ISSUES AND CHALLENGES IN IMPLEMENTING CORPORATE GOVERNANCE FRAMEWORK IN PRIVATE COMPANIES IN INDIA

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ABSTRACT

This research paper is aimed at analysing the issues and challenges faced by every private company in India during practicing good corporate governance. Corporate governance is a system that is used by every company for its good direction and control. The Board of directors has a very important role in maintaining strong corporate governance in the companies. It does not only increase the profit but also creates a good reputation in the dynamic world. By following this the companies can easily survive in this competitive world but there is some deficiency because of which the companies are failing for maintaining good corporate governance in some or the other way. There are many issues and challenges of corporate governance faced by private companies like the independence of independent directors, family Run business, and conflict between promoters and Management. The importance of corporate governance in private companies is that it is good for risk management and it creates a good relationship between stakeholders, management, and the Board of Directors of the company. It assures compliance in the company. Currently, in practical scenarios, many companies are not following corporate governance but if they follow corporate governance then it will be very beneficial for them and their goal will be achieved in a very effective and efficient way. Nowadays corporate governance is only written in pen and paper but in practical scenarios, it is not followed much.

Keywords: Corporate Governance, Private Companies, Directors, Stakeholder, Committee.

CONCEPTUALIZATION OF CORPORATE GOVERNANCE IN INDIA WITH RESPECT TO PRIVATE COMPANIES

Introduction

The scenario of a developing economy in a country like India, practices of corporate governance have become a significant challenge for companies that will steer an exponential growth to their businesses. A good corporate governance practice has to be understood as an instrument rather than a concept which focuses on how the management and the control structure of the enterprise is appropriate according to their functions. As defined by Sir Adrian Cadbury in the Cadbury Committee report, "*Corporate Governance is a system by which companies are directed and controlled. Board of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place*."[i]

The administration of good governance specifies the appropriation of rights and duties among various members in the organisation (like the board of directors, managers, shareholders and other stakeholders) thereby clarifying the principles and procedures for settling on decision for corporate affairs. It lays down a framework to attain corporate objectives as well as balance the interests of the stakeholders by generating maximum value from the allocation of corporate resources. But, when there is a separation of ownership and management in the company, issue raises concerning proper supervision at different levels.

The topic of corporate governance practice in the private sector have been widely debated in India mostly concerning about important issues such as accountability, quality and transparency. The governing laws are rigorous for listed and public companies while exempting the private companies which often leads to mis-management and fraudulent activities within the companies.

This paper aims to identify and provide a complete analysis of the key issues in Corporate Governance practices faced by the Indian private companies.

Evolution & Development of Corporate Governance in India

Since the third century, India has practiced the idea of successful good governance. Good Corporate Governance principles contribute to preserving corporate resources, maximizing equity by proper asset management, retaining wealth through constructive operations, and, most importantly, safeguarding shareholder interests as the king of the state is succeeded by the Company CEO or Board of Directors. Until the mid-1990s, corporate governance was not too far off of Indian organizations, and there was no discussion of it in the law books. A significant part of the guidelines takes into account the needs and interests of British employers, and a significant part of the colonial principles are tied to Indian corporate bodies. The Companies Act was passed in the year of 1866 and has been amended three times since then in the respective years of 1882, 1913, and 1932. The managing organization model, in which the corporate firms entered into a legal agreement with corporate organizations to manage the above, was the focus of these enactments. Because of dispersed and unprofessional proprietorship, this was an age of resource exploitation or abuse and neglecting of responsibilities by managing professionals.

Industrialists became interested in producing a variety of vital goods for which the govt. guided and directed equal prices promptly after independence. The Bureau of Industrial Costs and Prices and the Tariff Commission were established at this time by the government. In the mid-1990s, India introduced significant and new corporate governance reforms. In a host of respects, the Securities and Exchange Board of India (SEBI) and the Ministry of Corporate Affairs (MCA) collaborated on this reform.

India's Corporate Governance Reforms: Phase One (1996-2008)

The Confederation of Indian Industries (CII) took the first exceptional measure in Indian business in 1996, focusing on corporate governance. The purpose was to expand and establish a code of conduct for all corporate bodies, whether private or public, financial institutions or

banks. The CII's acts discussed public concerns regarding investor security, exceptionally among small investors; the transparency of industry and market is promoted and encouraged; and the need to move toward international standards for corporate information disclosure, and, above all, to instill a high ratio of public confidence in industry and business. [ii]

To guard the interests of our investors, the Securities and Exchange Board of India (SEBI) has selected a well-known industrialist to shed light on the topic of insider trading. A special annual report, as well as a report on corporate governance, was expected to submit by the Companies detailing the measures taken to conform with the committee's recommendations. Shareholders should be able to see which businesses they have invested in, and efforts to ensure good corporate governance should be encouraged, according to the objection. Several concrete recommendations for the formation and operation of Board Audit Committees were made when the Committee acknowledged the role of the auditing body.[iii] Clause 49, a newly revised listing agreement clause that went into effect in phases between 2000 & 2003, enshrined these laws and guidelines, and SEBI revised its listing contract at the time to incorporate the recommendations.[iv] And Clause 49 was modified again in 2004 as a result of the Murthy Committee's recommendations. Though, due to a lack of preparedness and market opposition to such broad amendments, the implementation of those amendments was delayed until 2006. The Murthy Report's most significant changes to Indian company governance and transparency standards were governance regulations governing audit committees, corporate boards, shareholder responsibility, and CEO or CFO qualification in internal controls.[v]

However, Indian private companies did not gain any spotlight in any of the committee reports other than the “Report of the Committee on Regulation of Private Companies and Partnerships” headed by Shri Naresh Chandra in 2003. This committee recommend certain amendment required in the provisions of The Companies Act, 1956 that were not applicable to private companies in India such as Right of other persons to stand for directorship, simplified exit strategy for a defunct or inactive private company and so on.[vi]

