SHAREHOLDER DEMOCRACY

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Abstract

Corporate governance is a much-discussed concept in India. There are significant changes incorporated in the Companies Act, 2013, to maintain governance in the company. However, in the company's governance, the concept of corporate democracy is always sidelined. Unless enterprise democracy is inculcated, corporate governance can not complete. It is the company's responsibility to provide all necessary information and to encourage shareholder participation in the company's affairs. The management does not, however, aim to maintain the democratic culture in the Company. Shareholders constitute the essence of any public company.

However, their role is limited merely to obtain the monetary benefit. Management is never encouraging their participation in the company's administration. The Companies Act, 2013, focuses more on corporate governance but less on enterprise democracy. Excessive executive powers and limited shareholder rights are questionable factors under the new Act. Directors are fiduciary agents and managers of the company. However, they could not enjoy excessive powers in a public company. Shareholder's checks and balance is a remedial measure to maintain corporate governance in any public company. A legal foundation is fundamental to encourage corporate democracy in the company.

Introduction

Shareholders Democracy, which is theoretically part of corporate democracy, means a company is under its shareholders' control. However, the shareholders' involvement in the corporation's work is the prime issue to be determined. Shareholders are one of the vital components in the corporate scenario, or should I say the supreme ones. In theory, they are empowered to influence and even frame major corporate decisions and are the managers of their company. Shareholders can exercise control over the Company in several ways. The one way to exert control over the decision-making process incorporate is by utilizing their rights by virtue of his shareholding.

An ordinary share usually grants on its holders the right to cast a vote on all matters, placed in the shareholders meeting except few provisions. This control mechanism is sometimes referred to as control in the form of 'voice' and can thus explore opportunities by raising their voices. Another way to control rests on the market forces. The Shareholders can express their content by reacting through market forces by way of selling or buying the shares. In contrast, the management of the Company is responsible for the involvement of shareholders in the decision making process in order to create a "check and balance" system. The informed participant can actively participate in the company's affairs, contribute effectively in the discussions, and help the management in decisions and the participation of the shareholders has been increased by way of proxies. However, after everything, if a resolution has been passed by the shareholders of a company at a general meeting which has been attended by say, hardly 1% of the total number of shareholders holding say 3% of the voting power, it cannot be said that the shareholders' democracy has been implemented in true spirit although there is no violation of the law.

Indian Scenario

The J.J Irani Committee constituted in 2004 to have the Companies Act, 1956 replaced by a lean and straight forward version, recommended various effective measures be initiated for protecting the interests of stakeholders and investors, including small investors, through legal basis for sound corporate governance practices. An underlying theme of the recommendations laid stress on the concept of shareholders' democracy. Unfortunately, in actual practice, shareholders' democracy means total control by the majority to the virtual exclusion of the minority, hence need of adequate checks and balances to ensure that unscrupulous promoters do not misuse the system is a must. Shareholder democracy means precisely the right to speak, communicate with the core shareholders, and to learn about what's going on in the company. Shareholder democracy plays an essential role in stimulating the Board of Directors, raising the company's performance, and ensuring a greater interest in industrial progress. However, it is the nude fact that only the majority attend such meetings as only their voice is heard. Except for only a few rights, there is minimal participation of shareholders in Toto. Moreover, Board governance also benefits shareholders by performing minor decision-making functions. They are responsible for promoting more efficient and informed business decision-making. It is difficult and expensive to arrange for thousands of dispersed shareholders to express their often-differing views on the best way to run the firm. Nor, given the rational apathy most shareholders bring to the table, should we expect shareholder governance to produce particularly good results. Accordingly, most experts agree that board governance offers essential advantages in terms of efficient and informed decision-making

Shareholders Democracy under Corporate Governance

This chapter explains the shareholder democracy as a model of corporate governance. It begins by analyzing the areas of company decision-making that are generally assigned to shareholders and considering whether it is possible to increase corporate efficiency by expanding the number of issues that members have the last word about.

The legal rights of shareholders to participate in corporate governance are often referred to as "corporate democracy." In this dynamic period, the government had been the regulator of corporations. It is unjust to legitimize the power of "shareholder democracy." Settlements in the power balance between shareholders and management try to achieve corporate governance in harmony with their self-professed governance aspirations. However, those aspirations are barely "democratic." Corporate democracy is the cornerstone of keeping company transparency. The fundamental issue of the shareholders participating in Corporate Governance is the disclosure and information flow to shareholders. It is, therefore, about sharing information with the shareholders and also about shareholders' participation in corporate administration. However, it does not mean that shareholders are an alternative to managing the dissolving role of corporate directors. A fundamental principle is that directors are not shareholders who manage the firm. However, the failure of corporate governance makes directors liable to respond to shareholders. This essence of checks and balance is corporate democracy, where shareholders have such powers to question the management. A company with thousands of shareholders should run like democracies. Corporate democracy is a vital element of corporate governance. It is seen as stakeholder participation and contribution to corporate governance. In any public company, shareholders are a large part of the stakeholders. Shareholders can advance corporate democracy by giving their votes and electing directors to regulate the company's affairs. They can make a contribution by expressing their views on the affairs of the company. Shareholders are one of the vital parts of the company. They are statutorily entitled to influence and even frame major corporate decisions.

