CORPORATE GOVERNANCE IN THE CHANGING WORLD ECONOMIC ORDER: AN INDIAN PERSPECTIVE

SUMAIRA JAN[1*]

[1]Department of Commerce, Abdul Ahad Azad Memorial Degree College Bemina, Srinagar- 190018

[*]*Corresponding author: Sumairanazir67@gmail.com*

Abstract

The purpose of the study is to explore various developments that took place in the area of corporate governance in the world with special reference to India. The study revealed that the concerns about corporate governance in India were, however, largely triggered by a spate of crises in the early 1990's. These concerns about corporate governance stemming from the corporate scandals, coupled with a perceived need to opening up to the forces of competition and globalization, gave rise to several investigations into ways to fix the corporate governance situation in India. In the present research the Indian Corporate Governance system has been understood vis-a-vis to the Corporate Governance system of four selected countries only *viz.* Japan, Germany, United Kingdom and United States of America. The study suggests that India has one of the best corporate governance laws, but improvements are also necessary in the enforcement of certain laws and regulations. The study clarifies that how dramatic changes have exposed Indian corporate to the merciless forces of international competition and forced them to shed their old ways if not switch over to newer norms of corporate governance.

Keywords: *Corporate Governance System; Globalization; Liberalization and Privatization; Developments; India*

Introduction

As corporations operate and compete in almost all parts of the world, there has always been a need to develop some governing law and the purpose of that law has been to integrate the legislatively imposed standards with the realities of the market place, so that overall goals would be promoted. Over the years, corporate governance has found significant relevance in the corporate world. This is particularly so in the context of the growing number and size of the corporations, the widening base of their shareholders, increasing linkages with the physical environment, and overall impact on the society's well being. Corporate governance has greater importance since it is the largest sector in any country involving most of the human and natural resources and making the largest contribution to the economic development of a country. Unless there is proper corporate governance, no country can

progress. Though the importance of corporate governance was always implicit, its relevance came to the forefront only after a series of corporate failures such as Enron and WorldCom that brought corporate governance into the limelight. These companies collapsed because of the corporate mis-governance and unethical practices they indulged in. Satyam scandal in India is also the case of corporate mis-governance. Satyam case exposed the complete lack of accountability in the company and raised pointers towards corporate governance practices of the country's listed entities. In the past, some organizations were thriving on unethical practices at the market place and showed scant regard for the timeless human and organizational value while dealing with their shareholders, employees and other stakeholders. The reasons for such corporate mis-governance were many which include; closed market, lack of competitive spirit and an efficient regulatory framework. These were responsible for the poor governance of companies in India for well over 40 years, between 1951 and 1991. Economic liberalization, a steady dismantling of the control and quota regime, de-licencing and deregulation of industries, changes in export - import and overall commercial policies, globalization of the economy within and outside the ambit of the World Trade Organization (WTO), the entry of transnational corporations and the take-over bids in an open and competitive environment have all ripped open the cocoons within which Indian corporate had laid out their cozy existence. These dramatic changes have exposed them to the merciless forces of international competition and forced them to shed their old ways if not switch over to newer norms of corporate governance.

Corporate Governance against the backdrop of globalization has become a delicate and onerous task for survival as well as for seizing the opportunities. Corporate governance stipulates parameters of accountability, control and reporting functions of the board of directors of the corporations. It also calls for establishing a proper and a viable relationship amongst the various participants of a corporation, the board, the management team, auditors, share holders and other stakeholders. Corporate governance refers to the way that Boards oversee the running of a company by its managers, and how Board members are held accountable to shareowners and the company. This has implications for company behavior not only to shareowners but also to employees, customers, those financing the company, and other stakeholders, including the communities in which the business operates. Corporate governance is a set of systems and processes to ensure that company is managed to suit the best interests of all stakeholders. The philosophy of corporate governance hinges on total transparency, integrity and accountability of the management. According to Rachel Kyte (quoted by UNGC, GCGF & IFC-2009), "Good corporate governance practices instill in companies the essential vision, processes, and structures to make decisions that ensure

longer-term sustainability. More than ever, we need companies that can be profitable as well as achieving environmental, social, and economic value for society." Good corporate governance is the glue that holds together responsible business practices, which ensures positive workplace management, marketplace responsibility, environmental stewardship, community engagement, and sustained financial performance. This is even truer now as we work worldwide to restore confidence and promote economic growth**.**

