

ROLE OF SHAREHOLDER AND CORPORATE SOCIAL RESPONSIBILITY

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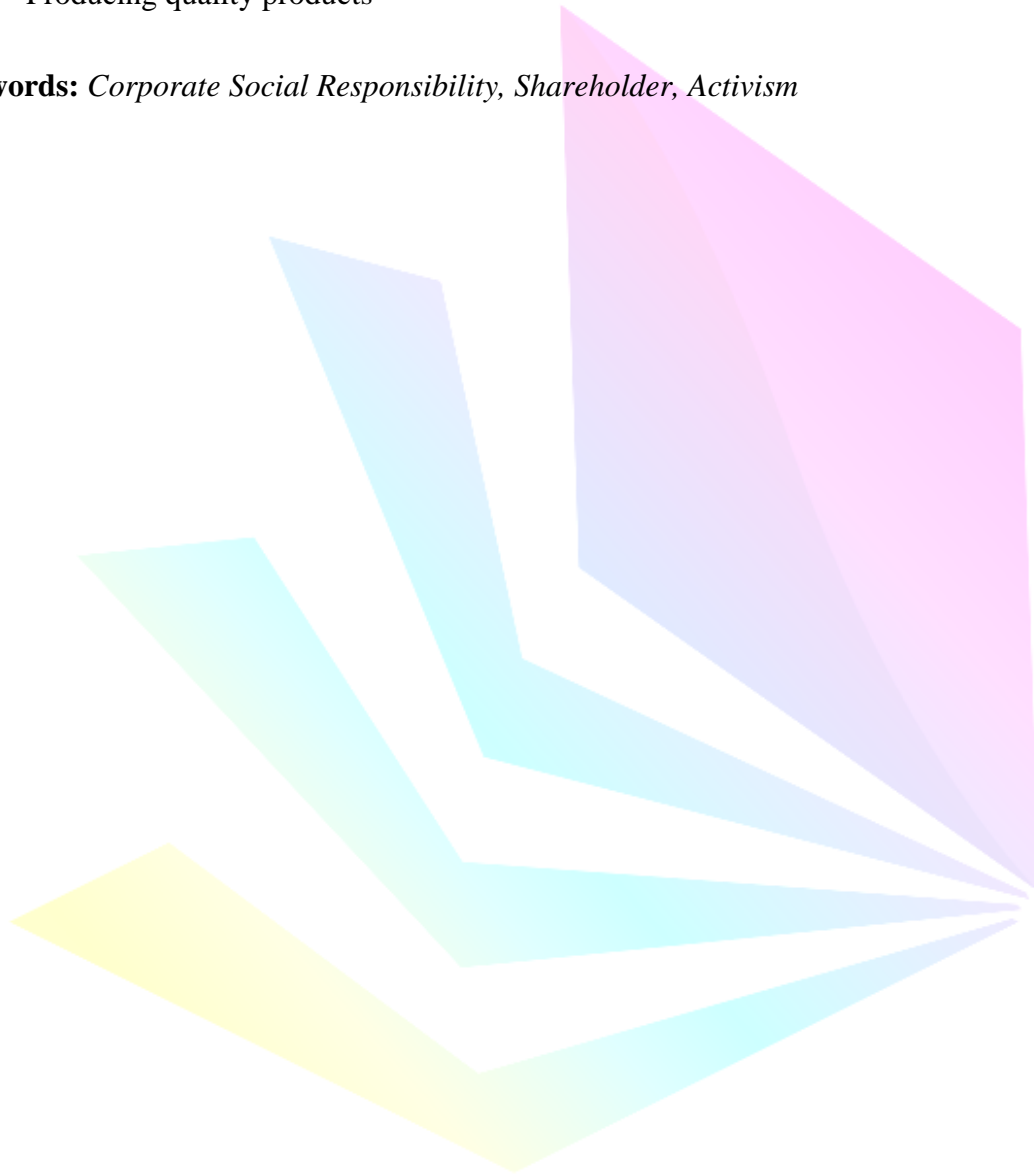
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Abstract

