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A Perusal of Corporate Governance in India

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ABSTRACT

The notion of good corporate governance attained significant importance all over the sphere. The reason behind the downfall of many great companies is the lack of corporate governance. Good corporate governance in the top management helps them to manage, direct, and reach the goals of the organization. Ignorance of corporate governance not just affects the company but it affects society and people equally as much as it does to the company. Corporate governance must be considered a serious issue and laws made respectively should be strictly followed by the top management of the company. It is noted that Good corporate governance means not just complying with the laws but it also means having core principles of human life such as ethics and morals. This paper traces the notion of corporate governance, the necessity of corporate governance, provisions of company law regarding corporate governance, and committees established to date in our country.

Keywords: *Corporate Governance, Top Management, Committees, Companies Act.*

I. INTRODUCTION

Unlike the sole proprietorship or partnership business many people are involved in the companies whether it may be private or public, financial institutions, etc. The more people involved in any business the task of the top management becomes difficult but if the company is having good corporate governance, then it can overcome such difficulties easily. In companies, there will be several people involved like shareholders, stakeholders, creditors, managers, directors, auditors so on and so forth when people with keen interests involve in such companies then the ultimate aim of the company is earning maximum profits where the responsibility of the same will be in the hands of the top management so that all the people who vest their interest in the company will be happy. The locution corporate is extracted from a Latin term that says body and the term governance means administration, managing, etc. Together it means a body managing, directing, and administrating the affairs of the company. Corporate Governance plays a substantial role and provides the framework for administrating, controlling, directing, and managing companies. Following are the definitions given by various committees and statutory bodies. “A system of rules, procedures, and processes by which a company is directed and controlled. Specifically, it is a framework by which various stakeholder interests

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are balanced and efficiently and professionally” (Cadbury, 1992). “Corporate governance involves a set of relationships between a company’s management, its board, its shareholders, and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined” (OECD, 2015). “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” (ICSI, 2019). “Corporate Governance is the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and their role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct, and about making a distinction between personal and corporate funds in the management of a company” (Murthy, 2003). It is wrong to presume that corporate governance will only be applied within the company but corporate governance is interlinked with societal aspects, ethics, and the economy of the country. The core principles of corporate governance are accountability, integrity, transparency, and disclosure. It is true to say that if the company is maintaining high transparency, then the stakeholders, shareholders, and creditors will have a high level of confidence which is good for the company in long run. Corporate governance brings down the principal-agent relationship in the corporation and recognizes the accountability of every individual. The top management should not find loopholes or just adhere to the present legislation but it should run the company with high morals and ethics where though the legislation is not strong the company shall not take any advantage of it and defraud the people who vested their interest in the company. The top management shall disclose everything to the stakeholders, shareholders, and creditors so that there won't be any internal disturbances within the company. From the above definitions and core principles, we can infer that corporate governance drives the company to reach its goals with the help of better administration, management, and directing. It also maintains better relations between the directors, shareholders, stakeholders, and creditors.

The scope of Good corporate governance helps the company to set and reach its goals. Following are the substantial areas that fall within the ambit of the scope of corporate governance. The top management of any company will set the goals of the company and make sure that the company can reach those goals. The top management will make sure that the corporation is complying with all the laws and regulations. The board of directors coming from vast backgrounds and experience will be an add-on to the company if they maintain their independence and act in good faith. Shareholders are given vast importance in receiving

dividends and participating in meetings. The concept of e-voting and video meetings helps the company to build confidence among the shareholders by maintaining transparency and responding to their concerns. Every company is obliged to disclose its financial reports and statements. Good corporate governance also helps companies in risk management by keeping track of risk exposure. Good corporate governance does not just come from the laws the institution is expected to set out certain ethics and professional conduct rules so that all the people involved in the company will maintain ethics and integrity by complying with those rules. Corporate social responsibilities of companies make sure that a determined percentage of the amount of the corporation turnover will be spent on societal good causes.