At the company level, good governance practices have been found to be associated with creditworthiness and higher average annual total returns. "Corporate Governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The corporate governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations and society," (Sir Adrian Cadbury in Corporate Governance and Development, Global Corporate Governance Forum, World Bank, 2003). Companies around the world are realizing that better corporate governance adds considerable value to their operational performance in the following ways: (a) It improves strategic thinking at the top by inducting independent directors who bring a wealth of experience, and a host of new ideas; (b) It rationalizes the management and monitoring of risk that a firm faces globally; (c) it limits the liability of top management and directors, by carefully articulating the decision-making process; (d) It assures the integrity of financial reporting; and (e) It has long-term reputation effects among dey stakeholders, both internally and externally

Objectives of the Study

1) To explore various developments that took place in the area of corporate governance in the world with special reference to India.
2) To identify different lacunae in Indian Corporate Governance system.
3) To give suggestions on the basis of study results.

Corporate Governance: The Global Experience

In this section, four countries have been selected in order to understand the corporate governance practices in their corporates *viz.* Japan, Germany, United Kingdom and United States of America. Companies in Japan which seek the benefit of limited liability with public subscription for their shares have to register as *Kabushiki Kaisha.* These must have a minimum of three directors elected by the shareholders, but most of the company boards have more than three. The striking feature of the Japanese firms is the prevalence of

interlocking shareholdings. This exists among transaction partners, banks, suppliers, customer and insurance firms. Cross investments are held on long-term basis and are divested only in extreme cases under the watchful eye of the main bank. The characteristics of Japan's corporate governance structure include: (a) powerful government interventions, (b) close relationships between corporations and government sectors, (c) passive and stable shareholders, and (d) the virtual absence of an external market for corporate control, although mergers are common.

German firms with more than 2000 employees are required to have a Two-tier board structure. Through this structure, the supervision of management is separated from other duties normally assigned to a board of directors, especially the nomination of new board members. Thus, Germany's two-tiered system places the responsibility to monitor and control managerial (or supervisory) decisions and actions in the hands of a separate group. In many Private German firms, the owner and manager is still the same individual. In these instances, there is no agency problem. The German banks and large block holders control a substantial share of the listed companies. Hence, they are powerful in the German corporate governance system.

In United Kingdom, the theme of corporate governance has been very close to the heart of accounting and corporate profession. In May 1991, Cadbury Committee was set-up by the Financial Reporting Council of London Stock Exchange and the Accounting Profession. It contains the important guidelines about Board of Directors, Non-Executive Directors, Executive Directors and Reporting and council. The meeting of Board of Directors (BODs) should be regularly held. BODs must retain full and effective control over the company. The role of non-executive directors should be to contribute towards independent judgment. The contract of service of executive directors should not exceed three years without the shareholders approval and there should be transparent disclosures of directors and chairman's total emolument, separately together with the highest paid UK directors. It is the duty of the board to present a balanced and understandable assessment of the company's position.

In the United States of America, the corporate system and structure is characterized by diffused ownership and shareholdings as a large percentage of the shares is subscribed to by the public. US has a well-developed capital market with active shareholder participation. Firms are subject to strict disclosure norms and investor protection. The focus of good governance in such country is the code of best practices. Audit Committee, in particular are seen as being central to corporate governance. In the US the New York Stock Exchange has

required all listed companies to have Audit Committees composed solely of independent directors. In the US, companies are required to prepare financial statements in conformity with the Generally Accepted Accounting Principles (GAAP) and companies are required to include the opinion of the independent auditor in their published annual reports. Of late, the US companies are required to follow the provisions of Sarbanes Oxley Act 2002, regarding corporate governance.

