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A Study on Corporate Governance Issues and Challenges in Public Sector Undertakings in India

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Abstract:
Corporate governance has become crucial for all sectors, including government organizations, as a result of the altered nature of the commercial environment in today's market. Building the trust of its many stakeholders, including customers, suppliers, workers, shareholders, bankers, and society at large, is a constant focus of corporate governance. Since these public-sector organizations (PSUs) are operated with taxpayer money, it becomes crucial for these organizations to abide by these conditions since they are socially responsible units. A firm is managed and regulated using the corporate governance system of laws, customs, and procedures. Any public-sector undertaking's corporate governance system is based on four pillars: transparency, full disclosure, independent oversight, and equity for all. The current corporate governance environment, practices, and institutional structure of Indian PSUs are examined in the study. It is a theoretical analysis of public-sector corporate governance in India. This essay makes an effort to comprehend the various causes of the PSUs in India's inability to maintain corporate governance and, in turn, offers recommendations to enhance its application. Even if the public sector has distinctive qualities, it must conform to corporate governance to promote accountability, openness in business, and stakeholder confidence. This study is entirely based on secondary data and conceptual in nature.

Keywords: Corporate Governance, Accountability, Transparency, Public sector, Shareholders.

1. INTRODUCTION

When compared to other economies, the structure and mechanism of the Indian economy are very distinctive. India has a mixed economy, meaning that both the public and private sectors contribute significantly to the nation's total economic growth. When it comes to the private sector, it is entirely business-oriented and was created with the intention of making big profits. They avoid investing in sectors of the economy that are focused on the public good for this reason. Although a sizable expenditure is needed to invest in certain industries, the results ultimately obtained fall short of expectations and are not in line with industry standards.

The central or state governments are the owners of public sector undertakings (PSUs) or public sector enterprises. In PSUs, the Central or State Government not only governs but also finances corporate governance. Governments strive for balanced economic growth while concentrating primarily on benefits to society. According to the Company's Act, the government is a significant investor in PSUs. In India, PSUs are distinct from the private sector.

In the case of PSUs, issues like government interference, ministerial directives, delays in the recruitment of independent directors, etc., are more clearly observed. Minority shareholders in PSUs have advantages such as attending general shareholder meetings, getting notes, receiving dividends, and transferring shares, among other things. They can pursue the matter with the Ministry of Corporate Affairs or SEBI if any inconsistencies are found.

Despite the fact that the government has made significant decisions without consulting the minority owners who own 51% of the company. The Colgate Scam, so named because the interests of the minority owners were disregarded for the benefit of the ministry and industries, occurred under the rule of the UPA administration. Corporate governance has done a good job of contributing significantly to the national economy. The PSUs significantly contribute to the nation's economic expansion. The fundamental objectives of corporate governance are to oversee, examine, and guarantee the operation of the corporation.

2. LITERATURE REVIEW

- According to the research of **Pallavi Vartak** (2018)**,** "Corporate Governance: A Literature Review with a Focus on Public Sector Undertakings in India" is a topic worth studying. The paper makes an effort to comprehend the many factors that contribute to the PSUs in India's inability to hold governance, and it offers ideas to enhance the application of corporate governance. This paper is entirely based on secondary research from the numerous pieces of literature in the magazine. It is a strictly conceptual work that follows the authors' suggestions.
- **Mahesha N.M.** (2016) conducted research on the subject of "Corporate Governance in Public Sector Undertakings in India: Issues and Challenges" and came to the conclusion that Accountability and Responsibility in Corporate Governance are a must and a proper practice for improved performance of corporate organizations. All PSUs in India are expected to create and implement codes of conduct, adhere to tight disclosure requirements, and follow accounting standards. However, socially responsible governance is the most crucial aspect of corporate governance. All business organizations must address and properly execute CSR since it is such a critical component of company behaviour and governance.
- A comparative study of public and private sector banks is conducted by **Ankita Asthana & M.L. Dutt** (2013) on the subject of "The Extent of Disclosure Code of Corporate Governance in India." The study adds novelty by measuring not only the disclosure practices that are required and optional for the scheduled commercial banks listed on the stock market, but also by examining the exemplary committees formed by banks in the public and private sectors that demonstrate their interest in forming additional corporate governance committees over and above the one that is advised by SEBI and the Reserve Bank of India (RBI) to reduce fraud.
- Corporate Governance in Public Sector Undertakings in India is the topic of article by **Pankaj Sinha and Anushree Singhal** (2012). In light of recent developments, this study examines the importance of corporate governance from a worldwide standpoint. Additionally, it emphasizes the significant corporate governance problems in India's public sector organizations and their effects on performance and accountability as compared to the private sector. Public sector organizations need to build well-defined plans and place a significant emphasis on planning and execution components

for the many factors including management autonomy, board structure, responsibilities played by non-executive directors, and compliance with SEBI laws that have been provided.

