

**ROLE OF MINISTRY OF CORPORATE AFFAIRS &
SECURITIES AND EXCHANGE BOARD OF INDIA IN
THE DEVELOPMENT OF CORPORATE GOVERNANCE
IN INDIA**

M.Kannappan*

Dr.Ambedkar**

Abstract

Corporate governance is codification of rules by which the company is managed. Corporate governance is a tool which establishes confidence to investors on the company and helps the company to raise capital. This study analyses the role of Ministry of Corporate Affairs and Securities and Exchange Board of India in the development of corporate governance in India. The both authorities have appointed many committees. Those committees have reviewed and recommended to improve the norms of the corporate governance according to the international standards.

Key Words: Role of MCA and SEBI, corporate governance

* *Ph.D Scholar (Part-Time),*

** *Govt Law College, Pondicherry (Central) University, Puducherry. and Asst.Professor in Saveetha School of Law, Saveetha University, Chennai,*

Introduction

Corporate governance is codification of rules by which the company is managed. “Corporate governance is the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct and about making a distinction between personal and corporate funds in the management of a company”.¹

Companies raise capital from the both domestic and foreign investors. No investors will invest their investment in a company without protection. In this context, such investment is mainly based on the ability of management of company. Investors expect the Board and the management of the company to act as trustees and ensure the safety of the investment. Good corporate governance practices enable the company to run its business smoothly and it increase confidence on the company among the investor community. In this regard, investors expect management to act in their best interests at all times and adopt good corporate governance practices. Memorandum of Association and Articles of Association of company consist those rules. Companies Act regulator the Ministry of Corporate Affairs (MCA), the securities market regulator Securities and Exchange Board of India (SEBI) have taken various steps to improve the standards of corporate governance in India.

Steps taken by MCA

The MCA, primary regulator of the Indian corporate world has been incorporating many regulatory measures in the provisions of Company Law from time to time to enhance the standards of corporate governance. The companies Act, 1956 had contained basic framework of corporate governance in its various provisions. It prevented the interested directors from participating and voting in the Board meetings.² It mandated to constitute audit committee for public companies having paid-up capital 5 crore or more.³

¹ Defined by Narayana Moorthy Committee constituted by Securities and Exchange Board of India

² Section 300 of Companies Act, 1956

³ Section 292A of Companies Act, 1956

Chandratre Committee

On July 1996, in the Budget Speech Mr. P. Chidambaram, the then Union Finance Minister, announced that, a committee would be constituted to re-write the Companies Act. In August 1996, a committee was constituted under the chairmanship of Dr K.R. Chandratre, the then President, the Institute of Company Secretaries of India. Incorporation of corporate governance practices in company law was one of the basic recommendations of this committee. “Desirable corporate governance and practices need legal support as well as evolution of internal standards - where the more progressive elements of the corporate sector design best practices that are constantly up-dated to complement and enhance the legal provisions. Nations that have good corporate practices do not rely exclusively upon law; conversely, those with poor records have never evolved internal codes of best practice. Keeping this in mind, the Group has sought to distinguish between legal provisions that will be incorporated in the draft Bill and recommendations which ought to be followed by Indian companies in their best interests”.⁴

The committee felt that, the well functioning Board of Directors which performs its dual role is a key to desirable corporate governance and such board understands the issues put forward by management, and honestly discharging their fiduciary responsibilities towards shareholders.⁵ The committee recommended that, professional non-executive directors will enhance corporate performance and maximize long term shareholder value.⁶

Iradi Committee

On October, 22, 1999 Department of company Affairs constituted a Committee under the chairmanship of Mr. Balakrishna Iradi, Chairman Ravi & Beas Tribunal, Retired Judge of Supreme Court of India to examine the existing law relating to winding up proceedings of companies in order to remodel it in line with the latest developments and innovations in the corporate law and governance.

