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NITIN KUMAR**S/O SITA RAM****R/O HOUSE NO. 89, NEAR PARK NO.-2****VILLAGE & POST OFFICE - SAMASPUR, DISTRICT GURGAON****ABSTRACT**

Corporate Governance is about promoting corporate fairness, transparency and accountability. It is the ethical practice of corporate administration where the interests of shareholders and other stake holders are always given high priority. Today, the term Corporate Governance is the buzzword in global business and regulatory communities. The growing interest in corporate governance practices around the world has also reached India, both from positive and normative perspectives. In a liberalising and deregulating country like India, corporate governance is all the most important. India now ranks as the tenth-largest economy in the world and third largest in terms of GDP on PPP basis. According to BRIC report (Global Paper 99), India has the potential to raise its per capita (US dollar) to 35 times in 2050 compared to its current levels thus making it one of the most attractive market for the FDI's and MNC's. India has been ranked in the seventh place in terms of corporate governance score in Asia Pacific region, says a report by global brokerage firm CLSA. In India, SEBI (Security Exchange Board of India) has taken up the task of building the regulatory norms for the smooth functioning of the companies. It has been suggested that the Indian approach of corporate governance is drawn from the Gandhian principle of trusteeship and the Directive Principles of the Indian Constitution. The present paper aims at reviewing the various developments and present framework in corporate governance in India.

KEYWORDS

Companies Act, 2013, Corporate Governance, SEBI, Stakeholders.

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INTRODUCTION

In simple terms, Corporate Governance refers to the set of laws, rules, systems, principles, process by which a company is governed. Corporate governance is based on principles such as conducting the business with all integrity and fairness, being transparent with regard to all transactions, making all the necessary disclosures and decisions, complying with all the laws, accountability and responsibility towards the stakeholders and commitment to conducting business in an ethical manner. Another point which is highlighted in the SEBI report on corporate governance is the need for those in control to be able to distinguish between what are personal and corporate funds while managing a company.

Only with better corporate governance rules and practices can higher levels of investor trust and confidence be achieved—and with this, a more robust economic development. The best practices of corporate governance are important not only for public or shareholders, but also for the very existence of the company itself. Unless a corporation embraces and demonstrates ethical conduct, it will not be able to succeed.

Now the question arises: why don't firms, markets, and countries adjust and voluntarily adopt better corporate governance measures? The answer is that firms, markets, and countries do adjust to some extent, but that these steps fail to provide the full impact, work imperfectly, and involve considerable costs. Although SEBI has been propagating the importance of Corporate Governance for a long time but there has not been much success. However the signs are more promising this time. A small but growing class of activist shareholders has emerged in India, which will add heft to the fight for greater corporate transparency. It has become a movement for survival and growth of Corporates in the era of globalization and liberalization. Following the recently amended companies law that put the spotlight on corporate governance issues, Sebi's latest directives can help raise the bar on corporate governance in India.

OBJECTIVES OF THE STUDY

- To understand the concept of Corporate Governance
- To analyse various developments and present framework in Corporate Governance in India.
- To examine the legal provisions on Corporate Governance in India.

RESEARCH METHODOLOGY

The study has been conducted with an objective to analyse developments and present framework in Corporate Governance in India. To have insight of the topic Corporate Governance secondary sources have been adopted for study. Various newspapers, Journals, Articles, websites and books have been accessed to collect the information for study.

CORPORATE GOVERNANCE

A basic definition of corporate governance, which has been widely recognized, was given in a report by the committee under the chairmanship of Sir Adrian Cadbury titled (the Cadbury Report):

"Corporate governance is the system by which companies are directed and controlled. The boards of directors are responsible for the governance of their companies. The shareholder's role in governance is to appoint the directors and the auditors to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board's actions are subject to laws, regulations and the shareholders in general meeting." ¹ Source: Cadbury report, European Corporate Governance Institute

"Corporate Governance is the application of best Management practices, Compliance of law in true letter and spirit and adherence to ethical standards for Effective Management and distribution of wealth and discharge of social Responsibility for sustainable development of all stakeholders." ² Source: ICSI definition of corporate Governance.

