CONTEMPORARY ISSUES AND CHALLENGES IN LIGHT OF THE CORE PRINCIPLES OF CORPORATE GOVERNANCE

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Abstract

"*Good Corporate Governance, It's about being proper and prosper*"

- Author Toba Beta

This abstract is based on the concept of contemporary issues and challenges of corporate governance. The notion of Corporate Governance is nowadays based on the core principles which are transferability, accountability and fairness. But the question arises is whether these core principles of corporate governance are applicable in the actual corporate set-up or not? The paper is based on the concept of corporate governance, the issues regarding corporate governance and the challenges corporate faced in corporate governance. The objective of Corporate Governance is to ensure effective decision-making. The term corporate governance is a very idea that manages the system by which the companies are coordinated and controlled. Corporate governance is a term with an exceptionally extensive connotation, however, in the broadest sense, it implies it is an arrangement of rules, practices and procedure by which a company is coordinated and organized. Corporate accountability refers to the obligation and responsibility to provide clarification or clarification for the company's activities and behaviour. The board ought to introduce a decent and justifiable assessment of the company's position and prospects, the board is liable for deciding the nature and degree of the huge danger it is ready to take, the board ought to keep up sound risk management and internal control framework, the board ought to build up the formal and straightforward game plan for corporate reporting. The concept of Corporate Governance cannot work in isolation therefore it has to work in consonance with the objectives of the company which is controlled by its administration of the company and with the targets of the company which is constrained by its director, shareholders, stakeholders etc.

Keywords: Corporate Governance, Transferability, Accountability, Fairness, Company

Introduction

"The real mechanism for corporate governance is the active involvement of the owners".

- Lou Gerstner

The research paper is based on the concept of Corporate Governance and the principles of Corporate Governance. The notion of corporate governance came into focus in 1992 when Sir Adrian Cadbury submitted its recommendations in 1992 in which the concept of Corporate Governance is becoming popular very fast not only in the developed countries but also in developing countries for a variety of reasons. Developments in the field of information technology are creating seamless countries where businesses are gradually going out of the control of their respective Governments but are being controlled more through international norms and ethics. Corporations have to bother about the compliance of good Corporate Governance practices to build up their positive and favourable image which is not only becoming desirable but has become essential for its future growth, expansion and diversification plans. Be it market expansion or deeper market penetration or raising of funds through foreign markets or listing of its shares on the stock exchanges of different countries to win over the confidence of the overseas investor, compliance with good Corporate Governance practices is the precondition for the same. The paper is based on the concept of corporate governance, the issues regarding corporate governance and the challenges corporate faced in corporate governance. The objective of Corporate Governance is to ensure effective decision-making. Transparency in Business Transactions, to follow Statutory and Legal Compliance, Protection of Shareholder's Interest and Ethical Conduct of Business. These are some of the objectives in light of which the notion of corporate governance is established. Corporate Governance is a very vast concept and the system of corporate governance functions differently worldwide[1]. Some of the models of corporate governance followed globally are Anglo-American Model, German Model and the Japanese Model along with this there are several committees which is responsible for the evolution of corporate governance are Cadbury Committee 1992, Greenbury Committee 1995, Hampel Committee 1996, Kumar Mangalam Birla Committee 1999, Naresh Chandra Committee 2002, Dr. J.J. Irani Committee on Company Law 2005 and Narayan Murthy Committee 20E03. Through this it could be understood that the notion of corporate governance is based on the amalgamation of the various Models which are followed globally and the various committee reports of the USA, UK and India as this research paper is limited on the Anglo-American

[1] 3rd Edition ASX Corporate Governance Council, Corporate Governance Principles and Recommendations

model of corporate governance and India where the Companies Law is inspired by the UK also follows the Anglo-American Model of Corporate Governance. further, Corporate governance can also be defined as a process that aims to allocate corporate resources in the best possible manner that maximizes the value for all stakeholders. The term Corporate resources involve Shareholders and Investors, Employees and Customers, Suppliers, Corporate Social Responsibility (which involves Environment and Government and Society at large). A company is regulated when the direction, administration and control affect the processes, customs, laws and policies and the institution of the company. Therefore, these are some of the aspects which help in the proper functioning of the company in light of the principles of corporate governance. In India, Corporate governance is divided into Internal Environment, External Environment and Outcome of Corporate Governance: The Internal Environment includes the Board of Directors, Company Vision and Mission, Company Policy and Norms Internal Auditors and Internal Stakeholders. The External Environment is based on Corporate Culture and Characteristics, Laws & Policies and Regulatory Bodies including External Auditors, Depositaries and Borrowers and other stakeholders. The outcome of the internal and external environment on corporate governance is Proper Governance, Shareholder Value Maximization, Transparency, Customer Satisfaction, Investor Protection, Employee Welfare, Healthy Corporate Sector Development

What is Corporate Governance?

