Vartak, 2018  
Volume 4 Issue 1, pp.17-32  
Date of Publication: 15th March 2018  
DOI:https://dx.doi.org/10.20319/pijss.2018.41.1732  
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CORPORATE GOVERNANCE: A LITERATURE REVIEW WITH A FOCUS ON PUBLIC SECTOR UNDERTAKINGS IN INDIA

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Abstract

Business dynamic of today’s market has changed and as a result, market need to focus on transparency in the business hence corporate governance has become important for all sectors including government organization. Corporate Governance is steadily focusing on building the confidence of its various stakeholders including Customers, Suppliers, employees, shareholders, Bankers and Society at large. As these public-sector organization (PSU) are socially responsible unit, it becomes utmost important for these organization to adhere to these clauses because these are run by tax payer money for its operation. A company is directed and controlled with the system of rules, practices and process of the corporate governance. The corporate Governance framework of any Public-Sector Undertakings depends upon the four pillars namely Transparency, Full disclosures, Independent monitoring and Fairness to all. Study examines the existing corporate Governance environment, practice and institutional framework in PSUs in India. It is a theoretic review of corporate governance of PSU in India. This paper attempts to understand the various reason for failure to hold governance of the PSUs in India and accordingly provide the solutions to improve the implementation of corporate governance.

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Though the public sector has unique characteristics but need to adhere the corporate governance to bring the accountability, transparency in business and enhance confidence of the stakeholders. This paper is based on purely secondary research from the various literature available in the journal. It is purely conceptual paper based on the authors recommendations.

**Keywords**

Corporate Governance, Transparency, Public sector, Independent monitoring

1. Introduction

Indian Economy is a mixed economy, and both the public sector and private sector are indispensable for the all-round economic growth of the country. The private sector enterprises are primarily driven by profit motive, not by welfare purposes or public interest. Therefore, private business owners are not interested in setting up their businesses and investing in those areas of the economy which are very closely related to public interest, wherein massive capital investment is required, but profit obtained by such investment is either insufficient or can be achieved after a long period. The Government directly takes part in the business activities in those sectors setting up the public-sector undertakings or enterprises. The Central Government or the state government are the owners of the public-sector undertakings (PSU) or Public-Sector Enterprises are undertakings or enterprises. The corporate governance of Public Sector Undertakings is not only controlled but also financed by Central and State government with the basic focus on community benefit and balanced economic growth whereas profitable, or business attention takes a secondary position. Company’s Act makes the government a major stakeholder in public Sector Units. Central Public-Sector Units (CPSU) in India function differently from Private sector. They have a precise feature like government interference, ministerial command, delays in appointment of independent director, non-compliance of disclosure of norms, accountability to both general public and government. Companies with decent corporate governance in place become easy access to raise capital in the market. Minority shareholders in CPSU have been given privileges like expose of Data, receiving notices, participating in the general shareholders meeting, transferring their shares and receiving dividends. They can apply to Ministry of Corporate affairs or SEBI in case of any inconsistency noticed. In spite of these major decision taken by the government without the permission of minority shareholders as they are owner for more than 51% of share in the company. Colgate scam is related example where in
the regime of UPA government where minority shareholders interest was neglected for the conferred benefit of the lobbies of ministries and industrials.

2. Literature Review

(Singh. 2010) The researcher has found out that there are sufficient rules and regulations in the law but there is a problem of implementation of those rules and regulations. Researcher has also suggested that there should be a continuous review of an independent regulator, He has also noticed that the auditor and audit committee should work hand on hand to enhance the consistency factor of accounting documents. He has also examined that the Satyam was just a loophole rather than the rule.

(Chandrani.Chattopadhyay 2011) The researcher has investigated the problems faced by the PSUs in India. As the ownership is with the government and the they used the tax payer’s money for their operations. He has tried to find out the failure to sustain Corporate governance. He has found out some issues which includes contradictory objectives, extreme government interfering, lack of commercial and managerial self-sufficiency and absenteeism of self-governing directors. The PSU has its own features but it should concentrate on the impairments of corporate Governance and bring out the transparency and accountability.