Corporate Governance in India

India has a long history of commercial activity and has always been a major source of many of the world's most sought-after products. It is, therefore, natural that the corporate India has a long history of its corporate governance systems. A brief outlook of the systems of corporate governance practiced in India at different points of time has been studied into three groups viz.

The Managing Agency System	(1850-1955)
The Promoter System	(1956-1991)
The Anglo-American System	(1992 and onwards)

The Managing Agency System was an age-old system, which began in 1850. The Characteristics of governance under this system are twofold. First, the formal mechanism of control through the managing agency contract; second, the macro-economic situations of control and governance. It is this agency contracts through which the managing agents were able to exercise control over the 'managed' companies. In the year 1956, i.e. after independence, many developments took place as the Government of India adopted many corrective measures and provisions in the Companies Act 1956 in order to restrict the abuse of powers and ill-effects caused by the managing agents. Therefore, with the introduction of the Companies Act 1956, the relevance of the managing agency system almost diminished. However, a new system in the form of Promoter System emerged from the year 1956 was characterized by these developments. The 1980s was the era of radical economic liberation. The USA under the Reagan and the UK under Margaret Thatcher paved the path of global trend in economic liberation and introduced several programmes. The fiscal crisis of 1991 and the resultant need to approach the International monetary fund (IMF) forced India to move in the same direction. In the year 1991, the Government of India liberalized its economy to become an active player in the global economy. Since then, radical changes in the economy started taking place. This movement also implied a change in the system of corporate governance. Therefore, the Promoter system was replaced by the Anglo-American System since 1991. Anglo-American system is featured by a strong reliance on capital

markets and a single-tier board structure in which representation is limited to directors elected by the shareholders.

With respect to formal mechanism of control and governance, the government has passed sufficient provisions in the new Companies (Amendment) Acts right from 1998 up to 2002. The amendment Acts have allowed the standard Anglo-American option of a single tier board composed of a mix of inside and outside directors including a managing director/CEO who tends to occupy the position of chairman. Under this system, the board is increasingly having responsibility to 'govern' while the executive to whom it appoints, viz. manager/managing director, is responsible for the day-to-day 'management' of the firm. The one significant change concerning the formal mechanism of control has taken place is that the independent/non-executive directors and the nominee directors have given a significant voice in affairs of many large publicly held companies in order to ensure maximum shareholders' value and stakeholders' expectations.

The most important development in the field of corporate governance and investor protection in India has been the establishment of the Securities and Exchange Board of India (SEBI) in 1992 and its gradual empowerment since then. The statutory and regulatory powers to SEBI have been given by the Government with the mission to move from control regime to prudential regulation. SEBI was empowered to regulate the stock exchanges and all the players of the capital market including all listed companies. The bankers and registrars to the issue, merchant bankers, underwriters, portfolio managers, credit rating agencies, Foreign institutional Investors (FIIs), venture capital funds, mutual funds and Asset Management Companies (AMCs) also came within the purview of SEBI operations.

SEBI formulated various rules and regulations for the purpose of regulating the operations of the players of the capital market, which were aimed at promotion of more responsible corporate governance. All these regulations help to promote more responsible corporate governance by:

a) providing investors with greater information to make informed choices;
b) curbing insider trading and manipulation on the one hand and ensuring transparency and fair play, integrity and confidence of the investors on the other;
c) providing investors with more effective means of redress in cases of abuse;
d) providing equality of treatment and opportunities to minority shareholders, protection of the interest on minority shareholders, free and full disclosure of all material facts by the acquirers;

e) preventing the actions that do not respect the interest of the shareholders, viz. manipulation of stock exchanges including price rigging and artificially increasing/ decreasing share prices; and,

f) ensuring greater transparency in the market for corporate control and facilitating the process for replacement of under-performing management through takeovers.

Recent developments in Corporate Governance in India

A. *CII Code of Desirable Corporate Governance (1998):* The confederation of Indian Industry (CII) was the first business association to come out with a code of corporate governance for Indian listed companies, named as CII Code of Desirable Corporate Governance in 1998 for transparent corporate disclosure norms. The CII Code recommended: (i) key information to be reported, (ii) listed companies to have audit committees, (iii) corporates to give a statement on value addition, (iv) consolidation of accounts to be optional etc.