The Committee has made various recommendations with a view to make the provisions relating to filing of the balance sheet and annual returns more effectively. It recommended considering

⁴ Clause 1.11 (b) of the Chandratre committee report

⁵ Clause 4.3 of the Chandratre committee report

⁶ Clause 4.4 of the Chandratre committee report

the non-filing of balance sheet and annual returns for the last three years from the current financial year as an additional ground for winding up. Through such recommendations the committee ensured better corporate governance.⁷

Naresh Chandra Committee

A High Level Committee was constituted by the Department of Company Affairs under the Ministry of Finance and Company Affairs on 21 August 2002, under the chairmanship of Mr.Naresh Chandra. This committee examined in detail the auditor-company relationship, role of independent directors and their effectiveness. It defined the term independent director and tightened the definition already given by the Birla committee constituted by SEBI.

J.J Irani Committee

On 2nd December, 2004 a Committee was constituted under the chairmanship of Dr. J J Irani, Director, Tata Sons to fulfill the needs of competitive and technology driven business environment. This committee made many recommendations on Classification and Registration of Companies, Management and Board Governance, Related Party Transactions, Minority Interest, Investor Education and Protection, Accounts and Audit, Mergers and Acquisitions, Investigation under the Companies Act, Offences and Penalties, Restructuring and Liquidation.

The Companies Act, 2013

Companies Bill 2013 was passed in the House of people on 18 December 2012 and in the Council of States on 8 August 2013. It obtained the assent of the President of India on 29 August 2013. The 2013 Act gives more importance to corporate governance and its mandates norms of corporate governance under various provisions. Especially it focuses on composition of Board with the combination of independent directors, constitution of Audit committee, Nomination, Remuneration and Stakeholders relationship committee and Corporate Social Responsibility committee, Board's report, Auditing and Accounts standards. It enables to group of persons initiate class action against the company which conducts its business in a manner prejudicial to the interests of the company or its members or depositors.

⁷ Clause 9 of Preface of the Iradi committee

Steps taken by SEBI

Securities and Exchange Board of India was established in the year of 1988 as an advisory body. It was authorized to regulate the security market by the Securities and Exchange Board of India Act, 1992. Ultimate aim of establishment of SEBI is to protect the interests of investors in securities and to promote and regulate the securities market.

Birla Committee

The SEBI constituted a committee on Corporate Governance headed by Mr. Kumar Mangalam Birla On May 7, 1999. This committee referred various international corporate governance committees and submitted its report with SEBI. Based on the recommendations given by this committee, the SEBI inserted Clause 49 in the Listing Agreement. The Clause includes composition of Board of Directors with the combination of independent non-executive directors, constitution of Audit committee, Nomination and Remuneration Committee, Risk Management, Related Party Transactions, Disclosures, CEO/CFO certification, Report on corporate governance and Compliance of the clause.

Narayana Murthy Committee

Due to the worldwide corporate failures, the securities market regulator SEBI intended to review the corporate governance standards in India. With this intention, the SEBI constituted a Committee on Corporate Governance under the chairmanship of N R Narayana Murthy, Chairman of Infosys Technologies Limited. The SEBI revised the Clause 49 according to the recommendations of the committee.

Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

On September, 2, 2015 The SEBI enacted Listing Obligations and Disclosure Requirements. This regulation has incorporated all provisions from the listing agreement relating to corporate governance.

Kotak Committee

The SEBI constituted a Committee on corporate governance under the chairmanship of Mr. Uday Kotak, Managing Director of Kotak Mahindra Bank Limited on June 2, 2017. This committee has evaluated the independence of Independent Directors and their active participation in functioning of the company. It has recommended constituting the board of listed company with high ratio of independent directors.

Conclusion

The MCA and SEBI have taken numerous steps to enhance the standards of corporate governance. The both authorities have constituted various committees and incorporated the recommendations of those committees in the regulatory mechanism. The standard of corporate governance has been updated from time to time in the regulatory provisions according to the need and standard of corporate world.