Corporate Governance aafter Satyam Scam: Phase Two

In January 2009, the Corporal community of India was stunned by damaging revelations about Satyam's board of directors' failure and massive financial fraud. The Satyam fiasco has

prompted the Government of India to revise its corporate governance, transparency, responsibility, and compliance policies. The CII started investigating the corporate governance problems posed by this controversy immediately after news of the scandal became public. Further, other industrial groups formed corporate governance and ethics commissions to look at the result and lessons learned from the controversy. A task force of the CII released recommendations on corporate governance reform in late 2009. The CII stressed the one-of-a-kind aspect of the Satyam controversy in its article, stating that "Satyam is a one-off event." However, in mid-2010, the National Association of Software and Services Companies formed a Corporate Governance and Ethics Committee in addition to CII, which was chaired by one of Infosys' founders and a key player in India's corporate governance reforms.

Corporate Governance's Evolutionary Effect on Indian Organizations

The Indian private sector during the post-independent phase was heavily regulated by the government. When India was a closed economy, GDP rose at a rate of 3 to 4% per annum between the years 1956 and 1974. Between the years 1975 and 1990, when the private sectors of India were granted more independence, it hit a low of 4-5 percent. GDP increased by more than 6 percent between the years 1991 and 2004, and reached 8.5 percent after that, thanks to IMF-induced liberalization. [vii]

In terms of corporate governance, R. Narayanaswamy illustrates the big turning points in the country's post-economic liberalization journey.[viii] Further, future studies on Indian governance, accounting, and auditing processes are also described by the authors. The corporate sectors of India were pulled out of their comfort zones during the globalization period. They had to change their claustrophobic Corporate Governance structures to help recruit foreign expertise and clients in order to succeed and thrive globally. The game's rules have evolved as technology has progressed.

In order to boost financials, the McKinsey Report has addressed corporate accountability. According to research, stakeholders tend to engage in businesses that provide both psychological and financial advantages, all of which can only be achieved by good corporate governance that is applied proactively by the top management & cascades out to staff at all layers of the hierarchy. [ix]

The Indian government created SEBI and gave it legislative powers in the year 1992, marking a watershed moment in corporate governance. Efficient corporate governance procedures have been adopted and implemented in India by a number of private and public sector organizations. Wipro Technologies, Infosys Technologies, Maruti - Suzuki, Tata Group, Oil and Natural Gas Corporation (ONGC), Mahindra & Mahindra Group, and Engineers India Limited (EIL) are among the 21st-century companies on the list, which is not exhaustive.

Recent Developments in the Corporate Governance Code

The establishment of a 21-member committee by SEBI in June 2017 under the chairmanship of Shri Uday Kotak was the most recent development. The Committee's essential findings are as follows: [x]

1. In publicly traded firms, the subcommittee indicated that the time had come to separate the positions of Chairman and MD-CEO.
2. According to the committee, directors and officer's insurance for independent directors should be required for the top 500 corporate firms by market capitalization.
3. The committee recommends that mentioned companies have at least six directors on their boards, including at least one independent female member.
4. The committee advocated for more clarity in the selection process of independent directors, as well as for them to have a more active position on boards.
5. The overall number of listed entity directorships should be limited to eight, according to the panel and at least half of the board of directors must be comprised of independent directors in a publicly-traded company.
6. The Audit Committee, according to the panel, should look into the use of loans and investments by coin arm with a value of more than Rs 100 crore.
7. Holders must approve any proposal to occupy a temporary position in the office of an Independent Director and the panel recommends that the number of Audit Committee meetings that must be held each year should be risen to five.

8. No one should be selected as an alternative director for an independent director of a publicly traded corporation, as recommended by the panel.
9. Any new Independent Director designated to the board should receive a formal induction, as recommended by the panel.
10. The committee also recommends that, at least once a year, the Board of Directors should be briefed on legislative and enforcement trends.

Research Objectives

This research paper mainly focuses on the various issues and challenges of the corporate governance framework in private companies in India which will aid us in better understanding the different governance practices, issues, and obstacles that these private companies face. The majority of the research papers will focus on the importance of corporate governance in public and private corporations, as well as the legal system for corporate governance. However, this article, on the other hand, analyses the history and development of corporate governance in private corporations. Some of the other objectives of this research article are highlighted below:

- The interpretation of corporate governance in India, Brazil, and France, as well as its scope and limits.
- The concerns posed in corporate governance regarding Independence of Independent Directors, the inadequacy of directors' responsibility, lack of regulatory provision, Board Diversity, Corporate Social Responsibility, Family Run Business, and Succession Planning.
- It also addresses the issues and challenges that private corporations in India are facing as a result of COVID-19.
- In addition, the paper explores the legal deficiencies or lack of statutory provisions in corporate governance in India.

Research Methodology

The architecture of the research paper is analytical of nature, and the article has taken the approach of delving into the parameters of the research goals. For the research purpose, accessible secondary data from the archive and the internet are used extensively. It's also observational analysis because it's based entirely on findings from different cases, rather than theory. It's natural descriptive research that accurately depicts the features of a specific circumstance. As a consequence, in order to gather complete facts, it employs an unbiased process. The data were obtained by reviewing case studies and literature by authorities, which are quoted in footnotes alongside the related facts.

Research Questions

1. Why should private companies follow corporate governance norms?
2. What are the issues and challenges faced by private companies while practicing good corporate governance?
3. Why should private companies follow corporate governance norms irrespective for any laws in India?

