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Prospects and Challenges of Corporate Governance in India

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Abstract: *The relevance of corporate governance principles in the management of corporate organisations cannot be underestimated. The increasing influence of principles of corporate governance across the globe has been greatly linked to the recent corporate frauds and scandals. These frauds and scandals largely resulted from the failure of authorities of countries to effectively implement the legal and regulatory frameworks pertaining to corporate governance. India is stands at high in regards to the failure of authorities to enforce the laws and regulations in relation to corporate governance. During the enforcement of the laws and regulations of corporate governance, some vitally important issues are either overlooked or deliberately deserted. This paper attempts to examine the legal and regulatory framework of India in regards to corporate governance and points out the importance of complying with good corporate governance. It also highlights prevailing issues of corporate governance practice in India. It finally makes some recommendations, which are considered the major contribution of this paper.*

Key Words: *Prospects, Challenges, Corporate Governance and India.*

1. INTRODUCTION:

Good corporate governance has been foregrounded to be indispensable to corporate organisations especially in transition and emergent economies. The effectiveness of a company's corporate governance structure has a far-reaching effect on how well it Functionality is pertain. A corporation that embarks on good corporate governance practice offers requisite constitutionall information to its equity holders and other stakeholders to reduce information asymmetry. Financial scandals that are currently happening across the globe and the recent collapse of major corporate organisations in the India,US, Europe and other parts of the world have made corporate governance to take on the centre stage for academic and professional discourse. With the liberalization and globalization of the economy, the thrust of the Government of India has been on better corporate governance to make India globally competitive. Consequently, the Kumar Mangalam Birla Committee, Naresh Chandra Committee and Narayana Murthy Committee in their reports have recommended several legal and regulatory measures for improving the standards of corporate governance. Some of these recommendations have been incorporated by way of amendments in the Companies Act, 1956, and, Clause 49 in the Listing Agreement of Stock Exchanges.

However, to cope up with the need of emerging scenario, company law requires simplification and rationalization. The Government of India has, therefore, brought out a concept paper to meet the needs of modern business. Recently Dr. Jamshed J. Irani Committee has also submitted its report on the new Companies Act, which covers provisions for better corporate governance in line with the global management practices. In this context, an attempt is made to review the legal, regulatory and institutional framework of corporate governance with particular reference to the role of the board of directors and audit committee.

2. OBJECTIVES:

- To know the evolution of corporate governance.
- The Present paper is basically concerned with the Issues and Challenges for Corporate Governance in India.
- To provide suggestions bases on study.

3. RESEARCH METHODOLOGY:

The study is confined to secondary data to achieve the objectives. The data is procured through secondary survey method. Different news articles, Books and Web were used which were enumerated and recorded.

4. CORPORATE GOVERNANCE:

There is no universally accepted definition of "Corporate Governance" due to different legal, regulatory and institutional practices followed in different countries. However, for practical purposes, corporate governance refers to maximizing long-term shareholders' value by following high standards of corporate management, disclosure of financial information and investor democracy. It is the system by which companies are directed and controlled in the best interest of stakeholders. Good corporate governance means establishing legal and regulatory framework that promotes credible and effective governance practices for the benefit of economy, stakeholders and society as a whole. It is the process by which the board of directors directs, supervise and control affairs of companies in the best interest of stakeholders

