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Corporate Governance under Indian Legal System

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Abstract
Good governance is fundamental to reinforce the financial framework and to withstand the any emergency, both inner and outer. Corporate Governance has been picking up energy over the world because of hopeless corporate disappointments, unscrupulous business rehearses and lacking divulgence and so forth. In this paper, an undertaking has been made to expound the Corporate Governance components with regards to the legal system in India. The Indian legal provisions identified with corporate governance is investigated and the point of this paper is to give a review of the legal provisions identified with corporate governance in India and recognized the significant issues and difficulties that should be routed to execute a viable arrangement of corporate governance in India. This study seeks to gain insights into the major regulatory changes impacted corporate governance practices in India.

Keywords: corporate governance, corporate legal system, corporations

Introduction

The Corporate Governance came to worldwide business limelight from obscurity after collapses of high-profile companies including Enron, Houston, Energy Giant and World Com, Telecom Behemoth. The Collapse of these companies shocked the corporate world, while it was felt that problem is widespread across the world. Corporate Governance is the basic foundation of Country's economy. No country can progress economically and socially without adapting to good governance practices. If business enterprises don't develop, there will be no economic growth to the nation; no employment to people, no taxes paid and constantly the nation won't create economically.

What is Corporate Governance?

Corporate Governance is the framework that alludes the way where the intensity of a corporation is exercised, directed and controlled in the enterprises with the goal of keeping up and expanding shareholder esteem and satisfaction of other stakeholders. Corporate governance is a system to keep check on the companies whether the company is run in the optimum interest of shareholder or not. The stakeholders may be internal and external. It is inter-play between companies, shareholders, creditors, capital markets, financial sectors, institutions and the law.

The literature available on the subject confirms that there are various definitions of Corporate Governance. As per the *narrow* definition of Corporate Governance, it's a lot of relationship among company's administration, its board of directors, shareholders. On the other, in *broader* sense, degrees to which companies run in a transparent way, is significant for in general market certainty, efficiency of international capital allocation, renewal of countries industrial bases and eventually the nation's overall welfare. These concepts originate trust at firm level among the proprietors of the capital and it also creates confidence at aggregate economy level. In both the cases, they result in efficient allocation of capital.

Any particular country needs well-governed and oversaw business undertakings that can attract investments, wealth, creating jobs, maintainable and serious in the worldwide marketplace. It therefore becomes a prerequisite for national economic development.

Evolution of Corporate Governance

The growing role of market-oriented economy in the post-1990s or the early 21st century, led the spread of liberalization, capitalism, globalization and privatization, demanding efficiency, efficient corporate culture, model code of conduct and business ethics for the very survival of the corporate. A number of corporate scams and frauds have also shocked the confidence of the investors to demand it more rapidly.

India has its own culture and value system ruling the conduct of corporate as and when necessary. It has its own management practices. The present-day corporate sector in India is governed by the Companies Act and many other regulations passed by the regulatory bodies and lawmaking institutions. But the Indian Corporate Governance is a mix of arrangements gave by different laws, government orders and Indian social and promoting customs. The majority of the books and proposal straightforwardly manages the idea of Corporate Governance without imagining that to understand the arrangements of Companies Act.

Most of the Indian companies have the family members on the board, although using public money the family controls all the decisions and the small investors have no say in the decisions making process. However, the introduction of the new Companies Act 2013, has tried to remove the lacuna by inserting a provision for appointment of an Independent Directors for minority shareholders.

The issue of Corporate Social Responsibility is also a necessary piece of corporate technique and arranging. Benefit ought not be the sole rules in passing judgment on the company's presentation however corporate ought to also concentrate on their responsibility towards society also. It is the dedication of business to add to sustainable development to improve the personal satisfaction of the common people.

The purpose of the present study is to highlight the practices of good Corporate Governance in relation to Corporate Social Responsibility. This research work has also broken down a far-reaching perspective on the legislative methodology towards Corporate Governance and Corporate Social Responsibility issues in India.

Meaning and Definition of Corporate Governance

The term "Corporate Governance" broadly refers to set of rules that are designed to govern the behaviour of corporate enterprises, It can be defined as a blend of rules, regulations, laws and voluntary practices that empower companies to pull in financial and human capital, perform effectively and along these lines boost long haul an incentive for shareholders other than regarding the goals of various stakeholders including the society.