- Public Sector Corporate Governance Disclosures: An Examination of Annual Reporting Practices in Queensland is the subject of the study by **Christine Ryan and Chew Ng** (2008). The outcomes show that the generated set of principles may be applied to many types of public bodies on a broad scale. The disclosure of corporate governance is fragmented nonetheless, as a result of the absence of a well-established framework for the public sector. Compared to other public sector organizations, government-owned firms have stronger disclosure practices for the majority of principles. The goal of the paper is to spark discussion about corporate governance in the public sector and serve as a foundation for a more thorough examination of corporate governance disclosures.

3. OBJECTIVES OF THE STUDY

- To study corporate governance in public sector Undertakings in India.
- To understand the issues and challenges faced by PSUs in adhering to the CG in India.

4. JUSTIFICATIONS FOR THE NECESSITY OF STRONG CORPORATE GOVERNANCE

- Effective corporate governance reduces the amount of scandals that the business sector experiences. – If corporate governance is carried out effectively, it supports a strong financial system and aids in economic expansion.
- Corporate governance contributes to the availability of external sources of funding, which encourages strong investment growth and expands job prospects.
- If corporate governance is subpar, new enterprises' ability to develop will be hampered.
- Effective corporate governance lowers the cost of capital while increasing the company's value.
- With the right corporate governance, the mistrust among the many stakeholders is diminished.

5. CORPORATE GOVERNANCE IN PSUs

When India gained its independence, it was left with extremely wide wealth gaps, subpar infrastructure, and poorly developed technology resources. The nation's infrastructure needed to be improved, and there was a great demand for expansion in industries like steel, telecommunications, and power.

The private sector is discouraged from joining certain fields since doing so would involve significant investments with slow returns. When it comes to managing PSUs, the government is ineffective compared to how it should be managing the public sector. Government management in areas like de-licensing and deregulation has been shown to be ineffective. And ultimately, this was done. During the credit crisis, the public sector showed its worth and evolved into a new, less-impacted sector. The market capitalization of the listed PSUs has more than quadrupled from the previous year, which also represents the process of disinvestment.

The idea of corporate governance is expanding frequently, and it is a tool that promotes more openness in business operations globally. It primarily guarantees that both individual and institutional investors utilize their money in a transparent manner and avoid misusing it when conducting business. PSUs are concerned with the social duties that a business should have in addition to producing profits. Given that businesses are profiting from the money paid by the nation's tax payers, they should satisfy their social obligations. It primarily strives to increase transparency among the Company's partners, shareholders, and staff.

The shareholders of the company are essentially its owners, but their job is very different; they take on the position of investors and carry out their duties in that capacity. An investor in a company is constantly enthusiastic and interested in the success of the enterprise and strives to ensure its fairness and capability. A key component of corporate governance is seen to be the board of directors.

6. INDIA'S CORPORATE GOVERNANCE FRAMEWORK FOR PSUs

The Corporate Governance framework for listed PSUs in India is provided by provisions included in the Companies Act, 2013, SEBI recommendations on Corporate Governance, and DPE guidelines on Corporate Governance for Central Public-Sector Enterprises. Non-listed PSUs are not subject to SEBI regulations.

6.1 Provisions as contained in the Companies Act, 2013

- The Companies Act, 2013 was enacted on 29 August, 2013 and it replaced the Companies Act, 1956. The Ministry of Corporate Affairs has also notified Companies Rules, 2014 on Management and Administration, Appointment and Qualification of Directors, Meetings of Board and its Powers and Accounts. All businesses, including PSUs registered under the Companies Act, have access to a solid framework for corporate governance under the Companies Act of 2013 and the Companies Rules. The following are some of the significant requirements that have been established:
- Qualifications for Independent Directors along with the duties and guidelines for professional conduct (Section 149(8) and Schedule IV thereof).
- Mandatory appointment of one-woman director on the board of listed companies [Section 149(1)].
- The creation of certain committees, such as the Corporate Social Responsibility Committee (Section 135), the Audit Committee (Section 177(1)), the Nomination and Remuneration Committee (Section 178(1)), and the Stakeholders Relationship Committee (Section 178(5)), which must be created.
- Holding of a minimum of four meetings of Board of Directors every year in such a manner that not more than 120 days shall intervene between two consecutive meetings of the Board [Section 173(1)].

6.2 SEBI on Corporate Governance

- Securities and Exchange Board of India (SEBI) is the capital market regulator in India. It amended Clause 49 of the Listing Agreement in 2014 in order to align it with the Corporate Governance provisions specified in the Companies Act, 2013.
- It is applicable to all companies, including PSUs, which are listed on a recognized stock exchange but there are certain exceptions.

