Research Paper
Impact Factor 0.348

IJMSRR
E- ISSN - 2349-6746
ISSN -2349-6738

CORPORATE GOVERNANCE CHALLENGES IN INDIA: A STUDY IN THE CONTEXT OF THE RECENT REGULATORY DEVELOPMENTS

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Abstract
Corporate governance in India is still in its infancy but is progressing steadily. It involves the progressing of tuning the shareholders expectancies with the company's management efficiently to upgrade the organization's value. It encompasses active involvement of all the shareholders and management, communication, exchanging and validating ideas and extensive discussion and argument. Corporate governance needs to be woven into the organizational culture and functionality as it cannot be implemented independently. It has significant impact of the general governance eco-system both internal as well as external. In the recent times, India's corporate world has experienced a lot of mis-governance and scandals. This in turn has compelled the Indian firms to develop a judicious system of conducting business, standards of accountability in public administration encompassing government machinery and institutions. In spite of a number of voluntary as well as regulatory efforts from the part of the Government in the recent past, India's corporate world still suffers from a lot of challenges in the corporate governance front. This is particularly so in respect of Public Sector Enterprises (PSEs). In this context this paper studies the current scenario of corporate governance, its challenges, and suggests remedial strategies.

Key Words: Corporate Governance, Public Sector Enterprises, Companies Act 2013.

1.INTRODUCTION

Virtuous governance practices have always been crucial for humans for their interfaces. However, with the escalating uncertainty in the global business environment, good corporate governance has become a necessity. Commerce and economy are intriguingly aligned to the prosperity and treasures of the people who stress upon corporate governance and make it essential for any organization in present scenario. Corporate governance has emerged as one of the key differentiating factor for any company and has a significant impact on the profitability, progress and sustainability of the business. It is a highly intricate and multi-level process which is garnered from organizational characteristics like culture, policies, values and ethics of the governing management and how it handles the stakeholders (Dutta, et. al., 2012). Fernando (2009) has perceived corporate governance as the methodology to handle the problems that occur from the differentiation between control and ownership. Thus, corporate governance emphasizes upon internal structure and protocols of the board of directors, guidelines for dissemination of information to stakeholders and creditors, and the span of control of the management. Corporate governance ensures ethical and efficient business management which can ensure the shareholders get return on their investments. All Corporate governance models unanimously aim to ensure that shareholders select their representative directors, voting are done on critical decisions, there is utter transparency adopted in the decision making process, adopting accounting standards to generate better comprehendible reports, legal compliance of the land.

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2. RELEVANCE AND SIGNIFICANCE OF THE STUDY

In the light of liberalization and the need of synchronized international accounting practices in the purview of global commercial activities, corporate governance has started getting acknowledged from the 1990s and was introduced to the country by Confederation of Indian Industry (CII) as an intended means to be adopted by the Indian commercial undertakings. However, with changing times and impending requirements, corporate governance was made mandatory in the early 2000 through the introduction of Clause 49 of the Listing Agreement and all the companies listed on the various stock exchanges had to mandatorily adhere to these rubrics. In 2009, the Ministry of Corporate Affairs issued a suite of voluntary guidelines for corporate governance catering to an array of relevant issues (Pande and Kaushik, 2011). But, corporate governance still experiences a lot of challenges like disparity in corporate governance between public and private sectors, ineffective implementation of the legislations, inefficient accountability, sub-standard auditing and enhanced investor activism (KPMG, 2011). These challenges have enhanced the complexity of corporate governance function in India.

3. STATEMENT OF THE PROBLEM

The concept of corporate governance is still in its primitive stage in India as compared to the developed western world. Corporate governance has more to it than simply handling of the money and the conduct of the business in a responsible manner. There are many issues and challenges associated with corporate governance practices in India wherein the majority of the shareholders exercise dominant control on the functioning of individual corporate units. In case of Public sector enterprises (PSEs), PSEs are accountable to the ministries and ought to adhere to the norms set by the Department of Public Enterprises (DPE) and are subject to Right to Information Act (RTI Act), Comptroller and Auditor General (CAG) of India and the Central Vigilance Commission (CVC).Thus, PSEs in India are working in a highly complex setting.

4. OBJECTIVES OF THE STUDY

1. To study the current scenario regarding corporate governance in India with a focus on the Public Sector Enterprises (PSEs);
2. To study the regulatory bodies and impending regulations with regard to corporate governance in India, including the role of Government in this regard;
3. To identify the shortcomings and challenges in respect of corporate governance practices in India and also to suggest suitable remedial strategies.

5. RESEARCH QUESTIONS

1. What is the current status of corporate governance in India?
2. What are the issues and challenges in the corporate governance front particularly in PSEs?

