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### **Development of Corporate Governance Policies Vis- A- Vis Investor Protection, India**

**Kshetrimayum Rosita Devi\* and Doreshor Khwairakpam**

Amity Law School, Amity University, Haryana

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#### **ABSTRACT**

The corporate governance is closed with investor for their protection in the market sector when investment is made in the market. Corporate governance is a system to protect the investor (who invests money in the market sector). The relationship between corporate governance and investor is required particularly mechanism of corporate governance to run smoothly and welfare of the investor. So, the paper is about the development of corporate governance vis-à-vis Investor Protection. This study covers the Security Exchange Board of India (SEBI), Companies Act, 2013, the Securities Appellate Tribunal, and Clause 49 of Listing Agreements.

**KEY WORDS-** Corporate Governance, Investor, Law, Policies, Rules

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#### **\*Corresponding Author:**

**Kshetrimayum Rosita Devi**

Amity Law School, Amity University, Gurugram

Haryana, India-23106

E-mail: [menelikrosi@gmail.com](mailto:menelikrosi@gmail.com)

## **1. INTRODUCTION**

Corporate governance can be said as the regulatory body in order to control and also to give direction to investor as well as other who are involve or share in the market. The need of good corporate governance is compulsory and mechanism for corporate governance is essential with a clear focus of objective to free and fair market security. For the protection of investor, good corporate is to be exit with a standard of financial provision since fraud and cheating had arisen as increase the number of fraud and cheating in the last few years. It will loss to the investor and hence good corporate governance is essential and board of director has big roles to maintain the financial crises<sup>1</sup>.

The concept of good corporate governance draws back from certain failure in the large multinational companies in the market<sup>2</sup>. Development of corporate governance is the most concerning topic in order to give best performance for avoiding from the corporate failure. For the improvement of corporate governance, there are two models such as “shareholder model” and the “stakeholder model”. Shareholder model means in this model more important is given to the shareholder such as it describes the responsibility of the senior management and the objective of this model is to maximize the shareholder wealth. Stakeholder model of corporate governance is for the long term performance of the firm and to promote the shareholder value the contribution of the firm is done by the stakeholder of the company. In this stakeholder model more responsibility is given to the stakeholder by the company. Under this model the corporation is socially responsible and manages in the public interest and the firm performance is considered by a wider constituency interested in employment and their financial performance<sup>3</sup>.

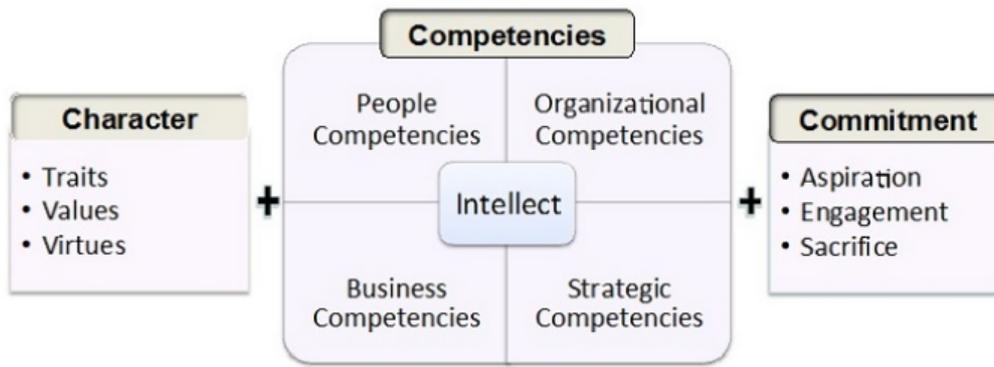
Importance of corporate governance in today’s scenario are (i) Shareholder and investors of a corporate organization need insurance for their venture because of absence of sufficient measures of money related revealing and responsibility. It has been seen in India that organizations raised capital from the market at high valuation of their offers by anticipating incorrectly image of the organization's presentation and productivity. (ii) There is increasing awareness and agreement among Indian investors to invest in the organizations which have a record of observing practices of good corporate governance. Subsequently, for encouraging Indian investors to make adequate investment in the supply of corporate organizations and accordingly boosting up rate of development of the economy, the protection of their interests from fraudulent practices in the corporate sector. (iii) The significance of good corporate governance lies in the way that it will empower the corporate firms to attract capital and perform efficiently. This will help in winning investors’ confidence. Investors will invest in the companies with a decent/good record of corporate governance. (iv) global perspective<sup>4</sup>. The degree to which corporate enterprises observe the fundamental standards of good corporate

