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CORPORATE BEHAVIOR IN THE CONTEXT OF GOOD CORPORATE CITIZENSHIP- A CRYING NEED

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ABSTRACT

Every firm is so dependent on its social environment that it can neither survive nor grow without full social acceptance and approval of all the constituents of the environment in particular, society at large and the government in general. The bad behavior of companies globally has brought the phrase "Corporate governance" back into the limelight. The Enron, Arthur Anderson, WorldCom, Xerox-Modicorp in India, Robert max well, Satyam, 2G spectrum, etc., were these corporate scandals have put a question mark on the corporate governance standards of the companies in the world. A series of scams in financial sector of other developed and underdeveloped countries including India brought in its wake need for a renewed thrust on good corporate governance. It is a key part of the contract that underpins economic growth in a market economy and public faith in the system. The importance of good corporate governance goes for beyond the interests of shareholders in an individual company. Indeed, the central corporate governance principles of transparency and accountability are crucial to the integrity and legal credibility to the market system. Because of the corporate misbehavior, the public, employees and other stakeholders are deliberately misled. Also there must be genuine need of whistle blowers in every corporate. The government intervention is must and they should also prove its integrity and commitments to a corruption-free government.

***KEYWORDS**: Corporate citizenship, Corruption-free, Ethics, social responsibility, Boards, Directors, Non-executive directors, Whistle blowers.*

1. INTRODUCTION

Milton Friedman, Nobel Laureate in economics, once asserted that the sole aim of a business is and should be the maximization of shareholders' value. Social mission, according to him, are the

responsibility of individuals, social organizations and the government. The present thinking of people is, however, different from that of Milton Friedman. Even the largest of large modern corporates have attained the present size due to full support of shareholders, suppliers of long-term and short-term assets, lenders, suppliers of raw materials, employees, government, the local community and society at large, which includes present and potential customers also. Every firm is so dependent on its social environment that it can neither survive nor grow without full social acceptance and approval of all the constituents of the environment in particular, society at large and the government in general.

All of us might have heard the old dictum: "See no evil, Speak no evil, Hear no evil", through the pictures of three monkeys--each one of them covering their eyes, mouth and ears respectively. This dictum has a precious educative value both for individuals as well institutions. The learning point in this saying is that every citizen of the country and every business unit of firm of the country must aim at becoming good corporate citizens of the country and the world as a whole. But that can happen only when one and oneself are world-class in quality of goods, services, it's pricing, etc. and therefore, enjoy excellent image within the area, country, and at Global level.

2. RISING OF CORPORATE GOVERNANCE

The bad behavior of companies globally has brought the phrase. "Corporate governance" back into the limelight. The Enron, Arthur Ander son, world com, Xerox-Modi capus in India, Robert max well, Satyam,2G spectrum etc., were these corporate scandals have put a question mark on the corporate governance standards of the companies in the world. The meteoric fall in the fortunes of several giant corporate in U.S and U.K also a series of scams in financial sector of other developed and underdeveloped countries including India brought in its wake need for a renewed thrust on good corporate governance. The failure of corporate governance in several countries has opened up questions about the values of business leaders themselves and their accountability to the society.[(1)]

Finance and account personnel of an organization have an act in public interest, an interest which is more easily felt and known compared to other areas of business. Finance and accounting professionals have to follow certain basics ethical norms in the interest of not just an individual or an organization but the public at large. Because as professionals, they have been entrusted with the task of ensuring that the business organizations are more open accountable.

Until some years ago, business surveys about the financial honesty of the top management showed that the public greatly believed in their righteousness, or rather, the public found it convenient to believe in their righteousness. But one after another, the commercial idols crumbled**.** In some cases, the insiders working in a small capacity and having information about financial scams exposed the wrongdoers. In these cases, although the employees know of the financial wrongdoings, and know that they could be and should be reported, they did not do it. The reason is insecurity for both their job and life. This also amounts to unethical conduct.[(2)]

Business ethics is a Universal Phenomenon- The concept of business ethic and social responsibility is a global phenomenon and is recognized throughout the world.-nay a cult with most of the progressive and future –looking corporate.

Good governance goes beyond common sense. It is a key part of the contract that underpins economic growth in a market economy and public faith in that system. The recent spate of U.S corporate failures and breakdowns in truthful accounting has undermined people's faith in financial reporting, corporate leadership, and the integrity of markets the world over(Witherell, 2002)[3]. The fact that the wave of scandals has come hot on the heels of collapse in the hi-tech bubble has a sharp ironic flavor. Both events have their roots in the heady days of stock market exuberance, when anything was possible, from creating multi-billion dollars companies with little more than an idea, an investment angel and a lot of faith, to believing that markets would but any yearn a group of fast-talking executives could spin, even if to cover-up serious losses and illegal practices.