It may also be defined as a system of structuring, operating & controlling a company with the following aims: -

- Fulfilling long term strategic goals of owners;
- Taking care of the interest of employees;
- A consideration for the environment and local community;
- Keeping up incredible relations with clients and providers;
- Legitimate consistence with all pertinent legal and regulatory requirements.

The mainstream accounting and finance literature define it as "The range of corporate governance control ensure and upgrade the enthusiasm of shareholders of business enterprises".

Monks and Minow have defined corporate governance as "Relationships among different members in deciding the heading and execution of a corporation". Where essential members are the tripod of shareholders drove by the CEO and the Board of Directors.

As indicated by James D. Wolfensohn, leader of World Bank, "Corporate governance is tied in with advancing corporate fairness, transparency and accountability".

Corporate governance means that company managers its business in a way that is responsible and dependable to the shareholders. In a wider interpretation, corporate governance includes company's responsibility to shareholders and different stakeholders, for example, representatives, providers, clients and local community.

Corporate Governance might be characterized as a lot of frameworks, procedures and standards which guarantee that a company is represented to the greatest advantage of everything being equal. It is the system by which companies are facilitated and controlled. It is tied in with advancing corporate reasonableness, straightforwardness and responsibility.

India and corporate governance

Corporate governance has assumed a significant job in the present economic state of India. India effectively began its move towards open and inviting economy in 1991. From that point onwards it has seen an astounding upward pattern in the size of its stock market, that is, the quantity of recorded firms was expanding proportionately. If India needs to pull in more nations for remote direct speculations, Indian companies must be progressively centered around straightforwardness and "Shareholders value maximization".

Despite the fact that corporate governance practices can be antedated to as ahead of schedule as 1961 around the globe, India was falling behind. It was not until 1991 when progression occurred and corporate governance set up a universal setting. The most significant activity of 1992 was the change of the Securities and Exchange Board of India (SEBI). The primary target of SEBI was to oversee and standardize stock trading, yet it steadily shaped numerous corporate governance rules and regulations. The following significant change was the course of action of Confederation of Indian Industry (CII) in 1996, which developed the game plan of laws for Indian companies to begin the showing towards corporate governance. By then, two councils Kumar Mangalam Birla and Narayan Murthy under Securities and Exchange Board of India started laying the reason for formalizing the recommended methodology on corporate governance. Taking into account proposals from these panels, Clause 49 was introduced as a significant part of the posting contract for the companies recorded on the Indian stock exchange. Nevertheless, due to scandals like Enron, Satyam, WorldCom etc compelled the Clause 49 to be improved to incorporate and beat the issues that made these companies fall and break the economies of the individual nations.

Corporate governance: legal and regulatory systems

Companies in India should be governed by the provisions of the Companies Act, 1956; SEBI Act, 1992; SEBI Regulations and Guidelines and various Mercantile Laws. In this section the researcher discussed in detail the provisions of the Companies Act, 1956 and SEBI Regulation and other laws.

Legislation is a measure to prevent fraud within the corporate world. In India, there are many legislations that deal with corporate scams. The statutory framework in India conforms to the international best practices of corporate governance, and is in large measure.

The Contract Act, 1872

Though the Act mainly talks about the different arrangements of the contract rules but it also directly or indirectly deals with corporate frauds / scams. Some of these are as follows:

Misrepresentation is ordinarily used to connote both *innocent misrepresentation* and *dishonest misrepresentation.* A party deceived by it in a case of innocent misconduct may avoid the contract, but cannot sue for damages under normal circumstances. In the case of dishonest misrepresentation / willful misrepresentation or fraud, knowingly or recklessly or without a false statement believing its truth. Such a statement is intended to deceive. The disobeying party can avoid the contract and also claim damages.

There are contracts in which the law imposes a special duty to act solely with good faith, namely to disclose all material information. If one party fails to disclose such information, it will void the contract at the alternative of the other party, e.g. when a company invites the public to subscribe to its shares, it is under statutory obligation to disclose the nature of the business and the truth of its finances provided under the particulars of the contract. Any person responsible for non-disclosure of any of these matters is liable for damages. Furthermore, the contract to purchase the shares is void where the material in the prospectus is inaccurate detail or

non-disclosure.

