CORPORATE GOVERNANCE CODES AND GUIDELINES: ASSESSING COMPLIANCE AND IMPLEMENTATION IN ADDRESSING THE INTERESTS OF STAKEHOLDERS IN THE FIRMS

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ABSTRACT

The period of economic expansion in India, which occurred in 1992, coincided with the advent of globalization, marking the first time there was a pressing need to adopt corporate governance norms aligned with international standards. The Ministry of Corporate Affairs established a benchmark for companies to adhere to voluntary guidelines for corporate governance, while the Securities and Exchange Board of India (SEBI) and the Companies Act, 2013, delineated mandatory provisions for corporate governance. This study delves into the current legal framework surrounding corporate governance and the requirements imposed on listed companies. It elucidates how the integration of corporate governance guidelines has facilitated the growth of large corporations. This paper contributes to the existing body of literature by conducting a review of the application of governance codes and guidelines by companies and applying doctrinal research. It is concluded that the Companies Act, 2013, along with other regulatory bodies in India, has established mandatory provisions for corporate governance. The study evaluates the extent to which these provisions are adhered to by companies. Furthermore, the study briefly addresses the benefits to stakeholders resulting from the implementation of governance standards mandated by SEBI, and it was found that a few companies have experienced significant growth as a result. However, it was also noted that some Public Sector Undertakings (PSUs) have struggled to meet these standards. The study highlights the importance of corporate governance within companies and underscores the need for its effective implementation.

Keywords: corporate governance, whistle blower, corporation, committee, director, money-laundering

1. Introduction

A corporate governance code serves as a comprehensive guide for board members and directors, outlining the principles and standards by which they are expected to conduct their duties within an organization. This code acts as a rulebook, governing both the company and its employees, by establishing the approach that board members and directors must adhere to when exercising their powers and functions. In India, the necessity for such a code was underscored in the late 1990s, a period characterized by the country's openness to privatization. The corporate governance code is instrumental in establishing a framework for the efficient operation of companies, ensuring accountability, oversight of company leadership, and a board's responsibility towards the company's stakeholders. It plays a crucial role in monitoring a company's accountability, its relationships with shareholders, and ensuring that executive compensation aligns with industry standards. Therefore, it can be concluded that a corporate governance code functions as a guiding framework that directs an organization's ethical orientation, control, and administration.

The Ministry of Corporate Affairs in India has decided to frame voluntary guidelines which will help companies achieve the highest standard of corporate governance.[1] The rules framed by the ministry serve as a guiding principle by giving corporate India a structure with the help of which companies can govern themselves by the highest standards and responsible business practices. By adopting the rules set by the ministry, it will not only result in a high degree of stakeholder confidence but will also result in long-term sustainability of the company.[2]

The year 2009 marked a significant milestone in the history of corporate governance structures in India. The Ministry of Corporate Affairs, under the government of India, formulated Corporate Governance Voluntary Guidelines, 2009. These guidelines were developed in response to the need to address the shortcomings in the corporate governance mechanism, particularly in light of several high-profile scams that had occurred in the market. One of the most notable incidents was the 'Satyam Scam,' where the company's board members were implicated in misappropriating the company's funds.[3] This incident highlighted the urgent need

[1] '*CORPORATE GOVERNANCE VOLUNTARY GUIDELINES 2009*', Ministry of Corporate Affairs, Government of India, New Delhi, a*vailable at:* https://www.mca.gov.in/Ministry/latestnews/CG_Voluntary_Guidelines_2009_24dec2009.pdf (last visited on April 15, 2024).

[2] *Id*

[3] Minutes of the Meeting of the Board of Directors of Satyam Computer Services Ltd., 2 (Dec. 16, 2008, at Hyderabad, India), *available at:* https://www.wsj.com/public/resources/documents/satyam0115.pdf (last visited on April 16, 2024).

for improved corporate governance practices. The guidelines were designed as voluntary, lacking legal enforceability but aimed at encouraging companies to follow them for long-term success. Today, both public and private companies in India are voluntarily adopting these guidelines, demonstrating a commitment to responsible corporate governance.

The guidelines included streamlining the process of appointment of independent directors and ascertaining their roles and responsibilities, clarifying the responsibilities of the audit committee, the auditors, and other incidental issues, such as secretarial audit and the establishment of whistle blower mechanism in order to modernize the audit process.[4] The research conducted in the present study primarily focuses on assessing the compliances by the companies in India and how it is procuring the interest of all stakeholders of the companies who are implementing these codes and guidelines efficiently.

2. Research Methodology

This paper primarily employs doctrinal research to analyse relevant legal texts, including statutes, judicial opinions, and legal commentaries. This method allows for in-depth analysis of legal arguments, interpretations, and guidelines related to corporate governance standards. Doctrinal research is well-suited to examining the legal framework surrounding corporate governance standards for its compliance by the companies effectively.