The term corporate governance is a very idea that manages the system by which the companies are coordinated and controlled. Corporate governance is a term with an exceptionally extensive connotation, however, in the broadest sense, it implies it is an arrangement of rules, practices and procedure by which a company is coordinated and organized. It includes working to the greatest advantage of the company through adjusting the interest of numerous stakeholders in the company. Since corporate governance likewise gives the framework to accomplish a company's targets, it includes each circle of the management, from activity plans and inward controls to execution measurement and corporate disclosure. So essentially, corporate governance is the utilization of best management practices, predictable of law in its genuine soul and adherence and good standards for powerful management and distribution of wealth and arrival of social obligation for sustainable development of all shareholders. Governance is a politically loaded word of public law. The term corporate law is simply a logical inconsistency. There is an absence of unanimity in the intellectual circle on the meaning of corporate governance in the corporate and consumers' world. The key objective of corporate governance is to build up an area of trust and certainty amongst those having contending and clashing interests to improve shareholders esteem and ensure the enthusiasm of other stakeholders by updating the corporate performance and accountability. Corporate governance is the acknowledgement by management of the natural right of shareholders as the genuine owners of the corporate and of their role as trustees on behalf of the shareholder.

Corporate democracy is a basic piece of corporate governance. It is expected that the stakeholders in a publicly held corporate should take a progressively dynamic enthusiasm for the undertakings of the corporation. Management ought to furnish them with more data to manage them in practising voting rights. The Management will give them a reasonable chance to be a part of the administrative procedure at whatever point required. They will be express their conclusion in the company without fear or favour. The public limited company is based upon the investment of shareholders. So, their support is likewise similarly critical to keep up corporate governance. The few giants in association individual take the vast majority of the administrative choice which are then appropriate on shareholders. These couple of individuals run the company at their discretion and the rest is treated as a matter of chance. So, these managers of corporations win more advantage as they control issues of the company. The mass shareholders have antagonistic democracy in huge corporations and their privileges are essentially controlled by few managers of the organization.

In the Companies Act, 2013 the 2019 Amendment of the Companies Act had re-introduced Section 11 of the Companies Act, 2013[2] (which was previously omitted in the 2015 Amendment after doing away with the requirements of minimum paid-up capital) to provide for a declaration by a company having share capital before it commences its business or exercises borrowing power. Non-compliance with section 11 by an officer in default shall result in liability to a penalty instead of a fine.

Issues Regarding Corporate Governance

Corporate governance is based on the core principles of Transferability, Accountability and Fairness. But the question arises whether these core principles are applied in the actual corporate setup or not? This question arose as it is a fact that the principles of corporate governance are enacted to ensure the smooth functioning and regulation of the Companies.

[2] Section 11 of the Companies Act, 2013- Commencement of business, etc

These principles though seem perfect in the theoretical sense but whether these principles are been implemented in the real-world also or not? The 2019 Amendment of the Companies Act, 2013 had inserted sub-section (9) to Section 12 of the Companies Act, 2013[3]. Corporate Governance ensures a strong disclosure regime for which timely and accurate information should be provided by the Companies to the NCLAT relating to the financial position in terms of the shareholdings, stakeholders, company's performance etc. Corporate Governance also ensures Auditing Accounts, convene board meetings, conducting General Meetings and Annual General Meetings, providing proper notice to the shareholders etc. The 2019 Amendment also discusses the provision regarding the Registration of significant beneficial owners in a company-provided in Section 90 of the Companies Act, 2013[4]. Section 164 Companies Act, 2013 of the Companies Act, 2013 mentions the disqualifications from the appointment of directors[5].

"Various provisions of the Companies Act, 1956 lay down many standards of disclosures, transparency and accountability. Following are some instances:

1) Board must meet at regular intervals & deliberate on matters concerning the Company.

2) Directors who are persistent absentees have to lose office.

3) Disclosure of interest in dealings with the Company.

4) Disclosure of material facts on special business at general meetings.

5) Disclosure of shareholdings, dealings in the company's shares, etc.

6) Restrictions & disclosure of remuneration.

7) Office or place of profit in the Company by Directors or their relatives and associates and its disclosure.

8) Disqualification for directorship.

9) Prohibition against fraudulent persons from managing companies.

[3] "If Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provision of sub-section (8), cause a physical verification of the registered office of the company and if any default is found in complying with the requirements of subsection (1), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII"

[4] Considering the importance of the disclosures under section 90, the punishment for violation of section 90(1) prescribed under section 90(10) is enhanced to the effect that the contravention is punishable with fine or imprisonment or both, instead of being punishable with only fine. (This amendment was provided in the Companies (Amendment) Second Ordinance, 2019).