Literature Review

John Kay and Aubrey in their article "*Corporate Governance*", (National Institute Economic Review, August 1995) discuss how corporate behaviour and corporate personality are important for the company. They also discussed that public companies and private companies have their limitations and boundaries. They analyzed the corporate governance future and raised the issue which deals with the shareholders of the company. The authors also dealt with different corporate governance models. It will be better if independent directors consult relevant agencies and provide a report of the company's performance to them for better corporate governance.

V.K.Malhotra And Manoj Kumar Agarwal in their article "*The Ownership Structure and Corporate Governance in Major Private Sector Companies of India (2000 -2010)*", (International In-house Counsel Journal, 2012) dealt with the structure of ownership and the issues related to the ownership in the private companies in India. They also conducted a study

related to the corporate governance in different selected companies. In this article, they discussed the measurement of corporate governance index through corporate governance related to the board, corporate governance related to the finance, and corporate governance related to audit fee, complaints, and tax dues. They also showed the pattern of shareholding in corporate governance. It will be better if the companies concentrate more on their financial performance.

Lorraine Uhlaner, Mike Wright, and Morten Huse in their article "*Private Firms and Corporate Governance: An Integrated Economic and Management Perspective*", (Small Business Economics, 2007) analyzed the challenges faced by private firms related to corporate governance. Corporate governance in the firms which are held privately involves accountability, management, and transparency which is very important. In their research, the authors also mentioned the need for the scope of corporate governance in private companies. This research also discusses the corporate governance life cycle. There should be proper implementation of corporate governance policy in private companies.

Kalpana Unadkat in her article, 'Top *ten issue practices of corporate governance in India*'. (Review, 2017) given her views regarding issue faced during practicing corporate governance in every company in India. She has mentioned about true independence of director, CSR responsibility, right of the board etc. should look into consideration for maintaining a good corporate governance. If it will take in to consideration, then can overcome the more frequency of corporate fraud and mismanagement.

Archana Koli, Rutvi Mehta in their article, *'Corporate social responsibility in time of COVID-19'.* (Review, 2020) given their analysis regarding practicing of CSR in COVID-19 scenario. The Government of India has encouraged and motivated the companies of India to take wise decision and carry out the practices of CSR. It will be wise if the companies focus on areas the society need by understanding them. This will, in turn, ensure universal advancement of the country.

Lynn S. Paine in his article, '*COVID-19 re writing the rule of Corporate Governance'.* (Review, 2020) analyse that most of the rules of the companies are change after the effect of COVID-19 that are attention should be given more to board composition, director race and

ethnicity, more deliberative decision making required, intersection to business and community, compensation approach, attention towards stakeholder. As the companies were facing much more difficult after the effect of COVID-19 so companies' norms need to be changed so that they can deal with this new issue.

Ankit Gupta in his, article '*Corporate Governance Challenges In Business enterprises'*, has discussed the major issues and challenges that are encountered by the company are in concerning the Independence of independent directors, family Owned Enterprises affect good corporate governance. Also, it talks about the lack of proper legislation for the private company in respect of following corporate governance.

Dr. Reena Shyam in her article, '*An Analysis of Corporate Social Responsibility in India'*, which majorly discusses the impact that corporate social responsibility in Indian society and how the company needs to follow it for maintaining better corporate governance standers. This article also talks about the various challenges that a go through to incorporate CSR activity into the business model.

Sharukh Tara, Sorab Sadri in their article, '*Corporate Governance and Risk Management: An Indian Perspective'* talks about the risk management system and its importance in the corporate governance the director are the key element in making such decision in day to day activity they must need to act in a manner which is beneficial to the corporate entity taking an unwanted risk will affect bout shareholder as well as a stakeholder the amount of risk-managed will directly result in the amount of profitability of the business.. This article also talks about the business judgment rule and its implication in improving corporate governance.

Ahmed Mohsen Al-Baidhani in his article, '*The role of audit committee in corporate governance'*. (Review, 2016) analyse the power, function and the important roles played by the audit committee. The audit committee of every company play an important role and help in forming strong corporate governance by supervising and maintaining records of financial and audit performance and also reporting to the Board.

Warren W. Stippich in his article, 'Audit Committees in the Private Sector Essential or Excessive?', discusses why audit committees are important for a private company and clarifies

certain misconceptions that exits with respect to audit committees. The author strictly believes that it is essential for private companies to constitute an audit committee in order to meet the corporate governance standards in today's scenario.

Scope & Limitation

Corporate governance has a wide scope in private companies. The scope of corporate governance extends to increasing the value of shareholders and improving financial transparency. Corporate Governance ensures the resources given to the directors of the company. Resources include the benefits, facilities, profit sharing, etc. Corporate governance is very important when a private company wants to convert into a public company. If there is a proper implementation of corporate governance then there will better performance of the private company as well as the proper implementation of control in internal matters of the company.[xi] The scope of Corporate governance includes internal control and the independence of the auditor's entity. It means that whatever work is done inside the company it is not done under pressure and is voluntary. Corporate governance in private companies extends to family affairs as members of families can run the business and there is always a satisfaction that good management is done and therefore the work done more efficiently. Corporate governance also extends to gaining the trust of the investors of the company. There is fairness and transparency for preparing the financial statement of the company when proper corporate governance is implemented.[xii] Corporate governance ensures that auditors must be preparing audit reports properly and there must not be overstating or understating of the profit of the company. There is a choice of corporate governance in private companies.