governance has now turned into an important factor for attracting foreign investment. In this time of globalization when quantitative confinements have been expelled and exchange trade barrier dismantled, the relation between the corporate governance and flow of foreign investment become important.

## **2. QUALITY OF CORPORATE GOVERNANCE**

In discussion with the corporate governance quality, features of corporate and characters are two parameters to study and analysis. The main features of corporate governance are namely; Transparency, Protection of shareholders Right, more power to CEO, accountability, based on ethics, universal application, and systematic<sup>5</sup>. In the parameter of corporate governance characteristics, the characteristic of the good corporate governance must have a leadership at the management level and direction to work at lower level must obey their rules and regulations of the companies' policy. The company has clear vision in the aspect of (i) clear organization strategy, (ii) effective risk management, (iii) discipline and commitment, (iv) fairness to employees and customers, (v) transparency and information sharing, (vi) corporate social responsibility and (vii) regular self-evaluation<sup>6</sup>.

Leadership is also one of the corporate governance qualities. The leadership is required to run the corporate governance to deliver better services to investor. The following characters are indispensable as leadership. Firstly - competencies matter: possessing a quality of capable in doing of any assessment of leaders in an organization or business firm is a matter of competencies which is very much required. Secondly; Commitment: It is as important as that of the competencies. As a leader of any company or organization hard work and how they engaged in the work to perform their duty and how honest they are to do the duty for the welfare of the company these are all a part of his commitment to the company and thirdly; character: It character determines both the competencies and the commitment that they have for the company. This character will show how well they make the decision and how far they are implemented (Figure. 1). The good leadership has multi dimensions of characters such as integrity, humility, courage, humanity, drive, accountability, temperance, justice, collaboration, transcendence and judgment<sup>7</sup>.



Source Jeffrey Gandz, et al., 2013

**Figure 1 Good Leadership Character**

### **3. INVESTOR PROTECTION IN INDIA**

For the efficiency of corporate governance ensures the optimal use of resources both infra-firm and inter-firms with effective system of corporate governance, debt and equity capital<sup>8</sup>. And also, frameworks for investor protection in India are given as the structural framework and the organizational framework. It is also said to be known as those regulatory frameworks done or given by the various regulatory bodies which are working in the capital market. It consists different regulations, guidelines and Acts all of this provide smooth functioning and transparency in the capital market for the protection of the investor. Measures that required for the protection of the interest of the investors by introducing certain suitable legislation, establishing regulatory bodies or by passing of regulations or guidelines for protecting the interest of the investors in the capital market is called the investor protection<sup>9</sup>. Establishment of regulatory body in India means the various regulatory bodies which make as the safeguarded of the protection of the investors in the securities market. These regulatory bodies were mainly the SEBI, MCA, Securities Appellate Tribunal (SAT), judiciary etc. therefore, the main legislation governing the securities market i.e. under which an approach can be made to various regulatory bodies are: (i) the SEBI Act, 1992; (ii) the Companies Act, 2013; (iii) the Securities Appellate Tribunal; (iv) Clause 49 of Listing Agreement; (v) Corporate Social Responsibilities<sup>10</sup>.