6.3 Department of Public Enterprises (DPE) on Corporate Governance

- The Department of Public Enterprises (DPE) issued first ever guidelines on Corporate Governance in November 1992 for PSUs which were voluntary in nature.
- These have been revised from time to time, latest being the DPE guidelines in May, 2010.
- These guidelines are mandatory and are applicable to all PSUs – listed or not listed.
- The guidelines issued by DPE has covered areas like composition of Board of Directors, composition and functions of Board committees like Audit Committee, Remuneration committee, details on subsidiary companies, disclosures, reports and the schedules for implementation.

- DPE has also incorporated Corporate Governance as a performance parameter in the MoUs of all PSUs.
- In July 2014, DPE issued revised guidelines for grading the PSUs on Corporate Governance.
- In order to encourage compliance with guidelines, DPE made it clear that deviation from Corporate Governance guidelines would attract negative marking in the performance evaluation of PSUs under Memorandum of Understanding process from the fiscal year 2015-16.

7. ISSUES IN CORPORATE GOVERNANCE OF PSUs

Since the launch of New Industrial Policy, many Indian PSUs have grown immensely domestically as well as globally. To increase competitiveness and improve investor confidence, it is important for them to embrace corporate governance standards which would ensure further growth in an ethical and transparent manner. The major impediment in achieving desired level of competitiveness is governance deficit due to certain key issues which require immediate attention. Some of these are:

(i) Board autonomy: Any corporation's success depends on having a competent and independent board. In the case of PSUs, however, ministerial directives could occasionally have an impact on the board's agenda and take precedence over strategic and business-related issues. Even in the appointment of independent directors, PSUs play no part. It is challenging to develop a systematic performance evaluation system for the Board members and establish responsibility without complete operational and financial autonomy.

(ii) Ownership policy - There is no established ownership policy. The government's obligations to minority shareholders and other stakeholders, including workers, suppliers, consumers, and communities, must be clearly defined. In accordance with 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." To establish accountability, the ownership policy should be openly declared and discussed.

(iii) Appointment of independent, non-executive directors and women directors on PSU boards – To guarantee the independence and gender diversity of PSU Boards, legal requirements and guidelines released by SEBI and DPE have established requirements. The necessity of a properly formed board for guaranteeing the objectivity of board choices and exerting oversight over decisions made by the board and its committees is widely accepted and experimentally supported. According to a recent study, of the top 27 PSUs, 25% do not satisfy the requirements for the board's independence, and over 25% do not have a woman director.

(iv) Failure to follow legal requirements as well as SEBI and DPE guidelines - It is alarming to see how many of the top PSUs are struggling to meet the minimal standards outlined in Clause 49 and the DPE Guidelines. This problem was brought to light by the Comptroller and Auditor General of India's compliance audit.

(v) Excessive regulation - In addition to Parliament, PSUs must answer to a number of other regulatory bodies, including the Central Vigilance Commission, the Competition Commission of India, the Comptroller & Auditor General of India, and the Right to Information Act. In addition to causing issues with accountability, overregulation has also destroyed corporate governance.

The issue of governance deficiency in PSUs should be addressed, and if PSUs are to leave their impact on the global business landscape, they should be viewed as organizations striving to manage the resources entrusted to them wisely rather than as governments. It is noteworthy to take note of Pt. Nehru's statement in this context, who was a driving factor behind the creation of PSUs in India. While debating on Second Five Year Plan in Parliament, he said, *"I have no doubt that the normal governmental procedure applied to a public enterprise will lead to the failure of that public enterprise. Therefore, we have to evolve a system for working public enterprises where on the one hand, there are adequate checks and protections, and on the other, enough freedom for that enterprise to work quickly and without delay."*

8. WAYS TO STRENGTHEN CORPORATE GOVERNANCE IN PSUs

The most significant national assets in India are PSUs. The government has made a consistent effort to enhance PSU governance. However, it has not been able to shift its focus from managing PSUs on a day-to-day basis to exercising its fundamental ownership rights in accordance with good corporate governance practices.

- **Upgrade PSU boards' professionalism**

(i) Candidates from the private sector should be included on PSU boards as well.

(ii) When choosing and nominating independent and ineffective directors to PSU boards, PSU CMDs should be actively consulted. In this context, the Public Enterprises Selection Board's (PESB) position has to be re-evaluated.

(iii) Below PSU boards with more power to make choices about executive compensation, performance management systems, and project execution. Government should limit its engagement to only those issues that are in the public interest.

(iv) A system for assessing the board's overall performance has to be put in place.