6. METHODOLOGY AND DATA SOURCES

This study is primarily of descriptive-analytical nature, as it makes use of latest available data on corporate governance in Indian companies. Accordingly, the paper studies the present scenario as well as the major issues and challenges of Indian corporates in the corporate governance front in Indian companies, particularly the PSEs. The data used are secondary in nature and these include various government publications, official websites of regulatory bodies etc. The data so collected are analyzed for the purpose of their systematic presentation that facilitates their meaningful interpretation as well as specific conclusions.

7.CURRENT STATUS OF CORPORATE GOVERNANCE IN INDIA

With the goal of promoting better corporate governance practices in India, the Ministry of Corporate Affairs, Government of India, on 1st October 2003 set up 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). In the year 2010, stakeholders in NFCG has been expanded with the inclusion of The Institute of Cost Accountants of India (ICAI) and National Stock Exchange (NSE). The vision of this has been "to be A Catalyst in Making India the Best in Corporate Governance Practices" and its mission has been as follows:

- To foster a culture for promoting good governance, voluntary compliance and facilitate effective participation of different stakeholders;
- To create a framework of best practices, structure, processes and ethics;
- To make significant difference to Indian Corporate Sector by raising the standard of corporate governance in India towards achieving stability and growth.

Under the guidance of NFCG, there are various programmes conducted to bring about awareness among the corporate and other stakeholders of the corporate. Some of the programmes organized by NFCG are as follows:

- Corporate Governance Awareness Camp
- Programme on Sustainability Accounting & Reporting
- Corporate Compliance Management & Secretarial Audit
- Corporate Governance Summit -International Level
- Seminar on IFRS
- Seminar on Corporate Governance in SMEs
- 5th Sustainability Summit Asia 2010 Remodelling Growth
- Conference on Corporate Governance- Harnessing the power of Ethics
- Training Programme :Advance Certificate Programme on Corporate Governance
- National Seminar - Corporate Compliance Management and Due Diligence
- Seminar on Limited Liability Partnership

8. CORPORATE GOVERNANCE IN INDIA – ROLE OF DEPARTMENT OF PUBIC ENTERPRISES (DPE)

In their 52nd Report (3rd Lok Sabha), the Estimates Committee referred to the absence of any organisation in the Government to provide policy and overall guidance to the Central Public Sector Enterprises (PSEs) and stressed the need for setting up a centralized coordinating unit which could also make continuous appraisal of the performance of public enterprises. This led to the setting up of the Bureau of Public Enterprises (BPE) in 1965. BPE was later constituted as an independent administrative unit within the Ministry of Finance, Department of Expenditure in 1969. As a result of the re-organisation of the Ministries/Departments of the Central Government in September, 1985, BPE was transferred from Ministry of Finance to the Ministry of Industry. In May, 1990, BPE was conferred the status of a full-fledged Department and is now known as the Department of Public Enterprises (DPE) in the Ministry of Heavy Industries and Public Enterprises. The DPE issues guidelines on various issues pertaining to the above issues and obtains compliance reports.

With regard to the Corporate Governance, DPE has included Corporate Governance into the Maharatna Scheme. CPSE's are expected to expand international operations and become global giants, for which effective Corporate Governance is imperative. These guidelines on Corporate Governance are formulated with the objective that the Central Public Sector Enterprises follow the guidelines in their functioning. Proper implementation of these guidelines would protect the interest of the shareholders and the relevant stakeholders. For the purpose of evolving Guidelines on Corporate Governance, CPSE's have been classified into two categories, namely, (i) those listed in the stock Exchange; (ii) those not listed in the stock Exchanges. For the listed CPSE's, they have to follow the SEBI Guidelines on corporate Governance. In addition, they shall follow those provisions in the guidelines which do not exist in the SEBI Guidelines and also do not contradict any of the provisions of the SEBI Guidelines. For the non-listed CPSE's, it suggests that they should strive to institutionalize good Corporate Governance practices broadly in conformity with the SEBI guidelines, as they may be considered for listing within a reasonable time frame to be set by the Administrative Ministry concerned in consultation with the CPSE's concerned. The DPE has issued guidelines to the CPSE's on the following major issues to conform to the Corporate Guidelines on (i) Composition of Board of Directors, (ii) Setting up of Audit Committees, (iii) Remuneration Committee, (iv) Subsidiary Committee, (v) Disclosures, and (vi) Report, Compliance and Schedule of Implementation.

