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Indian Redefined Corporate Governance: In the Context of Companies Act 2013

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Abstract
Good corporate governance in the changing business environment has emerged as powerful tool of competitiveness and sustainability. Thus in order to grow, prosper and compete in international markets, demands to commit itself as reliable, innovative and prompt service provider to protect interest of stakeholders and should also become reliable business partners in order to prosper and to have all round growth. Due to growing need of regulations for current settings Companies Act 1956 has been in need of a substantial revamp for quite some time now, to make it more contemporary and relevant to corporations, regulators and other stakeholders in India and keeping in the mind dynamism of world level business to have flexibility in internal and cross border transactions. Large part of the new Act is addressing the protecting mechanism corporate governance, a set of redefined regulation focusing on protection of share holders wealth and stake holders abstract interest in the entity in wake of sophisticated innovation in communication and technology sector. The main objective of the paper is to asses changed regulation and possible impact on the business sector. The current Act has redefined the concept and has brought a radical change in the way corporations are governed in India, with an objective, to improve corporate regulatory framework and governance model. The 2013 Act, has laid down specific responsibilities on the Executive Management, Board of Directors and Audit Committee of the Companies. It has not only raised the bar by increasing a number of Risk Management and Governance requirements, but has also stated stringent penalties for non-compliance to these provisions. The inclusion according to demanding needs of society add responsibility to the corporations to protect not only share holders interest but their policies should be bi product of own development and stakeholders protection. The strong implementation in co operation with entities is believed to facilitate compliance and promoting highest standard of corporate governance in India.

Introduction
To curb the corporate scandals like Enron Scandal (2001), WorldCom Scandal (2002), Tyco Scandal (2002), American International Group (AIG) Scandal (2005), Satyam Scandal (2009) positive and quick response came from different niches of world especially from the worst hit countries like USA in the form of The Sarbanes-Oxley Act 2002 and followed by other countries with adopting a number of regulatory changes to serve as governance code to demonstrate good corporate citizenship through environmental awareness, ethical behavior and sound corporate governance practices. Thus for balancing the interest of stakeholders in an entity requires the system of rules practices and processes by which their affairs are directed and controlled. While going for history of concept of corporate governance it has been found the word corporate governance has a very recent origin but principles of good governance are as old as good behavior but lacked the recognition in the past thus the concept have hardly any formal definition from the long past.

Even though in India corporate governance gained prominence in 1990,s due to introduction of LPG model economy and was initially adopted on voluntary basis but soon it got mandatory status in the form of introduction of clause 49 of listing agreements for companies of certain size listed in stock exchanges of India were required to comply with these norms without fail. In response to cope-wit Satyam (2009) called as Enron of India like frauds, Ministry of Company Affairs of India in December 2009 issued fresh set of guidelines to address the roots corporate problems which have capacity to transform into scandals or collapses. The main aim of governing corporation is to create value and safeguard interest of various stake holder groups through efficient use of resources, accountability for stewardship, promotion of compliance with prevailing laws and regulations of the country and for ethical conduct of business. Inferior standard of governance in organizations leads to indiscipline, chaos in management and lack of responsiveness and sensitivity towards stakeholders, which not only poses a risk to themselves but they could indeed pull down economy.

Considering the emergence of code of best Corporate Governance practices and all over the world (like Cadbury Greenbury and Hampel Committee reports) SEBI constituted different committees like the Shri Kumar Mangalam Birla committe, Mr. Narayana Murthy committee and Mr. Naresh Chandra committee from time to improve promote and raise the standard of Corporate Governance and considered their respective reports for recommendations to the clause 49 which contains both mandatory and non mandatory (implemented at the discretion of the company) obligations for companies to comply with. All these committees have defined the corporate governance in their own way. The governance in corporations is thus given the widely accepted shape in the form of principles to measure and analyze the degree of compliance to these set procedures and regulations.

The principles of corporate governance are mainly Rights and equitable treatment of shareholders, interests of other stakeholders, Role and responsibilities of the board, Integrity and ethical behavior and Disclosure and transparency.

Need for change

In today's business world only constant is the change, increasing competitive business environment, with technological revolution pose a compulsion to business world to change with it. Social and ecological awareness among people has claimed the corporations to behave with responsibility and contribute to sustainable development of the nations. India an important component of world business now is among the developing countries to modify setting especially laws governing business for comfort business ties with the world giants. Similarly the Companies Act 1956 has been in need of a substantial revamp for quite some time now, to make it more contemporary and relevant to corporations, regulators and other stakeholders in India and keeping in the mind dynamism of world level business to cope-wit un-law full cross border transactions. Thus came up with new set of regulation in the form of new Companies Act 2013.The magnitude of changes in new Companies Act touched business from incorporation to distribution of the earned income thus leaving no stone unturned to comply with the dynamic nature of current business world