The corporate scandals and the bursting of the hi-tech bubble have different causes though, wrong management decisions and cover-ups in one, and bloated investment assessment followed by a sharp market correction that spelt the end for thousands of hi-tech wannabes in the other. Still, it is difficult to disentangle the negative effects these two parallel developments have had on the confidence of investors. With the bursting of the hi-tech bubble, share values were written down and venture capitalists took a bruising, as did many shareholders. That is the downside of committing resources to investments with a high risk-high reward profile. But in the cases of corporate misbehavior, the public, employees and other stakeholders are deliberately mislead. They have now lost many billions of dollars, and in some cases their life savings, while some insiders benefited.

The truly unfortunate part is that both events might in their own way have been avoided (or at least anticipated), if effective corporate governance and high levels of corporate responsibility had been respected. The role of good governance and corporate responsibility in helping to assure the well functioning markets needed for economic growth and development cannot be taken for granted. This idea has been repeated by government and business leaders the world over and most recently reaffirmed at summits from Doha to Johannesburg.

Clearly, the importance of good corporate governance goes for beyond the interests of shareholders in an individual company. Indeed, the central corporate governance principles of transparency and accountability are crucial to the integrity and legal credibility to the market system.

The financial scandals of World's major companies teach us that----

- The firm does not always make decisions which serve the investors' interest:
- The directors do not ensure that the financial operations of the firm protect shareholders' interest;
- The financial statements of a firm are not necessarily a true reflective of its financial health;
- Even independent auditors fail to rectify the financial statement, which should be true and fair view.

- Quality behavior by high level executives.
- Increasing acceptance of aggressive accounts profit and loss and made willingness of CFOs and CEOs.
- Emergences of the CEO as media share
- Exorbitant compensation, along with growing director's fees, second contribution to the problems.
- Finally, a board ineffectiveness for a number of reasons such as directors who are mere rubber stamps.

3. MIS FOR BOARD OF DIRECTORS

This is a rather nebulous aspect of board functioning. So far as part-time outside directors are concerned, they normally receive a file of papers, few days in advance of the Board meeting from the company secretary. The agenda is prepared by the enterprise itself, consisting of certain regular features and certain non –recurring items. The initial agenda is drafted by the secretary and then the managing director takes a hard look at it. Outside directors are not requested to initiate agenda items on their own. While attending board meetings, if such directors ask for more or undisclosed information, it is not directly denied.

Unquestioning BODs- Directors who have family, social or business ties with the chief executive or have served very long on the board, may no longer be objective in their judgment. Thus these directors serve limited purpose in terms of questioning or cautioning the CEO about his action.(4)

4. MUSHROOMS OF CORPORATE SCAMS AND SCANDALS-INDIAN PERCEPTIVE

As India enter the 21st Century and half way through the sixth decade of free existence the country is facing an avalanche of corruptions, scandals and scams. Besides, infest of all levels and sections of society, corruption has undergone a significant qualitative change and an enormous quantitative expansion. The tarnished Bofors, HDW submarine, cement and other scandals of 1980s and the bank scam, sugar scandal, hawala pay off etc. of the 1990s are some of the extreme instances of corruption and malpractices at high places. But corruption, denigration of values and unethical practices are becoming a way of life. It has become essential for a large section of the country's population to give bribes and spend money to get even legitimate things done-from maternity hospitals to burial grounds.(5)

Corporate world is no exception. Large amounts of monies change hands, mal – practices from Board level to the lowest employee, favoritism and nepotism, impair accumulation of wealth in the hands of few at the cost of many poor, irregular appointments, avoidance of taxes and ill conceived down sizing, are but a few of the areas of moral bankrupts. The ethics of corporate governance is the determination of what is 'right' 'fair', 'proper' and 'just' in decisions and actions that effect after people – goes for beyond simple questions of bribery, theft and collusion.

Ninety percent of companies have codes of conduct and 70 percent have statements of visions and values (Madsen and Shafritz, 1990)[6]. Does this mean that most companies have what they need? No. Though most of these companies have statements of values and codes of conduct, many might be better off if they did not have them. Many of them do not do anything with these documents. They simply paste them on the wall to impress employees, customers, suppliers and the public. As a result, the organizations loose credibility by proclaiming values but not living by them.[7]

5. LEGAL ASPECTS AND LIABILITIES OF DIRECTORS

The ethical temperature of any business or capital market depends on three factors. The first is the individuals' sense of values. The second is the social values accepted by the business and industry social values will depend upon the standards set up by professional bodies like the Association of Chartered accountants or Cost accountants and so on. The third and perhaps the most decisive factor is the system. It is the main challenges. This system does not encourage corporate governance.