3. Corporate governance and India

The term "corporate governance" describes how top executives run businesses. It's a general term that encompasses elements of accountability, transparency, fairness, risk management, responsibility, authority, and decision-making. The Companies Act, 2013 provides the guidelines for the companies and has framed a formal structure by which the listed companies are governed. There are disclosure requirements, reporting to the audit committee, transparency in working, conveying details to the shareholders, and other requirements that a listed company should follow without failure. The Ministry of Corporate Affairs has framed the company rules, 2014 on management and administration, appointment and qualification of directors, meetings of the board and its powers and accounts.[5]

[4] Umakanth Varottil, '*INDIA'S CORPORATE GOVERNANCE VOLUNTARY GUIDELINES 2009: RHETORIC OR REALITY?*' (2010) 22(2) National Law School of India Review, *available at:* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1634821 (last visited on April 16, 2024).

[5] '*Chapter IV: Corporate Governance'* (CAG, 2018), *available at:* https://cag.gov.in/uploads/download_audit_report/2021/8_C-4%20Corporate%20Governance-061bb1b6d98c843.75300583.pdf (last visited on April, 18 2024).

Moreover, The Ministry of Corporate Affairs (MCA) and the Securities and Exchange Board of India (SEBI) comprise the organisational framework for corporate governance activities in India. In India, SEBI uses Clause 49 of the listing agreement to oversee and control the corporate governance of listed firms. Listing businesses are required to abide by the terms of this clause, which is included in the listing agreements that stock exchanges have with corporations. Corporate executives, policy makers, regulators, law enforcement agencies, and non-governmental organisations can share experiences and ideas through the National Foundation for Corporate Governance (NFCG), a not-for-profit trust, which is one of the appointed committees and forums run by MCA.[6] Furthermore, SEBI revised Clause 49 in 2013 to align it with the new Act following the passing of the Companies Act, 2013.

3.1 Present requirements mandated by legislation

- Requirements for independent directors, as well as obligations and standards for appropriate behaviour.
- At least one female director must be appointed to the board.
- Audit Committee creation is required as per Section 177(1), Committee on Nomination and Remuneration provided in Section 178(1), and Committee on Stakeholder Relations provided in Section 178(5).[7]
- The Board of Directors shall meet at least four times annually and in a way that allows for a maximum of 120 days to elapse between meetings as per Section 173(1).[8]

4. India and US on voluntary and mandatory compliance

The corporate governance compliance can be voluntary or mandatory. In US, companies do not have the option to avoid compliance as they have mandatory provisions of corporate governance which all the companies have to comply with. The US follows a 'one-size-fits-all' approach and non-compliance would result in penalties. One example of a mandated approach is the United States Sarbanes-Oxley Act.[9] Whereas in India we follow both approaches, one for the listed entities and another for unlisted organisations. There are mandatory provisions for

[6] '*Deloitte Governance Guide: Risk Management Essentials*', (Deloitte, 2018), *available at:* <https://www2.deloitte.com/in/en/pages/risk/articles/governance-101.html (last visited on April 19, 2024).

[7] Mehul R., Varadraj B. (2012). '*Corporate Governance Compliance Practices of Indian Companies*', Research Journal of Finance and Accounting. 3(8).

[8] *Id*

[9] Corporate Governance, 18th Report [Session 2017-18], Comptroller and Auditor General of India, *available at:* https://cag.gov.in/uploads/download_audit_report/2018/Chapter_3_Corporate_Governance_of_Report_No_18_of_2018__Compliance_Audit_on_General_Purpose_Financial_Reports_of_Central_Public_Sector_Enterprises_of_Union_Governme.pdf (last visited on April 20, 2024).

the listed companies however the companies unlisted can voluntarily follow the guidelines framed by the Ministry of Corporate Affairs in India. Giving small firms the option of voluntary compliance allows them to create appropriate self-regulatory standards that are flexible in nature, as they are not required to adhere to the whole spectrum of norms.[10] Companies must provide an explanation for why they haven't established any rules governing internal management. Nonetheless, organisations that adhere to strict governance guidelines have benefited all parties involved and advanced the business as a whole.

5. Assessing the importance of compliance

The companies incorporating effective corporate governance norms on their own have benefitted much today. The primary concern for including a corporate governance framework is to ensure that the key managerial people or board members act in the interest of the organization and its stakeholders. With the inclusion of effective corporate governance mechanisms in the company's workings, the interests of the stakeholders like investors, employees, suppliers, government, customers, and society have been procured by the companies today.