The Indian Companies Act, 1956

Entries 43 and 44 of List I of Schedule VII of the Constitution of India empower Parliament to legislate on corporate matters. From these entries it becomes clear that the act of incorporation giving rise to the rights and liabilities of a company will be regulated by the law under which the company is created and the manner provided by the Act.

Institutions created by Parliament are known as corporations, whereas those incorporated under the Companies Act are known as companies. Corporate companies doing business for profit are mostly covered under the Companies Act. The Companies Act 1956 has recently been amended by the Companies (Amendment) Act, 2000 and the Amendment Act, 2002. The Companies (Amendment) Bill, 2003 was introduced in the Parliament (Rajya Sabha) on 7 May 2003 to amend the Companies Act, 1956, which was withdrawn under pressure from the business sector.

Securities Contracts (Regulation) Act, 1956 (SCRA)

The SCRA has been enacted with the following objectives:

1. To accommodate the guideline of stock exchanges.
2. To provide for the regulation of the transaction in securities.
3. To prevent undesirable speculation in securities.
4. To manage the purchasing and selling of securities outside the breaking point of stock exchanges.
5. To provide for ancillary matters.

SEBI (Insider Trading) Regulation, 1992

Under this regulation, it sets out the mechanism for regulating insider trading. The word insider means anyone who:

Is or was associated with the company or is believed to be associated with the company and has access to unpublished value delicate data in relation to securities; or access to such unpublished price, sensitive information.

a. Unpublished price, sensitive information

Unpublished price, delicate data implies any data which is not published/ disclosed in public by the Company or through its agent.

b. Price sensitive information

Value delicate data implies any data relating to any company or directly or indirectly, which is probably going to physically influence the cost of the securities of the companies.

c. Prohibition on Dealing, Communication or Counseling on Matters Relating to Insider Trading

It provides that no insider, either for his own sake or for the benefit of another person, deals in securities of a company that is in control of any unpublished value touchy data; or communicates, the consultant purchases unpublished value delicate data straightforwardly or in a roundabout way to any other persons.

SEBI (Depositories and Participants) Regulations, 1996

A depository is an organization similar to the Central Bank, where a shareholder's securities are held in an e-form in line with the investor through the depository participants, thus the depository participant channels between the depository and the shareholder. A depository system is beneficial because it eliminates all the risks related with physical certificates and reduces the possibility of fraud and theft.

Under the regulation, it speaks of security eligible for dematerialization.

The Depositories Act, 1996

The Depository Act, 1996, a rule providing for the regulation of depositories in securities came into force on 10 August 1996. The Act accommodates a legal structure for establishing a single or multiple depository for filing ownership details as book entries. Any person eligible to provide depository services should be shaped and enlisted as a company under the Companies Act, 1956 and will look for enrollment with SEBI and get an endorsement of business from SEBI on satisfaction of the recommended conditions.

SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003

The regulation is unfair and prohibits business practices. It provides that no person shall be directly or indirectly involved in buying or selling securities or in any case managing in a fraudulent manner; or using or appointing the aforesaid purchase or sale or engaging over the span of any act or behaviour or business that is or is operated as fraudulent behaviour.

SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

This regulation provides guidelines or criteria that need to be met before issuing capital. This regulation also talks about:

A. Prohibition on payment of Incentives

Any person connected to the issue will offer an incentive in any way, whether directly or indirectly, whether in cash or of any kind, or to apply for the allocation of specified securities to any individual for services or otherwise.

One reason for including it under the rules is that it is not allowed under the Companies Act, 2013. It can also lead to corporate fraud on stakeholders.

SEBI (Investor Protection and Education Fund)Regulations, 2009

This regulation ensures the formation of a fund called Investor Protection and Education Fund and these funds will be considered to be established; By the Board under Section 11 of the SEBI Act, 2002. The fund will be utilized with the end goal of security of financial specialists and advancement of speculator training and mindfulness as per these rules.