One of the limitations of corporate governance in private companies is that private companies may have a small environment that lacks independent directors, knowledge, and skills. There may be a requirement of independent directors in a private company for the improvement of corporate governance. Due to lack of cash flow, there may be difficulty affording an independent director in a private company for corporate governance.[xiii] There is an increased cost in implementing corporate governance. For following practices of corporate governance, many information is to be disclosed and many people are to be hired which leads to the increased cost. The responsibility of these hired people is to properly manage the

information which leads to increased cost of the organization. Whatever practices are included in corporate governance related to the board of directors or members or through the Companies Act including clause 49, all information is to be disclosed. But when the guidelines related to the quality of information remain silent or are not disclosed then there is a misrepresentation of information.[xiv] Therefore because of this, the chances of misrepresentation can be increased. Limitation of corporate governance also includes insider trading. Insider trading means that information that is available to the employees of the company including so on the board of directors is not publicly available.[xv] This information is used by the employees of the company. For example, according to SEBI If the employees of the company including the Board of Directors and CEOs want to purchase the share of the company in which they are working then they have to disclose this information. SEBI does not restrict them to purchase the shares but sometimes they disclose information that is not publicly available to the broker which influences the shares price indirectly. Therefore, sometimes the employees of the company start using information that is not publicly available for their benefit. Corporate governance is not able to restrict the insider trading practice of the company.

DISCUSSION ON THE ISSUES AND CHALLENGES FACED BY PRIVATE COMPANIES IN INDIA

Issues and Challenges

Independence Of Independent Director -

Good corporate governance is said to be implemented only when the independent directors are truly independent. There is a huge role and responsibility of independent director not only to stakeholders but also to the shareholder of the company, but the sad truth is that the independence of independent director is just a statutory provision which is mentions in pen and paper but not in a practical scenario. In a recent survey which has been conducted by local circles which is an online platform where it was found that 79% of shareholder had shown their concern in a very important aspect which is the independence of the independent director of the company, after certain corporate governance implementation also certain flaws can be seen

in the case of independence of the independent directors. As we know the decision which are made by the independent director can increase the accuracy of the company which is linked with the reputation of the company, so to increase the efficiency and accuracy, the independent director should be given a proper work without any interference of any of the member of the company, without any biasness and shall not have any misconduct in making any decisions. Independent directors are being puppets whose strings are attached by the directors of the company which must not be happening for good corporate governance. It is of common knowledge that there must be no relationship between promoter and independent director but even after following due diligence there is the certain relationship which may not be a financial relationship, etc. but a certain relationship which has a commercial benefit agreement which can hard to be proof and as mostly there in a verbal form as we know proving mens rea is very difficult. Boards mostly take decision in favour of the shareholder for the material benefit of a few. Quality of governance depends upon the competency and integrity of directors this is the reason why we need an independent director in a private company so that there would be transparency and good governance in a private company. One of the biggest reforms brought under corporate governance was the concept of independent directors. But it has been 20 years down the line the impact expected from this in the company has not been delivered yet. The provision has time to time been amended and brought some new aspects like audit committee, etc It has just become inbox that needs to be ticked in promoter list as they are controlled by them so to be straight independent director are not truly independent it is mostly because of the removable process which can be easily done by the promoter by a majority of shareholder when an independent director is criticizing for the fact that acting one-sided or in favour of the majority it is because if they act against them they would be removed from their post so they keep their mouth shut and watch the play happen because who doesn't like some extra money in their pockets to be filed.[xvi] There is no mandate on a private company to appointment independent director but they can follow it if even though they don’t fall under the rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014. If any private company start following the concept of independent director it would enlarge the scope and reduce the mismanagement and, a better decision-making process in board would be established if the company do follow it would be axiomatic in nature and if we take an interpretation of sec 149 they would be bound by such provision given under sec149(6) and exception must be made

hear in respect to clause 149(4) as it is applicable for the listed companies.[xvii] An important suggestion made by SEBI's International Advisory in relation to increasing the transparency in the appointment and removal process of an independent director so that there is greater freedom given to the independent director to work on and to be free from any pressure from promoter or shareholders and keeping an additional check on the removal process.

Insufficiency in the Responsibility of Director -

The director plays an important role in good corporate governance. It is an implied responsibility on the director that he needs to protect the interest of shareholder and stakeholder. The responsibility is in the hand of the director to minimize the risk and maximise the gross profit. Even after the implementation of the corporate governance, the risk is not reduced in the private company. The director of the private companies in India has to fulfil their duty with utmost due care, protect the interest and right of not only shareholder but also a stakeholder and should follow the constitution of the company that is memorandum of association (MOA) and article of association (AOA). The implementation of risk management is an important policy that the company needs to follow. While they are monitored by big national media houses waiting for the opportunity to publish a piece of news when once a company makes a fault. In India, the statutory norms of the company law state that there must be a statement in the shareholder report specifically mentioning the development and how they are implementing risk management policy for the company.[xviii] It is the role of the independent director to have close look on the committee for more effective results. A governance model must be established that deals with effective risk management policy that would help seating up principles and practices for managing the risk management in daily cooperate business activity.

No Statutory Provisions -

One of the flaws in the implementation and the aftermath of corporate governance is that the regulatory body and the statutory norm are only for the listed companies due to which small and mid-cap companies do face problem in implementation and executing it adequately as there are no proper guidelines, set of rules that direct them to move into the particular direction whereupon it leads to mismanagement due to no mandatory rule and regulation. That gives an opportunity to the company not to follow the law which would be ethical to do but as they are

not legally bound, they don't want to take the additional burden. Private company who implements corporate governance finds it an additional cost which a company need to bear over them which is not mandatory on them to follow so small and mid-cap companies don't want to add on an additional expenditure over them as it will affect their gross profit.[xix]