Magnitude of change

Confederation of Indian industries and ministry of finance had been receiving numerous views and requests for revisions or clarifications of complying with the new requirements as it had became subject matter of debates all over country. Companies Act, 2013 ("new Act") and subordinate legislation in the form of rules, companies are faced with the challenge of complying with the new legal regime with 29 chapters containing 470 sections considering all the changing aspect related to business in current scenario. From format of Basic document Memorandum of Association to additional minute details accompanied with financial reports to the stakeholders. Additional to our topic corporate governance there is wide range of changes including:

- Format and Alteration of MOA (Section 13)
- One person company {Rule 3(1)}
- Shifting of registered office is not allowed if any inquiry, inspection or investigation has been initiated against the company. (Section 12)
- Director as Related Party Section 149 At least one director in India
- Woman director
- Board Evaluation (Section 178) & Requirement of Committees section 149(4).
- Requirement - Independent Directors in public companies & joint ventures
- Loans to other subsidiary companies (Section 186) and their conversion into share capital
- Requirement of disclosure (Section 92)
- Records of meetings conducted by audio visual means (section 173)
- Deposit Insurance & Deposit Insurance Cover
- Related party transactions
- Companies (Share Capital and Debentures) (Sec 47)
- Preparation of CFS under IFRS/Indian GAAP

Thus new Companies Act 2013 now a complete set of regulations addressing the current issues and to cope-wit the upcoming problems in business settings with dynamic business world. The main objective of the paper is to examine the changes related to corporate governance and their future prospect and implications. Thus our focus is how changes related to corporate governance are supposed to be effective for managing the management stake holder's relationship in an effective manner. Some vital points regarding corporate governance and their implications are addressed in the current paper.

Women Director in Board

The Corporate ministry realizing importance of women in diversified Indian culture where sati custom was worshiped in the long past, now considered as skilled effective managers *R Yoginderaja (2014)* have a reserved a mandatory position in the board of directors. Applicable from 1st April 2014 every listed having (a) paid–up share capital of one hundred Cr rupees or more or (b) turnover of three hundred Cr rupees or more shall have a woman director. Mandating gender diversity may not be supported by a practical viewpoint in India because of the cultural and religious diversifications and challenges faced for women empowerment, like education , religious obligations or the gap being there in the society from long past. The hindrances have came on spot light again while listed firms were reluctant on appointing women directors in the board, even as on 1st April 2015 by after 1 year of notification only 43 companies were complying followed SEBI guidelines on 08.04.15 issued a Circular bearing reference no. CIR/CFD/CMD/1/2015 and subject as "Fine structure for non-compliance with the requirement of Clause 49(II)(A)(1) of Listing Agreement" to all Managing Directors/Executive Directors and all recognized Stock

Exchanges. Complying to order 912 directorship positions in 872 companies were filled *(Press Trust of India)*. Even though Board power needs to be enriched by bringing together the right mix of members with the desirable skills required for the efficient running of the business. An inclusive Board would be one which has not only diversity of skills, thought, experience, knowledge, understanding, perspective and age but gender also plays significant role in enriching opportunity expertise, networking professionalism, relationship specialization, social affiliations and psychological attributes to behave differently which influence the behavior & performance of management thus may contribute to add value to stake holders of an organization.

Increased role Independent Directors

In public companies: At least 2 independent directors are required to be appointed by public companies having paid-up share capital of Rs. 10 Cr or more or turnover of Rs. 100 Cr or more or interest bearing liabilities of Rs. 50 Cr or more. Reducing the threshold limit of Share Capital and Outstanding Loans is not appropriate, as many large Companies would have their Subsidiary Companies which may be fulfilling all the above criteria and hence would be required to have Independent Directors to curb the freedom of bureaucrats and politicians controlling the public entities according to their whims and fancies and to protect the material interest of loan providers and the stake holders at maximum.

In Joint Ventures: As Per Section 149, appointment of independent directors and woman director is applicable to joint venture Company if incorporated as public limited company on attaining the threshold for such compliance. Where joint venture with foreign partner incorporated for Technology Transfer or for manufacturing specialty Products even though incorporated as Private Limited Company or being a subsidiary of a Public Limited Company and hence for the purposes of the Companies Act, would be treated as Public Limited Companies but for appointment of directors would be treated as private ltd company.

In Committees: Companies Act, 2013, also include provisions stating necessarily have independent directors on the committees, like share holders Grievance committee, Audit committee, remuneration committee and other welfare committees, have been notified and are applicable from April 1, 2014. It will directly affect the decision making process of these committees and will protect stake holder's interest and also add firm value by professionalization of decision making and working at committee levels which will be addressing the specific issues. Independent directors in committees will also help to address the issues independently for welfare and benefit of employees and other stake holders.

Thus new regulations code with innovative enhanced powers and functions, with more discreet duties which raise bench mark and performance of independent directors. The duties include constructive attendance in all board/general meetings, reporting unethical practices, fraud and violation of law, retaining any confidential information pertaining to company as confidential, ensuring the concerns relating to management are placed before the board and be recorded in the minutes of board meeting. In short, there is a significant onus on them to assist in safeguarding the legitimate interest of the company and its stakeholders.