Like in any other Institutional Framework or system of governance in the Corporations also a system of democracy exits that follows the same principles but with less vigor. The directors in corporations are accountable to the shareholders. The shareholders, on the other hand, are required to participate in the decision-making process in order to create a 'check and balance' approach, and there should be transparency in all the company's actions, whether the company or the shareholders take them. Shareholders Democracy which is part of corporate democracy means a company is under shareholder control. In this, every shareholder has an equal opportunity to elect and constitute a board of directors to manage and conduct the affairs of the company. They act under as agents and trustees for the company in a fiduciary capacity. As such, their meaningful participation in company meetings is imperative.

Within the Indian Companies Act, 2013, there are various methods available for shareholders to participate in corporate governance. In each of these methods, both the actual procedures as well as the problems arising which obstruct or increase the costs of shareholder participation were also discussed. The methods available for shareholders to take part in the Indian Companies Act, 2013, corporate governance are as follows:

1. Appointment of Directors and Power of Removal of Directors
2. Placing of Accounts, Balance Sheet, Report of Director, Auditor and Corporate Governance Report
3. General Meeting

Shareholder 'Ownership'

The first source is the famous but misleading metaphor that describes shareholders as "owners" of corporations. As a legal matter, the claim that shareholders "own" the corporation is obviously incorrect. Corporations are independent legal entities that own themselves; shareholders own only security, called "stock," with minimal legal rights.

Nevertheless, the ownership metaphor exerts a powerful influence on the way many people think about corporate governance. After all, if shareholders "own" corporations, should they not also control them?

The first is the casual assumption, on the principle of "agency" that shareholders are the “principals” in public corporations and that directors are shareholders’ “agents.” However, as corporate law experts have pointed out, the agency metaphor misstates the real legal status of shareholders and directors. At law, a principal has a right to control her agent. Directors are not agents, but fiduciaries largely insulated from shareholders’ control, and they owe duties not just to shareholders but also to the firm as a whole.

Thus, none of the phrases commonly used to describe shareholders’ relationship to the corporation — whether as “owners,” or as “principals,” — is factually correct!

Conclusion

It is essential to address precisely what "democracy" means by its proponents. Democracy is a fluid concept and does not mean the same thing to everyone. In the corporate governance team production model, the role of the board of directors is not merely to act as the shareholders' agent to maximize their wealth but to manage the firm-specific inputs of all the company's stakeholders to coordinate their efforts and maximize productivity. Corporate governance is also about the participation and contribution of shareholders in the governance of the company. However, this concept of corporate democracy is sidelined under the statute. Corporate governance is not only about achieving the financial goals of the company; such progress can never be the economic development of corporations.

Indian Corporate laws have less focus on corporate democracy. The Companies Act, 2013, moreover discussed corporate governance and not democracy. The aim of the legislature gets fulfilled when shareholders are free to exercise their rights democratically.The Company's management is responsible for involving shareholders in the decision-making process in order to create a system of "check and balance." This will ensure transparency in all acts performed by the firm or the shareholders... Informed participants shall actively participate in the company's affairs. They should contribute to decision making and help the management in decision making. To effectively create these checks and balances in different board committees' nomination of shareholders is very important. So the Nominated Director of a shareholder is very essential in the composition of the Stakeholders Relation Committee and Audit Committee. The Nomination and Remuneration Committee shall ask intent for the Nominated director of shareholders for their consideration.

It is undoubtedly not an Indian-specific phenomenon, but it is and has always been a universal issue. As is evident from the above, the rule of the majority is the hallmark of democracy. This applies equally to Corporate Democracy. However, the majority rule is not free from abuse or misuse. It is more vulnerable to such misuse because it calculates the number of shares held by a shareholder, and not the number of individuals involved. Today we need more than ever corporate activism; we need them to argue for unwieldy corporate managers. Indian shareholders' attitude is very passive in the firm's governance. The very little crowd is active in understanding and shape companies' policies. The most crowd is moreover desired to get financial befits only. They never think that they, too, are entitled to administrative powers. The management takes undue advantage of a real scenario like this. The board also sometimes considers shareholder watchfulness a threat to their position. However, shareholders have a role not in questioning management but in maintaining corporate governance. Corporate democracy is the very essence of corporate governance. In order to create the company's economic development, it needs more attention to statutes and addresses per company. The companies must fulfill their responsibilities towards their shareholders as a whole and towards society as a whole.

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