Board Diversity -

Board Diversity is one of the most important issue, which come under corporate governance. When the word board diversity comes to the mind, we only think of gender diversity but there are many more things, which dealt under board diversity that are shareholder rights, respecting the decision of everyone, giving an opportunity to everyone so that they can participate and give their point of view. These were all the point, which the private companies should look thoroughly in order to maintain good corporate governance. After mentioning in the statute also the implementation or practice has not been yet applied appropriately in most of the private companies in India which is why the companies are not been able to maintain proper corporate governance standard in the company. So, the company should protect the interest of the shareholder rights by providing them proper share, no oppression mismanagement should be taking place and the decision made must be fair and transparent to all the shareholder and must be accountable if they are taking any decision related to company. The decision made by director must be respected irrespective of gender , cast or education qualification for example if we take an Cosmetic company where the director of the company want to bring an new line cosmetic but the director who has no idea respective to the cosmetic but if a women whose idea is much more in the field if she is an director her decision would help in taking key decision in such circumstances, there is no mandate provision for private companies that there should be a women director but it would be better choice if there is one it would add value to such circumstances like this. The Private company may adopt this provision of hiring women director which would give an better diversified board and help in decision made in the process, having attest one women director would make a change .Companies need to have a diversified board where each and every one decision is taken in to consideration irrespective of their gender companies need to be flexible in this case.[xx] The board must even consider the newer generation director as they can understand the market in much better way as we know India is place where are most of the population are in the age group of 22-45 this can be understand

well by an younger director as he may understand the needs of the age group better As the world is moving toward an dynamic approach our corporate governance must evolve with it for this reason we need younger minds who can give their effort and apply their mind in case of taking decision for the company so it will be benefited for both side it would motivate and encourage them and even would be profitable for the company too. Therefore, in order to create a good reputation, the company should follow this.

Corporate Social Responsibility -

According to section 135 of the Companies Act 2013, it has been stated that a company which has a net worth of over Rs.500 crores, a turnover of Rs.1000 crore, net profit Rs.5 crores. or more. the company that satisfied the above-mentioned condition fall under this section have a mandatory obligation to use 2% of average net profit made preceding three years for the benefits of the society as well as the environment for example constructing the bridge, school, hospital and etc. The voluntary status of this provision makes it difficult for the companies to follow as it would be a burden on small and mid-cap companies since this additional amount goes out of the pockets of the companies making the net profitless. [xxi] Where the companies making a minute profit won't be interested to share. Companies who have a very diversified business but the primary means of profit is from selling tobacco products the harm caused to society from this product is much higher than the CSR given by these companies to society which in term bring a big issue in between companies and society. The reason shareholder doesn't want to invest in CSR is that it is a long term process of getting the result they want with respect to making an loyal customer base it may be a long-term benefit but when we see that the shareholder they prefer an instantaneous profit.[xxii]

Family Run Business -

In India where most of the companies are run by family own business which in term means that shareholder belongs to the same family which lead to a bigger issue that is the dispersed ownership where there is no dilution of power which will mean a majority of the decision will be in favour of the family and further leads to mismanagement occur due to the majority and minority shareholders in this type of companies the shareholders welcome the cash flow but are reluctant to give any power and control to any minority shareholder which leads to an issue, that the minority shareholder couldn't able to know day to day practice going on due to disparity

of ownership. There may be many internal conflicts and interference being created in this respect.[xxiii] Corporate governance is for improving transparency but even though the company run by the majority of a family member which leads to a lack of transparency and lack of check and balances over the executive decision. There is another issue related to asset management where these family-run businesses use the company asset for personal benefits which other members shareholder will not be agreeing to there is no distinction between a company-owned asset and the personal asset. [xxiv]

The Conflict Between Promoters and Management -

In India where we see a common atmosphere that the companies are mostly family-owned and where the promoter of such a company is the majority shareholder in it so this creates concentrated ownership in the company. So due to which, the shareholder shows an undue influence over the management of the company which leads to an issue between the promoter of the company and the management as it feels that their hand are tied and they are pawns in a cheese board who are controlled by the promoter which further leads to a bigger problem witch is mismanagement since, management looks over the day to day activities of the company it is important they act independently with no external influence on them .In the recent case which this problem is seen evidently is the case of the Tata Son were the CEO of Infosys Cyrus Mistry where he was removed from his position due to the main issue that there was a conflict of interest between the top management and the promoters.[xxv]

Succession Planning -

Corporate governance is dominated by the founders of the company so the implementation of the corporate governance is mostly controlled by the founders of the company. In India it is a common saying that the company is known by the name of the founder. The founder is irrespective of what position they hold to keep an influence over the key management and business decision of companies. The main issue here is that the founders fail to acknowledge the principle of succession planning which talks about the passing of the leadership roles in certain circumstances. “It ensures that businesses continue to run smoothly after a company's most important people move on to new opportunities, retire, or pass away”. Family-owned businesses suffer from this common issue when they suffer an inherent inhibition to let go of

control. The solution to this problem lies in the dignity of the person when they are ready to adopt succession planning less number. of companies will start to go out of business.[xxvi]

COVID-19 Affecting Corporate Governance -

- Companies are facing certain difficulties in this pandemic irrespective of nature of the company let it be private or public companies. There are certain points where the companies have lacked to fulfil due to pandemics. The certain points are mentioned below: -
- Less attention is given to stakeholders: - Due to this pandemic companies are not able to focus on the interest of stakeholders, interest of employees and the customer wants need to be kept in mind. As the customer income has reduced significantly, their needs have also been reducing automatically so the companies have to retain their customer by using incentives and innovative steps. As we know that, the stakeholder is the means of investment. So, in order to maintain good corporate governance, the company needs to follow this and pay more attention to the stakeholders.[xxvii]
- Affecting CSR activities: - This pandemic has affected the CSR activities as it made it difficult for the companies to carry it out but the companies have to overcome this and start acting on it. The government has inspired various company to come forward and put their effort into CSR activities.[xxviii] If the companies will start practicing CSR activities then it will be a win-win situation for both the companies and the communities. If a company starts to invest in certain activities as constructing health infrastructure, then it will be benefited for the companies to create its good reputation as well as the community can use it efficiently. It can create a positive relationship between companies and the community.
- Difficulties in holding up meetings: - It becomes a way more difficult for the companies to hold up meetings and to decide a particularly important matter. Due to the pandemic where we face travel issue and individual are scared of even stepping out of house So, in order to overcome this, the companies hold up the meeting virtually online where they can decide the particular matter for the companies very easily.

