LEGAL PERSPECTIVE OF CORPORATE GOVERNANCE

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ABSTRACT

Companies are regulated and managed following a system of rules, regulations, and regulations, which are known together as corporate governance. It is an example of effective corporate governance when a framework is clearly defined and executed, and it works to the advantage of all parties involved by ensuring that the organisation conforms to ethical values that have been established. Corporate governance that is lacking in structure, ambiguity, and compliance, on the other hand, may hurt a company's image as well as its financial health. Several principles underpin Corporate Governance, and they will be covered in depth throughout the course to develop a more comprehensive grasp of the philosophy and instill responsible corporate culture ethics in our participants, hence strengthening future CSR efforts. “The restoration of equilibrium when a dispute arises as a consequence of conflicting interests is the function of corporate governance. It also supports and develops rules that companies may use to regulate and manage themselves.“In this article, the author provides an analysis of how the corporate governance framework works in the context of India.

Keywords: Corporate Governance, Auditor.

THE HISTORY OF CORPORATE GOVERNANCE

Corporate governance is a multidisciplinary field of study that encompasses consulting, accounting, ethics, economics, law, management, and finance, to mention a few areas of specialisation. One of the most important goals of corporate governance is to have agreements in place that detail the company's operations and the rights of its shareholders. The purpose of this session is to provide you with a better knowledge of the Indian viewpoint on corporate governance and how it differs from your own. The programme will look at the long-term and macroeconomic benefits of implementing corporate governance standards in developing markets such as India and will include case studies. The restoration of equilibrium when a dispute arises as a consequence of conflicting interests is the function of corporate governance. It also supports and develops rules that companies may use to regulate and

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manage themselves. When you consider the substance and purpose of corporate governance, you have to question why various nations adhere to or do not adhere to the same corporate governance standards in their respective jurisdictions.

This might be because corporate governance has a two-stranded history, with one strand being Anglo-American and the other being Continental European. Concentrated blockholder ownership, active capital control markets, strong shareholder rights, and flexible labour markets characterize Anglo-American capitalism, whereas Continental European capitalism consists of dispersed ownership, short-term equity finance, active capital control markets, and strong shareholder rights. Dispersed ownership, active capital control markets, strong shareholder rights, and flexible labour markets characterize Anglo-American capitalism. But no other nation on the earth can mindlessly follow either model of corporate governance, and therefore each one must develop its variants on the theme. World presence, globalisation, deregulation, competitiveness, and a variety of other elements all have a part in the change of a country. These criteria influence the extent to which a nation may adhere to one of the corporate governance systems listed above.

AUDITORS AND THE AUDITOR COMMITTEE'S IMPORTANCE

"It is up to the company to choose whether an internal or external auditor will be hired. Internal auditors are often engaged on a full-time basis by the company, while external auditors are often engaged on a project-based basis. As a result of a regulation issued by the Securities and Exchange Commission (SEC), management is prohibited from firing an auditor without first receiving consent from the audit committee. This progress has been aided by the Confederation of Indian Industries (CII), the Kumar Manglam Birla Committee, new Securities and Exchange Board of India (SEBI) legislation, and changes in company law."

One of the most significant responsibilities of an audit committee is the selection and protection of the independence of the auditor. "When selecting an auditor, there are a few considerations to bear in mind. To begin with, the auditors of any corporation will just be engaged in advising activities. Second, the auditing committee is appointed by an independent board of directors, rather than by the chief treasurer. Fourth, the lead accounting partner should be rotated every five years to eliminate any potential conflicts of interest between the auditor and the business." In today's world, an auditing committee is regarded as the "oversight role of corporate governance, financial reporting process, internal control structure, and audit functions," according to the International Accounting Standards Board. The effectiveness of an Audit Committee is improved when its members are objective, possess governance and financial skills, and have no financial interest in the organisation.

An auditing committee with significant authority, transparency, and ethical standards must be formed in every organization—whether in the developed United States or destitute India. In addition, if outside shareholders believe that the audit committee possesses sufficient independence to make sound decisions, the risk premium associated with raising capital can be reduced, providing yet another compelling reason for corporations to devote time and resources to both auditor and audit committee independence.

THE INDIAN CONTEXT OF CORPORATE GOVERNANCE

The importance of corporate governance in India's present economic predicament cannot be overstated. Because of this, the country's economy has been thriving since 1991. “Even though clinical genetics has been practised in India since 1961, we continue to fall behind in several areas. The Securities and Exchange Board of India (SEBI) was reformed in 1992, and this was the most significant step done in this sector since then. Clause 49 of the Sarbanes-Oxley Act of 2002 may be compared to Clause 49 of the Sarbanes-Oxley Act of 2001 since they are mostly founded on similar lines of reasoning. It was established for the benefit of corporations having stock exchange listings in the United Kingdom. The most significant distinction between the two is that under Sarbanes-Oxley if deceit or destruction of reports happens, the perpetrators may be sentenced to up to 20 years in prison, while Clause 49 does not have such a requirement.”[1]

Within a year of the two main founding, the Securities and Exchange Board of India (SEBI) constituted two committees, headed by Kumar Mangalam Birla and Narayan Murthy, to lay the groundwork for formalising the most acceptable and productive corporate governance principles. “Following consideration of the committees' recommendations, Clause 49 was added to the listing contract for companies that are listed on the Indian stock market. Because of various scandals, including Enron, Satyam, and WorldCom among others, it was necessary to update Clause 49 to incorporate and overcome the weaknesses that caused these firms to go bankrupt and wreak havoc on the economy of their respective nations. Clause 49 of the

[1]RBI Publications, https://rbi.org.in/scripts/PublicationsView.aspx?id=15725 (last visited on 13 June, 2021).