"Corporate Social Responsibility" means, corporate conscience, corporate citizenship or responsible business. It is a form of corporate self-regulation integrated into a business model. CSR policy functions as a self-regulatory mechanism whereby a business monitors and guarantees its active obedience with the spirit of the law, ethical values and national or international standards. With some models, a firm's solicitation of CSR goes past compliance and statutory necessities, which engages in "actions that appear to further some social good, beyond the welfares of the firm and that which is required by law" The binary choice between 'complying' with the law and 'going beyond' the law must be qualified with some tone. In many areas such as environmental or labor regulations, employers can select to comply with the law, to go beyond the law, but they can also choose to not comply with the law, such as when they intentionally ignore gender equality or the mandate to hire restricted workers. There must be credit that many so-called 'hard' laws are also 'weak' laws, weak in the sense that they are poorly enforced, with no or little control and/or no or few sanctions in case of non-compliance. 'Weak' law must not be muddled with soft law. Now days CSR and shareholder value is the metrics used to measure results. Shareholder value has an unambiguous measure: the share price of a company's stock plus dividends received. In addition, SEC regulations and GAAP and IAS accounting rules proscribe what financial information companies must disclose and how they must disclose it, and comparable requirements exist globally. Revenue, profit and market capitalization are universally understood and clear measures of where a company stands. On the CSR side, no singular goal comparable to increasing shareholder value exists, primarily for two reasons. First, CSR comprises a wide range of corporate decisions and activities. Consider the following:

- Paying a "living wage" rather than market wage.
- Obeying environmental laws.
- Campaigns to reduce employee obesity.
- Corporate philanthropy.
- Producing quality products

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INTRODUCTION

Friends, together, we can achieve a new phase of globalization - one that creates inclusive and sustainable markets, builds development and enhances international cooperation. We each have a responsibility in moving our agenda forward." Hence, Corporate Social Responsibility is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. CSR is generally understood as being the way through which a company achieves a balance of economic, environmental and social imperatives ("Triple-Bottom-Line- Approach"), while at the same time addressing the expectations of shareholders and stakeholders. In this sense, it is important to draw a distinction between CSR, which can be a strategic business management concept, and charity, sponsorships or philanthropy. Even though the latter can also make a valuable contribution to poverty reduction, will directly enhance the reputation of a company and strengthen its brand, the concept of CSR clearly goes beyond that. Despite persistence of the image of shareholders as narrow-minded profit maximizers who demand that managers ignore calls for a broader social responsibility of business, shareholders have become some of the most important allies of the corporate social responsibility (CSR) movement. This paper examines the intersection of shareholder engagement and CSR from a historical perspective. It provides background information about two central avenues through which shareholders engage the corporation—shareholder activism and socially responsible investing—and then traces how these avenues have shaped and been shaped by the CSR movement. Today, many companies struggle to integrate their CSR efforts into their core mission, strategy, business model and products/services. They also face the challenge of communicating the nature and impact of their CSR initiatives to an often-skeptical audience of employees, customers, investors and even environmental/social activists. At the root of these issues is the conflict — real or imagined — between CSR activities and the holy grail of corporate management: shareholder value. This article examines the factors behind this conflict and suggests ways CSR and shareholder value can be reconciled. Shareholders are commonly considered the owners of a corporation. In shareholding, the ownership rights are somewhat limited compared to the ownership rights one has over a house or other type of tangible property. The aim is to increase long-term profits and shareholder trust through positive public relations and high ethical standards to reduce business and legal risk by taking responsibility for corporate actions. CSR

strategies encourage the company to make a positive impact on the environment and stakeholders including consumers, employees, investors, communities, and others. Proponents argue that corporations increase long-term profits by operating with a CSR perspective, while critics argue that CSR distracts from businesses' economic role. A 2000 study compared existing econometric studies of the relationship between social and financial performance, concluding that the contradictory results of previous studies reporting positive, negative, and neutral financial impact, were due to flawed empirical analysis and claimed when the study is properly specified, CSR has a neutral impact on financial outcomes. In this way, the Corporate Social Responsibility means the “Social responsibility is the responsibility of an organization for the impacts of its decisions and activities on society and the environment, through transparent and ethical behavior that:

- Contributes to sustainable development, including the health and the welfare of society
- Takes into account the expectations of stakeholders
- Is in compliance with applicable law and consistent with international norms of behavior, and
- Is integrated throughout the organization and practiced in its relationships .

The social responsibilities of business are those responsibilities that arise in the context of corporate-stakeholder relationships. Stakeholders have expectations about the behavior and responsibilities of business that go beyond the provision of jobs and products or services. No two companies are likely to have the exact same set of responsibilities, because each corporation has different products, services and strategies and therefore, different combinations of stakeholders and stakeholder interests and issues. Nevertheless, a plethora of international initiatives have attempted to provide guidance on the question of the social responsibilities of business, such as the UN Global Compact and the Global Reporting Initiative. CSR issues for investors can relate specifically to socially responsible investment strategies, or more broadly to understanding and identifying material sources of social risk. More recently, investors have become more active in engaging directly with companies about their social, environmental and governance risks, often through industry associations.