LACK OF PROVISIONS FOR PRIVATE COMPANIES

Following Corporate Governance Norms in Absence of Any Statutory Provision in India

For private companies' voluntary and comply by codes must be in place for the conduct of directors and entails the procedures for due diligence and care in the company. The presence of such codes would serve to educate both directors and investing public.[xxix] A board of directors is required in a company to keep checks and balances of everyday business and ensure undisturbed functioning of a company. Reforms in corporate governance starts from the boardroom, consisting of honest executive and non-executive directors, functioning for the benefits and profit of the company, its shareholders, stakeholders, members etc. by also looking towards solving issues faced by the company. Independent director as defined by SEBI included directors who does not have any other personal or monetary relationship or any other affairs and activities in an organisation other than the receiving remuneration. An Independent director should not be related to the promoters or any of the companies' management that could possibly influence the judgement in the board and question their state of independent nature in the board. The Annual report must consist of all financial relationship or affairs and activities by directors of the board. Generally, promoters are the initial directors of a private company. In private companies mostly a close relative or a hierarchical flow of relatives like father – son is seen to be the promoter as well as the directors. Since the requirement of starting a private company is less at the board level compared to public companies usually the family is at the position of a director and takes decisions which are biased and might prove to be non-compliant to the industry standard of functioning of a company. Therefore, the presence of an independent director on the board should be made necessary.

Why Should Private Companies Keep Independent Directors in Its Board?

From the above interpreted texts, it is reasonably clear that private companies and firms should set up independent directors in their board level to compliment industrial voluntary standards of practicing good corporate governance. In private companies the capital majorly is derived from personal funds of the promoters and initial investors who sit on the company board where the ownership becomes concentrated and investors have direct management rights, thus making

it a non-necessary addition of forming a separate board of directors consisting of Independent directors. Investors typically perform the management tasks themselves or have distinct members on board with whom they share friendly relations to overlook the management of the company.

A private company, though requiring a smaller number of members to initiate incorporation process, every company except public company holding private subsidiaries or a public company turning private is a start-up. Because of liability considerations, small private companies especially start-ups find it difficult to hire independent directors. In such an occasion small private companies ought to constitute a group of counsellors/advisors from the board, separately from the board which should include independent directors[xxx]. Now why should a private company consider having an independent director on its board? A private start-up requires investing and investors are usually looking for preference shareholding in the financial aspect. This leads to increased opportunistic behaviour by an investor. Therefore, a private entity whose board consists of an independent director gives room for a third person opinion on any problem, being unbiased and more development oriented due to expertise in that field. An Independent director will be the one, such as to share control over the board as a person on a tie-breaking pedestal.[xxxi] Independent directors have market specialization and know the minute functioning of an industry which if kept would bring an expert opinion on the board for market penetration, upscaling sales, Marketing strategy etc. while taking corporate growth discussions. The importance of an independent director is relevant here as to when a private company is in its initial years, the board members consist of only investors who will have diversified interest in areas to focus on as to if their investment is making money or not. This is when an independent member on the board can bring back the focus on the table and put valuable insights. Therefore, the overall essence of having an independent director on the board of a private company is to bring in expertise, increase accountability, and give direction to the functioning of it. Corporate survival largely depends on the board and the practice of good corporate governance by them.

Why Private Companies Must Form Audit Committees?

The audit committee exercises its powers by representing and performing functions of the board of directors by undertaking governance responsibilities. These includes certain supervision and monitoring of the financial reports, disclosure, internal and external audits, internal control and regulatory compliance and other risk management activities of the company.

Provisions of The Companies Act 2013, under section 177[xxxii] read with Rule 6 of Companies (Meeting of Board and its powers) Rules[xxxiii], 2014, does not mandate a private company to form an audit committee. But in order to meet the corporate governance standards, it is of utmost importance for a private company to institute the same. The committee discusses with the internal auditors and other relevant parties, to identify irregularities in the management functions and related administrative and financial matters and submit to the board.

Another important role played by the committee is overseeing the disclosure process of the company. All local and international laws, regulations along with ethical standards and compliance with company's charter and internal policies are all monitored by the committee.[xxxiv] It also discusses any litigation or compliance risk with management, attorneys and the organisation's general counsel.

Though the laws in India are not rigorous in the case of private companies, it is always beneficial to adhere to the laws present for the governance of the listed and public companies. This ensures to mitigate the risk of fraudulent activities within the company and avoid future disputes and enhance the overall quality of good corporate governance practice in the organisation.

It may be argued that an independent audit committee might not be the most cost-effective measure in today's scenario for companies with less annual turnover. But the given functions and benefits far outweighs the cost effectiveness as it helps the board to meet their requirements and protect the stakeholder's interest.[xxxv]

Need For Nomination and Remuneration Policy in Private Companies

The Nomination and Remuneration Committee (hereinafter referred to as "NRC") under section 178[xxxvi] of the Companies Act, 2013 stated that every listed public company shall form the NRC consisting of minimum three non-executive directors out of which two shall be independent directors. Even though this provision does not apply to private companies in India, NRC can play a key role in corporate governance practice within any company.

Schedule II (Part D) (A) of The SEBI (LODR) Regulations 2015[xxxvii], mandates NRC to –

"(1) formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the board of directors a policy relating to, the remuneration of the directors, key managerial personnel and other employees;

(2) formulation of criteria for evaluation of performance of independent directors and the board of directors;

(3) devising a policy on diversity of board of directors;

(4) identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal.