Corporate governance is primarily focused on strategic land concern for accountability and control. Good governance is fundamental to effective performance in all types of organizations. A system of checks and balance is important for ensuring a focus on multiple, perspective and constituencies; on proper distribution of resources, power and decision authority, and on the responsibility for making changes and setting direction. Given the increasing complexity of governance and corporate responsibility, the relationship between corporate governance and ethical leadership is an important one to consider. As recent scandals have illuminated, ethical leadership, whether embodied by top executive or a board of directors has significant effects on stakeholder relationships and subsequent performance.

The secret of success lies in pooling together the strength of the two groups so as to derive maximum advantage of mixed boards. In a large measure it would depend upon the chairman who can create a sense of partnership, collective leadership, mutual understandings, respect and commitment to the common goals on the part of the groups. He also plays a key role in ensuring that outside directors identify with the board and the organization. It will be no exaggeration to say that the effectiveness with which the chairman mange's the sensitive relationship between the executive and the non-executive member and develop a team spirit. He can convert this sensitive relationship into a synergistic one to the mutual benefit and satisfaction of both the enterprise and the individual directors. Fifty per cent of non executive directors, in the committees, also ensure better strategic, long-term management of corporate affairs.

Directors are elected representatives of shareholders engaged in directing the affairs of the company on its behalf. They stand in a fiduciary position towards the company in respect of their powers and capital under their control. Directors are, therefore, liable for negligence, breach of Trust misfeasance in either of their capacities as agents or trustees or as both, where they have to ensure that they act prudently and genuinely. The companies Act also imposes both civil and criminal liabilities for misrepresentation in offer documents and annual accounts, failure to refund subscription money to investors and also generally for contravention of the law. Over the years, the following duties have been evolved by courts for directors under the common law: [8]

- Duty of care and skill in the discharge of functions as directors.
- Duty to attend Board meetings and devote sufficient time and attention to affairs of the company.
- Duty not to be negligent and not to commit or let others commit tort-liable acts.
- Duty not to exceed powers.
- Duty to have regard to and act in the best interests of the company and its stakeholders and customers.
- Duty of creditors if business is conducted with intent to defraud them.
- Duty of confidentiality.
- Duty not to make secret profits and make good losses, if occurred due to breach of duty, negligence, etc.
- Duty not to exercise powers for collateral purpose.
- Duty not to misapply company assets.
- Duty not to compete with the company.

Indian business, industry, Government and the Reserve Bank of India have more than 100 years of experience of managing and regulating corporate sector. As we know, corporate of 20th century are being managed through a host of committees like BODs, audit committees etc. rather than individual identities. The main objectives of theses committees are to run the company in a transparent manner so that the firm is cited as an example of good governance. Transparency is, therefore a big image-booster for corporate.

So the board members must be accountable to all members, not just majority shareholders. They should act independently of management and the third parties. More than Compensation, audit, board and other committees must consist of half of independent directors. The participation in the Board may be people from the following walks of life can make significant contribution to the effectiveness of the Board:

- An outstanding technologist with a considerable experience in related fields.
- A renowned marketing expert.
- An experienced person from the world of banking fiancé or taxation.
- An eminent person from legal profession

- A well-known business economist or a management consultant, academician who can contribute innovative ideas or generate fresh thinking.

- A distinguished administrator who had his useful innings in the government administration.

6. NEED OF WHISTLE BLOWERS

With the increase in corporate corruption and frauds running into crores of rupees or billions of dollars, there seems to be a genuine need of whistle blowers in every corporate above a cut –off point of turnover of say, Rs 100 crores. (WorldCom's internal auditor Cynthia copper, when she saw the wrong entries and artificially blown up profits, reported it.) . The Whistle blower would be on the payrolls of the company, with normal career path progression. His function would be generally to keep his eyes and ears open: should himself be a person of proven integrity and job knowledge: should be well aware of the working of the company with reasonable work experience of 15years or more, and must be known for his independent style of working. He should be directly answerable to the Board of directors of the company and the CVC, although he may consult the chairman or keep him/her informed generally. In case the Chairman & CEO is himself involved in the scandal, he should have the authority to bring the matter directly to the Board of the Company for necessary action, placing his recommendations before the board for its considerations.

