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Corporate Governance in India: Evolution, Legal Framework and Challenges for the Future

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ABSTRACT
This article describes the Indian corporate Governance system and examines how the system has both supported and held back India's economic growth. The country's legal system provides some of the best investor protection in the world but enforcement of the same is a major problem with growing corruption and over-burdened slow courts. The securities and exchange board of India has a regulatory mechanism to ensure fairness, transparency and good practice. Most importantly, the Corporate Governance scenario in the country has been changing fast over the past decade and if this trend is maintained, India will reach the summit of Corporate Governance which is necessary to sustain its impressive current growth rates. By this paper, the author intend to examine the concept of Corporate Governance in India with regards to the legal framework under the Companies Act 2013.

KEYWORDS: Corporate Governance, Companies, Companies Act 2013, SEBI guidelines, Government policy and regulations, Financial markets, Stakeholders and Board of Directors.

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I. INTRODUCTION

The Indian economy in the 20th century witnessed a very glossy time due to privatization,globalization and liberalization. The existence of Corporate Governance in India and across the world was the result of capitalization, growing corporate culture in the economy and business ethics due to which India for the first time was with the world economy for product, capital and sustainability of its economy.

Corporate Governance is perhaps one of the most important factors in an economy which has a direct impact on the profitability, growth and the sustainability of a business. It is a multi-tiered process that is treated as an organization's culture, its policies, its governing values and ethics constituted of the people running the business and the process by which it deals with various stakeholders. Corporate governance can be defined as the structure and the system of control by which the managers, Board of Directors become responsible for all the stakes of the stakeholders present in the organization be it internally or externally. In other words all the mechanism and the processes by which the organization governed is collectively called Corporate Governance. An organization which is run by a number of participants such as the board of directors, shareholders, auditors, managers, etc. is bound to have a governance structure and principles which includes rules and regulations for making any kind of decision in corporate matters. Corporate governance is the need for every organization due to fact that it doesn't allow the organization to go through a conflict of interest between its shareholders and the managing teams and other stakeholders. Hence, it is the process through which an organization's objectives are framed and used in the social, regulatory and market environment. This also includes monitoring the legal policies, the ongoing practices, the actions and the decision made by the organization.

The relationship between Corporate Governance and firm's performance is a well-researched topic in almost all the developed countries. However, we also see that in the past few years this has also been well discussed and debated in the context of all emerging countries such as India, in the light of the recent corporate collapses and scams. The corporate collapses resulting from a weak mechanism and an ill structure of Corporate Governance which is to be highlighted and the need to improve the governance structure. The failure in preventing these scam has initiated many debates on the effectiveness of the current Corporate Governance rules, principles and all governing ethics which forms the entire structure.

The firms with weaker governance have to face more agency problem and the managers of such firm gains more private benefits. The agency problems suggest that the Director of the firm is not likely to be careful with other people's money as their own fund. It also further states that the core purpose of corporate governance is to provide assurance to the shareholders that managers are working towards achieving the outcomes as the shareholder's interest. This also establishes a strong relationship between the success of the organization and the shareholder's satisfaction.

One of the major economic developments of this decade has been the recent success ofIndia with its growth rates averaging in excess of 8% for the past four years and the stockmarket has shown a rise over three fold in as many years and a steady inflow of foreign investment. Thus, the long term sustainability of the India's economic success depends critically on the state of Corporate Governance in the country.

II. HISTORICAL BACKGROUND AND THE NEED IN INDIA

In the year 1996 due to the economic liberalization and the regulation of businesses and industries the concept of corporate governance immerged in India. There was always a need for accountability of companies/organization to their respective shareholders and customers. Hence, the report of a company called Cadbury on the financial aspect of corporate governance in United Kingdom rose the debate of having corporate governance in India.

In the year of 1947, India had well-functioning stock exchange markets, the manufacturing sector, a developing banking sector, and also a well-developed convention of western practices derived from the Britishers. From 1947 to 1991, the Indian government perused certain policies in the favour of the public when the state nationalized most banks and became the principal provider of debt and equity capital for private firms.

The government agencies that provided capital to private firms were assessed on the basis of the amount of capital invested rather than on their return on investment. Private companies who provided debt and equity capitals faced serious hindrances in assessment of over sight over managers due to long delays in judicial proceedings and difficulty claiming demands in bankruptcy.

