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Corporate Governance In India

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Abstract: *Corporate Governance is a set of policies, guidelines and regulations that guide Board of Directors in running a Company. It is essential because ownership of the Company is different from management – shareholders are the real owners while the day-to-day management is vested in the Board. The Board is thus answerable to the shareholders. Not just the shareholders, there are other stakeholders too who are affected by the actions of the Board. In such a scenario, there should be system which provides insights into how Board should manage the Company. However, Corporate Governance is not a new concept in INDIA. The concept of good governance has been elaborately explained by Kautilya in 'Arthasasthra'. Similarly, our Vedas and Upanishads stress on transparency and truthfulness – hallmark features of Corporate Governance. In recent times, failure of Enron and few other big corporate houses in the Western world brought into light mismanagement done by the Board. Such corporate failures crippled the economy world wide necessitating a system of strong Corporate Governance. Various Committees like the Cadbury Committee and Kings Committee were appointed which prescribed norms for strict governance. In INDIA, the most important development in this sphere has been the establishment of SEBI. It is a regulator for capital markets. Moreover, many committees were set up in order to look into the nuances of Corporate Governance like Kumara Mangalam Birla Committee, NR Narayana Murthy Committee etc.*

Keywords: *CSR, Ethics, Governance, SEBI*

I. Introduction

Corporate Governance has been defined in many ways. One of the most comprehensive definition was given by the Cadbury Committee (U.K) which said, "Corporate Governance is the system by which companies are directed and controlled"

In simple words, Corporate Governance is the system which ensures that the interests of stakeholders are protected at all times. This stems from the fact that the management of a Company is in the hands of the Board of Directors while shareholders are the real owners. In other words, management is in the hands of the Board of Directors while shareholders are the real owners. Moreover, shareholders are generally not at one place but are scattered all over. In such a scenario, it is important to ensure that the shareholders have complete knowledge about the happenings in the Company.Also, in the light of growing scandals, the image of corporate structure has taken a backseat. Hence, it becomes all the more necessary that a fair view has to be presented to the shareholders.

The concept of Corporate Governance has become a buzzword today, however it is not of a recent origin. If we look at it, way back in 1992 itself, Cadbury, Sir Adrian submitted a report on Corporate Governance popularly known as Cadbury Committee's report, which found that a major corporate governance difference between countries is the board structure.

Similarly, The Organization for Economic Co-operation and Development (OECD) published its principles of Corporate Governance in 1999 following a request from the OECD Council to develop corporate governance standards and guidelines.

II. Objectives Of The Study

a. To study the evolution of Corporate Governance in India
b. To analyse the impact of our Ancient Ethos on the subject of Corporate Governance
c. To study how the Companies Act, 2013 has strengthened Corporate Governance

III. Review Of Literature

N. Siva Kumar and U.S. Rao (1996) in their paper, ―Guidelines for Values Based Management in Kautilya‟sArthashastra, assert that Kautilya'sArthshastra provides a total framework for the practice of value based management. The objective of their paper was to develop a model for valuebased management on the guidelines provided in Kautilya‟sArthshastra with focus on ethics, morals and values.The model incorporated

the Kautilya‟s belief that not only the leader but organization members should also be virtuous and righteous and their righteous behaviour should be rewarded while their unethical behaviour should be checked.
ChSrinivasaMurthy in his book *The Bhagavad Gita*provides valuable insights about the dialogue Lord Krishna had with Arjuna and focuses on the Vedic line of thought Indians have. This book throws light on Vedas, Upanishads and the Karma Yoga.

Arun Kumar (2004) in his published research work, "Management Leadership through Bhagwat Gita", made an in-depth study with a view to explore, identify and formulate the wisdom of Bhagwat Gita in the field of leadership and team building, philosophy of life, work ethics, decision-making, motivation, communication and human relations in business and industry.The concept of 'NishkamaKarma‟ -doing good deeds without any expectation of reward, recognition, appreciation or gratitude, the central teaching of Gita.