(Singhal 2012) The researcher has investigated the importance of Corporate governance for the new developments in a worldwide viewpoint. They have also compared major issues of PSU in India, there performances and responsibility with public sector in India. Managerial autonomy, board structure, roles undertaken by nonexecutive directors and compliance with SEBI policies for planning and executions. These are the factors they have gone through in their research. Researcher has also suggested that government should frame good policy for each PSU to safeguard its effective working and suggest severe CG practices for the unlisted PSU also. Managerial reward, endorsement of projects and performance management systems barring matters of national interest should be kept resistant from partisan and government involvement by PSU. The standards should be set by the government to employ capable experts as board members who have a good understanding of the business and the sector. Implementation of corporate governance norms for both listed and unlisted, should be supervised consistently. The government
required to pay continuous attention on the performance of its Board of directors in cases where it acts as a promoter.

Rujitha T R (2012), Researcher has found that the objective of the audit committee has to be continued to include mistake of risk management control systems to create an environment for the obedience to the practices of good corporate governance. Since audit committee plays very important role in the corporate governance so continuous monitoring is required. The role of audit committee gains more prominence as there is a growing concern about the quality of financial statements for the protection of stake holders interest. To ensure the effective implementation and compliance of standards of corporate governance by SEBI rules and regulations is a need of an hour at the ground level.

(V.N., 2012) The researcher has concluded that the provisions of Corporate Governance should be harmonized to facilitate easy compliance and economy for companies. He has suggested some key areas for good Corporate Governance that adopt formal and transparent process. Segregate the roles of CEO and the chairman of the Board. Evaluate the performance of senior management team and CEO annually. Peer evaluation of Independent Director should be adopted. He has also suggested that we should understand the risk, strategy and business models, they should also have effective oversight of internal and external auditors, encourage companies to introduce whistle blower policies.

(Meenu. 2012) The researcher has investigated Corporate governance is proving a very efficient and effective system for Indian economy and it saves the interest of shareholders but he has observed that some more efficient monitoring and transparent internal audit system, efficient board and management can lead it to effective corporate governance.

(Gopal, 2013) Researchers have investigated that good corporate governance depends upon the effective board, the independent auditors, role of professionals and the effective legislation. According to them to improve corporate governance certain issues need to solve. These issues are effectiveness of board, the auditor, role of professionals and the legislation.

(Rupali, M 2015) The Public Sector Undertakings counted very poorly on Corporate Governance and compulsory by the government. The state-owned Companies has violated rules related to boards Independence, nominations, Corporate Social Responsibility Committees, appointment of Auditor and Women Director on the board. According to Stakeholders Empowerment Services (SES) studied the top 27 Public Sector Undertakings
the research says that 25 do not meet the criteria for Independence of the board, while nearly 25% do not have a women Director, almost 50% failed to create a compliant CSR Committee, 80% do not have compliant committee and Nomination and remuneration Committee.

(Ravi 2016) It is a case of collective failure of the system in India. Ruling party and opposition parties played a blame game. Appointments of CEO through political involvement. Bank has not made the official complaint. He has provided the solution of this problem in India is to provide teeth to the watch dog organizations like SEBI, grant more powers to investigating agencies like CBI, ensuring more accountability from public banks, strengthen the other supervisor institutions and decongest courts and bringing culprit to swift justice. The corporation must be made to follow the corporate governance practices both in letter and spirit is suggested by him.

(K.. M. 2017) The purpose of the paper was to analyze the legal provisions relating to the protection extended to the private employees who blows the whistle. The research has been done from primary and secondary data where researcher has read the whistle blowers Protection act, 2011, official secrets act 1923, Right to information act 2005 etc. He has found that this Acts provides a mechanism to receive complaints and inquire into allegations of corruptions or misuse of power by the public servant only. The need of exhaustive and complete law is also necessary so that the evils like corruption can curbed completely and effectively.

(Qazi. 2017) Researcher has found that the transparent and effective Corporate governance has played by SEBI. It To improve the transparency and integrity of the Market it has constituted several committees. Major amendments are made under the listing Agreement clause 49 that includes Shareholder right, provisions regarding independent Directors, related party transactions, Disclosure and transparency. He found that India has a really best law but the problem is that how the corporate is going to monitor and implement these new laws to improve the Corporate Governance.

Lisma L et al (2017), Researchers have examined that the basic concepts of transparency were an attitude or action of the company to disclose entire business and information material about the effects that can affect the decisions of investors or other stakeholders. They proved that information disclosure is determined by 3 (three) factors: clear, accurate, and timely. In applying
the principles of transparency, the board of directors is responsible for providing information to stakeholders both internal and external. The application of the principle of transparency in the limited company shows that the level of transparency tends to be higher in term of nonfinancial information, but instead tend to be closed when it comes to financial information, particularly on the closed company or not a public company.