Audit and Reliability

Decisions require relevant and reliable information as false and misrepresentations will misdirect the governance agenda even auditor does not have direct corporate governance responsibility but rather provides a check on the information aspects of the governance system. New regime of information technology and complexities in it is posing a question mark on information to be relied by the parties involved. Thus increase the regime of supervision to provide reliable valuable and material accounting and financial information not only to interested shareholders but also to other concerned authorities. Keeping in the view new companies Act 2013 has come up with different set of requirements like eligibility, qualifications and disqualifications of auditors, and their financial interest and indebtedness, guarantee or security in the concerned company. The crux behind it is to provide reliable information assessed and investigated by financially independent person to add validity to the financial reporting. Thus to mitigate the relationship between audit firm and the company all listed and unlisted (specified) cannot appoint or re-appoint an audit firm as auditor for more than two terms of five consecutive years.

Transparency and Disclosures

Transparency and Disclosures being an important part and parcel of corporate governance as it serves the communication link between company and other parties transacting directly or indirectly with the company. Recent shift to protecting the natural resources for sustainable development has demanded the corporations to incur the social and environmental cost and subscribe for environmental development and more significantly report the actions, reactions and spending for the protection of dwelling ecosystem. More over reporting in a new horizon of developed information technology a gross root level and mass subscription of masses to the social networking made reporting an finger tipping task but laws governing the same were lagging behind needed to be revamped in the current context. To beat out datedness the new companies Act 2013 come up with additional reporting requirements u/s 184: regarding publishing financial and other reports on their respective websites with specific reports including Board report, meeting minutes, Risk management reports environmental social and governance reports separately more than that of specified u/s 143(3) addressing the issues of disclosure of effect of pending litigations; provision for foreseeable losses, if any, on long term contracts including derivative contracts and deposits in Investor Education and Protection Fund.

Further Electronic reporting, the growth in online financial services and the central role of the Internet in the popularization of financial communication are starting to level the playing field between institutional and retail stakeholders. Social media may lower the barriers for obtaining information about a public company and therefore increase the transparency of the company, thus demanding further attention to be proactive rather than reactive.

CSR and Society Development

Keeping in the view the need for social and environmental development, in bringing out stability and strength in the weaker sections of the society new set of rules according to sec 135 of the new Companies Act, 2013 will be governing the social cost be utilized for the development of society. As per the new requirement, every company having net worth of Rs 500 Cr or more, or turnover of Rs 1000 Cr or more or a net profit of Rs 5 Cr or more during any financial year shall be spending at least 2% of its average net profits towards CSR activities. Thus CSR is a mandatory commitment for the company to contribute for the social, economic or environment development activities, which includes promotion of education, promotion of gender equality and empowerment of women, eradication of hunger or poverty, contribution to Prime Minister's national relief fund. The designated committee has to formulate the CSR policy and recommend proposed activities in each financial year and report it with the said financial statements. It will strengthen the bond between company and its dwelling society and will add firm value, and enhance the living standard of the society.

Conclusion

The Companies Act 2013 has brought a radical change in the way corporations are governed in India, with an objective, to improve corporate regulatory framework and governance model. The 2013 Act, has laid down specific responsibilities on the Executive Management, Board of Directors and Audit Committee of the Companies. It has not only raised the bar by increasing a number of Risk Management and Governance requirements, but has also stated stringent penalties for non-compliance to these provisions. The inclusion according to demanding needs of society add responsibility to the corporate to protect not only share holders interest but their policies should be bi product of own development and development of stakeholders. The new regulation has not only touched the issued related to financial and material matters but also the taboos regarding gender, poverty, and education through CSR contribution and women director appointment.

In wake of recent changes in regulatory framework, role of internal audit has become very important in helping Board, Audit Committee and Management to fulfill their oversight responsibility and legal duties. Internal Audit function is expected to add value by highlighting leading industry best practices, acting as independent advisor to all stakeholders & actively participate in enterprise risk management

The new Act empowers independent directors with proper checks and balances, so that such extensive powers are not exercised in an unbridled manner, but in a rational and accountable way. The changes are a step in the right direction. They should enhance corporate governance and ensure the management and affairs of the companies are conducted in the interest of stakeholders. It is expected that these changes will thwart corporate scandals in future and insulate shareholders interest. However effects are yet to be analyzed the actual effectiveness and practical defects can be determined only in the time to come.

Thus this modern set of regulations seems to be more compatible in the current setting and addressing the minute material aspects and protecting the interest of large stakeholders. The provisions are not just restricted to Listed Companies but also extended to certain Unlisted Public Companies and all Private Limited Companies to address the conflicts where owners or managers are just earning on the cost of minority share holders and society at large and provide barriers to corrupt related party dealings, limit discretionary decisions and introduce new code of ethics and governance

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Reference to Act means Companies Act, 2013 unless stated otherwise.
Reference to Clause 49 means Revised Clause 49 of Listing Agreement which shall be effective from 01st October, 2014.
Master Circular of SEBI is available at website of SEBI <www.sebi.gov.in> under the categories "Legal Framework" and "Issues and Listing" <http://www.sebi.gov.in/cms/sebi_data/attachdocs/1397734478112.pdf>