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# CORPORATE GOVERNANCE IN PUBLIC SECTOR UNDERTAKINGS

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## What is Corporate Governance

Corporate Governance is a few set of principles, rules and system by which a company is controlled by the owners. It also provides guidelines for the smooth running of a company and maximizing its profits for the betterment of the stakeholders in a long term. The principals on which corporate governance relies on are basically based on integrity, fairness and transparency in all transactions and doing all the business abiding by the laws of the land and doing business in the manner to profit the stakeholders and maintaining good relation among the stakeholders and the company[1].

## History of Corporate Governance

Corporate Governance first came into view in the United States in the 1970s. The main reason behind its growth was the rising conflicts between the owners and the managers of the companies. In the early 1600 the East India Company was one of the biggest and first companies to come into the market. Then the companies used to run on partnership basis for doing any specific job. A Joint Stock Company, which mainly operated in India. Then the shares of the company were mainly divided amongst the active members and they only comprised of the board of Directors. Due to absence of any organized market the selling of shares were not at all easy thus shares were mostly transferred to friends, relatives or in the family. In those days the companies were made for carrying out certain small purposes and they were not allowed to hold shares in any other companies. After the Industrial Revolution, between the years of 1890-1910 the companies transformed from state controlled organization to privately controlled organizations with limited responsibility which created a large capital demand in the market for the multinational companies at it gave birth to the Stock market which helps in creating a relation between the investors and the companies. For these purposes market for exchange of shares of the private companies capital markets were formed in many cities in the Europe like New York. The Organization for Economic Cooperation and Development was established in 1961 with the goal of expanding the world trade and to contribute a sufficient amount to the world economy from the trades. The term Corporate Governance was mentioned in the report of the Federal Securities and Exchange Commission due to reference of corporate scandals. Due to which it became mandatory for the Government to set down rules and regulations regarding the corporate governance for the betterment in the relation between the investors and the owners of the companies. In 1976 finally the principles of Corporate Governance were laid down by the U.S Government and finally it came into role.[2]

## Principles of Corporate Governance

There are 3 principles around which the corporate governance has developed for years

[1] What is corporate governance, policy, (March 2, 2019, 10:00PM), https://www.icsa.org.uk/about-us/policy/what-is-corporate-governance

[2] Brian R, Cheffins, The History of Corporate Governance, SSRN Electronic Journal. 10.2139/ssrn.1975404, 2011

- Transparency – transparency refers to disclosure of all accurate and adequate information's timely of the company to the stakeholders. It's very important to keep this transparency to maintain the good relation between the managers and the stakeholders. Transparency in maintaining all the record books and display of right accounting figures as of operating results and etc. transparency is also called as one of the foundation principle of the corporate governance. It helps in development of the public confidence on the corporate sector at huge levels. The publishing of the details must be made at an public platform so that the information is easily accessible to all public in quarterly or half-yearly basis.
- Accountability – Accountability refers to the liability of the managers to explain and give every reason for the decision that they have taken in the interest of the company. It also refers to seeing that the company's resources are best utilized for the betterment of the company's stakeholders and members.
- Independence – Independence is very necessary for a good and strong corporate structure where the top level managers of the company are independent in making any decisions for the company. The board of directors must maintain a strong non-partisan body to take all business decisions on the basis of business prudence.

**Needs for Corporate Governance**

In the last decade, there have been a numerous frauds in India which has led to the importance for lying down of the Corporate Governance norms. Thus India provides proper norms aligned internationally for governing of a firm. The reasons behind it are discussed below:

- Corporate Governance provides a code of conduct for implementing democracy of the shareholders as different shareholders have different approach to any affairs regarding any corporate issue.
- Corporate Governance is a set of code that deals with situations where large corporate investors start influencing the decisions of the company and becomes a challenge for the management to run them on their own terms.
- It also helps in rebuilding the confidence of the investors those trusts were shaken by the frauds that had happened in the recent past years. It was very crucial for regaining the trusts for the investors.
- The society expects the corporate to take care of the pollution, environment, sustainable development, quality of goods and services etc. to fulfill the expectations of the public by formulating a code of conduct. It is also important to keep this code for development of the country.
- Globalization had made the communication with the foreign countries easy due to which many Indian companies are listed in many foreign national stock exchanges. So for regulating these companies and the foreign companies coming to India the code of conduct of the Corporate Governance is essential.
- The code of conduct of the Corporate Governance is also essential to nullify the affect that is created on the company managements due to the excessive cash flow of foreign currency in an Indian company.

**Corporate Governance Framework in India**

The standards for Corporate Governance has been laid down in India through a certain laws and norms, it is in accordance to all the international standards. They are described in:

- The Companies Act 2013 which has laid down provisions concerning Independent Directors, General Meetings, Board Meetings, Audit Committees, Board Constitution, Board Processes, Related Party Transactions, etc.
- SEBI Guidelines or the Securities Exchange Board of India has laid down guidelines for the protection of the investors and all the companies are compelled to follow those guidelines.
- Accounting Standards Issued by the ICAI, ICAI (Institute of Chartered Accountants of India) regulates and issues accounting standards that all companies have to maintain. It being an autonomous body has made the disclosure of accounts of any company mandatory in accordance with the Companies Act 2013.
- The Standard Listing Agreement of Stock Exchanges that every company has to agree those want to list their companies in any Stock Exchange.
- Secretarial Standards Issued by the ICSI, ICSI is the Institute of Company Secretaries of India has issued standards regarding General Meetings, Board Meetings, etc. The Companies Act gives authorities to many autonomous bodies to create and lay guidelines for the companies and such guidelines if not maintained or followed they are to be held in violation of the Companies Act and hence may be punished.