[5] A new clause (i) after clause (h) in section 164(1) inserted, whereby a person shall be subject to disqualification if he accepts directorships exceeding the maximum number of directorships provided in section 165

10) Removal from office when found guilty of fraud, misfeasance, persistent negligence or default; breach of trust; the business of the Company not being conducted by sound business principles or otherwise detrimental stakeholders.

11) Maintenance of books of accounts. Audit, Auditors' Report, Directors Report, etc.

12) Restrictions on loans to Directors and their associates.

13) Disclosure of interest in contracts, appointed managing director, manager, etc.

14) Certain powers to be exercised only.

• At Board meetings

• With shareholders' consent

15) Inspection, the investigation into a Company's affairs.

16) Restriction on the number of directorships and managing / whole time directorships[6]."

The Directors of a company are responsible for the annual reports of the companies, the civil and criminal liabilities of the companies. These duties of the directors of the company are also mentioned in the statutes of the company law as well as the performance of a company reflects the same. A company's transparency and enhanced image can maintain through its non-mandatory information also. Transparency can also maintain through its customers as there is tremendous competition in the market scenario which entitles the customer to several choices. The maximum amount of transparency can happen when the corporation subscribes to all the deals and the customers should have the confidence that the corporation can go on for a long tenure. One of the utmost requirements for the smooth functioning of a corporation is to ensure that there is transparency and fairness in the business. The next reason for transparency is the government. The government has shown tremendous faith in us and reduced taxes and duties.

Challenges to Corporate Governance

The role of Corporate Governance is to govern the companies properly and this can be achieved by adhering to the core principles of Corporate Governance i.e., Transferability, Accountability and Fairness. But as previously discussed in this paper these principles are not effectively implemented in the real world which poses a challenge in the effective implementation of Corporate Governance. The concept of Corporate Governance cannot work in isolation therefore it has to work in consonance with the objectives of the company

[6] Kenneth I. Bergman, J.D., Legal Brief: Balancing Accountability and Transparency on the Board Level, SOURCE, (FALL, 2009), https://www.advanc-ed.org/source/legal-brief-balancing-accountability-and-transparency-board-level

which is controlled by its directors, shareholders, stakeholders etc. some of the challenges are stated below:

Conflict of Interest

A conflict of interest happens when a controlling individual from the company has other financial interests that could impact his decision-making or struggle with the objectives of the company. For example, a board individual of a wind turbine company who possesses a lot of stock in an oil company is probably going to be clashed, in light of the fact she has a financial interest for not speaking to the headway of the environmentally friendly vitality. Conflicts of interest dissolve the trust of stakeholders and the general population and possibly free the business up to litigation[7].

Governance Standards

A board can have all the unbiased rules and policies it prefers but if it can't spread those measures all through the business, what chance does the company have? Resistant managers can subvert good corporate governance at the operational level, leaving the business presented to state or government law infringement and reputational harm with stakeholders. A policy of corporate governance needs an unmistakable requirement system, applied consistently, as a check and equalization against the activities of executive staff[8].

Short-Termed

Good corporate governance necessitates that boards ought to reserve the option to deal with the company as long as possible, to make maintainable worth. This is hazardous for several reasons. In the first place, the rules governing a recorded company's performance tend to prioritize short-term performance for the advantage of shareholders. Managers face an unrelenting pressure to meet quarterly income targets since dropping the profit per share by even a cent or two could hit the company's stock cost. Now and then a company need to go private to accomplish the sort of sustainable innovation that can’t be accomplished in the glare of the public markets[9].

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[7] Jane Muir, 5 COMMON ISSUES THAT ARISE IN CORPORATE GOVERNANCE, J. MUIR & ASSOCIATES, (November 20, 2016), https://jmuirandassociates.com/corporate-governance-issues
[8] Jane Muir, 5 COMMON ISSUES THAT ARISE IN CORPORATE GOVERNANCE, J. MUIR & ASSOCIATES, (November 20, 2016), https://jmuirandassociates.com/corporate-governance-issues
[9] Jane Muir, 5 COMMON ISSUES THAT ARISE IN CORPORATE GOVERNANCE, J. MUIR & ASSOCIATES, (November 20, 2016), https://jmuirandassociates.com/corporate-governance-issues

Diversity

It's common sense that boards ought to have an obligation to guarantee the proper mix of skills and point of view in the boardroom, but few boards take a hard look at their composition and ask whether it reflects the age, gender, race and stakeholder composition of the company. For example, should workers be given a place on the board? This is the standard across the vast majority of Europe and proof proposes that worker participation prompts companies having lower pay inequalities and greater regard for their workforce. It's an exercise in careful control, however, as companies may concentrate on securing jobs as opposed to settling on intense choices.

