



REVIEW OF RESEARCH

ISSN: 2249-894X

IMPACT FACTOR : 5.7631 (UIF)

UGC APPROVED JOURNAL NO. 48514

VOLUME - 8 | ISSUE - 9 | JUNE - 2019



AN ANALYTICAL STUDY ON THE PRESENT STATE OF CONTEMPORARY CORPORATE GOVERNANCE IN INDIAN SCENARIO

Ankit Awasthi

Assistant Professor of Law, HNLU, Raipur(C.G.).

ABSTRACT:

Corporate Governance is not a new subject for research but from contemporary relevance and application point of view it has been and will always be a matter of great significance. It is not only in India but across the world the nature and scope of 'Corporate Governance' changed from time to time. In India it travelled the path from voluntary to mandatory. In this background, the present article is an attempt to analyze the existing framework of Corporate Governance in India, especially after the inception of the Companies Act, 2013 under the head of 'Contemporary Corporate Governance'.



KEYWORDS: Contemporary Corporate, Governance, Board, Sustainability.

INTRODUCTION

"Following the law is itself an objective of a corporation."

- Eric W. Orts¹

There are different ways in which the subject 'Corporate Governance' can be understood and analyzed. In this respect, Christopher KohThengJer mentioned in his article published in Singapore Law Review under heading "Corporate Governance: A Multi-Headed Hydra?" that: "the field of corporate governance is

diverse and it means many different things to many people according to their interest."² It is very true as we see now the area of corporate governance purely from multidisciplinary analysis point of view and contemporary point of view it will depend on the lens adopted to analyze the subject. For example, from management studies point of view corporate governance is all about running the show in the name of business, from economics point of view it covers

the investment and returns but from legal studies point view deals with rules and regulations on the basis of which a company runs.

According to Stuart L. Gillan, Corporate Governance means "the system of laws, rules, and factors that control operations at a company."³ In India, after independence to cope up with the changed situation in the field of corporate legislation the Companies Act, 1956 came into existence, which

¹ Eric W. Orts, "The Complexity and Legitimacy of Corporate Law," pg. no. 1565, volume no. 50, WASH & LEE L. REV. (1993). In the present article Eric W. Orts described it as 'modest idealism.'

² Christopher KohThengJer, "Corporate Governance: Finding an Appropriate Model for Singapore," pg. no. 52, volume no. 20, Singapore Law Review (1999).

³ Stuart L. Gillan, "Recent Developments in Corporate Governance: An Overview," pg. no. 381, volume no. 12, J. Corp. FIN. (2006).

worked with several necessary amendments for more than fifty years.

However, after 1991 with the adoption of liberalization, privatization and globalization model in Indian scenario, there was a need to overhaul the basic law which deals with the incorporated entities. With various amendments specifically in the year 2002, 2005, 2008 and 2011 the companies act, 1956 tried to with the dynamics in the field of corporate law but in the after math of Satyam it was high time to address the issue in a more systematic and refined manner. The mentioned need of contemporary legislation in the field of corporate law finally fulfilled with the short name of the '*Companies Act, 2013*' which has been marked as a historic day in the history of India by the then Minister of Corporate Affairs.

There are various salient features of the newly enacted Companies Act, 2013 which make it better than the Companies Act, 1956. In single sentence, it is more comprehensive, short and simple. This a basic element of the law which is required to address the corporate and governance of the same.

CONTEMPORARY CORPORATE GOVERNANCE:

Now corporate governance is not analyzed only from national or domestic scenario but it has been transformed in the form of '*International Corporate Governance*,' or '*Comparative Corporate Governance*' or more commonly '*Contemporary Corporate Governance*.' Basically the idea behind this development is that, now every jurisdiction in all continents realized that there is no point to discuss about the set of rules and regulation to make a company just run but to make it run more effectively and efficiently by avoiding the situation due to which it may collapse. Sometimes it deals with internal factors, sometimes it deals with external factors, sometimes it deals with adoption and sometimes it deals with convergence.

Whatever the point of discussion and study it would be the thing that is important for consideration is workable model or mechanism to deal with the issue. In this context also law is supposed to deal with it. Therefore, it is required to focus on the main area of study under following heading:

Contemporary Corporate Governance vis-à-vis the Companies Act, 2013:

La Porta, R.; F. Lopez-de-Silanes; A. Shleifer; and R. W. Vishny hypothesize that, "*the legal system is a fundamentally important corporate governance mechanism. In particular, the extent to which a country's laws protect investor rights and the extent to which those laws are enforced are the most basic determinants of the ways in which corporate finance and corporate governance evolve in that country.*"⁴ In short it deals with the regime required to be followed as a matter of legitimate expectation.