SHAREHOLDER ACTIVISM

Shareholder activism is a way in which shareholders can influence a corporation's behavior by exercising their rights as owners. Although shareholders don't run a company, there are ways for them to influence the board of directors and management. Shareholders Activism is considered to be a set of “proactive efforts on the part of shareholder to change firm behavior or governance rule.” It signifies the efforts on the part of shareholders or minority shareholders to influence the management in governing the company. Shareholder activism can take shape in an atmosphere where the regulators demand that minority shareholder interests are protected. The Companies Act 2013, following revisions to Clause 49 of the Listing Agreement and other regulatory changes by SEBI have ushered in many changes that enhance the corporate governance landscape in India the requirements for greater degree of disclosures by companies aided shareholders to analyze particular actions and make better-informed decisions. Any act of the shareholder(s) of a company which results in either influencing or changing the behavior and / or decision of the company, either through its management or otherwise. Issues on shareholder activism and corporate governance have been a point of debate in the United States and Europe for many years. In India however, these issues have come to the fore only in the last couple of years. In fact the amendments passed in the companies act in 2013 seek to acknowledge and rectify issues relating to corporate governance which highlights the need for stringency in this area.

ROLE OF SHAREHOLDER IN CSR

Electronic Voting: it is required to all listed companies to provide for electronic voting on shareholder resolutions, allowing minority stakeholders to have their say, without arduous treks to far-flung locations, or unreliable postal ballots. Further, SEBI amended the listing agreement requiring large companies to provide electronic voting (e-voting) facilities in respect of matters requiring postal ballot. The top 500 listed companies on the Bombay Stock Exchange and the National Stock Exchange now provide e-voting facility and this is quickly being extended by all listed companies. General meetings of companies are held at their registered offices and it is not possible for every member to travel to the registered office. In particular, members holding a few shares of the company find it futile to travel so far to cast their vote.

E-voting does not eliminate member's right to physically attend and vote at the general meeting however member can cast his vote through one mode only. A member after casting his vote through e-voting can go and attend the general meeting but cannot cast vote in that general meeting.

RELATED PARTY TRANSACTIONS TO BE APPROVED BY MINORITY SHAREHOLDERS

It is necessary to all related party transactions to be approved by shareholders through special resolution. In November last year, Siemens India proposed to sell the company's Metals Technologies Business to its German parent. Since the proposal was a related party transaction, it required approval of minority shareholders, via a special resolution. The minority shareholders rejected the offer price as too little. Consequently, Siemens Germany revised the offer price from Rs 857.2 Cr. to Rs 1,023.27 Cr. Further, In the case of United Spirits, last month minority shareholders rejected as many as 9 related party transactions with Vijay Mallya entities. A significant change in this regard has also been made to clause 49 of the listings agreement by SEBI, to inculcate the essence of the new companies act for greater participation of minority shareholders in crucial decisions of the company. One such regulation requires all related party transactions to be approved by 75% of the minority shareholders. This regulation however, has been felt by many to be very stringent hence the cabinet recently passed an amendment wherein the threshold would be brought down from 75% to 51%. This amendment is yet to receive approval from the Parliament of India.

SMALL SHAREHOLDERS DIRECTOR

In this case it is mandatory for all listed companies to appoint at least one director elected by small shareholders. Small shareholders for this purpose means shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed. This is in addition to clause 49 of the stock exchange's listing agreement which prescribes for half the board of directors to be independent (in case the chairman of the board is a non-executive director, then at least one-third of the Board should comprise of independent directors).

GREATER PARTICIPATION OF INSTITUTIONAL INVESTORS

Continuous efforts are being made by both SEBI and the Government to encourage participation of mutual funds in corporate decision making. For example, in 2010, SEBI issued a circular to mutual funds requiring them to play an active role to exercise their voting rights in the investee company in a responsible manner. Further this circular requires the asset management companies of these mutual funds to disclose on their websites and their annual reports, their general policies and procedures regarding the exercise of their votes in the listed companies.

OPPRESSION AND MISMANAGEMENT

Now, the legal system allows any number of minority shareholders to file proceedings against the company that what constitutes minority in this regard is left to the discretion of the tribunal. Earlier this decision was left to the central Government which is probably why not many oppression and mismanagement cases were filed.

Corporations act as major players in an economy ever since the industrial modes of production became prime mover of an economy. Professors Adolf Berle & Gardiner Means, in their seminal work on corporate governance and law, *The Modern Corporation and Private Property* outlined the fundamental problems plaguing the structure of corporate ownership.