3. Objectives Of The Study

1) To study the corporate governance in public sector Undertakings in India
2) To understand the challenges faced to adhere the CG

4. Background Of Public Sector Undertakings In India

The government-owned corporations are termed as Public-Sector Undertakings (PSUs) in India. A business is maintained, Managed and controlled by State, Central or local government is also known as public sector Undertakings. Their main aim is to maximize the social welfare and secure the public interest. The PSU has some features like government ownership and management where the business is fully management by either state or central government or in some cases it is partly owned by government or partly by private industrialist and the public. But mostly it is owned by government. The features are that the fund Or Capital is raised by the government and they have to make the provision in their fund in the budget. Another motive of the PSU is the public welfare where basically their main aim is not to earn the profit but to provide the service to the public at lower or subsidized rate. For e.g. Indian Oil Corporation or Gas Authority of India Limited. PSU’s are concentrating on providing public utility services like transport, tele communication, electricity etc. PSU’s are having the accountability towards the public and they have excessive formalities in their operations.

In a PSU the majority of the paid-up share capital which is 51% or more is held by central government or by any state government or partly by the central governments and partly by one or more state governments. The Comptroller and Auditor General of India audits government companies. For any Government Companies the Comptroller of Audit General of India has the control to employ the Auditor and to direct the way in which the Auditor shall audit the company's accounts.

The PSUs exist and operate in India in three forms, such as, the Departmental Undertakings, such as, railways, postal services, Broadcast (Doordarshan and All India Radio),
etc. in this form it comes under control of some ministry of the Government and financed and controlled by any other Government Department.

Secondly, the Statutory Public Corporations created by the Parliament or State Legislature by passing an Act which defines the powers, functions, management, organizational and administrative structures of such corporations, such as the Food Corporation of India, Life Insurance Corporation of India, etc.

Thirdly, the Government Companies also fall under the purview of PSU. A company is deemed to be a Government company or PSU if the Government holds 51 percent or more of its paid-up capital. For example, Hindustan Machine Tools Limited, Steel Authority of India Limited, etc.

4.1 Definition of Corporate Governance by Securities Exchange of Board of India

Corporate Governance is defined as “A set of systems, processes and principles which ensure that a company is governed in the best interest of all stakeholders.” It ensures Commitment to values and ethical conduct of business; Transparency in business transactions; Statutory and legal compliance; adequate disclosures and Effective decision-making to achieve corporate objectives. In other words, Corporate Governance is about promoting corporate fairness, transparency and accountability. Good Corporate Governance is simply Good Business.

5. Corporate Governance Of PSUs

Corporate Governance is growing trend and concept which helps as a tool to control to function the operation across the world by higher transparency it also ensure investors both individual and institutional shareholders that organizations will not misuse their funds in the business operation. Public sector Undertakings with important social responsibilities to fulfill other than make profits also come under the scanner because they use the tax payers money for their operations. (Chattopadhyay, 2011) Corporate Governance protecting the interest of investors also, it aims at achieving fairness and transparency in transactions with all the stakeholders including customers, employees, investors, vendors, government and the society at large. Shareholders are the owners of the company but actually they play a role of Investors and always investor are interested in company’s profitability, fairness towards them and Capability. The corporate Governance regulations in India promote the rights of shareholders, while at the same time ensure the interest of the stakeholders are also concurrently sheltered.
The Board of Directors is considered as a crucial part of the corporate governance. The Board’s primary role is to monitor management on behalf of the shareholders. The primary responsibility of governing a company (whether private or Government Company) is upon its Board of Directors. The Board should function as follows –

1. To keep control over the company and monitor the executive management of the company the Board should meet regularly,
2. The Board of Directors should steer discussions properly in the meetings with regard to the affairs of the company;
3. The Board of Directors has responsibilities in the matter of employment and dismissal of the CEO;
4. The Board of Directors should provide guidance and supervise on the selection, evaluation, etc. of the senior management of the company;
5. The Board should monitor the performance of the company in the fulfilment of its business objectives, plans, and strategies. The Board also oversees to ascertain the proper management of the company;
6. The Board also ensures compliance with the applicable laws, rules, and regulations, etc.

The Central Public-Sector Enterprises (CPSEs) has to comply with the corporate governance rules which is made by the Department of Public Enterprises under the Ministry of Heavy Industries and Public Enterprises, New Delhi.