EVOLUTION OF CORPORATE GOVERNANCE FRMEWORK IN INDIA

In order to ensure the credibility of capital market and to facilitate the flow of investment finance of firms, there have been various reforms made through the Security and Exchange Board of India (SEBI), the Ministry of Corporate Affairs (MCA) and Government of India.

A. CORPORATE GOVERNANCE IN INDIA IS DERIVED FROM THE VARIOUS LEGAL AND REGULATORY FRAMEWORKS COMPRISING OF THE FOLLOWING: ³

- Companies Act, 1956 (Replaced by new Companies Act, 2013)
- Monopolies and Restrictive Trade Practices Act, 1969 (Replaced by new Competition Act, 2002)
- Foreign Exchange Management Act, 2000
- Securities and Exchange Board of India Act, 1992

- Securities Contract Regulation Act, 1956
- The Depositories Act, 1996
- SEBI Code on Corporate Governance
- Clause 49 of the Listing Agreement (SEBI 2005)

These laws have been introduced and amended, from time to time, to bring more transparency and accountability in the provisions of corporate governance. That is, corporate laws have been simplified so that they are amenable to clear interpretation and provide a framework that would facilitate faster economic growth.

B. COMMITTEE ON CORPORATE GOVERNANCE

Various committees have been formed with a view to reforming the Corporate Governance in India since 1990s. Some of the recommendations of these committees are highlighted below:⁴

- CII Code of "desirable corporate governance" (1998)
- UTI code of governance (1999)
- Kumar Mangalam Birla Committee on Corporate Governance (2000)
- Naresh Chandra Committee (2002)
- Narayan Murthy Committee (2002)
- J.J. Irani Committee (2004)

CORPORATE GOVERNANCE INITIATIVES IN INDIA

Faced with a fiscal crisis in 1991, the Indian Government responded by enacting a series of reforms aimed at general economic liberalization. The Securities and Exchange Board of India (SEBI)—India's securities market regulator—was formed in 1992, and by the mid 1990s, the Indian economy was growing steadily, and Indian firms had begun to seek equity capital to finance expansion into the market spaces created by liberalization and the growth of outsourcing.

The need for capital, amongst other things, led to corporate governance reform and many major corporate governance initiatives were launched in India since the mid 1990s, most of these initiatives were focused on improving the governance climate in corporate India. Like, Incorporation of SEBI with a stated aim of creating open and participative markets and its fair success in managing the markets in what has been clearly a very dynamic and challenging decade for them; the new Companies Bill with an explicit emphasis on promoting best practices in corporate governance and MCA's more active redefined role in it; RBI's notable management of the Indian banking sector in the last few years of widespread failures in the financial sector in other parts of the world.

1) CONFEDERATION OF INDIAN INDUSTRY "DESIRABLE CODE ON CORPORATE GOVERNANCE" (1998)

Desirable Corporate Governance – A Code In 1996, Confederation of Indian Industry (CII) took a special initiative on corporate governance – the first institutional initiative in Indian Industry. The committee submitted its report in April 1998 comprising of 17 recommendations such as board comprising of independent and nonexecutive directors, enhanced disclosure to shareholders, restriction on the number of directorships of listed companies, reporting of material information to the Board, formation of Audit committee etc Although this code was a significant step, it failed to make the desired change in the governance landscape primarily because of its voluntary nature.

2) SEBI KUMAR MANGALAM BIRLA COMMITTEE (1999)

The SEBI appointed a Committee on Corporate Governance on May 7, 1999 under the chairmanship of Shri Kumar Manglam Birla, to promote and raise the standards of corporate governance mainly from the perspective of the investors and shareholders and to prepare a code to suit the Indian corporate environment. The first formal regulatory framework for listed companies specifically for corporate governance was established by SEBI in February 2000, following the recommendations of Kumar mangalam Birla Committee Report. It was enshrined as Clause 49 of the Listing Agreement.

3) MCA NARESH CHANDRA COMMITTEE (2002)

The Naresh Chandra committee was appointed on August 21, 2002 by the Department of Company Affairs (DCA) under the Ministry of Finance and Company Affairs, to examine various issues of corporate governance relating to statutory auditor- company relationship, rotation of statutory audit firm or partners, appointment of auditors and determination of audit fees, independence of auditing functions, certification of accounts and financial statements by management and directors role of independent directors etc. The Committee submitted its report in December 2002. It made recommendations in terms of two key aspects of corporate governance: financial and non-financial disclosures, and independent auditing and board oversight of management.