B. *SEBI norms based on Kumar mangalam Birla Committee recommendations on corporate governance (2000):* In late 1999, a government-appointed committee under the leadership of Shri Kumar Mangalam Birla, Chairman, Aditya Birla Group, released a draft of India's first national code on corporate governance for listed companies, named as Clause 49. The code was approved by the Securities and Exchange Board of India (SEBI) in early 2000 and was implemented in stages over the following two years. It also led to changes in the stock exchange listing rules. Birla committee recommended: (i) board to set up qualified and independent audit committee to enhance credibility of financial disclosures and to promote transparency, (ii) corporates to provide consolidated statements in respect of all its subsidiaries having a shareholding of 51% or more of the share capital, (iii) shareholders to exhibit greater degree of interest and involvement in the appointment of directors and auditors etc.

C. *Companies (Amendment Act 2000):* The government amended the Companies Act in 2000 and various provisions concerning corporate governance included in this Amendment Act were: (i) board to report in cases where buy-back not completed within the time specified [Section 77 (4)], (ii) providing for directors' responsibility statement [Section 217 (2AA)], (iii) small shareholders' representation in the board through a director (Section 252), (iv) limitations in directorships in companies (Section 274 & 275), (v) constitution of audit committees (Section 292 (A)], (vi) provisions for higher penalties for offences in various sections of the Companies Act etc.

D. *Insertion of New Clause 49 of the Listing Agreement by SEBI (2000):* SEBI held a meeting on 25 January 2000, decided to make amendments to the Listing Agreement by inserting a new Clause 49 and published it through a circular no. SMDRP/Policy/Cir-10/2000 dated 21st February 2000. The new Clause 49 dealt with corporate governance and included the aspects, viz. (i) providing for appointment of optimum number of executive, non-executive/independent directors, (ii) appointment of audit committee, (iii) remuneration of directors and its disclosure, (iv) board procedure and meetings, (v) management report, (vi) report on corporate governance.

E. *Reserve Bank of India (RBI) Report of the Advisory Group on Corporate Governance (2001):* A standing committee under the chairmanship of Dr. Y.V. Reddy, the then Deputy Governor of RBI was set up by the then Governor of the Reserve Bank of India on 8th December 1999. The standing committee in its first meeting on 13th January 2000, constituted non-official advisory groups in ten major subject areas, of which corporate governance was identified as one of the areas. Accordingly, an advisory group on corporate governance under the chairmanship of Dr. R.H. Patil, Managing Director, National Stock Exchange (NSE), Mumbai was constituted on 8th February 2000. They submitted report on 24th March, 2001. The report contained several recommendations on corporate governance which are applicable to all companies, especially the public sector banks (PSBs) and public sector enterprises (PSEs) which include: (i) the responsibility of the company as also the bank-board should be clearly defined to include the key functions, (ii) the boards of companies, including PSEs, should be accountable to the owners of the companies, (iii) board members should have access to accurate, relevant and timely information, (iv) independent and executive directors of the companies should be appointed to the board, based on the recommendations of a nomination committee comprising of the independent directors of the board, (v) all banks should have minimum of 10 board members, (vi) the board should have core group of excellent, professionally qualified non-executive directors, (vii) in case of all companies, the maximum limit for a director serving on multiple boards should be 10, (viii) if the CEO is also the chairman of the board, more than 50% of the board members should be independent, (ix) all types of companies need to ensure that the audit committee of the board functions effectively and independently which should be comprised of independent directors, having a minimum of three directors, (x) boards of companies should, banks, and PSUs should set up nomination committees consisting of at least three independent board numbers, (xi) the boards of large companies and banks should meet at least six times a year, (xii) the term limits for independent directors may