(5) whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors."

The provision clears the various functions of the committee that includes identifying personnel for the position of directors based on their qualification, expertise, experience and integrity and perform evaluation to ascertain their contribution towards the company's goals are sufficient and satisfactory.[xxxviii] A company constituting a Nomination and remuneration policy reviews and approve the remuneration of the directors based on their evaluation and make recommendation to the board for further compensation programme for Key Managerial Personnel's and Senior Management, where further approval of the board in required.

Nomination and remuneration policy provides a detailed structure with respect to the matters that are required to be dealt with, perused and recommended to the Board by the NRC. This includes matters relating to the composition and number of directors in the board, succession plans, evaluation performance, board diversity, remuneration framework and policies and so on. It also lays down provision for appointment, removal and tenure for directors, KMP and senior management.

Private companies should adopt such policy to balance the level of remuneration to performance ratio and generate maximum output. In simpler terms, such a policy would help maintain a benchmark in terms of quality output from persons involved, simply motivating and attracting them with reasonable and sufficient remuneration and an effective evaluation process. This is a fruitful method to achieve both long- and short-term objectives that the company aims and minimize conflict within the company.[xxxix]

ANALYSIS OF CORPORATE GOVERNANCE NORMS IN UNITED KINGDOM, FRANCE AND BRAZIL

Practices In United Kingdom -

Board of Directors -

The board of directors is the most significant component of corporate governance.[xl] The Committee headed by Sir Adrian Cadbury in 1992, the Higgs Review (2003), and, most recently, the updated UK Code of Corporate Governance (2012) demonstrate the relevance and priority given to boards, through the evolution of corporate governance. United Kingdom have a one-tier board structure where major obligations faced by the board are an obligation of trust and an obligation of care. An obligation of trust assumes the wield power of trustee duty to the investor. This involves behaving in the best intentions of the business as a whole, rather than functioning for personal gain; eliminating disputes; not abusing role and information; and not trading while going bankrupt. Making decisions with fair consideration and caution is what a duty of care involves. At the top of the organizational hierarchy, boards of directors are charged with exercising vital evaluative judgement. The board is normally in charge of deciding the

company's goals and strategic strategy, developing strategies to achieve those goals, and tracking progress toward those goals.

Directors' Remuneration -

Policymakers, the public, and experts have also been interested in directors' remuneration policies. The debate about director compensation has continued for years, with key contention being the director receiving huge remuneration. There is a need for policy that indicates adequate and reasonable remuneration based on performance.

Different components of directors' compensation incorporate base compensation, rewards, limited offer plans, annuity and different advantages like vehicles and medical services.[xli] The general perception of director compensation and other pay schemes as being in excess and at the cost of shareholder satisfaction has already been talked about in such controversies. There has been serious deficiency in compensation arrangements discovered, which have affected shareholders both in terms of increase in their earnings as well as, most specifically, in terms of leading to schemes that dilute and distort management incentives.[xlii]

Corporate Social Responsibility -

Corporate Social Responsibility (CSR) is a general term that applies to corporate businesses acting as responsible corporate citizens. Nonetheless, over time, the apparently straightforward term CSR has come to mean various things to various organizations and entities.

Corporate Social Responsibility is defined as -
"Social responsibilities mean that businessmen should oversee the operation of an economic system that fulfils the expectations of the public. And this means in turn that the economy's means of production should be employed in such a way that production and distribution should enhance total socioeconomic welfare. Social responsibility, in the final analysis, implies a public posture toward society's economic and human resources and a willingness to see that those resources are used for broad social ends and not simply for the narrowly circumscribed interests of private persons and firms"[xliii]

We also seen an increase in understanding of socially responsible investment (SRI) as global investment has grown in the UK, and at both the individual sector and global investment stages, has been an integral aspect of business ethics. We also seen an increase in understanding of socially responsible investment (SRI) as global investment has grown in the UK, and in both the private sector and institutional investment levels, business ethics has now become a critical component.

Practices In France-

Board of Directors -

An overview of the board structure was provided by Belot et al. which provided a distinction between the top two board structures, i.e., unitary and two-tier board structure in France. [xliv]
Initially, there was a unitary board structure in private companies in France where the board had representative of the company's managers and shareholders. In such a case, the functions of the CEO and board chairman were merged, but after 2001 when the New Economic Regulation came into force, companies which had a unitary board structure were allowed to split the functions into two and given two separate positions. Some companies which split the functions of the CEO and the board chairman after 2001, are LVMH and Bouygues.
On the other hand, not only are the functions of the CEO and board chairman separated in a two-tier structure but have two distinct boards too. They are as follows:

- The election of Chief Executive Officer and other directors in the board is carried out by the shareholders, forming the supervisory board. This board also monitors the working of the board of directors and sets up the plan of the global corporate strategy.
- The daily affairs are organisation is managed by the board of directors.

Representation of women in the board -

A vital feature of the board composition is board parity[xlv]. As a result of this issue, several new rules or guidelines are being adopted all around the globe. The proportion of female members on boards has remained persistent across nations. Before the 1990s, women representation used to be null but now the representation has gone up to almost 40% of the board and in the near

future the representation hopefully will be at a higher bar. The Copé - Zimmermann Act establishes a judicial mandate in France to assign slots on boards to female members.