**Security and Exchange Board of India (SEBI):** The SEBI was established by the government of India on 12 April 1988 an interim administrative body to promote orderly and healthy growth of the securities orderly and healthy growth of the securities market and to protect investors rights. It is functioning under Ministry of Finance, Government of India. It was given statutory status on 30<sup>th</sup> January 1992 through and ordinance. It was replaced by an act of parliament, Securities and Exchange Board of India Act, 1992. The aim of SEBI is to provide secure the investor and regulate

stock exchange and securities in the market sector and their main roles are regulatory function, registration of brokers and sub brokers and other players in the market, registration of collective investment and mutual funds, prohibition of fraudulent and unfair trade practice, Controlling insider trading and takeover bids and imposing penalties for such practices, Investor education, Training of intermediaries, Conducting research and publishing information useful to all market participants, etc<sup>11</sup>.

**The Companies Act, 2013:** The Company Act, 1956 was an old Act therefore, with development process in the society the rule, laws that the society followed need to be change accordingly with the existing situation of the society. With this requirement The Companies Act, 2013 is enacted in order to make up the gap between the developing society and old Act<sup>12</sup>. This Companies Act, 2013 provide certain provisions that give protection to the investor, so some provisions are mention below<sup>13</sup>.

- **Section 73:** “section 73 of the companies Act, 2013 is about the acceptance of deposit from the general public which is not permitted under the Act, and violation of any of the provision is a punishable offense. Under this Act no company shall accept or review deposits the public, provided some exceptions are given such as matter related with banks, insurance etc”.
- **Section 34:** Section 34 of the CA, 2013 gives about the misstatement in prospectus. It is generally a written document issued by the company to the general public containing brief information regarding companies profile and their investment proposals. This section deals with the criminal liability for miss statement in the prospectus issued by a company. Under section 447 of this Act any misleading or untrue in the prospectus which is issued by the company will be liable for misstatement in the prospectus.
- **Section 36:** Section 36 of the Companies Act, 2013 talks about the penal provision to the person who willfully induce any person to invest money in the company or market giving false agreement to make profit from the invested money. Under section 447 of the company’s act held liable for punishment of such an offence.
- **Section 123:** Section 123 of the company’s act provides that the dividend should be credited to the investor’s account within five days after the declaration. In the annual general meeting of company declaration of dividend is an important agenda of every organization or company. Here, dividend refers to any profit of the company which is divided among the shareholders of the company in a proportion of shares held by the shareholder in the company. Section 125 of the companies Act, 2013 provides that investors in the securities have to be given education known as the investor’s education and protection fund. Therefore, this fund is endorsed with the unpaid measures of utilization of the fund. Thus this fund is used for the promotion of investor’s interest.

**Security Appellate Tribunal (SAT):** The Security Appellate Tribunal (SAT) was set up with the main objectives to safe guard and relief to the investor in the securities market along with this to maintain transparency in the governance system in the Indian security market. Prior to the SEBI Act, 2002 an appeal against the order passed by the SAT shall have to be file in the High Court but after this amendment appeal against the SAT order can be file directly to the Supreme Court. Powers and procedure of the SAT is deals under section 15 of the SEBI Act. Security appellate tribunal generally acts as a civil court but in some circumstances SAT act as criminal court which is mention under section 15(3). SAT exercise the powers as that of SEBI when it comes for the matter of appeal against the order of Securities and Exchange Board of India provided; these powers were not strong enough and effective for the enforcement or execution of its order especially in respect of the protection of the investors in the Indian security market<sup>14</sup>.

**Clause 49 of Listing Agreement:** With regards to Clause 49 of Listing Agreement, evaluation has carried out by the SEBI on the existing practice system of Clause 49 that recommendations made by Kumar Mangalam Birla Committee. Based on the evaluation Chairmanship by Mr. Narayana Murthy 2002-03 had recommended again for further improvement on corporate governance norms. This has been forward for further action with a major changes in the agendas - Independence of Directors, Whistle Blower Policy (WBP), performance of the evaluation of non-executive directors, mandatory training of non-executive directors etc<sup>15</sup>.