Indian stock exchange's listing agreement was in force from 2000 and 2003. Among other things, it included all of the rules and regulations for a minimum number of independent directors, board members, and many essential committees, a code of conduct, and audit committee rules and restrictions. Company names were deleted from the list and financial fines were levied on those who did not adhere to the standards. Clause 49 is comparable to the Sarbanes-Oxley Act of 2002 in that it is predicated on ideas that are comparable to those of the Sarbanes-Oxley Act.[2]"Corporate entities having stock exchange listings in the United States were eligible to apply for the programme. Both the management duties and the number of directors are the same when it comes to the organization's structure.[3] They also adhere to the same rules when it comes to insider trading, director loans, and other similar activities. The Securities and Exchange Board of India (SEBI), as the market's regulator, has the right to begin criminal actions. If the SEBI chooses to impose a severe penalty, it may commence criminal proceedings against the company or raise the charge for failing to comply with Clause 49, which results in the company being delisted automatically.[4] As a consequence, executives of foreign multinational corporations considering investing in the United States should be familiar with corporate governance standards and concerns in the country.[5]

SURROUNDING CORPORATE GOVERNANCE SUPPORT SYSTEMS

Internal governance refers to the internal behaviour of a business as shown by its board of directors, shareholders, members, and auditors. Examining the code of governance, contemporary competitiveness, and environmental legislation are the greatest ways to grasp the notion of the internal and external environment. The board of directors, as the company's decision-makers, is the most important and indispensable component of any organisation.

- **Board of Directors**

"The owner and the shareholders are connected via the company's board of directors. They act as a link between the managers who operate in the corporate office and the big group of corporate controllers who are dispersed across the world. Because they were chosen to the

[2] PCAOB, https://pcaobus.org/About/History/Documents/PDFs/Sarbanes_Oxley_Act_of_2002.pdf (last visited on 13 June, 2021).
[3] Ibid.
[4] Corporate Governance, https://www.sebi.gov.in/legal/circulars/feb-2000/corporate-governance_17930.html (last visited on 13 June, 2021).
[5] Mark S Beasley & Joseph V, Fraudlent Financial reporting , Research gate, https://www.researchgate.net/publication/246238034_Fraudulent_Financial_Reporting_Consideration_of_Industry_Traits_and_Corporate_Governance_Mechanisms (last visited on 13 June, 2021).

board of directors by the company's shareholders, they owe a fiduciary duty to those shareholders.” The board of directors is comprised of both internal and external members. Internal directors, often known as executive directors, are often persons who have important roles inside an organization's internal structure. Directorship entails some essential obligations, two of which are the responsibility of care and the requirement of loyalty. The board of directors is also responsible for ensuring that the audited financial statements and other financial reports are accurate. In order to comply with international laws and regulations, The SEBI code has been changed multiple times in order to include and integrate best practices from throughout the world. As a whole, the board of directors has a variety of obligations, and the tasks that they do are reliant on the relevant information provided by the company's management, provided that the information is accurate. The board of directors must have access to a sufficient quantity of relevant and high-quality data in order to make the best decisions possible for the company's stockholders and investors. These considerations are especially significant for emerging countries such as India, which has a high degree of domestic domination and so needs further attention.

- **Board Size and Composition**

Although there is no universally agreed figure for the appropriate board of directors’ size, there are several guidelines. Smaller or bigger boards of directors can have benefits and drawbacks depending on the organization's needs. It is difficult to establish a relationship between board size, board usefulness, and company success. According to a study done by the Corporate Library, the average board of directors consists of three to thirty-one members. In India, there is no need for the number of members on a board of directors to have a certain minimum, except for the need that private limited companies have two members and public limited companies have three members.

CONCLUSION

Corporate ethics is a vast issue that encompasses a variety of different topics. It is guided by the principles of justice, fairness, and equity in its operations. Put another way, the term refers to the application of basic ethical notions to business difficulties and the identification of a solution that is "right" in every respect. Workplace ethics is a sort of practical ethics that looks at the ethical principles and moral concerns that occur in the workplace. National Association of Corporate Directors (2008) said that corporate governance practises should be structured to promote and support ethical behaviour in organisations.[6] Because the directors owe a fiduciary duty to the shareholders, corporate ethics are also very important.[7] The importance of ethical behaviour in fiduciary relationships cannot be emphasized, especially when it comes to financial transactions.

[6] Dessain, Vincent, Olivier Meier, et Vicente Salas, Corporate Governance and Ethics: Shareholder Reality, Social Responsibility or Institutional Necessity? , *Management*, vol. vol. 11, no. 2, 2008, pp. 65-79.
[7] Ibid.