not breach the organization’s confidences or infringe its proprietary rights to the information released. On the other hand, there is potential for external disclosure to disturb the hierarchy and therefore apparently disturb the command structure of the organization. The harsh truth is that when an employee has blown the whistle by taking the case to outside authorities, it represents a failure of everyone concerned. Proper responses to internal complaints should

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not only prevent external whistleblowing, but should also encourage immediate positive changes in the organization (Benson and Ross 1998).

There could be various methods by which internal whistleblowing could be made very easy or we could say these methods could create a whistleblowers culture in the organization.

**Get Endorsement from top management**

Top management, starting with the CEO, should demonstrate a strong commitment to encouraging whistleblowing. This message must be communicated by line managers at all levels, who are trained continuously in creating an open-door policy regarding employee complaints.

**Publicize the Organization's Commitment**

To create a culture of openness and honesty, it is important that employees hear about the policy regularly. Top management should make every effort to talk about the commitment to ethical behavior in memos, newsletters, and speeches to company personnel. Publicly acknowledging and rewarding employees who pinpoint ethical issues is one way to send the message that management is serious about addressing issues before they become endemic.

**Investigate and Follow Up**

Managers should be required to investigate all allegations promptly and thoroughly, and report the origins and the results of the investigation to a higher authority. For example, at IBM, a long-standing open-door policy requires that any complaint received must be investigated within a certain number of hours. Inaction is the best way to create cynicism about the seriousness of an organization's ethics policy.

**Assess the Organization's Internal Whistleblowing System**

Find out employees’ opinions about the organization's culture vis-à-vis its commitment to ethics and values. For example, Sears conducts an annual employee survey related to ethics. Some questions are: Do you believe unethical issues are tolerated here? Do you know how

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41 ibid.
to report an ethical issue? These guidelines would definitely help the organization to create a whistleblowers culture where activist will feel safe while disclosing any wrongdoings.

It is required to have a substantial legislation for the governance of private sector which would definitely resolve this problem or if organization wants to eradicate this problem they could adopt certain substantial principles which will definitely serve the society at large. Internal whistleblowing would definitely help the organization too to improve their reputation. It is in the corporation’s interest to correct any unethical practices internally in spite of taking those matters externally. It is far more beneficial to adopt internal whistleblowing as benefits which would be arising out of the complaints will outweigh the cost needed for investigation of such complaints.

Organization should make arrangements such as:

1. **Definition of person covered:** Clear definition of the person covered under this act should be given, it should cover person within the organization as well as external parties who conduct business with their organization as they might get aware of any unethical practices.

2. **Methods to encourage whistleblowers:** Policies should be made in such a manner that should prevent retaliation against the person who blows the whistle. Policies should also include the methods to encourage the whistleblowers so that they will report the unethical practices.

3. **Confidentiality:** This is the important part of the whistleblower protection policy. Confidentiality is a great concern because it is the main object of the act, i.e. to create the atmosphere where employees will feel free and comfortable to report the concern. Complaints regarding illegal practices should be investigated by independent counsel who should directly report to the independent director.

4. **Process:** A substantial process is required for protection of the whistleblower. There should be a process which could allow the person to have easy access to the independent authority. There should be a specific reporting mechanism in the process by which whistleblower could have proper ladder to achieve accountability. A strong code of ethics for its employees that could set the parameters is required.

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5. Communication: A policy cannot be effective until and unless it is efficaciously communicated to all its employees. Employees should be made well versed with the steps required in communicating their concerns internally.

Internal whistleblowing could be proved to be an effective policy but there are too many disadvantages too. Whistleblowers could face certain financial disincentives such as poor performance report by their supervisors, disqualification from the incentives, potential loss of shareholders value, inability to get new jobs because of poor performance report prepared by their supervisors. Apart from financial disincentives internal whistleblowing could lead to non financial disincentives too such as psychological pressure, excluding the whistleblowers from social gatherings, transfer of whistleblowers form one place to another. Culture should be developed in such a way, which make employees believe that it is safe and if such concerns are raised there should not be any risk. If there prevails any risk in the organisation, an important opportunity to detect and investigate the unethical practices. It will block the opportunity for organization to take any appropriate action and to prevent its integrity and reputation in the market. The most effective way to encourage the people working in the organization is to provide proper safeguards to their position. There should be clearly defined channels for internal reporting which will provide safe and substantial route to raise their concerns. Substantial internal control systems can lessen the probability of something going seriously wrong, although this risk can never be reduced to zero.

The company code of conduct provides by and large framework for the ethical behavior of its employees. Ethics-minded employees are inclined to adopta positive view and practice Whistle-blowing. A written internal policy on Whistleblowing is a complement to the code of conduct. It is also necessary for private firms to establish internal Disciplinary Action Committees to assure prompt and suitable correction in response to proven wrongdoings.

Fredrick D. Lipman, Whistleblowers: Incentives, Disincentives, and protection strategies (John Willey & Sons Inc., New Jersey, United States of America 2012)

Conclusion

The Whistle Blowers Protection Act, 2011 has an aim to curb the corruption and thus, giving exemption to the private sector from its ambit would definitely harm its object. However, giving exemption to the authorities that are dealing with the matters of national security would be necessary but considering the value of private organizations, they should not be exempted from the ambit of this act.

From the above discussion it is very clear that employees will look for their safety first, it doesn’t matter whether they opt internal or external procedure to raise the concern. It is advisable that organization should adopt the substantial policy which will help in eradicating the corruption and subsequently will be beneficial for the organization itself. Considering the recent cases like Satyam fraud case and Indian Premier League scandal, it is very clear that, either private sector should be included in the ambit of the act, or there should be substantial legislation dealing with this sector so that corruption would be eradicated form this sector too.

Private sector if included in the above mentioned act, would definitely resolve the problem, but on the same hand it will raise the question of “breathing space” that needs to be given to private organization working in the country. So in concluding remarks author would like to suggest that, to improve the organizational quality of private sector there should be a national legislation which should deal with substantial guidelines that needs to be adopted by private companies or existing legislation i.e. clause 49 of listing agreement and section 177 of The Companies Act, 2013 should be made substantial which should include efficacious guidelines and procedure that needs to be adopted by the companies by which organization can create an environment which will make employees to believe in their own strength and powers. There is a significant need to raise the standard of corporate governance in India, that will certainly help in bringing forth the stability, transparency and growth.