Apart from those noted above, in fact, some of the principles of corporate governance are already in vogue in public sector. These practices include, inter alia, (i) the Chairman, Managing Director and Directors are appointed independently through prescribed procedures; (ii) statutory auditors are appointed independently by the C&AG; (iii) arbitrary actions, if any, of the Management can be challenged through writ petitions; (iv) remuneration of directors, employees, etc. are determined on the basis of recommendations of the respective Pay committees; etc. etc.

9. SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI) – ITS ROLE IN CORPORATE GOVERNANCE

Securities Exchange Board of India (SEBI) was set up in 1988 to regulate the functions of securities market. SEBI promotes orderly and healthy development in the stock market but initially SEBI was not able to exercise complete control over the stock market transactions. It was left as a watch dog to observe the activities but was found ineffective in regulating and controlling them. As a result in May 1992, SEBI was granted legal status. SEBI is a body corporate having a separate legal existence and perpetual succession. With the growth in the dealings of stock markets, lot of malpractices also started in stock markets such as price rigging, 'unofficial premium on new issue, and delay in delivery of shares, violation of rules and regulations of stock exchange and listing requirements. Due to these malpractices the customers started losing confidence and faith in the stock exchange. So government of India decided to set up an agency or regulatory body viz. SEBI. SEBI was set up with the main purpose of keeping a check on malpractices and protect the interest of investors. It was set up to meet the needs of three groups, (i) Issuers, (ii) Investors and (iii) Intermediaries.

The objectives of SEBI are (i) to regulate the activities of stock exchange, (ii) to protect the rights of investors and ensuring safety to their investment, (iii) to prevent fraudulent and malpractices by having balance between self regulation of business and its statutory regulations, (iv) to regulate and develop a code of conduct for intermediaries like brokers, underwriters, etc.

10. NEW COMPANIES ACT 2013 IN INDIA – ITS PROVISIONS ON CORPORATE GOVERNANCE

The Companies Act 2013 envisages radical changes in the area of Corporate Governance and is set to have far-reaching implications. The new regime is expected to significantly change the manner in which corporates operate in India. Highlights of the Companies Act from the perspective of Corporate Governance include two broad aspects viz. (i) Severe consequences for non-compliance: While the bar for corporate governance has been raised, the penal consequences have been exponentially increased with a large number of sections reserving provisions for the prosecution of directors, officers in default and key managerial personnel, (ii) Stricter regime even for unlisted public companies and private companies: There is a clear shift towards closely monitoring unlisted public companies and large private companies with enhanced compliance requirements on disclosures, transparency and governance procedures. While there are changes across the board, the key impact areas in the area of corporate governance include the following:

❖ ***Board Structure and Responsibility***

- Enhanced responsibility for the board and its committees

- Specified unlisted co's. to have independent directors (ID); mandatory code for IDs
- Mandatory woman director for certain co's.
- Mandatory key managerial personnel (KMP) – CEO/MD/WTD, CFO and CS
- Performance evaluation of board and individual members

❖ ***Disclosures and Reporting***

- Enhanced disclosures and assertions in Directors' Report – risk management, internal control for financial reporting, legal compliance, RPT, CSR, etc.
- Compulsory consolidation of accounts; summary statements of associates / JVs / subsidiaries
- Disclosures of shareholding pattern
- Disclosures for public money lying unutilized

❖ ***Risk, Controls and Compliances***: Boards now obligated to report on the following:

- Development and implementation of risk management policy
- Systems to ensure compliance to all applicable laws and their operating effectiveness
- Internal financial controls and their operating effectiveness (for listed companies)

❖ ***Secretarial Compliances***: Stricter yet forward-looking requirements for board proceedings:

- Minimum 7 days' notice, board meetings permitted through electronic mode
- Presence of at least one ID must for board meeting at shorter notice
- Gap between two meetings < 120 days
- ICSI Secretarial Standards mandatory

❖ ***Related party Transactions (RPT), Loans and Investments***

- Scope of RPT significantly enhanced; concept of arm's length pricing introduced
- Central government approval not required, however, heavy penalties for non compliance
- RPT disclosure in Directors' Report along with justifications
- Stricter requirements for loans and investments including private companies

❖ ***Audit and Auditors***

- Enhanced restrictions on appointment and rotation of auditors
- Statutory auditors prohibited from providing certain services
- Enhanced powers and role of auditors
- Mandatory internal audit and secretarial audit for prescribed class of companies
- Auditors to report on internal financial controls and their operating effectiveness

❖ ***Corporate social responsibility***: Prescribed class of companies to:

- Form a CSR committee with atleast one ID
- Form and approve a CSR policy
- Endeavour to spend atleast 2% of net profits
- Directors to explain inability to spend in the directors' report