The Companies Act, 2013

The Companies Act is a relevant law in India which governs the incorporation, working and ending up of companies. It provides rules and regulations directly related to corporate fraud / scams and its penalties. It also provides various control mechanisms through which such fraud can be prevented.

The new amended Act brought many amendments compared to the old Companies Act, 1956. Before going into the details of the Companies Act 2013, It is important to highlight the characteristics of the Companies Act.

The Companies (Accounts) Rules, 2014

Under this regulation, it talks about keeping books of accounts in electronic mode.This regulation further specifies the process of keeping a book of accounts.

1. Books of account and other related books and papers which are kept in electronic mode will be available in India in order to be usable for later reference.
2. The books of account and other related books and papers mentioned in sub-rule (1) shall be fully retained in the format in which they originally originated, And the data contained in electronic records will remain complete and unused.
3. The information received from the branch offices will not be changed and will be kept in such a way as to indicate what was originally received from the branches.
4. The information will have the option to be shown in a decipherable structure in the electronic record of the document.
5. There shall be an appropriate system for storage, retrieval, display or printout of electronic records as the audit committee may deem appropriate.

Thus, the Company Accounting Rules helps to maintain books of accounts and other related documents for a particular period of time, without making any changes or changes in it.

Companies (Audit and Auditors) Rules, 2014

The rule seeks to disclose information that helps investors ascertain the company's market capitalization, overall market-risk exposure, and financial leverage.

The rule defines the duties and powers of an auditor in terms of all the time being used for the audit of the branch and the books of account and vouchers of the company, examined or making a report to the members of the company on each financial statement and their report will further clarify the fact that they have acquired all the data and clarifications that were necessary for their knowledge and belief with the end goal of their audit. This rule also states that the branch auditor shall submit his report to the auditor of the company.

Companies (Audit and Auditors) Amendment Rules, 2015

Rule 13 of the Companies (Audit and Auditors) Rules, 2014 has been amended to the extent that the auditors of the company during the performance of his duties as a statutory auditor, only those matters will be accounted for the Central Government which is a crime of fraud against the company committed by its officers or employees, on which the auditor believes that it personally involves an amount of Rs 1 crore or more.The procedure for reporting fraud has been revised to the extent that the auditor will report such fraud to the board/director committee by and large, within two days of his knowledgeand the report states that the auditor submits to the Central Government the details as specified in Form ADT-4.

Further, Rule 13 (3) has been inserted with the aforementioned alteration which rules 13 (1) addresses fraud involving an amount of less than 1 crore or more.The said fraud will be reported to the audit committee or board of directors, by and large, promptly inside two days of their information indicating and portraying the idea of the fraud, the amount involved and the parties involved in the fraud.The details of each fraud under Rule 13 (3) in terms of Rule 13 (4) shall be disclosed in the Board's report along with the specifications and details required under Rule 13 (3) and is also suggesting remedial action taken in that regard.Rule 13 (5) is on the same lines as earlier Rule 13 under the Companies (Audit and Auditor) Rules, 2014.

Conclusion

Good corporate governance implies insuring decency, graciousness and nobility in all exchanges, expanding long haul shareholder esteem in a legal and moral manner. Within and outside the company with clients, workers, speculators, accomplices, contenders, government and society. All stakeholders in a company now need to get a picture as close to reality as possible so that the core competence of a company can be evaluated.Market forces are highlighting the qualities of open, transparent and competency-based management, which must be achieved through sound corporate governance practices.

Good corporate governance cannot be the engine of economic growth but it is necessary for the proper functioning of the engine. On the other hand, a poor system of corporate governance often leads to fascism which can prove to be very costly.

For effective corporate governance in India, it has been suggested that there is a need to increase shareholder activism in India and therefore extend the legal rights of whistle-blowers who 'blows the whistle' if the organization is involved in unspecified, illegal, fraudulent or harmful activity. In addition, it has been recommended to reduce corruption and improve bankruptcy laws, this will greatly advantage the Indian economy besides improving corporate governance. In particular, India should improve how its board of directors' functions, improve its requirement components, reclassify its corporate laws, and hold onto corporate governance as a way of thinking. Ultimately India's corporate-governance destiny will be formed by this how effective its legislature, the judiciary and SEBI implemented transparent and effective corporate-governance laws.

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