**<u>The Issues in Corporate Governance in India</u>**

Though there are many issues that are faced by the Corporate Governance in India, highlighting a few major ones:

- Board Performance: It is very important to maintain the balance between the executive and non-executive directors director's for which it's important to have a women director. Due to non performance of evaluation from time to time the transparence gets lost. Performance is not all the time result oriented.
- Independent Director: In the present scenario in India the purpose for which the Independent Directors are appointed are not fulfilled. Though the guidelines has been laid down by the SEBI regarding the time to time audits and the appointment of an separate audit committee or give an separate meaning to the independent directors, in the present condition of the country is worst where none of them are fulfilled to its outmost useful extent.
- Accountability to Stakeholders: The Company or the stakeholders are not the only people who are considered accountable for any action. It's important for the Directors to keep in mind that the company not only works for their own interest but also for the interest for the community too.
- Risk Management: It is important for the directors to mention in the report to the shareholders the techniques that they take up compulsorily for the risk management factor of the company. This point is also not yet fulfilled in the outmost sincere manner that it must be taken.
- Privacy and Data Protection: Cyber security is an important Governance issue and also one of the most important security factor of the now governance. It's very important for the directors and other managers to know the cons or hazards of this issue.
- Corporate Social Responsibility: In India the legislature on investing in social causes is very fixed, that is an company must invest at

least 2% of their last profits of the past 3 years in CSR activities but these are also not fulfilled by the companies and they are reluctant in these investment too. It is mandatory to show proper causes in reports if CSR is failed.

**The Guidelines Laid By the SEBI on Corporate Governance**

The main overviews of the guidelines laid down by SEBI (Securities Exchange Board of India) are[3]:

- **Board of Directors:**

a) The board must combine of an optimum combination of executive and non-executive directors.

b) Whether the chairman is an executive or non-executive member will decide the numbers of the independent director. In case the chairman is an non-executive member then there must be one-third of the board of directors be independent directors; and if the chairman is executive person then the half of the board must comprise of independent directors.

Independent Director means a person who other that just taking the remuneration from the company doesn't have any other pecuniary relation with the company.

- **Audit Committee:**

a) There must be an independent audit committee in the company whose constitution would be of such layout:

i. The committee must constitute of at least three members, majority of them must be independent in nature, all three members must be non-executive, and at least one of the directors must have financial and accounting knowledge.

ii. The chairperson of the company must be an independent director.

iii. All the queries of the share holders must be answered by the director in an annual general meeting.

b) The powers of the audit committee are as follows:

i. The audit committee must be given free authority to investigate any matter that it finds relevant and in accordance to its reference.

ii. They should be given the authority to talk to any employee and gather any information that they want.

iii. The committee must be given full liberty to take any kind of legal and professional help from outside the company.

iv. If the committee finds it relevant and necessary it can take attendance of the outsiders with relevant expertise.

c) The role of the Audit committee would include:

i. The committee must oversee the company's financial reporting process and also make sure that the financial information are disclosed at the right time to make it credible and to check if they are sufficient and correct.

ii. They have the authority of appointing and also the removal of the external auditor.

iii. It must review the credibility and efficiency of the internal audit function.

iv. It must review all the companies risk taking factors and disclose them.

v. The committee should discuss with the external auditors about the way of audit and if there are any special concerns for the audit, they are also free to hold a discussion after the audit if any concern still persists.

[3] Corporate Governance, Circulars, Legal, (MARCH 3, 2019, 12:00AM), https://www.sebi.gov.in/legal/circulars/feb-2000/corporate-governance_17930.html

- **Remuneration of the Directors:**
  In the Annual Report a certain disclosures are mandate to be made regarding the remuneration of the directors are as follows:

a) All the heads of remuneration of the directors must be disclosed, that is the salary, bonuses, benefits etc..
b) All the details of the fixed salary and also the performance based bonuses including the criteria's required to qualify and details of such bonuses.

- **Some procedures of the Board:**

a) In a year at least four board meetings should take place and not having more than four months gap between two board meetings.
b) A director should not be members in more than ten companies and if he is a chairman then not more than five companies in total.

- **Management Discussion:**
  A report must be prepared and attached with the Annual Report on the decisions taken by the management with an analysis report of it. The must comprise of the following topics:

a) Threats and Opportunities
b) Performance reports based on segments of the company or on the products of the company.
c) Factors of concern and risks.
d) The report should include an analysis on financial performance in regard to operational performance.
e) It should include detailed reports in human resource or industrial relations front.