11. ISSUES AND CHALLENGES OF CORPORATE GOVERNANCE IN INDIA

Ever since the economic crisis of 2007–08, the world has had seen a revival of state capitalism. The going up of state capitalism amounts to one of the major transformations in the global economy nowadays. However, the growth of capitalism has had given rise to challenges for governments and regulators and they are under severe pressure to prevail over these challenges. In state run public sector enterprises intrinsic governance challenges lead to below average performance. As a result, corporate governance of public sector enterprises remains a major challenge in several economies including India. In India, the government owns or controls interests in major sectors, comprising of infrastructure, oil, gas, mining, and manufacturing sectors (Som, 2013). Jaiswall (2012) criticizes the corporate governance mechanisms and tactics of PSEs calling them no better than private sector firms in India due to two main reasons. The primary reason emerges from the pursuit of the neo-liberal agenda where it has been argued that following these national and social objectives deflects the enterprise from the primary objective of creating value for shareholders and breeds inefficiencies. These inefficiencies in turn lead to a strain on public finances and contribute to macro-economic distress in a country. The second reason stems from the vagueness and lack of clarity about what constitutes national interest. Thus the logic of reducing fiscal deficit which can be put forward to justify the current 'divestment act' deflects attention from an analysis and engagement with why such a deficit came to exist in the first place and whether this entire 'act' could have been avoided with more prudent policies. It may be noted that as of 2010 as many as 17 listed PSUs, including blue chip entities like Indian Oil, BHEL and SAIL do not have the requisite number of independent directors, an important tool of corporate governance. Independent directors as the most significant instrument of corporate governance, only they can challenge the decisions of the management and protect the interest of shareholders and other stakeholders.

In summary, the history and evolution of corporate governance follows a trajectory that more often than not fails to even acknowledge the governance challenges implicit in national interest let alone propose mechanisms for dealing with it. This is particularly true in respect of PSEs. The corporate governance function still experiences a lot of challenges like disparity between corporate governance between public and private sector, ineffective implementation of the legislations, inefficient accountability, sub-standard auditing and enhanced investor activism. These challenges have enhanced the complexity of corporate governance in India. Thus, the steps initiated by the Government of India towards ensuring efficient and transparent corporate governance in the country need to be continued more vigorously in the days to come.

12. EFFECTIVE IMPLEMENTATION OF CORPORATE GOVERNANCE IN INDIA: SOME SUGGESTIONS

- Corporate governance initiatives should strive to institutionalize such good practices that broadly in conformity with the SEBI guidelines in this regard. Companies following such practices may be considered for listing within a reasonable time frame to be set by the concerned administrative ministry in consultation with the respective companies.
- All corporate governance initiatives should ideally seek to address the long-term and broader societal benefits as well as balanced and equitable development of the nation as a whole. Thus, all the governmental efforts should have such a long term perspective.
- It shall be recognized that good governance is not just about compliance, rather the same needs to be done in its true letter and spirit for the long-term benefit of the public at large.
- There needs to be good clarity as to the role of the Board regarding the strategy towards effective and efficient implementation of corporate governance practices
- Side by side with the implementation of sound corporate practices there should also be close monitoring of the organizational performance on an ongoing basis.
- It shall be clearly understood that the Board employs the Chairperson of the organization for the purpose of effective implementation of sound corporate governance.
- The Chairperson appointed should have the requisite level of competence.
- It must also be recognized that the governance of risk is a responsibility of the Board of Directors of a corporate entity.
- It shall be ensured at all times that the Directors of a company have at their disposal the relevant information that they need for scientific and learned decisions.
- For efficient implementation of sound corporate governance practices in an organization, it shall be ensured that an effective governance infrastructure is built up and maintained.
- A skill-based Board needs to be developed and maintained at all times.
- There should be a permanent mechanism to evaluate the performance of the Board and individual Directors, as well as to pursue opportunities for constant improvement thereof.

- Last but not the least, to ensure a level playing field for all companies, corporate governance norms should be made applicable uniformly to both public sector and private sector companies alike. There should not be any discrimination to companies based on the ownership pattern.

13. CONCLUDING REMARKS

In view of the foregoing, it may be noted that there is a noticeable disparity between corporate governance standards in the public sector and the private sector. Corporate governance of PSEs still remains a major challenge in India. In India, the government owns or controls interests in key sectors, like, infrastructure, oil, gas, mining, and manufacturing. Over the years, Government of India (GOI) has taken a number of steps to improve the performance of PSEs, including better corporate governance. These reforms have gained prominence because of the major role that PSEs continue to play in Indian economy; the increased pressure on PSEs to improve their competitiveness; and listing of PSEs on the stock exchanges. Let us hope that the GOI initiatives will continue and corporate governance situation in India will attain commanding heights.

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