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"Corporate Governance in India: Role Legislation can play"

***Anuniti Pandey**
Amity University, Rajasthan

****Gaurav Sanghi**
Amity University, Rajasthan

Abstract

The expression "governance" implies control i.e. controlling an organization, an association and so forth and corporate governance is representing or controlling the corporate bodies i.e. morals, values, standards, ethics. Corporate administration helps in building up a framework where a director is showered with obligations and duties of the issues of the company. To achieve the objectives of corporate governance, the Government of India has put in place a statutory framework. The Government of India has notified New Companies Act which replaced the erstwhile Companies Act, 1956. This paper will show the history of corporate governance along with the role of legislature in its development. This paper will also focus on the standards of corporate governance which is regulated by SEBI along with case laws for the better understanding of the model of Corporative governance in India.

Keywords- Corporate Governance, SEBI, Companies Act, Legislature.

Introduction

Corporative governance is a procedure set up for the organizations in view of specific frameworks and standards by which an organization is governed. The rules gave guarantee that the organization is coordinated and controlled in a route to accomplish the objectives and targets to increase the value of the organization and furthermore advantage the stakeholders in the long term.[1]

The noticeable corporate governance failure scams like the Stock Market Scam, the UTI trick, Ketan Parikh scam, Satyam scam that was genuinely examined by the speculators, required a need to make corporate governance in India direct as it fundamentally impacts the change of the

[1]James McRitchie, *Corporate Governance in India*, Corporate Governance (May 12, 2015), https://www.corpgov.net/2015/05/corporate-governance-in-india/.

nation. *'Corporate governance is concerned with ways of bringing the* Interests *of investors and manager into line and ensuring that firms are run for the benefit of investors'*[2]

History of Corporative Governance in India

The historical backdrop of the improvement of Indian corporate laws has been set apart by intriguing differences. At freedom, India acquired one of the world's poorest economies however one which had a factory sector accounting for a tenth of the national item; four working securities exchanges (originating before the Tokyo Stock Exchange) with unmistakably characterized rules governing listing, trading and settlements; a well-developed equity culture if only among the urban rich; and a banking system replete with well-developed lending norms and recovery procedures.

The "Corporate Governance Concept" stays in India from the Arthashastra time rather than CEO around then there were lords and subjects. Today, corporate and shareholder supplant them, however the standards still stay same, unaltered i.e. great administration. Kautilya's fourfold obligation of a ruler:

- ***Raksha***: Literally implies assurance, in the corporate situation it can be compared with the hazard administration angle.

- ***Vriddhi***: actually implies development, in the present day setting can be compared to partner esteem improvement.

- ***Palana***: Literally implies support/consistence, in the present day setting it can be compared to consistence with the law in letter and soul.

- ***Yogakshema***: Literally implies prosperity and in Kautilya's Arthashastra it is utilized as a part of setting of a government disability framework. In the present day setting, it can be likened to corporate social duty

The corporate administration idea developed again in India after the second 50% of 1996 because of monetary progression and deregulation of industry and business. With the evolving times, there was likewise requirement for more noteworthy responsibility of organizations to their investors and clients.

Model of Corporate Governance in India[3]

The Securities and Exchange Board of India Committee on Corporate Governance characterizes corporate administration as the "acknowledgment by administration of the basic privileges of

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[2]K. Keasey, S. Thompson and M. Wright, *'Introduction: The corporate governance problem - competing diagnoses and solutions'* (1997).

[3] "Report of the SEBI Committee on Corporate Governance, February 2003" (PDF). Securities and Exchange Board of India Committee on Corporate Governance. Archived from the original (PDF) on 2011-09-28. Retrieved 2011-07-20

investors as the genuine proprietors of the company and of their own part as trustees for the benefit of the investors. It is about pledge to values, about moral business lead and about making a refinement between individual and corporate supports in the administration of a company.

Corporate Governance in India[4]

The Securities and Exchange Board of India Committee on Corporate Governance characterizes corporate governance as the "acknowledgment by administration of the natural privileges of investors as the genuine proprietors of the organization and of their own part as trustees for the benefit of the investors. It is about responsibility to values, about moral business lead and about making a qualification between individual and corporate supports in the administration of an organization. Prior to the Companies Act, 2013 was enacted; the Clause 49 of the Listing Agreement guided Corporate Governance[5]. With the approval of SEBI, there were certain amendments made out in the above agreement to improve the transparency in transactions and influencing the minority shareholders in taking decisions. SEBI issued circulars from time to time since 21February 2000 to ensure compliance of various requirements in terms of corporate governance.