According to Oran Young "*a regime is a governance system intended to deal with a more limited set of issues or a single issue area.*"⁵ Before the research proceed in Indian scenario it would be relevant to mention that, in the year 1976, publication of Jensen and Meckling article produced a voluminous body of research in the field of '*Corporate Governance*,' both theoretical and empirical, but it was mainly focused on developed nations more specifically on United States. However, in recent years we have witnessed an explosion of research on Corporate Governance around the world, for both developed and

⁴ Diane K. Denis and John J. McConnell, "*International Corporate Governance*," pg. no. 04, *The Journal of Financial and Quantitative Analysis*, Vol. 38, No. 1 (Mar., 2003), Published by: Cambridge University Press on behalf of the University of Washington School of Business Administration. Available at, <http://www.jstor.org/stable/4126762> (last accessed on 7th April, 2019); See, La Porta, R.; F. Lopez-de-Silanes; A. Shleifer; and R. W. Vishny, "*Legal Determinants of External Finance*," pg. nos. 1131-1150, volume no. 52, *Journal of Finance* (1997).

⁵ David A. Detomasi, "*International Regimes: The Case of Western Corporate Governance*" *International Studies Review*, Vol. 8, No. 2 (Jun., 2006), pg. no. 231, Published by: Wiley on behalf of The International Studies Association, available at, <http://www.jstor.org/stable/3880224> (last accessed on 9th April, 2019).

See, Stephen D. Krasner, "*Structural Causes and Regime Consequences: Regimes as Intervening Variables. In International Regimes*", edited by Stephen D. Krasner. Ithaca: Cornell University Press (1983). Oran Young, "*Governance in World Affairs*." Ithaca: Cornell University Press (1999).

emerging markets which resulted into extensive and still growing body of research on International Corporate Governance.⁶ Depending on the regime as mentioned above there are different applications of the basic principles of corporate governance as provided by the Organisation for Economic Cooperation and Development (OECD).

The Companies Act, 2013 along with the Securities and Exchange Board of India Act, 1992 (SEBI) provide a basic framework which is legitimately expected to be followed by the incorporated entities in India, and by this process corporate governance is intended to be implemented by the Ministry of Corporate Affairs (MCA) as it is clear from its objective.

The Companies Act, 2013 came after global crisis at international level and Satyam's scam at national level. Therefore, all the bolts of the corporate governance mechanism have been tightened through various provisions, like: limitation on the maximum holding of directorship (in that also limitation in case of public company's directorship), mandatory application of the principle of diversity on board in the name of independent directors, women director and resident director etc., mandatory application of the social responsibility of corporate's under the head CSR, convergence with international financial reporting framework, inception of multidisciplinary investigating agency in the name of Serious Fraud Investigation Office (SFIO) and statutorily inception of National Company Law Tribunal and Appellate Tribunal with extensive jurisdiction even of cross-sectional statutes/code like: the Completion Act, 2002 and Insolvency and Bankruptcy Code, 2016.

CONCLUSION:

There are various facets which can be analyzed and discussed but most important thing in the field of corporate governance would be the harmonization and implementation of the rules and regulations and involvement of all the elements for the enhancement of efficiency for the betterment of all the concerned stakeholders. In this context I would like to conclude present article by referring the observation of Shri. Banikanta Mishra, as he stated that, "*from a holistic perspective, one cannot achieve corporate governance in isolation. For governance in one sphere to succeed, it is essential to have governance in other spheres. For governance at the corporate level to succeed, we need to have governance at the government, judiciary, executive, legislature, media, professional societal, family and even at individual levels.*"⁷



Ankit Awasthi
Assistant Professor of Law, HNLU, Raipur(C.G.).

⁶ Diane K. Denis and John J. McConnell, "International Corporate Governance," pg. no. 02, The Journal of Financial and Quantitative Analysis, Vol. 38, No. 1 (Mar., 2003), Published by: Cambridge University Press on behalf of the University of Washington School of Business Administration. Available at, <http://www.jstor.org/stable/4126762>(last accessed on 10th April, 2019).

⁷Banikanta Mishra, "Agency, Externality and Corporate Governance," pg. nos. 514-516, Vol. 40, No. 6, Economic and Political Weekly, (Feb. 5-11, 2005) Published by: Economic and Political Weekly. Available at: <http://www.jstor.org/stable/4416161>(last accessed on 11th April, 2019).