preferably be up to 10 years at a stretch, (xiii) banks and companies should prepare and present consolidated financial statements including those of all their subsidiaries, (xiv) in banks there should be much stronger internal control systems, including effective internal and external audit mechanisms, risk management functions independent of business lines, and other checks and balances, (xv) the bank's board should have obligations, but not accountability to stakeholders but a sound corporate governance should consider their interests and ensure that individual banks are conducting their business in such a way as not to harm the interests of depositors, (xvi) banks should be encouraged to make disclosures on senior management structures, i.e. responsibilities, reporting lines, qualifications and experience, and broad incentive structures, i.e. remuneration policies, executive compensation, bonuses, stock options, (xvii) the extent of compliance with governance requirements should be disclosed in the 'directors' report' of all companies.

F. *Naresh Chandra Committee's (First) Report on Corporate Audit and Governance (2002):* The Government of India appointed the Naresh Chandra Committee in 2002 to examine and recommend drastic amendments to the law pertaining to auditor-client relationships and the role of the independent directors. The Committee's recommendations included: (i) audit partner to rotate every 5 years instead of audit firm's rotation, (ii) audit committee to be set up with all independent directors, (iii) companies to have at least 50% independent directors, (iv) certain professional assignments not to be undertaken by the company auditors etc.

G. *N.R. Narayana Murthy Committee Report on Corporate Governance (2003):* In 2002, SEBI, while analyzing the status of compliance with Clause 49 by the listed companies, felt a need to look beyond mere systems and procedures in order to make the corporate governance more effective in protecting the interest of investors. SEBI, therefore, constituted a committee under the chairmanship of N.R. Narayana Murthy, chairman and mentor of Infosys, and mandated the committee to review the performance of corporate governance in India and make appropriate recommendations. The committee submitted its report on 8th February 2003. The Committee came out with two sets of recommendations namely, mandatory recommendations and non-mandatory recommendations. The mandatory recommendations focus on strengthening the responsibilities of audit committees, improving the quality of financial disclosures including those pertaining to related party transactions and proceeds from initial public offerings, requiring corporate executive boards to assess and disclose business risks in the annual reports of companies, calling upon the boards to adopt formal codes of conduct;

the position of nominee directors and improved disclosures relating to compensation to non-executive directors and shareholders. The non-mandatory recommendations pertain to moving to a regime providing for unqualified corporate financial statements, training of board members and evaluation of non-executive director's performance by a peer group comprising the entire board of directors, excluding the director being evaluated.

H. *Companies (Amendment) Bill (2003):* The Companies (Amendment) Bill 2003 was introduced in the upper house of the Parliament on 7th May 2003. the Companies (Amendment) Bill 2003 proposed drastic changes in the provisions of the Companies Act pertaining to corporate governance which included: (i) accounting standards, (ii) chief accounts officer, (iii) independent director, (iv) liability for non/insufficient disclosure, (v) no gift in addition to dividends, (vi) consolidated accounts etc., (vii) segment reporting, (viii) protection of environments, (ix) appointment of auditors, (x) resolution for removal of auditors, (xi) disqualification of auditor, (xii) prohibition of services other than audit, (xiii) auditors report, (xiv) special audit, (xv) penalty for non-compliance by auditor, (xvi) information regarding persons' having interest, (xvii) maximum and minimum number of directors, (xviii) number of directorships not more than 15, (xix) retiring age of directors, (xx) board meetings, (xxi) notice of board meetings, (xxii) audit committee (xxiii) restriction of appointment of Managing Director or whole time Director.

In totality, 174 sections have been affected for proposed new insertion, amendments, substitutions, modifications in this Bill. This Amendment Bill was sharply criticized by the industry group, chambers of commerce and some anomalies were also pointed out by the experts in the field. As, a result, the Companies (Amendment) Bill 2003 was withdrawn by the government for further review, rectifications or amendment by the Department of Company Affairs (DCA), Government of India.