Role of Legislature in Corporate Governance

Law can just give a base implicit rule for appropriate control of person or company. Law is made not to stop any demonstration but rather to guarantee that in the event that you do that demonstration, you will face such results i.e. good for good and bad for bad. Subsequently, in a similar way, role of law in corporate administration is to supplement and not to supplant. It cannot be best way to oversee corporate administration but rather it gives base implicit rules for good corporate administration. Law gives certain morals to govern everyone in order to have most extreme fulfillment and least erosion. It assumes an integral part. Role of law in corporate governance is in Companies Act which forces certain confinements on directors so that there is no distortion of reports, there is no excessive of power, so it forces obligation not to make secret benefit and make good losses due to breach of duty, carelessness, etc., duty to act in the best interest of the company etc.[6]

In **'*Ashoka Smokeless Coal Ind .P. Ltd. and Ors.* v. *Union of India (UOI) and Ors.'*** [7]the Apex Court inter alia observed, “Whereas good governance would mean protection of the weaker sections of the people; so far as good corporate governance is concerned, the same may not be of much relevance.” Good governance is an essential prerequisite for sustainable success. Likewise, good corporate governance provides direction for a company, which describes structures and procedures to direct and control companies, to increase the BoDs’ accountability to shareholders,

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[4]‘Report of the SEBI Committee on Corporate Governance, February 2003’.

[5]Securities and Exchange Board of India, https://www.sebi.gov.in/legal/circulars/oct-2004/corporate-governance-in-listed-companies-clause-49-of-the-listing-agreement_13153.html.

[6]‘Report of the Company Affairs Committee of the Confederation of the British Industry, Pg 71’.

[7] Ashoka Smokeless Coal Ind.P.Ltd. and Ors. v. Union of India (UOI) and Ors., (2007) 2 SCC 640.

promote effective risk management, and encourage discipline, transparency, social responsibility and eventually building investor trust. Mr. Bajpai, Ex-Chairman of SEBI was of the view that "Good governance, over and beyond its process aspects, is fundamentally a sustainability issue - good governance could result in the creation and fair distribution of tangible benefits."

The Companies Act, 2013

The newly enacted Companies Act, 2013 seeks to imbibe corporate governance within its domain by making certain good governance requisites mandatory. For achieving this objective, this Act seeks to lay greater emphasis on governance through the board and its processes. With significant changes to board compositions, the newly formed act seeks to ensure transparency in the corporate governance mechanisms by entrusting greater responsibility and obligation on the Body and Management in Indian companies. These include:

1. Appointment of independent directors[8]
2. Duties of the director[9]
3. Establishment of committees
    i. Audit committee[10]
    ii. Nomination and remuneration committee[11]
    iii. Stakeholders relationship Committee[12]
    iv. Corporate social responsibility committee(CSRC)[13]

***SEBI and Corporate Governance*[14]**

Corporate Governance standards for listed companies are regulated by the Securities and Exchange Board of India (SEBI) through clause 49 of the listing agreement of stock exchanges. SEBI issued circulars from time to time since 21st February, 2000 to ensure compliance of various requirements in terms of corporate governance. A very few companies go beyond requirements of clause 49 in order to follow the principles on which corporate governance is based namely accountability, transparency, fairness, equity, efficiency, flexibility and above all legality and integrity. Moreover, listed progressive companies made their Annual Reports fairly comprehensive to make it attractive enough for various stakeholders.

[8] Section 149(4) of the The Companies Act, 2013.
[9] Section 166, id.
[10] Section 177, id.
[11] Section 178, id.
[12] Section 178 (5), id.
[13] Section 135, id.
[14] https://www.sebi.gov.in/legal/circulars/aug-2003/corporate-governance-in-listed-companies-clause-49-of-the-listing-agreement_15948.html.

Conclusion

Corporate Governance is the central theme in every nation today, which is a sparkling issue for the developing countries because of the increasing trends of the corporate frauds. This has only increased because of the private players becoming more liberal in the economy. Another vital factor that has been in charge of the sudden exposure of the corporate sector to another worldview for corporate governance tuned in to the changing circumstances is the need and interest for more prominent responsibility of organizations to their investors and clients. The Indian Government with the help of SEBI, RBI and The Ministry of Corporate Affairs had done seriously and sincerely great efforts in minimizing the frauds nationwide. Corporate governance has to travel much beyond statutory bounds. Corporate governance is a continuous journey. It must keep on evolving in tune with changing nature of business and economics. Thus, in this modern corporative world, there has always been a great impact of the legislature in framing and executing the laws for the betterment of the nation in reducing the frauds and frauds in the market.