Accountability Issues

Under the present model of corporate governance, the board is situated soundly among shareholders and management. Authority streams from the shareholders at the top and accountability streams back the other way. In the end, its shareholders and not stakeholders by and large, who are generally ensured by corporate governance and shareholders and not stakeholders, who get to withhold critical votes unless certain reforms are implemented. While it's positively not unwanted to have the activities of the board checked by shareholders in this way, the future of corporate governance is perhaps more holistic. Companies can and do have moral commitments to their communities, customers, suppliers, creditors and employees, and must take care to ensure the interests of non-owner stakeholders in the company set of principles[10].

Analysis of the Paper

This research paper is based on the concept of contemporary issues of corporate governance in light of its core principles of Transferability, Accountability and Fairness along with this the paper will also be dealing with the challenges and issues faced in the implementation of corporate governance. The core principles of corporate governance i.e., Transferability, Accountability and Fairness should work with the proper object of the company. The idea of Corporate Governance can't work in detachment in this manner it needs to work in consonance with the targets of the company which is constrained by its director,

[10] Jane Muir, 5 COMMON ISSUES THAT ARISE IN CORPORATE GOVERNANCE, J. MUIR & ASSOCIATES, (November 20, 2016), https://jmuirandassociates.com/corporate-governance-issues

shareholders, stakeholders etc. Some of the challenges came like a conflict of interest, governance standards, short-terms, diversity, accountability issues and many more.

Fairness denotes equal treatment, for instance, all shareholders ought to receive equivalent consideration for whatever shareholders they hold. However, a few shareholders want to have a shareholder agreement, which can contain more widespread and successful minority security. In addition to shareholders, there ought to likewise be decency in the behaviour of all stakeholders including employees, communities and public officials. The more appealing the component appears to stakeholders, the more likely it is that it can endure the weight of invested parties.

Corporate accountability refers to the obligation and responsibility to provide clarification or clarification for the company's activities and behaviour. The board ought to introduce a decent and justifiable assessment of the company's position and prospects, the board is liable for deciding the nature and degree of the huge danger it is ready to take, the board ought to keep up sound risk management and internal control framework, the board ought to build up the formal and straightforward game plan for corporate reporting and risk management and for keeping up a fitting relationship with the company's auditor and the board ought to speak with stakeholders at regular intervals, a reasonable, adjusted and justifiable evaluation of how the company is accomplishing its business reason.

A head of good administration is that the stakeholders ought to be educated about the company's exercises, what it intends to do later on and any dangers associated with its business methodologies. Transparency implies openness, a willingness by the company to give clear data to shareholders and other stakeholders. For instance, transparency denotes the openness and willingness to reveal financial presentation figures which are honest and precise. Exposure of material issues concerning the organization's performance and activities ought to be timely and accurately reflects the financial, social and environmental position of the organization. The organization ought to explain and make the public known the roles and obligation of the board and management to provide shareholders with a level of accountability. Transparency guarantees that stakeholders can have confidence in the decision making and management processes of a company.

Conclusion

The term corporate governance is one of the concepts which keeps evolving for centuries. The notion of corporate governance has always been under the radar of the developing countries as compared to the developed countries because some of the concepts like industrialization, liberalization, globalization and privatization has emerged earlier in the developed countries. Also, the notion of corporate governance came into focus in 1992 when Sir Adrian Cadbury submitted its recommendations in 1992 in which the concept of Corporate Governance is becoming popular very fast not only in the developed countries but also in developing countries for a variety of reasons. Since corporate governance likewise gives the framework to accomplish a company's targets, it includes each circle of the management, from activity plans and inward controls to execution measurement and corporate disclosure. So essentially, corporate governance is the utilization of best management practices, predictable of law in its genuine soul and adherence and good standards for powerful management and distribution of wealth and arrival of social obligation for sustainable development of all shareholders. There some statutory provisions also which helps in the functioning of the corporate governance in the practical scenario such as Section 164 of the Companies Act, 2013, Section 90 of the Companies Act,2013 etc. The domain of corporate governance cannot function without the challenges which are faced in it such as Conflict of Interest, Governance Standards, Short-Termed, Diversity and Accountability Issues which are extensively dealt with in the paper. Corporate accountability refers to the obligation and responsibility to provide clarification or clarification for the company's activities and behaviour. The board ought to introduce a decent and justifiable assessment of the company's position and prospects, the board is liable for deciding the nature and degree of the huge danger it is ready to take, the board ought to keep up sound risk management and internal control framework, the board ought to build up the formal and straightforward game plan for corporate reporting. The concept of Corporate Governance cannot work in isolation therefore it has to work in consonance with the objectives of the company which is controlled by its administration of the company and with the targets of the company which is constrained by its director, shareholders, stakeholders etc.