Moving to shareholders as a constituency, activism on their part, a hitherto non-existent phenomenon in India, has become pervasive in recent years. This development has been aided both by efforts on the part of the regulators to encourage shareholder participation in corporate decision-making, and by growth in the activist stance of institutional investors in the Indian markets. This is part of a growing international trend, particularly in the wake of the global financial crisis. Over the last decade, regulatory reforms have focused on promoting shareholder participation in corporate decision-making. This has been implemented through legislative and regulatory measures. While the Securities and Exchange Board of India (SEBI) initiated measures in 2012 to introduce electronic voting, the new Companies Act, 2013 provides for electronic meetings, minority shareholder rights to approve significant related party transactions and other forms of protection to minority shareholders such as the class

action mechanism. These measures are expected to engender greater participation by shareholders in general meetings of companies. Apart from regulatory measures, shareholders themselves have been proactively adopting an activist stance. They have begun to engage with management and promoters of companies to pursue corporate policies that may enhance shareholder value. Where mere interaction with management is found to be ineffective, activist investors typically advance to the next stage of voting against the company's resolutions. The ultimate option of confronting management with efforts to displace them has been used elsewhere in the world, but in India such option is quite daunting given that most companies are controlled through a significant stake held by the promoter. The activist investors are now effectively aided by the emergence of a set of corporate governance intermediaries in the form of proxy advisors. While proxy advisors play a significant role in influencing corporate decision-making internationally, the industry is still nascent in India (although it is gradually exerting its presence as a key corporate governance intermediary to reckon with). These developments have brought about a paradigm shift in corporate governance. Anecdotal evidence suggests that managements can no longer take shareholders for granted when seeking their approval of significant corporate transactions. These may have the effect of raising transparency and governance standards in Indian companies, particularly where they are listed on a stock exchange. Having addressed the various facets of the shareholder activism in India, the strategies they use to administer the operations of company and the relevant provisions affecting the shareholder's protection in India, which is essential for shareholder activism to sustain, we now deliberately arc over the challenges faced by activism in Indian corporate environment and the upshot of activism in the mergers and acquisition mechanism in India. The Satyam fiasco in 2009 revealed various loops existing in the Indian corporate framework and underlined the importance of shareholder activism in India. This Satyam scam, often compared to the Enron scam in US, was an eye opener for many and spurred various reforms in the corporate legal framework. However, what is little known about the Satyam scam is that investor's activism, against an acquisition deal pursued by the Satyam promoters, is what led to the revelation of a billion-dollar scam undergoing in the boardrooms of Satyam Computers. The success-run of the company was halted rather abruptly in early January 2009, when Satyam promoters resolved to invest the company's funds in buying stakes for an amount equivalent to \$ 1.6 billion against their book worth of only \$ 225 million, in two firms, Maytas Properties and Maytas Infra founded by Satyam's Chairman, Ramalingam Raju's sons . The investors in

the company dissented the move and forced the management to retreat from its earlier decision. Investors publicly condemned the move when the promoters of the company asserted that the move did not require approval of the stockholders. The thumbs down given by investors and the market experts forced him to retreat within 12 hours. This was a remarkable feat achieved by shareholder activists and also paved way to a more conducive environment for shareholder activism India.

CONCLUSION

The way to solve the problem of lack of shareholder activism in India would be to create a more flexible capital market. The past few years have witnessed an initial level of activism in the corporate structure of our nation where promoters have experienced the power of activist shareholders. Thus, it can be safely concluded that Indian problem of substandard M&A can be easily solved by activist institutional investors and proxy advisory firms and deliberately adopting the U.S. model of shareholder activism. Corporate law in India too has undergone changes in relevant rules and regulations due to corporate frauds and failures. Corporate Governance structure under the companies Act, 2013, is standing on six pillars, which included Independent directors, Audit committee, Auditors, Internal Audit, Whistle Blower policy and secretarial Audit Report. Active participation of all stakeholders in corporate governance framework, continuous regulatory changes and entry of domestic and overseas institutional investors have all given birth to shareholders activism in India. The number of votes on shareholder resolutions has increased over the years, as is evident from a study by shareholder proxy firm IiAS. The study shows that in the 2014 proxy season, domestic mutual funds voted (either for or against) on 61% of the 30,124 resolutions presented to shareholders. This was over 2x the votes cast in the 2011 proxy season (during which mutual funds voted on only 54% of the 16,043 shareholder resolutions). Increased engagement between shareholders and company managements has led to greater awareness and put the spotlight on corporate governance and responsible activism, with many companies compelled to withdraw decisions which were opposed. Till recently, only Indian companies wanting to raise capital outside the country took a hard look at their corporate governance practices in expectation of heavy external scrutiny. Increasing international institutional investments in India's high growth companies created a

similar demand for greater transparency and disclosure standards among India-listed companies. If early indications are anything to go by, this trend is seeing further strengthening - with US-style shareholder activism gaining favor with international institutional investors in emerging markets across Asia, including India. The recent spate of crises afflicting the corporate and financial sectors around the world has triggered a new wave of corporate governance reforms, which call for greater empowerment of institutional and retail shareholders. The need for such reforms cannot be greater than in India where controlling shareholders, or promoters, dominate the corporate landscape.