The directions of Corporate Governance initiatives have been dictated mainly by Companies Act, 1956, Securities and Exchange Board of India (SEBI), Department of Public Enterprises (DPE), The DPE has issued governance guidelines on CG for Central Public-Sector Undertakings (CPSU’s)

Listed CPSUs have to follow the SEBI guidelines on corporate governance and in addition they shall follow those provision which do not exist in SEBI guidelines nor contradict any provisions of SEBI guidelines. The non-listed CPSUs shall follow the guidelines on CG given by DPE which is mandatory. DPE first issued guidelines on CG in Nov 1992 and further in Nov 2001, June 2007 and on the basis of experience gained during this period it decided to reissue the DPE guidelines in May 2010. These guidelines have been made mandatory and applicable to all CPSUs. Board of Directors, Audit Committee, Remuneration, Committee, Subsidiary, Companies Disclosures Report, Compliance and Schedule of Implementation.
The Functional, Nominee and Independent Directors would be the best combination of the board of Directors. The Functional Directors includes CMD/MD which should not be more than 50% of the actual capacity of the Board. The Nominee Directors appointed by Government/other CPSEs shall be restricted to a maximum of two. In case of a CPSU listed on the Stock Exchanges and whose Board of Directors is headed by an Executive Chairman, the number of Independent Directors shall be at least 50% of Board Members in case of all other CPSEs at least one-third of the Board Members should be Independent Directors.

Independent Directors should be two third of the total directors. An Independent Director should be the chairperson of the audit committee. All financial matters of Company should be known to the auditors of the company. The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries. The Company Secretary shall act as the Secretary to the Audit Committee.

There are total 89 PSUs which include 48 CPSE where the direct holding of the Central Government or of other CPSE is fifty one percent or more. Twenty Five Public Sector Banks has the straight ownership and other PSB has the 51% or more ownership of the Central or State government. 5 State level Public Enterprise where the direct holding of the state Governemnt or other SLPE is 51% or more and 11 Other Companies where Central and/or State Governments and/or Government Companies and/or Government Financial Institutions has the single largest shareholding.

6. Characteristics Of Indian PSU

Public sector undertakings are owned and operated by the Central and State Governments. There characteristics are as below:

6.1 State Ownership:

Public undertakings are fully owned by the Government. For example, Reserve Bank of India is owned by the Central Government while Maharashtra State road Transport Corporation is owned by the Government of Maharashtra State.

6.2 Government Control of PSU:

The control in public sector undertaking lies with the Government themselves.
6.3 Service Motive:

The basic objective of a public sector undertaking is to provide the service to the public. In doing so at time these organization incur the loss. Many a time government give subsidies for the various product and services to uplift the society by large.

6.4 State Financing:

Government of India provides the capital and funds to various state by allocation and through the appropriate budget. Even some time that provide the loan to the state.

6.5 Bureaucratic Management:

There is clear rules and regulation which are prescribed and followed by the government

6.6 Public Accountability:

These sectors are larger responsible to public for their performance and result. There annual audit are conducted by the Comptroller and Auditor General of India. Even, their annual reports are discussion in the Parliament or the State legislature.

7. Challenges Faced By PSU

The government is trying to improve the transparency and accountability levels of PSUs. In order to handle the issues like to failing to comply with clause 49 of the SEBI listing agreement, independence of PSUs government focuses on their implementation.

7.1 Actual Standards of PSUS Vis-A-Vis Private Sector

Private sectors are more adhere towards the rules and regulations of the Corporate governance as they have to compete with the international business. They always try to increase the market share in the international market. So they are good followers of Corporate governance but in the case of PSU they are not keen to increase the market share as well as they are not competing with the international brands. They stick on their own rules and regulations.

7.2 PSUS Have the Issue of Ownership Concentration and Control

As the majority of the ownership is with the government they have the full control on all decisions and they are least bothered about the minority stakeholders. As stated by (Chattopadhyay, 2011) complete independence is not granted to the board of public Sector units and unnecessary interference is created in the working by various ministries.

7.3 Lack of Respect for Shareholders and Low Financial Disclosure

As we have already discussed about ownership concentration the outside shareholders get very less respect. Financial disclosures are also not up to date.

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7.4 Balancing Commercial and Managerial Autonomy

Public-sector enterprises have got the approval by various level of independence by Indian government. However, the PSU restricting their decision making in various activities and its controlled by government who are limiting their autonomy and therefor it effects on their daily performance. Managerial autonomy and board composition should be delink according to current norms. To fulfill the vacancies in PSU for non-executive Directors it is impossible for the PSU due to government interference and it is ridiculous of their independence.

