

is a blatant violation of women's bodily integrity. Double standards seeing women's bodies and especially sexuality as shameful and glorification of males over females has to be stopped forthwith.

Lastly, it may be stated that after making several enactments in legislative laws the miserable stories of women still continuing. There is no change in the society. They have been under the foot of the men from the centuries in every walk of human life. Hence a drastic change has to come in providing safeguards to the women and act

immediately if a woman complaisance to the police drives that she is being harassed by someone, they must never refuse and they have to take control of the culprits. At the same time at all vulnerable points in the city where the maximum number of cases of eye teasing take place were converted into check points. The Special Police Drive must have to send the trained women police in the buses to identify and arrest the eye teasers readhandedly. By using all methods the police have to create a fear in the minds of the sex-deviants and eye teasers.

CORPORATE GOVERNANCE VIS-A-VIS ROLE OF LAW AND INSTITUTIONAL INVESTORS

By

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Corporate Governance (CG) is quintessential for every corporation/company established more so in developing nations as the corporations look ahead and are supposed to compete and be at par with the corporations of those as in the developed nations. The recent rise and fall of the record sensx crossing the milestone of 20K points and abrupt falling to 16K without having any stability has again depicted the vitalities of role and impact of CG in every company. Not just in India but internationally the conceptualization of CG has been encountered with tremendous growth, especially after collapses of major number of multi-national corporations such as Enron Corporation and Worldcom¹.

CG's advent in frontline news in India was aftermath series of incidents in 1992

starting from *Harshad Mehta* scam, preferential shares issued to promoters at a low price and companies which duped the shareholders by vanishing away with their monies, which could have been stopped had there been effective CG. This incident led the Government to take necessary actions for safeguarding the investors, one of the predominant step was taken by the *Confederation of Indian Industry (CII)* through establishing a committee chaired by *Rahul Bajaj* in the year 1996 which drafted guidelines and the code of Corporate Governance and finalized the *Desirable Corporate Governance Code* in April 1998, thereafter SEBI constituted two committees to look into the issue of corporate governance, first chaired by *Kumar Mangalam Birla* that submitted its report in early 2000 and the second by *Narayana Murthy* three years later.

SEBI has been constantly putting efforts to ensure that the companies adhere CG, making mandatory regulations for providing

1. "The Board Seat Becomes A Hot Seat: New Liability Risks For Corporate Directors" Philip Mattera, Corporate Research E-Letter No. 51, January-February 2005

valuable and timely information to the shareholders and establishing various committees. It also introduced clause 49 of the Listing Agreement which by and large mirror those of the Sarbanes-Oxley measures in the United States which deals with many corporate governance issues, including executive compensation and the use of independent directors. It seeks to restore the public's confidence in the corporate governance ethics and financial reporting guidelines.

CG is an internal system encompassing policies, process and people serving the needs of shareholders and other stakeholders and emphasizes the commitment to values, ethical business conduct by directing, controlling and managing activities with good business savvy, objectivity and integrity. Whilst the Gandhian principle of trusteeship and Directive Principle of Constitution emphasis on making a distinction between personal and corporate funds in the management of a company. CG is viewed as ethical and a moral duty².

For any company to grow in the global standards there a necessity to have a basic structure where the company having its shareholders shall elect the Board of Directors who should appoint the requisite management team to look after the day to day affairs of the company and maximize the wealth of the company including that of safeguarding the shareholder and other stakeholder's interest. Hence, there ought be a cordial relationship between the management and other members.

Issues affecting CG

SEBI regulations and various other laws are making efforts to safeguard the interest of the shareholders however; the major problem is that the shareholders who hold the majority stake also called as dominant shareholders play a pivotal role in the

appointment of the Board of Directors. Having a Board appointed solely on the basis of the approval of the dominant shareholders gives the Board all unquestionable powers to appoint its own management and take any decisions such as structuring of the business and transfer of assets between group companies, preferential allotment of shares and other similar activities to the convenience of the dominant shareholders³, instances where Board has such unquestionable powers are in family businesses groups where corporate control within these groups make it difficult for any outsider to track the business realities of such individual companies within the group. All managerial positions and the powers in the company are often controlled by group of people, commonly a family, who owns the majority stake. In both the cases interest of the majority shareholders need not coincide with those of the other minority shareholders. This situation leads to the exploitation of the interest of the minority shareholders for corporate gains or funds to other corporate entities within the group.

The conflict of the dominant and minority shareholder lead to disregard the principles of CG as the dominant shareholders would be interested in safeguarding their interest at the expense of the minority shareholders, even in a situation where decision taken would be against the principles of CG, the same cannot be questioned as they are saved under the principle of "Shareholder Democracy".

Mechanism evolved to monitor CG

Whilst considering protection of the minority shareholders, Company Law has incorporated certain provisions wherein their interest can be protected. The most powerful mechanism provided is the winding up of the company. This is power given to the shareholders when they feel that the

2. Wikipedia "Corporate Governance"

3. Corporate Governance in India: Disciplining the Dominant Shareholder, *Jayantb Rama Varma*

company is acting against their interest or prejudicial to the interest of the company. There is duty placed on the company to provide all accounting information along with the auditor's report and provide all material facts including the interest of the directors and their relatives in the company when calling for any resolution. These are few among the various other provisions provided to the shareholders to have a check of the CG and interest of the minority shareholders.