5.1 Procurement of investors' interest

The investor's or shareholders' interests are associated with the company's overall performance in the market, if the company fails to meet its governance standards then the shareholders would shun the company which eventually results in a fall in the stock price of the company in the market.[11] Therefore, the inclusion of corporate governance norms and their effective implementation by the companies would increase shareholder confidence in the company which will result in long-term relationship between the shareholders and the company. There are mandatory provisions for corporate governance which the companies are required to comply with if they are listed on the stock exchange of India. However, it is expected that voluntary code will increase compliance by encouraging self-regulation by the companies.[12] The investors in the market will see whether the companies covered by this optional code are

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[10] Stilpon Nestor, Simon C.W. Wong, '*Developing and Implementing Corporate Governance Codes*' 1 (2008), NJR, *available at:* http://ssrn.com/abstract=1321127 (last visited on April 24, 2024).
[11] Annaleen Steeno. (2006). '*Note: Corporate Governance: Economic Analysis of a "Comply or Explain" Approach'*, 11 STAN. J.L. BUS. & FIN. 386, 397.
[12] Cary Coglianese. (2004). '*The Role of Government in Corporate Governance*', 1 N.Y.U. J. L. & BUS. 219, 224; Cally Jordan, '*The Conundrum of Corporate Governance*', (2005) 30 BROOK. J. INT'L L. 983, 1013.

complying with it and therefore build their confidence in the company.[13] One disadvantage of voluntary compliance is the companies are self-regulated and they may incorporate adequate sanctions which would result in non-compliance.[14]

5.2 Strengthen Employee relationship

The companies that have a robust framework of corporate governance norms easily build long-term employee retention in the company. With the effective implementation of these compliances, the employers of the company build faith & confidence and would like to work for the organization's goals & objectives. There must be a relationship of trust between the employees and the companies, the companies making internal disclosure would build employee trust and their value to the company. If the board members act by the governance norms then the employees would like to follow them and work without any fear of fraud in the company. The employees would be provided a stable environment to work in.

5.3 Building customer's trust

The companies incorporating the governance provisions would develop good customer relationships with the company. The customer will remain loyal to the company if it delivers services by complying with the regulatory standards. It is an established fact that no company following governance norms would be involved into scams or frauds. A clearly defined policy not only benefits internally but also the customers of the company, they will also feel happy to be a part of the company by subscribing to their products or services. As the company's reputation is associated with its corporate governance norms it improves transparency in the internal management which eventually results in building customer trust, the company can survive even in difficult market situations.

5.4 Government regulation

The adherence to corporate governance principles by companies ensures compliance with laws and regulations established by governmental bodies and other regulatory authorities. This compliance guarantees that companies are accountable to their stakeholders and operate in their best interests. Government oversight ensures that all necessary regulatory compliance

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[13] Kai Li & Erinn B. Broshko, '*Corporate Governance Requirements in Canada and the United States: A Legal and Empirical Comparison of the Principles-based and Rules-based Approaches*' 4 (2006), *available at:* http://ssrn.com/abstract=892708 (last visited on April 27, 2024).

[14] Kerry Shannon Burke. (2002). '*Regulating Corporate Governance through the Market: Comparing the Approaches of the United States, Canada and the United Kingdom*', 27 J. CORP. L. 341, 355.

measures are implemented within the company. The objective is to prevent the company from engaging in corrupt practices that could adversely affect the interests of stakeholders. Companies that follow governance guidelines enhance the government's confidence in their operations. Corporate Governance (CG) also ensures that companies maintain transparency in their operations and are readily accountable for their actions. Consequently, companies regulated by the government are easier to evaluate compared to those that practice voluntary self-regulation.

5.5 Value for Society

From a societal perspective, companies that comply with good governance mechanisms are more likely to sustain their operations over the long term. Strong corporate governance mitigates conflicts of interest within the company by establishing clear rules that reduce the risk of potential fraud and corrupt practices within the corporate environment. When a company effectively implements governance standards, it is perceived by society as trustworthy, leading to sustainability by bolstering public confidence. Today, companies are increasingly involved in sustainability initiatives and enhance their green portfolios. By adhering to corporate governance guidelines, companies serve the interests of all stakeholders, including investors, employees, consumers, and the broader society, thereby benefiting society as a whole.

6. Compliances and Indian companies

6.1 The Tata model

The corporation acknowledges its responsibility as a corporate citizen and works to uphold the highest standards of corporate governance and best practices through accountability to the government, consumers, and other stakeholders and transparency in business ethics.[15] According to Tata, effective management may effectively guide and oversee the company’s operations and accomplish its objective of maximising value for all of its stakeholders when appropriate governance procedures are used. Transparency, integrity, honesty, and responsibility are the company’s key values; these are essential to a Tata Company.[16] Few policies were adopted by Tata against sexual exploitation at workplace, fit & proper criteria for

[15] ‘Corporate Governance Report’. (2024). Tata Industries Ltd, *available at:* https://www.tata.com/content/dam/tata/pdf/tata-industries/Corporate_Governance_Report.pdf (last visited on April 29, 2024).
[16] *Id*

director's appointment, anti-corruption policy, anti-money laundering policy, and whistle blower policy.[17]