As the Indian government faced financial crisis in 1991, it responded by enacting a series of reforms aiming at general economic liberalization. The Securities and Exchange Board of India(SEBI) which is also known as India's security market regulator was formed in 1992 and the Indian economy which was growing steadily had already begun to obtain equity capital to financial expansion into the market spaced created by the method of liberalization. The first major initiative was undertaken by the Confederation of Indian Industry (CII) which is also known as India's largest industry and business association who came up with the first voluntary code of corporate governance in 1998.

The second major corporate governance initiative in India was undertaken by SEBI in 1999 to promote and raise the standards of good corporate governance in the country. This committee specifically emphasized on independent directors in discussing code recommendations and it also recognized the importance of audit committees. In the year 2000, the SEBI board accepted the recommendations of the Birla committee which were later enforced as Clause 49 of the Listing Agreement of the Stock Exchanges which is regarded as one of the major reforms in Corporate Governance of the country.

III. LITERATURE REVIEW

A comprehensive study by Chakrabarti, Megginson and Yadav has observed the evolution and transformation period of corporate governance in India and examined the system which both supports and holds back India's ascent to the top ranks of the world's economies. The authors of this particular study found that in the framework of the country's legal system provides the investors, some of the best investor protection in the world. They also observed that corporate governance has a major lacuna that is the enforcement of the same and the slow rate of functioning of the over-burdened courts.

Simultaneously it also observed that the ownership of small and medium size enterprises remains concentrated at a less margin which includes only few people and hence the family and business groups continue to be the dominant ones in the entire market system. However, the authors have also found that in India the corporate governance does not compare unfavorably with any of the major economies in the world.

Gupta and Parua aimed to find out the compliance of the corporate governance codes by the private sector Indian companies which are listed in the Bombay stock Exchange. The data for 1245 companies were taken into account for the year 2004-05 and the annual reports of the corporate governance of these companies were selected for the study.

The compliance rate at which the corporate governance codes functioned in these companies was first tested for each company. Furthermore, the rate was taken into account and the variation among the companies was also tested. It was observed that more than 70 percent of the companies comply with 80 percent of the corporate governance codes. The authors further nothing more and concluded their findings form the annual reports of these companies in which the governance was truly seen and observed.

An important study by Dharmapala and Khanna recognized the importance of enforcement in corporate governance reform in all types of companies and studied the major impact of the introduction of Section 23E of the Securities Contracts (Regulation) Act, 1956 in the year 2004 which therefore inflicted large penalties of Rs. 25 crore for non-compliance with the listing agreement containing the corporate governance norms.

A sample of four thousand firms of the period between 1998-2006, was used for this study which revealed that there is a statistically and large positive effect which amounts to over 10 percent of the firm value.

The study also showed positive correlation between the introduction of the enforcement of the corporate governance norms and the market value of these companies. It also suggested that enforcement is important to the growth of stock markets.

Jayanth Varma, in his paper argue that the corporate governance problems in India are very different from those found in other developed countries of the world and it would need an authentic model for corporate governance, which has a clear significant focus on the economy. The governance issue in the developed countries is essentially enforcing the discipline of the management that has ceased to be accountable to the owners.

Against this problem in the Indian Corporate sector is that of maintaining the discipline of the dominant share holders who are also the block holder and also protecting the minority shareholders. We see that the author in his paper has stated that in the Indian context that it is not possible to resolve the conflict between the dominant share holders and the minority shareholders.

Pratip Kar, explored the vast culture of corporate governance in India by calling a tension to the three dynamics where it was observed the clash between the Indian cultural Ethos and the norms for good governance of the developed countries which are the strongest and they promote the actions of the large shareholders. The author also suggested that the best practices which are indeed seen in the western countries need to be adapted to be in line with the corporate ethics with other countries in India.

IV. PUBLIC SECTOR UNITS (PSUS)

The governance of the PSUs structure and back to the days when they were completely owned bythe government and were near mere at an extension arm of them, these structures allowed theadministrative departments in the concerned ministry to exercise and have complete control over the functioning of these enterprises in the market structure. It is now very much evident to observe that these structures are incompatible with the efficient and successful operation of the PSUs in an increasingly competitive and deregulated economy. These issues are also discussed and well researched in the in the last two decades and extensively worked upon by many economists.

It is interesting to observe how totally irrelevant the board really is in the governance of the PSUs today. The board has no role to play in any of the market structures whereas in the other developed countries we see that the reformers have always taken an extra step to strengthen the board. In India, the board has a very little to say in the selection of the CEO or in the composition of the board. The government is also seen as the majority shareholder and the government also takes part in these decisions through concerned ministries with the help of the Public Enterprises selection board. The board however cannot ask the CEO to leave the PSU or vary the individual’s compensation package. As far as audit is concerned we again observe that the dominant role is that of the Comptroller and Auditor Genera (CAG). There is very little that an audit committee would ever add to what the CAG does.