Independence of the board-

In France, the composition of the board with respect to the number of independent directors and their freedom in the higher-level management has been a well debated issue. Some companies have political connections and have politicians in their board, thus leading to this debate. It is a age long practice, in Europe, of old politicians to exercise a function in the private companies, after their political mandate(s). More broadly, since the 2000s, the rules on board independence have been implemented, special committees like that of compensation, audit and nomination, to name a few, have been created, the roles and functions of the manager (Chief Executive Officer) and the Board Chairman have been separated and now easily distinguished from each other, keeping the composition of the board with respect to the independent members in focus[xlvi]. Partly linked to the issue on board independence, the plurality of offices is limited. An individual cannot have more than five offices as a board or supervisory board member of a public corporation whose head office is located in France. This has been stated in the Commercial Code. The Macron Act reaffirmed this rule, putting a restriction on a person who was a Chief Executive Officer or a director of a big company that has its stocks listed in the Securities and Exchange Board of India and has two separate offices. Such other restrictions include both financial and monetary codes.

Practices In Brazil -

The majority of companies in Brazil are family controlled and private entities. When entrepreneurship flourished in Brazil in the 1950s, a majority of these companies were founded. Currently, the second or third generation of the founding families own and run these companies, frequently experiencing ownership and management problems at the time of succession distribution. Many organizations/firms have interpreted the requirements of good business ethical standards in the last decade.

In 1995, a non-profit organization named "The Brazilian Institute of Corporate Governance (IBGC)" by a group of people in the business corporate industry who by their expertise believed that the good governance's main purpose was to create an environment beneficial to the

corporate sector as well as the society. From the very beginning the main objective of the NGO was creating events which inculcate the Brazilian Business model into the model of corporate governance. It held group meetings to further divulge the members to form opinions and address issues and challenges related to corporate governance. The institute then embedded in itself the method of practice training its members to promote the benefits of good governance. The Institute hosted the first corporate director training course in 1999. Needs of different sectors were tailored sector wise to match its requirement, over time. One specific, most popular and oldest course called the Director training course, provided by the Institute covers various topics and concepts like business and financial planning, monetary claims etc.

Some of new developing programmes of IBGC are as follows -

- Risk Management and Control is optimised for the members of various committees. Those committees are audit committees, finance committees and many more. Risk management techniques, money management are taught in these courses.

- Family management of the company which are family run business are mentioned in the courses as to what path to be followed at the time of separation, if required.

The Access Market is a programme that will soon be launched by the Sao Paulo Stock Exchange with the cooperation of the IBGC that will help family-owned private companies to raise governance standards and eventually monitor capital markets. To assess the corporate governance practices of family controlled private companies, IBGC will soon launch a research project that will be sponsored by the CIPE (Centre for International Private Enterprise). The research publications of the findings will help the participating companies create training and guidelines for all its shareholders and directors, thus facilitating good governance inside the company. The IBCG has emerged as a great platform for providing guidelines to problem solving of the participating companies. Thus, for furthering the knowledge it is holding talks with Institutional Directors of the UK which could provide a future expansion drive of directors across the two counties.

CRITICAL ANALYSIS

Corporate governance in India with respect to private companies is an existing challenge. The Companies Act, 2013 does not expressly mention any key provisions that private companies must adhere to, with respect to good corporate governance practices. Even statutory bodies like SEBI and its regulations does not play any particular role in implementing the same for private companies in India.

Annual report from the Ministry of Corporate Affairs in India suggests that 95 percent of the companies registered in India are private limited by shares.[xlvii] Therefore, there is an urgent need for laws to reform good corporate governance practices among private companies in India. The authors identified some of the core issues that exists in today's scenario that included independence of independent directors in a company where in several companies', the independent directors are often influenced by internal members and faces difficulty in expressing unbiased opinion. There are also instances where the directors bring about ultra vires actions leading to fraudulent activities and unleashing multiple law suits.

Due to an absence of regulatory framework, the private entities must follow the standard regulation present for public listed companies as a self-regulation mechanism. This would lead to smooth conduct in the corporate affairs with the help of corporate governance guidelines and would lead to a proper distribution and division of rights and duties of every participant.[xlviii]

Furthermore, issues like board diversity, performance of directors, independence of independent directors, etc. can be resolved by an effective nomination and remuneration policy and forming an audit committee. The Nomination and remuneration committee ensures the compensation of the top managerial personnel get the adequate and justifies compensation.[xlix] The section of Corporate Governance in the Annual Report of the company must include the criteria framed for the performance evaluation of independent directors by the Nomination and remuneration committee.[l] The performance of the board members should be evaluated through a transparent and independent process and the auditing system requires transparency in order to avoid any financial irregularities and frauds.[li]

CONCLUSION

We conclude that the most significant threat to corporate governance in India is the strength of the country's powerful shareholders, who can exercise and control over the country's political system. It is a broad term that encompasses nearly all of a company's operating socioeconomic aspects following a series of corporate failures, Indians realized the importance of it for business, especially in terms of how it can be used to bring in socio-economic discipline. Corporate governance is one of the most talked-about topics in the business and financial world today. Almost all of the world's major economies are attempting to regiment and implement responsible corporate governance norms. Investing in sophisticated governance mechanisms does not yield visible returns, but they are beneficial to resource enlistment and valuation. In developing countries, however, the influence of good governance can be seen. Good governance is essential to a company's continued life. It is nothing more than the manner in which a company is managed or regulated.

Businesses of any corporate entity run on the system based on trust, integrity and good will in the Indian scenario. The authors feel that the country needs specific laws that are enforceable to private sectors, taking into account the following factors like transparency, role of directors, degree of accountability to the shareholders and lenders and public welfare.

The goal of corporate governance is to promote and preserve honesty, transparency, and accountability among management's higher levels. Due an intense amount of competition in the market that the company faces, the only solution to a viable growth is adopting fairness, accountability, disclosures and transparency criteria that maximises the value for the stakeholder in this evolving global market scenario. The means to that end is always good governance. The goals of a company are to generate wealth for society is to, preserve and detain that wealth beneficially, and distribute that wealth to stakeholders. The aforesaid objectives are achieved by the method of corporate governance.

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