6.2 The Mahindra model

According to Mahindra Lifespaces, good corporate governance standards benefit all of its stakeholders over the long run, including the community, suppliers, consumers, employees, and shareholders. The company continues to operate with the greatest standards of ethical conduct and in conformity with all laws and regulations. The society has faith and trust from the past 25 years in the company. The company's rules, codes, and governance philosophy serves as a framework for this endeavour.[18] The CEO and top leaders are in charge of managing day-to-day operations, with the Board of Directors (BoD) spearheading the process of formulating and executing their strategy.[19] The Mahindra Group's strategy is based on the notion that successful organisations are generally achieved via developing and empowering their workforce.

6.3 The Infosys model

"At Infosys, the goal of corporate governance is to ensure fairness for every stakeholder; its customers, investors, vendor-partners, the community, and the governments of the countries in which it operates."[20] The company's view of maintaining and growing investor trust depends heavily on effective corporate governance. It is an expression of its values-driven commitment, stakeholder relationships, policies, and culture. As a result, the company always ensures that integrity drives its performance.[21] Its disclosures aim to follow worldwide corporate governance best practices. In all of its business actions, it also aims to respect minority rights and increase long-term shareholder value.[22]

6.4 Other Companies model

The formulation of guidelines was undertaken by the Department of Public Enterprise (DPE), which was specifically designed for Central Public Sector Enterprises (CPSE). These standards covered a range of topics, including the composition of the board of directors and the roles and

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[17] *Id*

[18] 'Corporate Governance', 'Mahindra Life Spaces, 2024', *available at:* https://www.mahindralifespaces.com/sustainability-impacts/governance/#:~:text=Our%20Governance%20Structure&text=Spearheaded%20by%20Board%20of%20Directors,members%2C%20including%20one%20woman%20Director (last visited on May 3, 2024).

[19] *Id*

[20] 'Corporate Governance', 'Infosys, 2024', *available at:* https://www.infosys.com/about/corporate-governance.html (last visited on May 5, 2024).

[21] *Id*

[22] *Id*

responsibilities of various board committees, such as those related to compensation and audit. These guidelines were established as mandatory requirements. It was found that out of the 53 CPSE entities, four CPSE's lacked independent directors, while 37 CPSE's did not have an adequate number of independent directors. Additionally, nine CPSE's failed to appoint any female directors, and there were delays in the appointment of independent directors in 23 CPSE entities, with some experiencing delays of over three months. Furthermore, 16 CPSE entities faced delays of over six months in appointing functional directors to the board. One CPSE entity did not have an Audit Committee, while three CPSE's lacked a whistle blower mechanism. Five CPSE entities did not have a Nomination and Remuneration Committee, and two CPSE's failed to establish a Stakeholders Relationship Committee. Moreover, three CPSE entities did not have a policy in place regarding related party transactions.[23] The Indian government has been urged to exert pressure on the relevant administrative ministries and departments to ensure compliance with these policies, thereby achieving the objectives of corporate governance within CPSEs.

7. Conclusion

The study provided a concise overview of corporate governance codes and guidelines, their implementation in companies, and the challenges faced. It was initially recognized that certain governance standards are essential for a company's survival, following significant scandals and frauds in Indian history. The study highlighted the importance of governance guidelines as a guiding principle for companies to create value for their stakeholders. While India adopts both mandatory and voluntary approaches to implementing these guidelines, the Ministry of Corporate Affairs has introduced voluntary guidelines, whereas the Securities and Exchange Board of India and the Companies Act mandate their adherence. The shift towards formal guidelines was initiated in 2009 in response to concerns regarding the need for official standards to establish principles for all companies.

The study also compared the approaches of India and the United States in formulating corporate governance guidelines. It was noted that the United States has mandatory provisions applicable to all types of companies, as detailed in the study. In contrast, India has a mix of voluntary and mandatory provisions for corporate governance guidelines. It was observed that major private companies, such as Tata, Mahindra Group, and Insofys, have implemented robust corporate governance mechanisms, contributing to their success in the market. On the other hand, some

[23] Corporate Governance, *Supra* note 9.

unlisted companies have voluntarily followed these guidelines, leading to significant growth. However, a few public sector enterprises have struggled to meet the mandatory corporate governance standards.

According to the assessment, the companies' adherence to the abovementioned provisions & rules has benefited various stakeholders, including investors, employees, society, customers, and the government. As a result, businesses that have implemented solid governance practices have endured for a longer period of time. Nevertheless, the company's long-term viability depends on the implementation of these regulations; their mere addition may not have the desired effect. The way forward is to advocate for more stringent law enforcement or greater conformity to standards, both of which are still far short of what India should be.