Taxmann's Corporate Governance authored by Srinivasan Anand G details out a comprehensive Analysis of Clause 49 of the Listing Agreement issued by SEBI. Various Committees were appointed in order to study the Board structure and governance norms and their evolution.

SEBI has published a consultative paper on 'Review of Corporate Governance Norms In India' which details the evolution of Corporate Governance in the country and also lists out the way forward; the ways in which governance can be strengthened. It clearly talked about the new Companies Act. This paper was published before the 2013 Act came into existence. However, this paper clearly highlighted the key additions that will be seen in the corporate world once this bill gets passed.

IV. Methodology

The research methodology adopted is hermeneutics which involves the study and interpretation of ancient classical texts/literature. Since the study is descriptive in nature, there is no scope of collecting data.

V. Sources Of Corporate Governance

Corporate Governance is not a new concept in India. We can derive this from our ancient ethos – Vedas, Puranas, Ithihasas. Not just the ancient texts, the books written by scholars such as Kautilya are a case in point.

5.1 RAMAYANA:

Rama Rajya has been established as a model of good governance. Lord Rama is regarded as an ideal leader. He is an epitome of truthfulness – the golden lesson of Truth always triumphs or SatyamevaJayate taken from the **Mundaka Upanishad** is enshrined in the life journey of Rama. Corporate Governance is modelled on truth and transparency.

This epic shows the example of a King for whom duty comes before his personal comfort. He sent SitaMaa away from the palace to satisfy his subjects who doubted the chastity of Sita. Lord Rama set an example to show our managers or decision makers in the field of management that everyone is answerable to the stake holders. It may be the CEO or the clerk in the lowest rung – in order to ensure transparency, we should at all times protect the interests of our stakeholders.

During Ramayana, subjects were the stakeholders while in the modern day, shareholders, vendors, general public are the stakeholders. The goodwill of an organization is built on the trust the stakeholders have. It becomes important for modern day managers to perform their tasks with transparency thereby upholding their faith.

5.2 BHAGAVAD GITA[1]

The philosophy of Bhagavad-Gita has remained and will remain as a guide for developing managerial effectiveness, not only in this 21st century but also for many more centuries to come. Bhagavad-Gita is the summary of all Vedic philosophies and its teachings can be effectively applied to address any problem related to individual or organization.

Swadharma, an essential ideal of Gita refers to performance of one's duty. Each one has to do his duty, no matter what his circumstances are. At the same time, he should not expect results or fruits from performing his duty. This is indicated by Karma yoga which represents the essence of Gita through the concept of Niskam Karma. This concept emphasizes on action without expecting the fruits of action.

Karma Yoga **[3]**states that we only have the right to work but not on the consequences or fruits of our action. We shouldn't work for results but rather work for a purpose or ideal. When we work for a vision, we will always strive to reach it, no matter what the hardships are. This principle should be adopted by start-ups. We cannot expect results immediately on starting an enterprise. It takes time to build and nurture it. So, new age entrepreneurs should work towards a vision taking cue from the verses below:

"Karmanyevadhikaras.Te Ma phalesukadachana Ma karma phal heturbhurMa.Tesango'stvakarmani
The English translation goes on to state ''to work only you have the right and you have no right to the fruits of work" – this was the message given to Arjuna by Lord Krishna.

The concept of 'NishkamaKarma' -doing good deeds without any expectation of reward, recognition, appreciation or gratitude forms the central teaching of Gita.

5.3 VEDAS

Vedic literature can be expressed via-Dharma-Socialism, Artha-Capitalism, Moksha-Spiritualism (Love, Compassion and devotion)

The Vedic concept of the universe is founded on two pillars, truth and order which are represented by Satya and Rita.

Fairness or Impartiality – Samdarshita is an important element of governance which encompasses equality towards all. It is a part of our ancient texts. SAMA SHATRO CHA MITRE CHO has been mentioned in the Bhagawad Gita which advocates impartiality.

5.4 KAUTILYA[4]

Kautilya or Chanakyawas a manager in the Maurya kingdom. His 'Arthasasthra' – a book on public administration is popular all over the world and contains principles of good governance which corporatescan follow even today.