In many PSUs, we also see that the board is still very powerfully on people because the delegation of financial and operating powers to the CEO is very limited and restricted. This does not however make for an effective board because it enforces the board into managing rather than directing. There is a clear difference between directing and managing and the Board should have its concrete function as directing.

However, the current governance structure allows the Board to have a high role in obstruction it at all it chooses by opposing the CEO on operational matters of the market industry. The Board is still not allowed to have a constructive role in meaningful strategic decisions because they are all mostly taken by the dominant shareholders through the concerned ministries.

The more interesting issue which has yet not been received much attention so far is the potential that exist for conflict between the dominant shareholders and the minority shareholders which can also be called the public shareholders. There was a very well-known case which was observed few years ago where a dispute of several billion rupees arose between two PSUs. It was seen that one of these PSUs was completely ruled by the government while in the other there was a public shareholding. The government sided with the completely owned PSU and forced the other PSU to pay off the disputed amount and the impact on the earnings of the concerned PSU was seen to be quite substantial. There is a serious corporate governance problem in the resolution of the dispute in this matter because without either instruments and negotiations or a resort to judicial process, the PSU was forced to pay off the disputed amount. A minority shareholder could have recorded it as a simple case of enrichment of the dominant shareholder at the expense of the minority shareholders.

As we see such cases, in PSUs, the minority stakes of the government divestiture gathers pace and conflicts of this kind would become more frequent and more serious.

V. MULTINATIONAL CORPORATIONS (MNCS)

The government regulations have required most MNCs in India to function through subsidiaries which are not hundred percent owned by the parent. In the 70s, we saw that the government enacted a law limiting foreign ownership in most of the industries to the 40% while allowing 51% in highly technological scenarios. This law was liberalized in the 90s and now 51% is permitted in most industries while it is also seen that, 74% or even a total of 100% ownership is allowed in many cases. These regulations have a direct impact on corporate governance of the country where problems in several key areas are seen.

It was observed in the 70s that the MNCs were forced to issue shares to the Indian public to comply with the law. The controls that then existed on pricing of public issues meant that these issues were as substantial discounts to the market price. Again, in the 90s when the law permitted higher foreign ownership these MNCs raised to the foreign state by issuing shares at very deep discounts to the market price. This of course made a large loss to the minority shareholders. It was observed in one particular case where shares were issued to the parent at less than one tenth of the market price which was analyzed in detail later. When the calculations for the above was done with respect to the foreign net gain of the parent after compensating for the loss that it suffered, the total loss was amounted to two hundred million dollars. There are other similar share issues by MNCs which are made with the explicit consent of the shareholders in general meetings. The parent companies which the dominant share holding are able to get the resolutions passed with impressive majorities.

In fact when the government introduced regulations to prevent such substantial concerns the MNCs revolted against what they called an assault or a shareholder democracy. Another corporate governance problem starts arising when the foreign parent has two subsidiaries in India in one in which it holds a higher stake while in other it holds a smaller stake. The manner in which the MNCs structure its business in the market system in India between these two subsidiaries is always conflict with problems as far as the minority shareholder is concerned. There have been certain allegations in some cases where it was observed that the most profitable brands and business in the Indian market structure has been transferred from the long established 51% subsidiary to the newly established 100% subsidiary at very low prices. This implies a big loss to the minority shareholders of the 51% subsidiary who have all contributed equally to the investments that were made in the past to build up the market structure of the MNCs to their current dominant established position.

VI. INDIAN BUSINESS GROUPS

The situation in the category of Indian business groups is more complex than in the category of the PSUs and the MNCs where there are dominant shareholders. In the Indian business groups the concept of dominant shareholders is more unstructured for two reasons. First, the shareholding is spread across several friends and relatives as well as corporate entities. It is sometimes difficult to establish the total holding of such groups. Second, the aggregate of such group holdings of all these entities are taken together which is into a majority stake. In many cases it is also seen that the promoter may not even be the largest single shareholder. The promoters become the dominant shareholders by the method that is a large share of the shares is held by the state owned financial institutions which have played a passive role since decades. Passively, there have been few cases where they are involved in corporate governance issues, where they are widely seen as acting at the behest of their political masters and not in pursuance of their financial interest. As the financial institutions play a passive role, the promoters are seen very effective as dominant shareholders and they are able to get the approval for all their actions from the general body.