7.5 PSU Board Structures and Independent Directors

To select the capable professionals as board members who have good understanding of the business and the sector should be done by Government as per proper rules. To nominate the representatives of the Board large shareholders should be allowed. (Selarka , 2005). board members’ powers and any political association should be made independent of the executive management. The non-executive directors on PSU boards play important role to develop strategic priorities and providing a risk oversight in its governance.

7.6 Confiming Compliance with the SEBI Listing Agreement.

PSUs are covering behind in fulfilling with minimum requirements stated in Clause 49 of SEBI listing agreement by Several registered Navratna and Miniratna. When the Ministry of Corporate Affairs is stressing strongly on the implementation of corporate governance rules this straightly delays the upcoming forecasts of India Combined. To make proper disclosures within director’s and corporate governance reports and ensuring accountability the corrective action can be take. All the rules for CPSEs both listed and unlisted companies have to be applied constantly or not.

7.7 Shortage of Real Independent Directors

The role of independent Directors in the Boards of public sector undertakings is highly important in view of the Government’s interfering in their functioning. Independent Directors act as a counter balance in the interest of a company. But unluckily, official data reveals that almost all the PSU’s, including the Navratnas and Maharatnas which have excelled in their business despite being constrained by Government interference and influence in decision-making, are facing the critical shortage of Independent Directors who, if appointed, can help promote the efficient management and future of their companies. The absenteeism of Independent director is a gross damage of the Provisions of Companies Act. The law demands that the number of
Independent Directors should be equal to the combined strength of the salaried whole-time Directors and Government nominees.

7.8 Government as the Promoter

The performance of its Board of directors in cases where it performs as a promoter and a majority shareholder of the PSU should be monitor constantly by the Government. It should clearly provide the strategic layout for tackling various issues without modifying the independence and other powers of board of directors (Chattopadhyay, 2011). According to the Organization for Economic Cooperation and Development (OECD), the government should develop and issue an ownership policy that defines the overall objectives of state ownership, the state’s role in corporate governance of state-owned enterprises and how this policy is likely to be implemented.

7.9 Appointment of Audit Committee

Central Public-Sector Units lacks when they recruit retired staffs from the public sector in the name of the audit committee. So, their suggestions are of no use.

8. Conclusion

It has been identified after the literature review that, there are few issues and challenges faced by Indian companies on the issues of Corporate Governance. After the liberalization major development has been seen in corporate governance. Corporate governance has now playing very important role for the Public-Sector Enterprises (PSEs). Private as well as public sector are enactment of Clause 49 & Company Act 2013 (which has replaced Company Act 1956 is contributing both the sector for the Corporate governance standards.

There are problems related to independence, salary of the non-executive directors, deliberate engagement in low productive exercises, intervening ministerial agenda over the board agenda, goodness of the audit committee, the audit committee should get the extended support and compromising the minority shareholder’s interest etc. Implementing Corporate governance in such situations can only help CPSE in improving the performance in their respective fields. Independent Audit committee as per the corporate governance rules can deliver some useful suggestions that can help the CPSE companies to recover their performance and it will increase the confidence of the minority shareholders. CPSE should admire the rights of shareholder and inspire them to contribute in decision making of the company.
Non-executive directors on the board should be appointed on urgent basis as the transparency and accountability of the public-sector Undertakings is dependent upon the Non-executive directors. The people with correct attitude, qualification and vision should be considered while appointing the Non-executive director instead of referred people from public sector. It is also important to shorten the selection process by removing the many coatings involved in recruitment of board members. Weightage should be given to the knowledge, roles and responsibilities, training and compensation while selecting the board members.

Ethical decision making in public sector units also leads the way for good corporate governance. PSU should be ethical in their behavior while fulfilling with the law, trading with the minority shareholders, performance appraisal and engaging in day to day activities of the organization. It is not only the responsibility of the top-level management but each and every employee should give preference to the ethical behavior and they should accept it by positive mind.

The basic objectives of corporate governance are to attain the transparency in the business and to adhere the standard procedure and practices so as to maximize the value of various stakeholders of the organization. It requires the effort by the organization to understand and apply the standard laid down by the CG to become successful in the long run competition. Finally, India has a best corporate governance standard as compare to International practices but the success is depending on the good implementation of the Corporate governance

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