II. REVIEW LITERATURE

Good corporate governance needs Audit committees and their independence (Bhasin, 2012). (Ruchi Kulkani and Balasundram Maniam, 2014) paper made an enlightening study on the evolution of corporate governance, the need for corporate governance, ethics, and internal governance. Good corporate governance reduces risk, their paper dealt with the structure of corporate governance, weakness, importance as well as steps to be taken for better corporate governance (Dr. DR Jalwani, Pawan Kumar Bhura and Ashutosh Kumar Jha, 2022). The need for independence for independent directors should be given special attention for good corporate governance (Mukherjee, 2023). Examined the concept of corporate governance in India concerning the provisions of corporate governance under the “Companies Act 2013”, and discussed the need and importance of corporate governance along with the case laws (Meghna Thapar and Arjun Sharma, 2017). Investigated the different approaches to corporate governance and provisions of the “Companies Act 2013” regarding corporate governance (Divyansh Choudhary, Dr. Kiran Raj, Ms. Raneeta Pal, 2022). Investigated corporate governance practice in Indian companies by taking clause 49 as the basis, they concluded that the majority of sample companies are complying with the mandatory provisions dealing with corporate governance but a few companies like Bajaj, Dr. Reddy’s, etc disclosures are beyond the demand also these companies are following voluntary corporate governance set out by them (Ms. Neelam Bhardwaj and CMA Dr. Batani Raghavendra Rao, 2014). There is a requirement for strong research in the area of corporate governance so that the next generation of corporate governance will be more successful (Poonam Rajharia and Dr. Bhawana Sharma, 2014). Corporate governance system is very successful in upholding our economy by saving interest of creditors and shareholders’ but it can be more effective and successful if it is able to encourage more transparency, disclosures, effective top management (Sri. Mallikarjun M. Maradi and Sri. Paramanand Dasar , 2014).

The Necessity of Corporate Governance

1. Good corporate governance in any company will help the top management to take the right decisions at the right times. If the top management takes the right decisions at right time, it will be beneficiary to the company and its members in long run.
2. Investors after investing in any company will not be even able to sleep peacefully unless and until they get to know that the corporate governance of the company is good and provides them with all the required data. With fine corporate governance, the corporation will also be able to attract investors from every corner of the world.
3. One of the core principles of corporate governance is maintaining transparency. The more transparency maintained from the side of the company in matters related to finance and audit it will reduce the malpractices, fraud, etc.
4. Good corporate governance will help the company to maintain a good name and fame in the market so that the valuation of the company in the market will be high. One before investing or checking the creditworthiness of the company will consider the aspect of corporate governance.
5. Key factors of corporate governance are transparency and accountability if the company can maintain those key factors, then it will be easy to build confidence and expectations in stakeholders. Corporate governance will reduce the risk of the company because the strategies taken by the top management will be in good faith.

III. COMPANIES ACT PROVISIONS REGARDING CORPORATE GOVERNANCE

“Companies that are established under this act or previous act shall comply with the provisions of the Companies Act 2013”. The Legislative intention in making such provisions regarding corporate governance is to make reasonable and responsible Board members and also to develop corporate governance in the companies. Following are the few provisions of the “Companies Act 2013” which deal with the notion of corporate governance.

1. “Section 149(4) to (13), 150 read with rules 4 and 5 of Companies (Appointment and Qualification of Directors) Rules 2014 speak about the provisions of independent directors”. “Companies Act 2013” makes it obligatory for every listed public company to have independent directors. Section 149(6) speaks about the meaning of independent directors². According to section 149(7), every independent director as and when required shall give the declaration of

² Companies Act 2013, § 149(6), No.18, Acts of Parliament, 2013(India).

his/her independence³. The code for independent directors and professional conduct is stated under section 149 (8)⁴. Section 150(1) states the manner of selection of an independent director⁵. The holding of an Independent Director is 5 years but he can be reappointed through section 149 (10)⁶. provided that such an independent director shall not hold to the position for more than 2 successive terms but after the interlude of 3 years from the ceasing of the position he/she will be eligible to reappoint as an independent director under section 149(11)⁷. Section 149 states the remuneration of independent directors⁸ Liabilities of independent directors are prescribed under section 149(12)⁹.

2. Companies act specifically deals with the “appointment and remuneration of the key managerial person (KMP)”. The following positions in the company will be treated as KMP the managing director (MD) or chief executive officer (CEO) or the manager, the company secretary (CS), the whole-time director (WTD), the chief financial officer (CFO) and such other positions as may be prescribed. Section 196 of the companies act deals with the appointment of MD or manager, WTD¹⁰. Remuneration of MD or manager, WTD, and director shall be within the limits stated in section 197¹¹. Every listed company shall annex a secretarial audit report along with the board report which shall be given by the practicing company secretary. The functions of the company secretary are prescribed under section 205¹².

3. Every company which satisfies the requirements stated under the act shall have a Corporate Social Responsible Committee (CSR)¹³. The composition of the committee shall consist of at least 3 directors out of which 1 shall be an independent director in the case of the listed company whereas an unlisted company or private company shall have at least 2 directors. The composition of the CSR committee shall be annexed along with the board report¹⁴. The functions of the CSR committee are to formulate the policies and recommend them to the board, and to a proper plan of investing funds when and where concerning its requirements, it shall

³ Companies Act 2013, § 149(7), No.18, Acts of Parliament, 2013(India).

⁴ Companies Act 2013, § 149(8), No.18, Acts of Parliament, 2013(India).