This also in an implied manner also allows the promoter to play the passive role and also be the dominant shareholders part in the PSUs and MNCs structuring of the business market system and transfer assets between group companies and preferential allotment of shares to the dominantshareholder and also payment of services for closely held group companies. Over many decades, it has been observed that a large parallel black economy has developed in India where transactions are carried out in cash and are not recorded in the books of accounts. Some industries were at one stage so strong to be constructed by the black economy that it was almost impossible to carry on business without using black money. Though there have been several exceptions, many Indian business groups have finally listed their lure of black money. There have been many views on black money as it is primarily seen as a means of cheating the government. The fact that it is not accounted for in the company account books it also means that it is cheating the minority shareholders. Quite often when a company records losses in its accounts box, the true picture of the business is seen to be much more effective because of the profits which are coming in the form of black money. There is a standard joke among many bankers in India that there are many financially sick companies but there are no financially sick promoters.

The situation in these business groups or companies is so strongly absorbed that in the term of the great economist, Adam Smith, wrote over two centuries ago about East India Company that, it was seen frequently, a man of great fortune and sometimes even a man of small fortune is willing to purchase a thousand pounds share in India stock which merely is for the influence which the individual expects to acquire by the vote in the court of proprietors. It gives the individual the share though not in the plunder but yet in the appointment of the plunderers in India.

In the recent years it is seen that the tax reforms have coupled with economic liberalization which have shifted the balance away from the black money transactions. This is because firstly, the tax rates are now lower and also because secondly, increasing scale economies, are making it more difficult to operate with informal organizational market structures and financial arrangements that curtails the black money. It is hoped that tax reforms, deregulation of the governance and competition in the market would gradually reduce the role of black money to a point where it is only seen as an issue of major corruption in the system.

Another important corporate governance issue is that of mergers of companies in the same field. There have been several and many instances where the valuation of two different group companies for the purpose of merger have been observed to be partial in favour of one of the companies which is seen as partiality in the market structure of the Indian economy. There have been allegations allegedly in many cases that the promoters had secretly built up large positions in company with cheap means of acquiring shares of the merged company. The unstructured nature of the promoter group makes it immensely difficult to verify these allegations. Mergers are subjected to be approved by the shareholders of both the companies as well as from the judicial review.

VII. SMALL AND MEDIUM SIZE ENTERPRISES IN INDIA

The small and medium sized enterprises sector in India has and continues to play as an important role in the India's economy's growth success story. In many other countries this sector consists largely of various other groups but in in India we see that this sector comprises of the family enterprises. In India there are various surveys conducted which measures to show how well the formal and legal environment directly supports and regulates these businesses particularly the small and medium- sized enterprises. There have been various research that have indicated that small firms operate in such a market system which are covered almost completely with informal mechanisms which are based mostly on trust, reputation, image, and with little Direction to the legal system. The owners of this business also deal with widespread corruption. The owners of such business are also legally and socially seen to be involved with the black money corruption.

Over 80% of such firms are surveyed and they need a license to start a business but it is seen that for about half of them it was very difficult to obtain it. Government officials are mostly the problem, which are usually solved and get through the entire process study for the payment of bribes or buy the acknowledgement of the friends of government officials as negotiators. We also clearly see, networks and connections are critically important to negotiating the government structure. As for the conducting business, legal concerns are far less important than the unwritten codes which are operated on a daily basis usage in the Indian market structure. There are cases of defaults where the primary concern is the loss of reputation which is also closely followed by the loss of the company, the fear of legal consequences is the least concern of such small and medium sized enterprises sector in India.

About half of such firmsdo not have a regular legal adviser and also do not have lawyers. For mediation in a business dispute or for enforcement of a business contract there should be lawyers or legal advisers in the enterprise. There have been serious credit constraints from this sector resulting in the ongoing informal finance in the market structure of the small and medium sized enterprises. Relationship-based systems, are a characteristic of the market system of Asian countries which are usually far more important for these companies rather who have a formal relation with the system of corporate governance and contracts which are the most important proceedings in these companies as they have in Western Countries. The small and medium size enterprises sector is marked by strong informal look like family ties and trust. Legal remedies are present with the party but are very less important and we see that there is more number of informal mechanisms this sector present in the Indian market structure as an eminent functioning for the growth of the economy of the country.