4) SEBI NARAYAN MURTHY COMMITTEE (2003)

The fourth initiative on corporate governance in India is in the form of the recommendations of the Narayana Murthy Committee. This committee was set up in late 2002, by SEBI under the chairmanship of Mr. N.R. Narayana Murthy, in order to review Clause 49, and to suggest measures to improve corporate governance standards. Some of the major recommendations of the committee primarily related to audit committees, audit reports, independent directors, related party transactions, risk management, directorships and director compensation, codes of conduct and financial disclosures. These recommendations were reinforced through revising Clause 49 which came into effect from Jan 1, 2006.

5) MCA J.J. IRANI COMMITTEE (2004)

The review and redrafting of the Companies Act, 1956 was taken up by the Ministry of Corporate Affairs (MCA) on the basis of a detailed consultative process and the Government constituted an Expert Committee on Company Law under the Chairmanship of Dr. J.J. Irani on 2 December 2004 to offer advice on the new Companies Bill. The committee submitted its report in May 2005 covering a wide range of issues such as introducing the concept of new types of companies, introduction of e-governance facilities, detailed disclosure, definition and number of independent directors, Audit Committee independence, concept of Key Managerial personnel and investor protection.

In 2009, CII formed a task force headed by former cabinet secretary Naresh Chandra which came out with its report enumerating a set of voluntary recommendations with an objective to establish higher standards of corporate governance in the country.

In 2010, SEBI instituted amendments in the Listing Agreement to address disclosure and accounting concerns. SEBI also made some policy changes for better governance of listed companies such as disclosure of promoters pledging of shares, peer reviewed auditor, appointment of CFO by audit committee, disclosure of voting rights, mandatory e-voting facility.

In March 2012, a committee under the Chairmanship of Mr. Adi Godrej, Chairman, Godrej Industries Limited was constituted, by Ministry of Corporate Affairs to formulate policy document on Corporate Governance. In September, 2012 the Committee submitted its document, specifying seventeen guiding principles on corporate governance.

Additionally, the Institute of Company Secretaries of India (ICSI) came out with recommendations to strengthen corporate governance framework in the country in 2010. To achieve excellence in various secretarial practices for good corporate governance ICSI has issued following Secretarial standards:

- SS-1 Secretarial Standard on Meetings of the Board of Directors
- SS-2 Secretarial Standard on General Meetings
- SS-3 Secretarial Standard on Dividends

The institute has also taken initiatives to awaken Indian Corporate Sector in Corporate Governance. For this purpose, the Institute since 2001 is conferring 'ICSI National Award for Excellence in Corporate Governance' annually to the participating companies in order to promote corporate governance culture in Indian corporate sector.

The Accounting Standards issued by The Institute of Chartered Accountants of India (ICAI) serve the objective of reducing uncertainty and increasing overall efficiency and investor confidence.

FEW RECENT INITIATIVES

Several initiatives have been taken up recently, with the goal of promoting better corporate governance practices in India after several companies were found flouting rules on continuous listing requirements. Some of these are: ⁵

- New Companies Act – inducing good CG practices through self regulation, responsive legal framework based on shareholders' democracy; disclosure based regime; rational penal provisions with built-in deterrence and effective protection
- SEBI – Clause 49 – Appointment of Independent Directors, Audit committee, Code of conduct, disclosures of related party transactions, remunerations, compliance of accounting standards, certifications of CEO & CFO, Compliance Certification & Whistle-blower policy;
- Notification of Accounting Standards with a view to bring the disclosure norms in tune with the international reporting standards;
- Introduction of LLPs; transformation in the service delivery mechanism for transparency and certainty – low-cost, easy compliance;
- Launching of websites – www.investorhelpline.in and www.watchoutinvestors.com ;
- Setting up of National Foundation for Corporate Governance (NFCG) in partnership with Confederation of Indian Industry (CII), Institute of Company Secretaries of India (ICSI) and Institute of Chartered Accountants of India (ICAI).
- Empowerment of investors through the medium of education and information with the help of investor associations, VOs, NGOs, etc.;

COMPANIES ACT 2013 & CORPORATE GOVERNANCE

The introspection that followed the Satyam episode has resulted in some major changes in Indian corporate governance regime and the most important development is the Companies Act, 2013 (Replacing the nearly 60-year-old Companies Act, 1956).