I. *Revision of Clause 49 of the Listing Agreement by SEBI (2003 and 2004):* In exercise of the powers conferred by Section II (1) of the SEBI Act, 1992 read with Section 10 of the SCRA (1956), SEBI revised Clause 49 of the Listing Agreement. Accordingly, all stock exchanges were directed vide Circular No. SEBI/MRD/SE/31/2003/26/08 dated 26th August, 2003, to immediately replace the existing Clause 49 of the Listing Agreement to the revised Clause 49. This revision was brought by SEBI in order to ensure better corporate governance practices in the companies.

However, the above circular was deferred for implementation due to its controversial and debatable provisions and subsequently replaced by a new SEBI Circular No.

SEBI/CFD/DIL/CG/1/2004/12/10 dated 29th October, 2004 after complete overhaul of Clause 49, superseding all previous circular issued by the SEBI in this regard.

J. *Naresh Chandra Committee's (Second) Report on Amendment of Panel Provision for Independent and Non-executive Directors (2003):* The Naresh Chandra Committee in its second report submitted in 2003 to the government had suggested radical changes in the panel provisions of the Companies Act. The Committee recommended *interalia*, exemption of independent and non-executive directors from civil and criminal liability.

K. *Concept Paper on Company Law (2004):* The Ministry of Company Affairs, Government of India has taken another special initiative after having failed in three major attempts during all these years to re-write the company law, which has undergone amendments 24 times and released 'concept paper' containing a model codified company law and invited suggestions and critical comments before finalizing the Bill.

L. *Expert Committee (Dr. J J Irani Committee) Report on Company Law (2005):* Expert Committee (consisting of 13 members and 6 special invitees) under the chairmanship of Dr. J J Irani was constituted by the Ministry on December 2, 2004 to evaluate the comments and suggestions received on concept paper and provide recommendations to the government in making a simplified modern company law. The Committee has submitted its report to the Government on May 31, 2005.

M. *SEBI consultative paper on CG 2012:* SEBI released a consultative paper on "Review of Corporate Governance Norms in India". To improve the governance standards of companies in India, the report had provided a broad framework in the form of (i) overarching principles of corporate governance, and (ii) proposals. The objective of the concept paper was to attract a wider debate on the governance requirements for the listed companies so as to adopt better global practices. An attempt was made to ensure that the additional cost of compliance with the proposals did not outweigh the benefits of listing, while at the same time the need to boost the confidence of the investors on the capital market was recognized.

N. *Establishment of the NSE Centre for Excellence in Corporate Governance (2012):* NSE has continually endeavored to organize new initiatives relating to corporate governance (CG) in recognition of the important role that stock exchanges play in enhancing the CG standards. To encourage best standards of CG among the Indian corporate and to keep them abreast of the emerging and existing issues, the NSE set up in December, 2012, a Centre for Excellence in Corporate Governance (NSE CECG). This is an independent

expert advisory body comprising eminent domain experts, academics and practitioners. The Committee meets from time to time to discuss corporate governance (CG) issues and developments. The 'Quarterly Briefing', a note that offers an analysis of one emerging or existing CG issue, is a product emerging from these discussions.

O. *Companies Act (2013):* Companies Act 2013 meant to replace the companies Act 1956 was passed in Lok Sabha on 18th Dec., 2013 and on 8th August 2013 in the Rajya Sabha. It received Presidential assent on 29 August 2013.

Key Provisions of this Act vis-à-vis Corporate Governance include:

i. Stakeholders Relationship Committee: Companies with more than 1,000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during financial year to constitute a stakeholders' Relationship Committee, with a non-executive director as a chairperson and such other members as may be decided by the board.

ii. Certificate by the company's Auditor: No compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the Company's Auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under Section 133.

iii. Valuation by Registered Valuer: Where any valuation is required to be made of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the Act, it shall be valued by a registered valuer possessing qualifications as may be prescribed by the Central Government.

iv. Women Director: At least one women director shall be on the Board of such class or classes of companies as may be prescribed (Section 149).

v. Appointment of Independent Directors: At least one-third of the Board should comprise of independent directors and the term "independence" defined in relation to a company [Section 149(5)].

vi. Corporate Social Responsibility (CSR) (Clause 135): The new Act has mandated the profit making companies to spend on CSR related activities. Every company having net worth of Rs 500 crore or more or turnover of Rs 1000 crore or more or net profit of Rs 5 crore or more during any financial year shall constitute a CSR