⁵ Companies Act 2013, § 150(1), No.18, Acts of Parliament, 2013(India).

⁶ Companies Act 2013, § 149(10), No.18, Acts of Parliament, 2013(India).

⁷ Companies Act 2013, § 149(11), No.18, Acts of Parliament, 2013(India).

⁸ Companies Act 2013, § 149, No.18, Acts of Parliament, 2013(India).

⁹ Companies Act 2013, § 149(12), No.18, Acts of Parliament, 2013(India).

¹⁰ Companies Act 2013, § 196, No.18, Acts of Parliament, 2013(India).

¹¹ Companies Act 2013, § 197, No.18, Acts of Parliament, 2013(India).

¹² Companies Act 2013, § 205, No.18, Acts of Parliament, 2013(India).

¹³ Companies Act 2013, § 135, No.18, Acts of Parliament, 2013(India).

¹⁴ Companies Act 2013, § 134(4), No.18, Acts of Parliament, 2013(India).

also recommend the estimated amount of expenditure¹⁵. Every company must spend at least 2% of the net profits¹⁶.

4. As we discussed above one of the key factors of corporate governance is to maintain transparency. For any company to maintain transparency its accounts should be duly & fairly maintained for that reason companies act 2013 stresses the provisions regarding the Auditors. Individual CA or a firm can be appointed as an auditor for any company¹⁷. Audit committee responsibilities are increased. Disqualifications to be an auditor are stated clearly and if an auditor when he is in position becomes disqualified according to the provision then he shall vacate the office and it shall be deemed as a casual vacancy¹⁸.

5. Board of directors before starting any meeting shall disclose their independency and interest if any on the matters which are about to be decided in the meeting¹⁹. Various committees have to be established if the company falls within the requirements stated by the provisions of the company act. Bod shall disclose the matters which are prescribed and shall annex the “director’s responsibility statements”²⁰.

IV. PROGRESS TO DATE IN INDIA

One of the remarkable initiatives taken by the government of India in the year 1991 is to come up with Liberalization, Privatization, and Globalization policy to increase the Indian economy. But it was a quite tough deal for the government because the policy opens the gates for many multinational companies, financial institutions so, and so forth to set up their existence in India. Corporate governance and the laws dealing with it were much needed to enact and strict rules and regulations had to be made respectively. It was greatly necessary at that time to also take the initiative in establishing committees to develop recommendations for corporate governance.

1. In the year 1988 report was published by the “Confederation of Indian Industry (CII)” under the chairmanship of Mr. Rahul Bajaj. The report titled “Desirable Corporate Governance a Code” made many recommendations to strengthen corporate governance in India. As this was the first remarkable imitative taken by the CII it led the guidance to many other committees formed lately (“Desirable Corporate Governance: A Code”, 1988).

¹⁶ Companies Act 2013, § 135(5), No.18, Acts of Parliament, 2013(India).

¹⁷ Companies Act 2013, § 141(1), No.18, Acts of Parliament, 2013(India).

¹⁸ Companies Act 2013, § 141(3), No.18, Acts of Parliament, 2013(India).

¹⁹ Companies Act 2013, § 184, No.18, Acts of Parliament, 2013(India).

²⁰ Companies Act 2013, § 134, No.18, Acts of Parliament, 2013(India).

2. In the year 1999, another first step was taken by the “Securities and Exchange Board” (SEBI). A committee was established under the lead of Kumar Mangalam Birla. The committee was assigned to come up with recommendations on corporate governance to increase the existing standards of corporate governance. The committee in its report came up with many mandatory recommendations few of which were on insider trading, special emphasis made on shareholders and investors, differentiation being made between management and board in the aspect of corporate governance and one of the brilliant moves of the report was that company was obliged to mention in annuals reports of the company to what extent the company complied with the recommendation made respectively. It is noted that the recommendations made by the committee gave the way to the insertion of clause 49 in the Listing agreement in the year 2000 (Report of the Kumar Mangalam Birla Committee on Corporate Governance, 1999).

3. In the years 1999 and 2000 companies act 1956 had been amended and made many changes to protect and improve the existing corporate governance. A committee was established by the Department of Company Affairs to come up with recommendations and solutions to improve sustained corporate excellence. The committee in its report stated many recommendations and advised the ministry to establish a center for corporate excellence (Report on Corporate Excellence on a Sustained Basis to Sharpen India's Global Competitive Edge and to Further Develop Corporate Culture in the Country, 2000).

4. In the year 2002, another committee was established by the “Department of Company Affairs”. The task assigned to this committee was to come up with the required amendments in existing laws to increase the standards of corporate governance also committee was asked to recommend especially in the matters of independent directors, auditors-company relationships, separate standards for consulting, audit partner rotation, etc. (NARESH CHANDRA COMMITTEE REPORT, 2000).