5. CORPORATE GOVERNANCE IN INDIA:

Corporate governance has played a very important role in the present economic condition of India. India successfully started its move towards open and welcoming economy in 1991. From then onwards it has seen an amazing upward trend in the size of its stock market, that is, number of listed firms was increasing proportionately . If India wants to attract more countries for foreign direct investments, Indian companies have to be more focused on transparency and Shareholders value maximization. Even though corporate governance practices can be backdated to as early as 1961 around the world, India was lagging behind. It was not until 1991 when liberalization took place and corporate governance established an international context. The most important initiative of 1992 was the reform of Securities and Exchange Board of India (SEBI). The main objective of SEBI was to supervise and standardize stock trading, but it gradually formed many corporate governance rules and regulations. The next major change was formation of Confederation of Indian Industry (CII) in 1996, which developed the set of laws for Indian companies as to initiate the act towards corporate governance. Then two committees Kumar Mangalam Birla and Narayan Murthy under Securities and Exchange Board of India started laying the groundwork for formalizing the best practices on corporate governance. Based on suggestions from these committees, Clause 49 was introduced as part of the listing contract for the companies listed on the Indian stock exchange. However, due to scandals like Enron, Satyam, WorldCom etc. forced the clause 49 to be reformed to incorporate and overcome the problems that caused these companies to collapse and shatter the economies of the respective countries . Clause 49 of the listing agreement of Indian stock exchange took effect from 2000 to 2003. It contained all the regulations and requirement of minimum number of independent directors, board members, different necessary committees, code of conduct, audit committee rules and limits, etc. Firms that were not following these principles were removed from the listing and were given financial penalties. We can compare the Sarbanes-Oxley Act of 2002 and Clause 49. Clause 49 was based on the principles of Sarbanes-Oxley Act of 2002. It was developed for the companies listed on the US stock exchanges. As far as the responsibilities of management and number of directors were concerned, they are both the same. They also have same rules regarding insider trading, refusal of loans to directors and so on. The important difference between the two is under Sarbanes-Oxley legislation if fraud or annihilation of reports takes place up to 20 years of imprisonment can be charged, but in case of Clause 49, there is no such condition. Being the controller of the market SEBI can commence a criminal proceeding. If in case SEBI decides to give a severe punishment then it can commence a criminal proceeding or raise the fine for not agreeing with Clause 49, which automatically d-lists the company . Corporate governance affects corporations as well as countries in different ways such as firm"s access to outside financing increases, which leads to more investment, better growth opportunities and that causes the job market to flourish. Capital cost is decreased and so the firms are valued at higher cost. Firms can be attracted by this, which directs it to growth and again to reduced unemployment. Wealth is generated by better distribution of resources and good management practices, which is because of better operational performance. Better corporate governance can be associated to reduce financial crises. As these crises, have devastating effects of any countries economy. If corporate governance practices are followed properly this creates better rapport with the stakeholders. We can further see what significant role does corporate governance plays in the investment process. As corporate governance provides property protection and safe modes of ownership registration, it automatically affects the firm's capital mobilization. For any firm to receive funds from the market effectively it has to be consistent and transparent in disclosing its details. Finally, to effectively handle the capital received, any company should have proper resource allocation, authority distribution, and well-planned incentive schemes as some of the necessary steps. Fraudulent behavior of companies has caused countries to go through financial crisis. Corporate governance hence

became a critical issue for all the countries around the world. From Satyam Computer Limited of India to Enron of the U.S., pattern is more or less same. Failure of companies of these massive sizes created havoc in the industry and had caused the economic meltdown. The immediate action that the Indian authority took in response to the scandals reveal how government in emerging economies also feel the need to promote good corporate governance practices. Furthermore, understanding corporate governance standards and issues is also important to executives of foreign multinationals planning to do business with India

6. CORPORATE GOVERNANCE REGULATIONS IN INDIA:

In terms of structural and regulatory changes, India has seen a number of enactments, including the 2013 Companies Act and the regulations governing SEBI's listing obligations and disclosure requirements. These enactments have significantly strengthened governance standards and increased accountability through disclosures. The Companies Act, 2013 which has replaced the earlier Companies Act of 1956 covers laws relating to board composition, board meetings, independent directors, general meetings, related party transactions, financial statement disclosure obligations, and so on. The Act provides more opportunities for new entrepreneurs and enables wide application of Information Technology in the conduct of affairs by corporations.

⇒ The Securities and Exchange Board of India (SEBI) is a regulatory body that oversees listed firms and publishes rules to guarantee that investors are protected.

⇒ Companies whose shares are listed on stock exchanges are bound by the Standard Listing Agreement of Stock Exchanges. This agreement defines the rules, processes, and disclosures that companies must follow to remain as listed entities.

The Institute of Chartered Accountants of India (ICAI) is an autonomous body, which issues accounting standards, provides guidelines for disclosures of financial information.

⇒ The Institute of Company Secretaries of India (ICSI) is a self-governing group that establishes secretarial standards in accordance with the New Companies Act.

The Companies Act, 2013:

The Government of India introduced the Companies Act, 2013 ("New Companies Act"), which replaces the Companies Act of 1956. The New Act focuses on corporate governance through board and board processes.

The New Act deals with corporate governance through the following provisions:

⇒ It introduced a major change in the structure of directors' boards.
⇒ Every company is required to appoint one (1) director to its board.
⇒ Appointed directors will no longer be treated as independent directors.
⇒ Listed companies and certain categories of public companies are required to appoint independent directors and female directors to their boards.
⇒ The Act for the first time covers the functions of directors.
⇒ Listed companies and other public companies will be required to appoint at least one female director to its board.