VIII. SCAMS THAT OCCURRED IN INDIA

1. Satyam Scam:

In the year 2009, a Corporate scandal occurred which affected an Indian company called Satyam Computer Services. In this scandal the chairman of the company Mr. Ramalinga Raju admitted about the manipulation of company's accounts. This corporate scandal was estimated to be approximately of Rs.7000 crore. An e-mail was sent to SEBI by Ramalinga Raju where he confessed to have manipulated the cash and bank balances of the company.

He also said in an interview that Satyam, being one of the largest IT company in India had the leveraging capacity to raise Rs. 15,000 to Rs. 20,000 Crore by just maintaining a cash balance of Rs. 4000 crore. Later in the year 2015, Ramalinga Raju was convicted with 10 other members. A jail term of 6 months was given to Ramalinga Raju and three other members by Serious Fraud Investigation office (SFIO) in the year 2014. The auditors like Price Waterhouse Coopers (PWC) had really tough time auditing Satyam Computer Service.

2. Ricoh Case:

The Ricoh scam was almost a replication of the Satyam Scam in the terms of accounting fraud and the fraud of stock prices and that too without any promoter being the highlight. Only a couple of degenerate administrators were adequate to destroy the framework with the typical disappointment of the primary controlling foundations, for example, the reviewers, credit rating agencies, free executives of notoriety, boards of trustees of chiefs including the incredible review advisory groups kept an eye on by autonomous executives.

3. ICICI Bank Scam case:

It was the job of the Board in speedily giving a clean chit to its CEO without the consequences of an autonomous examination released in the public domain in an evident instance of supposed nepotism, and its refusal to take any inquiries on the issue.

4. Kingfisher Airlines and United Spirits Case:

It was altogether apparent that assets had been moved from United Spirits Ltd. (USL) to finance Kingfisher, that United Breweries (UB) Holdings was used as a channel for raising loans and offering them to his gathering, that inter-corporate credits were given to related gatherings without the Board's endorsement, accounts were improperly communicated, reviews were staged to be overseen, and so on during the period Mr. Vijay Mallya was answerable for USL**.**

IX. EVOLUTIONOF CORPORATE GOVERNANCE LAWS

Prior to Independence and four decades into Independence

India's association or the corporate entities were always bound by the colonial guidelines which followed them and a large portion of the principles and guidelines which were always taken into account was acting like the impulses of the British employers. The companies act was in acted in 1866 and was amended in 1882, 1913 and 1932. The partnership act was in acted in 1932. The enactments had a managing organisation model as a focus on the business firms which were into contract with business entities and which were to be managed later. This period was an error of miss use or abuse of resources by the obligation of managing specialist because of the unprofessional proprietorship. Soon after the independence there was an interest among the industry list for production of a lot of essential items for which the Indian government directed its fair prices. It was at this very time. When the tariff commission introduced itself and the Bureau of industrial costs and prices were set up by the government. It was also at this very time when the industries development and regulation act and the companies act were introduced into the legal system in the 1950s. If we see, 1960s was a time of setting up of heavy industries which acted as a routine affair and the period between the nineteen seventies to 1980s was the time of cost, volume and profit which were vital piece of the accounting activities.

Coming of Age

India has always been looked upon by the worldwide organisations with the objective of making inroads into untapped new markets. There are dynamic firms in India which made an endeavour to put the frameworks of good corporate administration in place from where the entire market structure can cooperate. However, the scenario was not very encouraging and the promoter centric and good governance norms were given away for the sake of convenience or comfort of the promoters.

Therefore, the need for realising the governing of corporates more effectively and professionally which is also going to make them globally competitive have been discussed a number of times and instances prompting the corporate advancement.

The fundamental code for corporate administration was proposed by the Chamber of Indian Industries (CII) in 1998. The exact definition which was proposed by CII was that the corporate governance manages laws, methods, practises and understood principles that decide and organisations capacity to manage administrative choices which are specifically the investors, banks, clients, the state and also its representatives.

X. REFORMATION IN CORPORATE GOVERNANCE

First Phase – 1996-2008

This stage was also known as the primary or the first stage of India's corporate governance which completely focused at making audit committees and making the boards more independent,focused and powerful which can supervise the management and can lead shareholders which include institutional and foreign shareholders or investors in the management.