The much awaited Companies Bill, 2012 was passed by the upper house of Parliament on 8 August 2013 and received president's assent on 29th Aug, 2013. It has the potential to be a historic milestone, as it aims to improve corporate governance, simplify regulations, enhance the interests of minority investors and for the first time legislates the role of whistle-blowers. The Act encourages good governance practices by placing the onus on independent directors to bring oversight in the functioning of the Board and protect the interest of minority shareholders.

The Companies Act, 2013 is a move by the government to strengthen the corporate governance framework in a country. The purpose was to simplify the law, provide principles covering all aspects of governance of corporate entities and a framework for their administration in a single legislation.

The 2013 Act contains a number of provisions which have significant implications on Governance of the companies. The Act stipulates enhanced self-regulations coupled with emphasis on corporate democracy and provides for amongst others, business friendly corporate regulation, e-governance initiatives, good corporate governance, Corporate Social Responsibility (CSR), enhanced disclosure norms, enhanced accountability of management, stricter enforcement, audit accountability, protection for minority shareholders, investor protection and activism and better framework for insolvency regulation and institutional structure. In the following section, we look at the corporate governance changes effected by the present Act.

KEY CHANGES AND DEVELOPMENTS IN THE COMPANIES ACT, 2013 HAVING IMPACT ON COMPLIANCE AND GOVERNANCE

- Enhanced disclosure norms;
- Higher Auditor Accountability;
- Easier Restructuring;
- Wider Director and Management Responsibility;
- Prohibition of insider trading;
- Inclusive CSR Agenda; and
- Emphasis on Investor Protection;

Market regulator The Securities and Exchange Board of India (SEBI) in February, 2014 came out with detailed corporate governance norms for listed companies providing for stricter disclosures and protection of investor rights which would be effective from October 1, 2014. Sebi's norms are aligned with the new Companies Act and are aimed to encourage companies to "adopt best practices on corporate governance".

KEY CORPORATE GOVERNANCE RULES ISSUED BY SEBI

- Enhanced disclosures about the remuneration of senior executives;
- Setting up of a system to evaluate the performance of independent directors and other board members;
- At least one woman director on the board of every company, Which was already mandated under the Companies Act;
- A compulsory whistle-blower mechanism in every company;
- Prohibition of stock options to independent directors;
- A separate meetings of independent directors;
- Seeking the approval of shareholders for all material related-party transactions through a vote on special resolution;

CONCLUSION

In this paper, we try to shed light on the Commitment to the highest standards of ethics and integrity, which should be an uncompromising principle of every corporation.

Unfortunately, corporate governance often becomes the centre of discussion only after the exposure of a large scam. We had the Harshad Mehta Scam, Ketan Parikh Scam, UTI Scam, Vanishing Company Scam, Bhansali Scam and so on. Corporate laws need to be simplified so that they are amenable to clear interpretation and provide a framework that would facilitate faster economic growth. The recent moves of India's capital market watchdog, Securities and Exchange Board of India (Sebi) to improve corporate governance norms of listed companies must therefore be seen as a welcome step in that direction. The new act 2013 is also seen as an important step in bringing Indian economy closer to global standards and in improving the ease and efficiency of doing business in India. However, there is still a need to focus on developing more appropriate solutions that will evolve from within and therefore address the India-specific challenges more efficiently.

India has one of the best Corporate Governance legal regimes but poor implementation together with socialistic policies of the pre-reform era has affected corporate governance. There is a need to speed up the process of implementation by strengthening existing institutions and creating new institutions, if required. In the years to come, corporate governance will become more relevant and a more acceptable practice worldwide. Thus it is necessary for the Corporates to ensure that they follow the law not just in letter but in spirit also as the true value of Corporate Governance lies beyond compliance.

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