Committee of the Board. In pursuance of its CSR policy, the Board of every such company–through these committees--shall ensure that the company spends (in every financial year) at least 2 percent of the average net profits of the company made during the three immediately preceding financial years.

vii. Serious Fraud Investigation Office (SFIO) (Clause 211): The Act has proposed statutory status to SFIO. Investigation report of SFIO filed with the Court for framing of charges shall be treated as a report filed by a Police Officer. SFIO shall have power to arrest in respect of certain offences of the Act which attract the punishment for fraud. Further, the new Act has a provision for stringent penalty for fraud related offences.

viii. Class action suits (Clause 245): For the first time, a provision has been made for class action under which it is provided that specified number of member(s), depositor(s) or any class of them, may file an application before the Tribunal seeking any damage or compensation or demand any other suitable action against an audit firm. The order passed by the Tribunal shall be binding on all the stakeholders including the company and all its members, depositors and auditors.

P. *SEBI's Revised Clause 49 of the listing Agreement 2014*: On 17th April 2014 SEBI amended Clause 49 of the Listing Agreement. This Revised Clause 49 of the SEBI's listing Agreement 2014 has been implemented from 1st October 2014. Some of the key changes are:

i. Appointment of a Woman Director: The Board shall have optimum combination of Executive Directors (ED) and Non- Executive Directors with at least one woman director on the Board of the company. ***AND*** Not less than 50% of the Board comprising Non-EDs. Requirement of Woman Director is to align with Section149(1) of the Companies Act, 2013.

As per new Companies Act, Non-Listed companies having paid-up share capital of Rs.100 Cr. or more OR Turnover of Rs.300 Cr. Or more need to have Woman Director before 31st March 2015.

ii. Tenure of Independent Directors: An Independent Director shall hold office for a term up to five consecutive years on the Board of a Company and shall be eligible for re-appointment for another term of upto 5 consecutive years on passing of a special resolution by the Company. Provided that a person who has already served as an Independent Director (ID) for five years or more in a company as on October

1, 2014 shall be eligible for re-appointment, on completion of his present term, for one more term of upto five years only.

iii. Formal letter of appointment to Independent Directors: The Company shall issue a formal letter of appointment to ID in the manner as provided in the Companies Act, 2013.

iv. Performance evaluation of Independent Directors

v. Separate meeting of Independent Directors & Training of IDs

vi. Succession Plan for Board/Sr. Management

vii. Compulsory whistleblower mechanism: The Company shall establish a Vigil Mechanism for directors and employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethical policy.

The mechanism should also provide for adequate safeguard against victimization of director(s)/ employee(s) who avail of the mechanism and also provide for direct access to the Chairman of the Audit Committee in exceptional cases.

The details of establishment of vigil mechanism shall be disclosed by the company on its website and in the Board's Report.

Similar requirement u/s 177(9) of the Companies Act, 2013 for listed companies to establish a Vigil Mechanism for Directors and Employees to report genuine concerns. (Before amendment of Clause 49, it was a non-mandatory requirement)

viii. Constitution of Nomination and Remuneration Committee.

ix. Disclosure in Annual Report about Remuneration Policy and evaluation criteria

x. Related Party Transactions: Includes close family members of directors or Key Managerial Personnel (KMP), private companies in which directors or KMP along their relatives have control, joint control or significant influence as related parties. Fellow subsidiaries; companies with common venture also included. Shareholders' approval required for all material related party transactions; requires company to lay down policy for material related party transactions and manner of dealing with related parties.

xi. Compulsory Electronic Voting for all shareholders resolutions (new Clause 35B)

Lacunae in Corporate Governance in India

Although India has a long way to go to be ranked among the best in the world in corporate governance, the driver is exactly right. A large number of CEOs now realize that their companies need financial and human capital in order to grow to scales necessary to survive international competition. They also understand that such capital will not be available in a non-transparent corporate regime that is bereft of international quality of disclosure and accountability. It is precisely this realization which is driving the corporate governance movement in India and which, has greater chances of delivering substance rather than ticking mandated governance checklists.