According to Kautilya, the essence of leadership lies in the acceptance of leader by the subjects. There are two pillars of governance – 'Nyaya' and 'Dharma'i.e Justice and Ethics respectively. Hence, any leader in order to be loved and respected by the people has to follow the tenets of Justice and Ethics. His decisions have to be bound by law and his conduct has to be moral.

In 'Arthasasthra', Kautilya states that there exists a strong correlation between good governance and economic prosperity of a nation. He says that King is a servant of the State. As such, a King should not harbour personal likes and dislikes. In order to ensure a good system of governance, there must be a properly guided public administration,

Kautilyasummarised the duties of a King as follows:

a. Raksha (safeguarding wealth)
b. Vriddhi (Maximise/ Enhancement)
c. Palana (Protection)
d. Yogakshema

By applying these tenets to a corporate scenario, we are able to understand that a Company has to protect the interests of its stakeholders at all times. Not only should the management protect a shareholder's wealth, it should also take steps to enhance their wealth.

Arthasasthra stresses on the welfare of people. Welfare state is one where the State plays a key role in the protection and promotion of the economic and social well-being of its subjects. It is based on principles of equal opportunity and equitable distribution of wealth. The main objective of a King/State is to secure the welfare of the people.

When we look at corporate houses, the main objective of a Company is no doubt profit but those profits have the distributed to the shareholders who are the real owners of the Company.

In Arthasashtra, emphasis was also laid on maintaining the environment. When we look at Corporate Social Responsibility (CSR) today, we see that protection of environment is an important element in CSR. This concept was explained by Kautilyasome centuries ago. Now the same has been incorporated in the Companies Act.

Very often, we see that in organisations, there is a lack of succession planning. Of late, every company is laying stress on succession planning. In fact, Kautilya states that Yuvraj (prince) should be trained in political science and economic administration. This is a lesson in succession planning. 'Going concern' concept is enshrined in this philosophy. Every organisation is started with the hope that it continues till eternity. There has to be a concrete plan on how the business has to be taken forward. In the olden days, the prince was expected to take after the King.

Kautilya always stressed on value based management.

Kautilya also states that: 'YO YASMIN KARMANI KUSHALASH SA TASMIN EVA YOKTAVYAH'

A person should be engaged in that job which he is capable of doing efficiently. Every person cannot do everything but each person is capable of doing something. The leader will have to assess the capabilities of the employees and assign jobs to them accordingly. Hence, leader should be capable of assessing his subordinates' skills and assign them work accordingly.

VI. Evolution Of Corporate Governance[2]

Though the concept of Corporate Governance is not new, yet after Independence due to setting up of and structuring of Companies, there have been many changes which lead to the establishment of Corporate Governance norms. Setting up of SEBI has been an important step towards enhancing Corporate Governance.

High profile corporate scandals like Enron in the Western world and Satyam in our own country have brought into public limelight the mundane subject of corporate governance reforms.

The corporate governance regime in India has considerably evolved over the last two decades, culminating with the enactment of the Companies Act, 2013.Many Committees were set up in order to oversee the working of the Companies and suggest on ways to improve governance norms. Two of them are discussed below:

6.1 Kumara Mangalam Birla Committee:

Consequently, the second major corporate governance initiative in the country was undertaken by SEBI. In 1999, it set up a committee under Kumar Mangalam Birla to promote and raise the standards of good corporate governance. This report pointed out that the issue of corporate governance involves, besides shareholders, *all other stakeholders*. The committee's recommendations have looked at corporate governance from the point of view of the stakeholders.

6.2 NR Narayana Murthy Committee

In 2002, SEBI therefore constituted a Committee under the Chairmanship of Shri N.R. Narayana Murthy, for reviewing the implementation of the corporate governance code by listed companies and issued revised clause 49 based on its recommendations.

Once clause 49 came into effect, the regulatory content for corporate governance changed significantly. It contained 8 segments dealing with Board of Directors, Audit Committee, Remuneration of Directors, Board Procedures, Management, Shareholders, Reports and Compliance. Additionally, with much greater inflow of foreign institutional investments (FII) into the Indian capital markets, there has been an increasing demand for *transparency and disclosure* from Indian firms to be on par with the best practices in the developed world.