It mandates following committees to be constituted by the board for prescribed class of companies:

⇒ Committee of Auditors
⇒ Committee on nominations and remuneration
⇒ Relationships with Stakeholders Committee
⇒ Committee on corporate social responsibility

CSR Amendments under the Companies (Amendment) Act, 2019:

The Companies (Amendment) Bill, 2019, was recently passed by the Lok Sabha. The legislation aims to improve corporate social responsibility (CSR) enforcement while also reducing the number of cases brought before the National Company Law Tribunal (NCLT).

- It tightened CSR enforcement standards and ensured that non-compliance with company law regulations would result in harsher penalties.
- It allowed companies to transfer unspent CSR monies to a separate account that had to be used within three years.
- If the monies remain unused, they should be transferred to one of the funds listed in Schedule VII of the Act.

The Companies (Amendment) Bill, 2019:

The Companies Amendment Bill (Amendment) of 2020 was passed by Parliament in 2020. The purpose of the bill is to alter the Companies Act of 2013.

Producer Companies: Under the 2013 Act, certain provisions from the Businesses Act, 1956 continue to apply to producer companies. This includes taking care of their members, holding meetings, and keeping track of their finances. Companies that specialise in the production, marketing, and marketing of agricultural products, as well as the selling of domestic industry items, are considered manufacturers. The Bill eliminates these restrictions and adds a new chapter to the Act that includes producer company-specific measures.
Offenses are to be changed in three ways, according to the bill. For starters, it eliminates the punishment for certain crimes. Second, it eliminates the need for incarceration in some circumstances. Third, in some situations, it reduces the amount of the fine that must be paid.
Direct Listing in Foreign Jurisdictions: The bill gives the federal government the authority to allow certain types of public corporations to write security listings (as determined by the federal government) in foreign jurisdictions.
Exclusion from the Definition of "Listed Company": The Bill empowers the central government to exclude companies that exclude specific categories of securities from the definition of "listed company" in agreement with the SEBI.
Non-Executive Directors' Remuneration: If the company's earnings are insufficient or non-existent in a particular year, the Act allows for specific arrangements for the payment of remuneration to the company's executive directors (including the managing director and other full-time directors). The Bill further extends this requirement to non-executive directors, including independent directors.
Beneficial Shareholding: Under the Act, if an individual has a beneficial interest in a company of at least 10% shares or has substantial influence or control over the firm, he must declare his interest to the company. If it is deemed acceptable in the public interest, the central government has the ability to exempt any category of individuals from these restrictions.
Exemptions from Filing Resolutions: The Act requires that certain resolutions be filed with the Registrar of Companies. This includes the company's Board of Directors' choices to borrow money or make loans. Banking firms, on the other hand, are not required to file resolutions offering loans or providing guarantees or security for loans. Non-banking financial companies and housing financing companies are exempt from this rule.
Unlisted Companies' Quarterly Financial Reports: The bill grants the government the power to compel unlisted companies to prepare and file quarterly financial statements, as well as to complete an audit or analysis of those results. Firms with a CSR liability of up to Rs 50 lakh per year are free from forming CSR Committees under the bill. Furthermore, if a company spends more than its CSR commitment in a fiscal year, the difference will be applied to all subsequent fiscal years' CSR responsibilities.
NCLAT Benches: According to the bill, the National Company Law Appellate Tribunal will be organised into benches. These are usually held in New Delhi or elsewhere.
Due to numerous changes in the business environment, corporate structure, stakeholder expectations, and various laws and government policies relating to corporations, corporate governance has become highly significant.