The Company Law providing for measures to have a check on CG is not the only method but also the securities laws have its own contributions. Securities and Exchange Board of India (SEBI) was set up as a statutory authority in 1992, and has taken numerous initiatives in the area of investor protection. Clause 49 of the Listing Agreement pertains specifically to CG. Clause 49 deals with compulsory appointment of independent directors, strengthening the responsibilities of audit committees, improving quality of financial disclosures, including those related to related-party transactions and proceeds from public/rights/preferential issues, requiring Boards to adopt formal code of conduct, requiring CEO/CFO certification of financial statements and for improving disclosures to shareholders. It was held in *Venkateswaran v. Securities and Exchange Board of India*⁴

“The standards of corporate governance are now more pervasive and comprehensive than the brief descriptions of the duties of Board of Directors”

It is pertinent to note that the time has arrived to show that companies adhere to CG not only because of the laws and other regulations but also other external factors such as Institutional Investors, Mutual Funds, Insurance Companies, and Foreign Investors who have substantial presence in India⁵. If a

company wants to become global competitor, they cannot ignore CG, if ignored then the investors shall have a second thought before investing their wealth in the company. Investors and financial institutions play major role in CG as their primary duty is to increase the wealth of their portfolio units. Then World Bank's India Country Director, *Michael Carter*, said investors have a special function to perform, particularly in view of their growing portfolios and they ought to be encouraged to be more of an activist seeking information and using voting rights to ensuring adherence of CG.

The role of good Corporate Governance has been highlighted by *McKinsey* and the World Bank report, which analyzed that international investors do not mind paying higher rate of premium to invest in companies with good governance⁶. It was held in *Re: Pentamedia Graphics Ltd.*⁷

“it is all the more essential for companies to adhere to the highest standards of corporate governance in keeping with global benchmarks.”

Ms. *Komal Anand*, the then Secretary, Ministry of Company Affairs said “*The Indian securities markets are fairly integrated with the global markets. They have undergone a transformation during the last decade resulting in significant improvements in their efficiency, transparency and safety. But they would be able to participate fully in this rally only if the investor was confident regarding participation in the financial markets*”⁸.

Conclusion:

Every company has a greater role to play if it wants to be in the market nationally and represent internationally. The CG is now looked in not only by the law enforcing agency and the regulators but also new set

4. [2006] 67 SCL 42 (SAT)

5. “Institutional Investors and Corporate Governance in India” *Pitabas Mohanty*

6. Business Line, December 18, 2005.

7. Decided on: 3.10.2005, Securities and Exchange Board of India

8. www.nfcgindia.org/communique.pdf

of institutions and investors such as Mutual Funds, Insurance Companies, and Foreign Investors are playing a role to judge a company and its relation with its shareholders. It is the essence of the time that every company has to consider the CG as a mandatory requirement in order to be in the market.

Financial Institutions and Investors have a key role in the entire process and procedure.

The investors have to increase their role in not only seeing that their investments in the company have multiplied but also to monitor the company affairs as how the company is considering the CG policies. Only when the Investor and Financial Institutions take such serious note that we can expect the CG to be achieved and see that every investor whose wealth is contributed to a company will be seen competing nationally and internationally.

A BRIEF NOTE ON SECTION 7-B OF THE INDIAN TELEGRAPH ACT

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1. The Indian Telegraph Act, 1885 provides “Arbitration of disputes under Section 7-B(1) except as otherwise, expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the Telegraph Authority and the person for whose benefit the line, appliance or apparatus is, or has been provided, the dispute shall be determined by arbitration and shall, for the purpose of such determination, be referred to an Arbitrator appointed by the Central Government either specially for the determination of that dispute or generally for the determination of disputes under this section.

2. The award of the Arbitrator appointed under sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any Court”.

Circular Letter of the Department No.13-324/Arb/88-TR, dated 13.4.1989 “subject appointment of Arbitrators in case of Excess Metering.

1. According to Section 7-B of Indian Telegraph Act, if any dispute concerning any

telegraph line *etc.*, arises between the Telegraph Authorities and subscriber, the dispute shall be referred to Arbitrators appointed by the Central Government. The award of the Arbitrator shall be conclusive, and shall not be questioned in any Court.

2. According to the above Act, if anybody approaches the department to appoint any Arbitrator, we are bound to do so, but we are aware that in every case of dispute by subscribers, an Arbitrator is appointed, the workload will increase tremendously and cases will increase to numbers where it will be difficult to find a sufficient number of officers for appointing as Arbitrators. To control the overflow of such cases, the department has decided, as a matter of policy, the Arbitrators will be appointed only in such case where the subscriber approaches the Court with a request to appoint an Arbitrator, and the Court orders for the same.

3. Many circles have approached this office saying that there is no provision in the Telegraph Act for appointing Arbitrators on the orders of the Court, we should not insist upon the same. In one circle, even the High