(a)CII – 1996

The CII in the year of 1996, took up the first institutional initiative in the Indian industry which took a special step on corporate governance. The aim was to promote and develop a code for companies to be in the public sector or private sector financial institutions or banks and it was for all the corporate entities. The steps which were taken by CII was addressed with the public concerns regarding the security of the interest and concern of the investors which mainly focused on the small investors and the Encouragement oftransparency inside industry and business went about as a need to approach towards theinternational standards of disclosure of information by corporate bodies and through the entirety of the means the point was to construct an elevated level trust in business and industry from the open's perspective.

The final draft of the squad was introduced in April 1998.

(b) Report of the Committee by Kumar Mangalam Birla on corporate governance

Mr. Kumar Mangalam Birla who is also an industry list was appointed by SEBI as the chairman to provide a comprehensive detail of the concerns related to insider trading to secure the rights of several investors. The suggestions insisted on listing the companies for initial and continuing disclosures within specific dates, through the listing agreement. The companies were supposed to disclose their annual reports separately and report on corporate governance and all the steps that they have taken to comply with the recommendations of the committee. The objective was to enable the shareholders to know where the companies have a stand and in which they have invested with respect to specific initiatives which were taken to ensure a growth in corporate governance.

(c) Clause 49

This very committee realise the importance of the auditing body and made many specific suggestions related to the constitution and function of the board audit committees. At that time, SEBI reviewed its listing contract to include all the recommendations which were put forward. These rules and regulations were listed in clause 49, a new section which was enforced of the listing agreement which came into force in phases of 2000 and 2003.

(d) Report of the advisory group on corporate governance on International Financial Standards and Code in March 2001

The advisory group tried to compare the corporate governance in India with the international best standards and also advise to improve the corporate governance standards in India through which the market structure of India with respect to the small investors and the shareholders could improve in a competitive manner

(e) Report of the group of directors of banks in April 2001

The directors of banks and financial institutions was further observed by reserve bank to review the corporate governance which were present in all these institutions and the supervisory role of boards of banks and financial institutions to get the feedback of all the activities of the boards compliance, transparency, audit committees, etc. and also to provide suggestions for the making or the role of all the board of directors which would make the entire structure to be more effective with the perspective to mitigate or reduce the risks.

(f) Report of the Committee by Naresh Chandra on Corporate Audit and Governance Committee in December, 2002

This committee took the charge of the task to analyse and suggest all the changes in different areas like the statutory auditor and the company relationship for the procedure of appointment of all the auditors and the determination of all the audit fees and also the restrictions if they are required for all the non-auditory fees. It also provided measures to ensure that the management in the companies were put forward with a true and fair statement of all the financial affairs of the said company.

(g) SEBI Report on Corporate Governance (N.R. Narayan Murthy)—February 2003

To improve the governance standards SEBI constituted a committee to study the role of all the independent directors, the related parties, all the risk management, the directorship and the director compensation with respect to the codes of conduct and financial disclosures.

(h) (Naresh Chandra Committee II) Report of the Committee on Regulation of Private Companies and Partnerships

As there were large number of private sector companies who were coming into the picture so there was a need to revisit the law again. In order to build upon the legal framework this time, the government made a committee in January 2003 to ensure a scientific and rational regulatory environment. The main focus of this report was on the Companies Act, 1956 and the Partnership Act, 1932.

(i) Clause 49 Amendment—Murthy Committee

In 2004, SEBI further brought many changes in clause 49 with the accordance of the Murthy committee's recommendations. The implementation of these changes were postponed till 1st January 2006 because of the lack of preparedness and the industry resistance to accept such wide reforms.

The Murthy report, is directly responsible for numerous changes in clause 49. The requirements of governancewith respect to corporate boards, audit committees, shareholder disclosure and CEO certification of internal controls which constitutes the largest transformation of the governance in the Indian companies.

Second Stage of Corporate Governance after the Satyam Scam

India's corporate entities experienced a significant upset in January 2009 with vandalizing all the revelations about board failure and the gigantic fraud in the financials of Satyam. The Satyam scandal also served as a catalyst for the Indian government to rethink about the corporate governance, all the disclosure and accountability of the mechanisms which operate. The industry response shortly after the news of the scandal broke and the CII started examining the corporate governance issues which were arising out of the Satyam scandal. In the year of 2009, a CII task force was put forward for the corporate governance reform recommendations.

In this very report the CII emphasised on the unique nature of the Satyam scandal noting that Satyam is one of the incidents where the Overwhelming majority of corporate India is well run and well regulated and does business in a legal manner. Furthermore to the CII, the chamber of commerce of IT BPO industries in India along with the National Association of Software and Service Companies as the Premier trade body also formed a corporate governance and ethics committee which was further chaired by N.R. Narayana Murthy, one of the founders of Infosys and a leading figure in the Indian corporate governance reforms and the committee issued its recommendations in 2010.