7. ISSUES IN CORPORATE GOVERNANCE IN INDIA:

Although there exist many issues in the field of Corporate Governance especially in India, an effort has been made to highlight only the major ones here:
Board performance: The requirement of at least one woman director is necessary, and also the balance of executive and non-executive directors are not maintained. Evaluation is not performed from time to time and transparency is lost somewhere. The performance is not result oriented. These requirements are not always met with. Independent Directors Independent directors are appointed for a reason which does not seem to be fulfilled in the current scenario. Even after SEBI guidelines being issued to the corporates, for the appointment of an audit committee or giving of a comprehensive definition of the independent directors, the actual situation appears to be worse.
Accountability to Stakeholders: The accountability is not restricted to that of the shareholders or the company, it is for the society at large and also the environment. The directors are not to keep in mind their own interests but also the interests of the community.
Risk Management: The risk management techniques are to be mandatorily be undertaken by the directors as per the Company Laws and they have to mention in their report to shareholders as well. This is not being done in the most sincere manners required for the job.
Privacy and Data Protection: This is an important governance issue. Cyber security has evolved to be the most important aspect of modern governance. Good governance can only be achieved once the directors and other leaders in the company are well known about the hazards in this field.
Corporate Social Responsibility (CSR): Being among the few countries to legislate on CSR, it is mandatory for companies to invest minimum 2% of the profits in the last 3 years for CSR activities. Otherwise proper reasons should be mentioned in the reports in case of failure. The companies seem to be reluctant towards making such investments. In

line with the issues mentioned above, there is a greater onus upon the directors of the companies to adapt to the standards and best practices provided in various laws and guidelines. Other than, the laws and norms prescribed by various institutions from time to time, the companies are also expected to act responsibly towards the society as a whole because the corporates are so huge in the current times, that they affect each and every individual citizen of the country equally. The burden on the companies is already reduced as they are made to follow a set of guidelines and they are not required to make any amends to that. It is also required that the stakeholders also participate in the decision making processes to make it a contributory job altogether.

8. CONCLUSION:

The more the level of corporate governance, the stronger is the company in the eyes of the shareholders of the company. The independent and the active directors are the ones who infuse and contribute towards displaying the corporate as that of having a positive outlook. When it comes to investment, the investors also seek to find the companies with stronger corporate governance in them. The corporate governance requirements in India deliberate the companies to audit their working culture and give the shareholders community a more positive outlook as their actions have moral and legal implications. The new norms after the Companies Act 2013 came into the picture, are very balanced and innovative. They have helped reformed the growth of Indian companies as per international standards. Shareholders are involved in the decision making of the companies and various safeguards have been put in order so that the interests of the shareholders and the society as a whole is not side-lined. Corporate Governance imbibes the much-required transparency in the corporates. Therefore, it pushes India ahead in the race of emerging economies of the world. Globalization helping Indian Companies to become global giants based on good governance: In today's competitive environment and due to globalization, several Indian Corporate bodies are becoming global companies which are possible only due to good corporate governance. The concept of corporate governance hinges on total transparency, integrity and responsibility of the administration and the board of directors. Be it finance, taxation, banking or legal structure each and every place requires good corporate governance. Corporate Governance is a means not an end, Corporate Excellence should be the end. Once, the good Corporate Governance is achieved and the Indian Commercial Body will shine to outshine the whole world. In the Indian context, the need for corporate governance has been pointed because of the frauds occurring constantly since the emergence of the concept of liberalization from 1991. We had the Harshad Mehta fraud, Ketan Parikh Scam, UTI fraud, Vanishing Company Scam, Bhansali Scam and so on. In the Indian corporate scene, there's a need to induct global standards so that at least while the scope for frauds may still exist, it can be at least reduced to the minimum.

REFERENCES:

1. Utting, P. 2003 Promoting Development through Corporate Social Responsibility – Does it Work?. Global Future, Third Quarter 2003, Profit and Loss? Corporations and Development. London: World Vision International.
2. Goswami, Omkar, 2002, “Corporate Governance in India,” *Taking Action Against Corruption in Asia and the Pacific* (Manila: Asian Development Bank), Chapter 9.
3. Das, A. and S. Ghosh, 2004. Corporate Governance in Banking System: An Empirical Investigation, Economic and Political Weekly, March 20, 2004, pp. 1263-1266.
4. Voluntary Guidelines on Corporate Governance, the Ministry of Corporate Affairs, December 2009.
5. Afar Afsharipour, a Brief Overview of Corporate Governance Reforms In India, UC Davis Legal Studies Research Paper Series. April 2011.
6. Dimple Grover, Amulya Khurana, Ravi Shankar, the Regulatory NormsOf Corporate Governance in India.
7. Sadhalaxmi Vivek Rao, Legal Framework and corporate Governance: An Analysis of Indian Governance System.
8. Chhibber, P.K., and S.K. Majumdar (1999), Foreign Ownership and Profitability: Property Rights, Control, and the Performance of Firms in Indian Industry, Journal Of Law and Economics. Journal of Finance