- **Shareholders:**
  The guideline says about disclosure of certain points to shareholders are:

a) The shareholders should be provided with certain information's during appointment of a new director or if a director is re-appointed:

I. The resume of the Director must be disclosed.
II. The fields in which the director has expertise and its nature.
III. It must be disclosed the number of companies in which he is a dictator and also holds memberships in any other companies.

b) A Shareholders or Investors Grievance Committee must be formed to hear out the issues faced by shareholders like transfer of shares, non receipt of declared dividends or non receipt of balance sheets, etc. This committee must be formed under the supervision of a chairperson of board committee who is a non executive member. The main aim of the committee is to look into any complaints of the investors and redressing them.

- **Report on Corporate Governance:**
  A separate section must be maintained in the Annual Report for the report on corporate governance and in a detailed manner. It is important to maintain this section according to the guidelines.
- **Compliance:**
  Every company must obtain a certificate of compliance from its auditors regarding compliance of the conditions of the corporate governance. It is important to attach this certificate with the director's report and to be send to every shareholder and also must be sent to the Stock Exchange too.

## Corporate Governance in Public Sector

The Government in the past few years has tried to increase the amount of transparency and accountability levels with respect to the Public Sector Undertakings or PSUs. The norms that bound the Central Public Sector Enterprises or CPSEs were made compulsory for all the Public Sector Undertakings (PSUs) those were not listed. Now the Government wants to implement corporate governance to tackle a few major issues that are being faced by the public sectors. The issues faced are:

- **Issue 1:** Current structure of corporate Governance in public sector in relation to private sector
  A public sector undertaking should work ideally by setting standards of accountability and transparency of its working rather than following the footsteps of the private sector enterprises. The PSUs must create their own standard by implementing corporate governance structure of its needs. The big and major public sector companies like the Navaratna should implement the corporate governance by adopting the guidelines set by the Ministry of Corporate Affairs (MCA). Many central agencies like the Public Enterprises Selection Board, Department of Public Enterprises, The Central Vigilance Commission and the Standing Conference on Public Enterprises has been discussing the different ways and mechanisms of implementing and bringing a reform in the structure of the corporate governance in the public sectors. The guidelines developed by the Department of Public Enterprises have now been made mandatory to follow by all the Central Public Sector Enterprises or CPSEs.
- **Issue 2:** Balancing commercial and managerial autonomy
  Theoretically it has been seen to be true that there is a strong correlation between autonomy and accountability. It is also applicable in case of enterprise performance and autonomy as well. Though the Indian Government has granted autonomy to the public sector undertakings (PSU) in various levels but the main control lies in the hands of the government only and they keep all major decision makings in their hands itself. In the present day situation as it lays it's very important to maintain an autonomous relation in the board regarding decision making and it is dependent on the ratio of the non-executive directors present in the field. Lastly the PSU must be kept aloof from any kind of political influence and also from bureaucrat involving in there working.
  **Issue 3:** Public Sector Undertaking Board structure and Independent Directors
  An initiative must be brought forward by the government to appoint good competent and skill full directors in the boards of the PSU. The shareholders must also be allowed to elect their representatives in the board. The board members and directors must not be politically influenced and there must be independent directors in the board as well as non executive directors. The non executive director plays a vital role in formulation of the strategies for the working of the company and they also provide an overview of the risks of the company.
- **Issue 4:** Ensuring compliance with SEBI listing Agreement
  Many listed Navratna and Miniratna PSUs are insulation behind in yielding with minimum needs expressed in Clause forty nine of SEBI listing agreement. This directly hampers the future prospects of India incorporated once the Ministry of company Affairs is action powerfully on the implementation of corporate governance pointers. The corrective action will be to create correct disclosures at intervals director's and company governance reports and guaranteeing answerability. Conjointly implementation of company governance norms for CPSEs, each listed and unlisted, ought to be supervised systematically.
- **Issue 5:** The government being the promoter
  The government desires to perpetually monitor the performance of its Board of administrators in cases wherever it acts as a promoter and a majority shareowner of the PSU while not mitigating the independence and alternative powers of

board of administrators, it ought to clearly give the strategic layout for effort numerous problems. According to the organization for Economic Cooperation and Development (OECD), the government ought to develop associate in the issue of possession policy that defines the general objectives of state ownership, the state's role in company governance of state-owned enterprises and the way this policy is probably going to be enforced.[4]

## Conclusion

Recent institutional failures in the world economic situation typically rise from inappropriate policies or poor models of company governance. In India too, there's an eternal battle amongst stakeholders for worth maximization and increasing transparency and answerability. Undoubtedly every public sector enterprise is distinctive and has its own set of strategically outlined goals and means of functioning and therefore, demands for a singular set of governance policies. However, sure corporate governance guiding principles must be categorical in nature to be applicable over a large span of public corporations to give a common performance analysis parameter. This would entail providing autonomy to the public sector on with observance it. And guaranteeing managerial autonomy to the PSUs doesn't limit the role of the government rather enhances it.

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[4] Sinha, Pankaj & Singhal, Anushree, A note on Corporate Governance in Public Sector Undertakings in India, 2012