XI. LEGAL FRAMEWORK ON CORPORATE GOVERNANCE

1) **The Companies Act, 2013-** Many high-profile corporate governance failure scams like the stock market scam, the Ketan Parikh scam, the Satyam scam which were severely criticised by the shareholders called for a need to make corporate governance in India as transparent as it greatly affects the development of the entire country. The Indian Companies Act, 2013 introduced some progressive and transparent process and method which benefits the stakeholders, directors as well as the management of the companies. Several types of investment advisory services and proxy firms provide information to the shareholders about the regulations that are recently introduced which mainly aim to improve the corporate governance in India. Corporate advisory services are offered by advisory firms to efficiently manage all the activities of the companies to ensure the stability and the growth of the business and to also maintain the reputation and the sustainability for customers and clients. The top management that consist of the board of directors is responsible for the governance. The directors must have an effective control over all the affairs of the company which is in the interest of the minority shareholders. Corporate governance ensures strict and efficient application of the management practises with the legal compliance which are continuously changing in the business scenario in India.

2) **SEBI guidelines**- SEBI is a governing authority having jurisdiction and powers over all the listed companies and which also issues regulations rules and guidelines to all the companies for the protection of investors and the minority shareholders. It issues guidelines which are advisory to all the corporate sectors which promote and effective control over all the corporate affairs of the country. The board of directors and the current corporate scenario follow the revised guidelines of the SEBI.

3) **Standard Listing Agreement of Stock Exchanges**- This is for those companies whose shares are listed on the stock exchanges. Corporate governance is guided by clause 49 of the listing agreement before the introduction of the Companies Act, 2013 and also as per the new provisions of SEBI which has approved certain amendments in the listing agreement to improve the transparency in transactions of the listed companies and also giving a bigger part to the minority stakeholders in influencing their decision in the management.

4) **Accounting Standards issued by the Institute of Chartered Accountants of India (ICAI) -** ICAI is an autonomous body which issues accounting standards and provides guidelines for the disclosures of financial information. According to the Section 129 of the New Companies Act provides that the financial statements given should be true and have a fair view of the state of affairs of the company which will comply with the accounting standards notified under Section 133 of the New Companies Act.

5) **Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI) -** ICSI is also an autonomous body which issues secretarial standards in terms of all the provisions of the new companies act. The ICSI has issued secretarial standard on meetings of the board of directors and also secretarial standards on general meetings. The secretarial standards have come into force from July 1, 2015. Section 118 (10) of the New Companies Act, provides that every company should observe secretarial standards specified by the ICSI with respect to general and board meetings.

XII. RECENT DEVELOPMENT AND FINDINGS

Liberalisation of the Indian economy had begun in 1991 and since then we have witnessed a wide changes in both laws and regulations and also saw a major positive transformation of the corporate sector and the corporate governance in India. The establishment of the Securities and Exchange Board of India in 1992 and its gradual and growing impairment in the market sector has been the most important development in the field of corporate governance and investor protection in India. The concerns about corporate governance which had arisen from the corporate scandals, coupled with the need of opening up the corporate sector to the forces of competition and globalisation which gave rise to several investigations into ways to fix a corporate governance situation in India. One such attempt was the association of Indian industry code for desirable corporate governance developed by a committee chaired by the leading industrial chairmen.

Simultaneously with these initiatives by the SEBI the Department of Company affairs and the Ministry of finance of the Government of India also began various improvements in corporate governance. These efforts were aimed at reforming the corporate structure of India which was clearly seen with the Companies Act, 2013. The development was seen by the enactment of clause 49 which pays a special attention to the composition and functioning of the audit committee, which requires at least three members on it with an independent chair and with two-third of it is made up of independent director and having at least one financially literate person serving the clause which also talks about the role and powers of the audit committee and stipulates the minimum number and the intensity of the quorum at the committee meetings.

Executive compensation in India which was freed from all the strict regulation by the Companies Act in 1994 is also another area of corporate governance that received much attention among researchers, scholars and economists in India. Managerial compensations in India are also the two components of it which is salary and performance-based commission as well as retirement and another benefit.

It was also observed with regard to the public sector governance that even when the country stays in the hands of the government partial privatisation has a positive impact on profitability, productivity and in the investment sector of the public sector enterprises. The monitoring role of the markets is the sole responsible factor in this case.