The government intervention is a must. It has to simultaneously devise a system by which the office of whistle blowing is made hundred percent safe for the informant and the whistle blowers. In fact, the grave risk to the informants increases in direct proportion to the volume of the financial fraud or the scandal. The government and the society at large must realize the indispensability of whistle-blowing, as it is a sure way of getting timely signals of corrupt practices in high places across the businesses. In the absences of such system, the scams may not surface for years till it assumes monstrous proportions, as in the case of Telgi's Stamp scam.

FOCUS: A joint report by the World Bank and the UNODC published on Monday, October 24, 2011 urges governments to devote more resources to training investigators in fighting financial crime, including large-scale corruption, money laundering and terrorist financing. It has illustrated in the report, the use of shell companies through reference to a case in 2002, When Kenya invited bids to replace its passport printing system. Despite a six euro million bid from French firm, a 31,89euro million contract was awarded to Anglo Leasing and Finance Ltd., an unknown shell company. The report said leaks that by whistle-blowers suggested that corrupt senior politicians planned to pocket the excess funds from the deal. Attempts to investigate the allegations were frustrated when it proved impossible to find out who really controlled Anglo leasing. The scandal nearly brought down the Kenyan Government.[(9)]

7. GOOD CORPORATE CITIZENSHIP:

A broad definition given by the doyen of corporate governance Sir Adrian Cadbury is - 'exercise of power in a responsible way'. He further observes, 'Corporate governance is concerned with holding the balance between economic and social goals and between individual and community

goals. The 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, corporation and society'. Companies recognizes that a strategy for corporate responsibility can play a valuable role not only in meeting the challenges of globalization by mitigating risk domestically and internationally but also in providing benefits beyond risk management—

The quality of governance depends chiefly on the following factors:

- Integrity of the management
- Accountability and ability of the board
- Financial reporting
- Participation of stakeholders in the management
- Quality of corporate reporting
- Compliance of statutory regulations

Based on the suggestions and recommendations of business sector advisory group of OECD, Blue Ribbon committee of US and Cadbury and Greenbury committees of the UK and also all the five committee on the corporate governance of India- CII committee, Ganguli committee, K.M.Birla Committee (SEBI), Naresh Chandra committee(Govt.of India) and Narayan Murthy Committee (SEBI) an effort has been made to develop a simple but practical corporate governance rating model, which is both easy to understand and implement. The suggested model is based on the following three pillars of corporate Governance: [10]

- Hard core parameters – is a legal requirements prescribed by the government of the regulators i.e SEBI in case of India and SEC in the US. This is thus, a legal requirement and every firm, without exception, has to fall in line.
- Core Parameters- survival and growth being the goal of the firm, it must aim at creating shareholders wealth in terms of EVA and MVA or Economic Profit
- Desirable Parameter, i.e a firm aspires to act as an ethical person inspired by societal welfare of locality, state, country and the world as a whole.

The aforesaid three parameters are based on two strong motives of SURVIVAL and GROWTH. There are several corporate governance structure available in the developed world but there is no one structure, which can be singled out as being better than the others. There is no "one size fits all" structure for corporate governance. The Committee's recommendations are not therefore based on any one model but are designed for the Indian environment. This type of models/recommendations should extend to government also. The Government should also prove its integrity and commitments to a Corruption free and Scandal-free government.

8. FINAL WORD

Corporate Governance extends beyond corporate law. Its fundamental objective is not mere fulfillment of the requirements of law but in ensuring commitment of the board in managing the company in a transparent manner for maximizing long term share holder value. The corporate governance has as many votaries as claimants. Among the latter, the Committee has primarily focused its recommendations on investors and shareholders, as they are the prime constituencies of SEBI. Effectiveness of corporate governance system cannot merely be legislated by law neither can any system of Corporate Governance be static. As competition increases, technology pronounces the death of distance and speeds up communications, and the environment in which firms operate in India also changes. In this dynamic environment, the systems of corporate governance also need to evolve. The committee believes that its recommendations will go a long way in raising the standards of corporate governance in Indian firms and make them attractive destinations for local and global capital. These recommendations will also form the base for further evolution of the structure of corporate governance in consonance with the rapidly changing economic and industrial environment of the country in the new millennium.

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ABBREVIATIONS

BOD-Board of Directors

CEO-Chief Executive Officer

CFO-Chief Financial Officer

CII- Confederation of Indian Industries

MIS- Management Information system

OECD-Organization for Economic Cooperation and Development

SEBI- Securities Exchange Board of India

SEC-Security Exchange of Commission

UNODC-United Nation Office of on Drugs and Crime