After taking a due comparison of Indian corporate governance practices with the countries viz. Japan, Germany, U.K. and U.S.A. it has been found that there are still some lacunae in different aspects of corporate governance, *viz.* (a) India still has poor bankruptcy laws and procedures (legal and procedural barriers to good corporate governance, (b) It is also a fact that Indian firms have suffered from a comparative disadvantage not entirely created by them but due to the previous systems, which did not encourage them to develop competitive advantage, (c) In spite of many developments that have taken place in the corporate sector in recent years, the Anglo-American System does not appear to be very successful in generating and enforcing policies that could provide Indian business with sufficient pragmatic motivation to consistently live up to their economic responsibilities, and (d) The Indian legal system is obviously built on the English common law system that provides best protection to shareholder rights but the application and enforcement of those laws are lamentable.

Conclusion and Suggestions

Good corporate governance has always been an issue since the companies started using stock market to meet their financing needs. The series of corporate failures have brought corporate governance into the limelight. India has a long history of commercial activity and has always been a major source of many of the world's most sought-after products. It is, therefore, natural that the corporate India has a long history of its corporate governance systems. The Managing Agency System was an age-old system, which began in 1850. In the year 1956, i.e. after independence, many developments took place as the Government of India adopted many corrective measures and provisions in the Companies Act 1956 in order to restrict the abuse of powers and ill-effects caused by the managing agents. Therefore, with the introduction of the Companies Act 1956, the relevance of the managing agency system almost diminished. However, a new system in the form of Promoter System emerged from the year 1956 was characterized by these developments. Concerns about corporate

governance in India were, however, largely triggered by a spate of crises in the early 1990's. These concerns about corporate governance stemming from the corporate scandals, coupled with a perceived need to opening up to the forces of competition and globalization, gave rise to several investigations into ways to fix the corporate governance situation in India. One of the first such endeavors was the Confederation of Indian Industry Code for Desirable Corporate Governance, developed by a committee chaired by Rahul Bajaj. The committee was formed in 1996 and submitted its code in April 1998. Later the SEBI constituted two committees to look into the issue of corporate governance--the first chaired by Kumar Mangalam Birla, which submitted its report in early 2000, and the second by Narayana Murthy, which submitted its report three years later. These two committees have been instrumental in bringing about far reaching changes in corporate governance in India through the formulation of Clause 49 of Listing Agreements. Concurrent with these initiatives by the SEBI, the Department of Company Affairs, the Ministry of Finance of the Government of India also began contemplating improvements in corporate governance. These efforts include the establishment of a study group to operationalize the Birla Committee recommendations in 2000; the Naresh Chandra Committee on Corporate Audit and Governance in 2002, Expert Committee on Corporate Law (the J.J. Irani Committee) in 2005, Companies Act (2013) and amendments in the revised clause 49 of the SEBI's listing agreement in the year 2014. All of these efforts were aimed at reforming the existing Companies Act of 1956 that still forms the backbone of corporate law in India. The companies Act 2013, the new law that has replaced the old Companies Act, 1956 and the amendments made in the SEBI's clause 49 of the listing agreement in the year 2014 has the potential to be a historic milestone, as it aims to improve Corporate Governance, simplify regulations, enhances the interests of minority investors and for the first time legislates the role of Whistle-Blowers. There is a lot in new Companies Act 2013 as it brings in sweeping changes in the way corporate are governed in India. The Companies Act, 2013 enhances the role and responsibilities of the Board of Directors' by making them more accountable for their actions while protecting shareholders interest and by mandating woman director on the board, the intent of the act is to improve gender diversity and increase transparency.

Unfortunately, after taking a due comparison of Indian corporate governance practices with the industrialized countries U.K., U.S.A. Germany and Japan it has been found that there are still some lacunae in different aspects of corporate governance. In fact, India has one of the best corporate governance laws, but improvements are also necessary in the enforcement of certain laws and regulations.

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