XIII. CONCLUSION

This article outlines all the salient features of the Indian corporate governance system. While on the paper the Indian legal system provides an off the highest levels of investor protection in the world but in the reality it is very different with slow and significant corruptions. Much of the Small and Medium size enterprises sector in India, display relationship based informal control and governance Mechanism which are in India inhibiting financing and keeping the cost of capital at levels higher than necessary. Even though India ranks high on the ease of getting credit and has a well-functioning banking sector but one of the lowest proportion of non-performing assets.

Corporate Governance remains as an unfinished agenda in India. Improving corporate governance standards had been a matter of priority for Indian policymakers for the past two decades. While scandals heightened the awareness of corporate governance issues and forced the government to protect public interest and restore the confidence in the market, corporate governance has shown economic growth and the desire to remain competitive, international capital flow and growth of global financial markets. Laws have been strengthened and regulations have been stricter to prevent further corporate misdeeds. The compliance regime has been tightened and the criminal and administrative penalties have been tough and. It can be stated that awareness of the importance of good corporate governance is now reasonably widespread in landscape. Still in the recent times we see that corporate misdeeds have continued to stop the country and make headlines in every few months each time in a different manner. This only reinforces the view that many experts hold that strong laws and tough regulation do not offer a complete solution to all the corporate governance issues. There are several reasons why enforcement of corporate governance is still an unfinished agenda in the country. India has attracted international best practices but the implementation on the outside of its natural context has remained problematic. In many respects, extreme measures have been introduced as the cap on number of drop down subsidy Aries. There are many extreme measures conflict with ease of doing business and discontent in the corporate world. The regular competition has fragmented corporate law enforcement. Criminal sanctions provide strong deterrent value but are subjected to procedural delays of the court system because of the high burden of proof that is demanded. The class action of the regime is under developed. And only stringent legal and regulatory regime for corporate governance can also be counter-productive.

There is a strong momentum for continuing reforms and the monumental changes that have already taken place have paved the way for making more changes to come. All these positive developments should arguably help Indian industry ensure their financial gains and reach their investors failed and transparently enabling it to sustain its new-found prosperity and growth.

XIV. SUGGESTIONS

While the efforts of the government in this area deserve an applause it also might be useful to pause think and go back and start from the basics, after wiping everything clean. Some grains of suggestions are stated below in brief –

1. The quality expected from a director needs to be thought for a while where the corporate governance system to work, the directors must possess three fundamental qualities which are integrity, courage and diplomacy.In many papers and with the experience of some economist it is shown that directors are unable to muster courage and stand up to face the queries by the boards. There are many directors who do but there are very less in this case and it is high time that the carriages included as the core virtue expected from a director.

Diplomacy is also essential. No matter how brilliant a brave direct maybe the director will not be effective if you cannot communicate.

2. The importance of a judgement by a director needs emphasis. The formulaic compliances with standard which has to be torched by the corporate governance debate means that a director should be able to judge as to when to take his or her reputation at stake on the issue and resign if necessary. Judgement, courage and conviction to do the right things are vital particularly women while navigating complex and uncertain Territory.

3. The gatekeepers of the company such as the auditors, accountants, legal and financial advisers and many others play an important role in the corporate governance. There have been many past scandals which have constantly raised questions regarding the extent to which these gatekeepers are fulfilling their promises. This gatekeepers are also been seen as negligent and even complicit in corporate miss deeds. There is a need to encourage greater professionalism and hold them accountable for their actions as corporate advisors.

4. Facilitating the shareholder communication with the board is the key. There is a need to provide to contact a person with whom shareholders may discuss their issues. In many western countries it is seen that there is now an investment relation Officer reports directly to the board.

5. There is a need to study the role of culture in societal issues in corporate governance.

6. India has paved the way for scope of mediation in company law disputes. We see mediation is cost-effective and less time consuming as compared to the litigation method in this country. The use of mediation should be in courage in disputes that require creative remedies.

7. Reforms in bankruptcy and related laws would bring the disciplining power of the deaf holders to bear upon all the recalcitrant managements.

8. The disclosure of information is the prerequisite for the minority shareholders or for the capital market to act against the corrupt managements. The regulator can enhance the scope, frequency, quality and the sustainability of the information which is being disclosed.

A deeper look into these challenges with the help of not just lawyers and corporate governance experts, but also social scientist, psychologist, philosophers, researchers and economist can help complete the unfinished agenda of corporate governance implementation in India.

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