5. Soon after another committee named “N. R. Narayana Murthy Committee” was established by the SEBI in the year 2003. The committee in its report stated both mandatory and non-mandatory recommendations. Mandatory recommendations were in the matters of audit committee’s responsibilities, independent director, financial disclosures, related party transactions, etc. and non-mandatory recommendations were on instituting a system to train the board members and evaluating their performance (Report of the SEBI Committee on Corporate Governance , 2003)

6. In a short course of time, another committee was formed under the leadership of Dr. Jamshed J. Irani. The Ministry of Company Affairs was assigned the task to recommend the

necessary changes required in the companies act 1956 so that India can globally be recognized and attract investors from all over the world (Report of the Expert Committee on Company Law, 2005).

7. In the year 2009, “CII’s Task Force” on Corporate Governance gave certain voluntary guidelines in its report which were duly posted on the ministry website it grabbed great response that in the same year Ministry of Company Affairs passed certain voluntary guidelines on corporate governance. The guidelines issued were not amendments or any substitutes but for the sole purpose to achieve better corporate governance (CORPORATE GOVERNANCE VOLUNTARY GUIDELINES, 2009).

8. “Companies Act 2013” came into the picture in the year 2013 by repealing the “Companies Act 1956”. The latest act contains many major changes in the provisions as well as in the definition which are much needed for the present economy, business models, and growing corporate world.

9. In recent times another committee was established by the SEBI under the lead of Mr. Uday Kotak. The committee was assigned the task to recommend the following issues regarding independent directors and their active participation, Related party transactions and disclosures, accounting and auditing practices, the effectiveness of board evaluation practices, voting issues and grievances, and any other matter required (Report of the Committee on Corporate Governance, 2017)

V. PRACTICAL IMPLICATIONS

To date, many committees have been established in India and extra efforts were put forth in making rules and regulations. Corporate governance regarding company law has several practical implications. The provisions of the Company law ensured that the BOD should maintain their independence in addition to acting in good faith, the mandatory appointment of key managerial persons and independent directors, disclosure of financial reports and statements, the appointment of auditors and audit committees, maintaining corporate social responsibility committee to spend money for good cause, special emphasizes have been made on shareholder rights and redressals.

VI. LIMITATIONS AND FUTURE SCOPE OF THE STUDY

This study has certain limitations. The study is purely based on secondary data. The study is focused only on the provisions of the company law regarding corporate governance. Further, the study only discussed the committees established to date in a nutshell. Future studies can be

conducted on amended provisions of company law dealing with corporate governance.

VII. CONCLUSION

The concept of good governance is not from recent times but if we look back to ancient times right from the Mahabharat and Ramayana we can find the concept of good governance. The study of holy books shows us that fine governance leads to better management, directing, and also reaching the goals of that particular regime. The concept of companies was introduced by the British government that is where the concept of corporate governance evolved in India. Later on, post-independence few companies, financial institutions, and public sectors were established and the companies act 1956 and other related laws were dealing with the notion of corporate governance. In the year 1991 major initiative was taken by the government of India that is privatization, liberalization, and globalization which ultimately led the way to the need for more regulations on corporate governance to prevent the country from major corporate scams. Right from that moment many committees were established and enlightening recommendations were made for the betterment of corporate governance. The study shows good corporate governance helps the company to reach its goals and objectives as well as to assure the money of the stakeholders and creditors is in safe hands. Despite many recommendations, policies, and laws made to date for the betterment of corporate governance India could still face corporate scams in multiple facets. From the author's point of view, good corporate governance does not come from complying with the existing laws but it comes from the inner morality and ethics of human beings. It is time to wake up and realize for the top management of those companies who indulge in such activities defraud the people who vest their interest in companies. The money invested in the companies by entrusting the top management is from people's sweat, blood, and hard work. In reality, in our country, it is not the sound parties who always invest in companies but there are instances where an 18-year-old kid sacrifices his pocket money given by his parents to secure his future by holding good stocks in his hands and to benefit out of those stocks by the dividends and if we look a 65-year-old man having no children invest his entire retirement funds and savings in stocks of the company to get benefited by the dividend so that he can still stand on his legs by earning an income out of it. So, it is to be noted that corporate governance is a serious issue, and companies, financial institutions, etc. should aim for better corporate governance. The study in this paper was only limited to a few provisions of the “companies act 2013” which deals with the notion of corporate governance but numerous laws deal with corporate governance in different sectors like SEBI LOR regulations for listed entities, RBI Circulars and Special acts for Banking and financial institution’s, IRDAI Laws and Circulars for Insurance companies, DPE Guidelines for public

sector enterprises.

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