- **Composition of Board-** This new clause that is the clause 49 of the listing agreement gives some terms and condition to fulfill for an independent director. So, non-executive director is required to fulfill these new terms in order to qualify for independent director. The new terms and conditions are that the director must not possess or keep any relation with the company other than his remuneration. “The given below are the indicator to qualify the independence director- (a) The first Indicator, the independent director should not have any relation with the company and he should not hold any position at the board too; (b) The second indicator, the independent director should not involve as an executive in the concern company for the last three financial years; (c) The third indicator, the independent director should not be the executive of the company either presently or even in the past three years of the company’s – should not be in the audit committee either statutory audit or internal audit of the associated company and any consulting firm in association with the company; (d) The four indicator, the independent director should not be a material supplier, service provider or customer or a lesser or lessee of the company, and (e) five indicator , he is not a substantial shareholder of the company owing to percent or more the block of share.”

- **Non-Executive Directors' compensation & disclosures** – This is new clause introduced under Clause 49 of the listing agreement, it deals with the financial with regard to the payment of fee and compensation to non-executive director on account of prior approval from shareholder. As per CA, 1956, the approval from the shareholder was not required for any form of payment and compensation to non-executive director. However, now listed companies must get approval from shareholder in this matter.
- **Audit Committee-** “The following points are changed under Clause 49 of the listing agreement with respect to the Audit Committee - (a)among the audit committee member, two-third of the member of committee should be independent director, (b) non-executive director must be audit committee member as per previous company act 1956 whereas in present status, it is not the same as previous statement, (c) As per Clause 49 of listing agreement, all the members of auditing committee must have knowledge or literate in the financial matter whereas in the previous, at least one member was required among the auditing members, (d) the number of meeting of the audit committee must increase from 3 to 4 in a year, (e) The of roles and duty/responsible has increased as per new clause such as (i) any matter is included to director responsible, (ii) to review the whistle blower mechanism by audit committee and (iii) to review and evaluation of the performance of statutory and internal auditor, (iv) management, discussion and analysis of financial status, and finding of the result, (v) statement of significant, (vi) internal control weakness of the companies”.
- **Subsidiary Companies-** There are condition required for subsidiary companies to be followed as per clause 49 of the listing agreement, these are –
  - a) in the board of the subsidiary companies at least one independent director shall be from board of holding companies,
  - b) to review the financial statement by company shareholder of the audit committee,
  - c) the minutes of the meeting held in the subsidiary company should share the particular minutes to the holding company board meeting.
- **Disclosures-** Under clause 49 of the listing agreement, there are new disclosure required and highlighted in the given below:
  - a) Every transaction statement is clear to the audit committee with respect to the bossiness' matter,
  - b) The transaction of details of material with regard to the business matter in the front of audit committee,
  - c) The financial matter (auditing, cross check with standard and norm) should disclose to the audit committee,

- d) The matter related to the risk assessment and minimization procedure of the company shall improve through review, and
- e) Statutory auditor has to clarify every audit committee report which prepared quarterly and annually in a proper channel by cross checking the incorporate criteria of the company.
- **CEO/CFO Certification**-The recommendation are prepared by Sarbanes Oxley Act of USA and Naresh Chnadra Committee for welfare of companies that CEO/CFO will have to certify the annual financial statement of the company. This give comfortable to the director in management and any related work of financial progress as per section 217(2A) of the company Act, 1956.
- **Non- Mandatory requirements**- the new clause that is clause 49 of the listing agreement has added five new points as a non-mandatory requirement they are:
  - a) Independent director must not have exceeded 9 years in the board of the company,
  - b) Unqualified audit report,
  - c) Board member training,
  - d) risk profile of business parameter for management of the company
  - e) performance and evaluation of the non-executive director by best practice group and
  - f) whistle blower policy

#### **4. CONCLUSION**

The important of corporate governance for investor protection with quality is essential on order to run business smoothly. Good leadership and commitment of corporate governance for investor as per policies, rules, act etc for welfare of shareholder, stakeholders, who so ever. Good governance principles and characters have significant roles to avoid cheating and fraud in the market sector. The SEBI, SAT, and clause 49 of listing agreement in India have been followed to protect investor in the market. The regulatory framework, the statutory provision and self-regulation has been another aspect of corporate governance. With these words, regulatory body must go along with investor as per provision and rules guidelines in the near future.

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