6.3 COMPANIES ACT, 2013

The Companies Act is a significant step in strengthening Corporate Governance in the country. It focuses on transparency and greater accountability towards the stakeholders. In order to achieve it, various provisions have been incorporated. Some of them are discussed below:

6.3.1 ROLE OF INDEPENDENT DIRECTORS

The new Act strengthened the roles and duties of Independent Directors.

The Act states the manner of selection and appointment of Independent Directors. Also, a code of conduct has been prescribed for Independent Directors wherein a framework of guidelines has been given in order to cover various aspects in the day-to-day affairs of the Company.

The new Act has also emphasized on the appointment of an ID as a member or as a chairperson in various committees like the Audit Committee. All these changes have been introduced in order to enhance the status of Independent Directors.

Section 149(4) of the Act states that every listed Company will have atleast one third of the total number of Directors as Independent Directors

The independent directors shall hold an exclusive meeting of themselves once a year *without the presence of non-independent directors and members of management.* This meeting is expected to review the performance of:

a. non independent directors and board as a whole
b. review the performance of the Chairperson after taking into account the views of executive directors and non-executive directors; and
c. assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties

6.3.2 WOMEN'S EMPOWERMENT

These days, we see a lot of issues pertaining to Women's Empowerment. By adding a provision in the Companies Act that every listed Company should appoint atleast one woman Director on its Board, the Act has given teeth to Women's Empowerment as well. It is a proven thing that having Women Directors brings diversity to the Board structure.

6.3.3 CORPORATE SOCIAL RESPONSIBILITY[5]

This is a new feature incorporated in the Companies Act, 2013[2]. Corporate Social Responsibility is applicable for the following class of Companies:

- Companies with a net worth of Rs. 500 crores or more, or
- Companies with a turnover of Rs. 1000 crores or more, or
- Companies with a net profit of Rs. 5 crores or more.

If any of the above financial strength criteria are met, the Corporate Social Responsibility (CSR) provisions and related rules will be applicable to the company. As such, CSR is applicable to profit making entities. 2% of the average net profits made by the Company during the three preceeding financial years have to be utilized for CSR activities.

The provision also states that a company shall give preference to the local areas and those areas around which the company operates for undertaking the said CSR activities. These companies are required to form a CSR committee consisting of atleast three directors of which one of them should be an independent Director.

The following activities can be performed by a company to accomplish its CSR obligations. These are outlined in Schedule VII of the Companies Act.

- Eradicating extreme hunger and poverty
- Promotion of education
- Promoting gender equality and empowering women
- Reducing child mortality
- Improving maternal health
- Combating human immunodeficiency virus, acquired, immune deficiency syndrome, malaria and other diseases
- Ensuring environmental sustainability,
- Employment enhancing vocational skills, social business projects
- Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development, and
- Relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women and such other matters as may be prescribed.

Through the concept of CSR, organizations are involved in doing their bit to the society – giving back. It encompasses the notion of "Sustainability". This gives a positivity to the Company and also helps the Company to build its brand – Company acquires goodwill through CSR activities. However, these activities should be closely monitored and hence there is a provision of a CSR Committee in the Company.

VII. New Authorities Under The Act:

The new act established a new statutory framework to replace the High Court and the Company Law Board. It has constituted the NCLT and its appellate authority that will perform the tasks and exercise the powers the High Court and the Company Law Board exercised in the previous regime. The new regulatory apparatus is empowered under the new law to adjudicate issues arising out of oppression and mismanagement, approve schemes of merger and other arrangements between shareholders/ creditors etc.

VIII. Conclusion

The new Act is a major step towards updating what could be called the keystone of corporate governance and investor protection in India. It reflects and regularizes several developments that have gradually emerged in the country and the world of financial markets. Though the Act is relatively new, the provisions are designed in such a way so as to ensure stricter compliance. Most of the provisions aim at timely disclosures which help in dissemination of information at the right time. These provisions will definitely help in improving Corporate Governance in the country.

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