- **Reorient the State's Ownership Role**

(i) Administrative ministers should reduce their day-to-day responsibilities and concentrate on fundamental ownership duties.

(ii) Enhance the MOU or performance monitoring system.

(iii) The ownership policy has to be very specific about how it will be applied to situations that affect minorities.

- **Ensure Adherence to SEBI and DPE Guidelines and Legal Requirements**

(i) Both listed and unlisted PSUs that violate corporate governance standards should be dealt with harshly by the government.

(ii) The constitution, chairman's appointment, and meeting requirements of the Audit Committee should all be carefully followed.

9. CHALLENGES FACED BY PSUs

PSUs experience the following obstacles:

(i) The PSUs' actual standards Compared to the private sector: when it comes to corporate governance, the private sector complies with the laws and norms established by the government. Additionally, they follow the laws and standards governing international business. The expansion of their market share on the global market is their main objective. As a result, they practice good corporate governance, whereas PSUs do the exact reverse; they show less interest in growing their market share. They adhere to their own rules and expectations.

(ii) **PSUs Face the Problem of Control and Ownership Concentration with PSUs**: the Government has the largest percentage of ownership, nearly complete control over all significant decisions, and little concern for the interests of minority shareholders. PSUs are not given complete freedom, and several departments of active ministries frequently meddle in needless ways.

(iii) **Poor regard for shareholders and insufficient financial disclosure**: the company's financial disclosure is out-of-date, and external shareholders are not treated with the respect they should be.

(iv) **Balance between Managerial and Commercial Autonomy:** the managerial makeup and the board composition should be separated, according to current standards. Choosing non-executive directors for PSUs has become more challenging due to government meddling in some way. Their performance on a daily basis is likewise impacted.

(v) **Ensuring adherence to the SEBI Listing Agreement**: the PSUs are covered under Clause - 49 of SEBI, and the minimum standards under the same were indicated. Here, as required by law, various Navratna and Miniratna listing agreements and registrations were observed. India's future economic projections are being delayed as a result of the Ministry of Corporate Affairs' active efforts to adopt corporate governance regulations. The right procedures must be followed to guarantee responsibility and corrective action in order to make adequate disclosure with corporate governance and within the director as well.

(vi) **Lack of True Independent Directors**: directors have a significant role on the boards of public-sector organizations. It is crucial in light of the government's interference with their operation. Independent Directors play a crucial role as a counterbalance to a company's interests. Sadly, it was discovered that almost all PSUs—including the Navratnas and Maharatnas, which have succeeded in business despite restrictions imposed by government interference and influence in matters of decision-making—are experiencing a lack of independent directors. Independent directors may support the management and future of the separate firms if they are selected.

(vii) **Government as a Promoter**: in such circumstances, the Government is required to closely oversee how the Board of Directors of the corporation operates if they serve as the primary promoter and the main shareholder of the PSU. It should consider the tactical plan for resolving difficulties connected to them and act accordingly without altering the board of directors.

(viii) **Establishing the Audit Committee:** there are certain issues with PSUs that are quite obvious. In order to perform audits and other similar committees, the Central Public Sector Units often hire retired employees from the public sector. This needs to be updated because their solutions wouldn't work.

10. CONCLUSION

The current global economic environment has made us aware of institutional failures brought on by weak corporate governance, bad models, and poorly implemented regulations.

In India, there is a persistent contradiction between the interests of the many stakeholders in maximizing value and improving openness and accountability. The majority of public sector businesses have distinctive, strategically defined aims that they alone offer, and a correct method of operation was observed. Therefore, the need for a special set of governance policies is highly important, and their execution is also vital. However, there are some instances where specific corporate governance is appropriate for particular public organizations that offer a common performance evaluation criterion. These corporate governance practices are governed by principles and are categorical in nature.

Policymakers, economists, business executives, and academics are now debating problems linked to corporate governance in many industrialized countries. The topic largely focuses on the corporate structure that must be developed by the important members, such as the board of directors, in order to improve the administration of the firm.

Clause 49 of the listing agreement for public firms, which was implemented by SEBI, deals with corporate governance standards and requirements. It debuted in the 2000–2001 fiscal year. The literature analysis revealed that there are specific problems and difficulties that Indian enterprises confront in relation to Corporate Governance. Corporate governance has undergone significant change as a result of liberalization. Public-Sector Enterprises (PSEs) place a high priority on corporate governance. In both the private and governmental sectors, Clause 49 of the 2013 Company Act has been adopted.

There are several concerns that are connected to things like independence, the compensation of non-executive directors, conscious participation in low-productive exercises, and ministerial agendas that interfere with board agendas. It also addresses the merits of the audit committee, whose primary duty is to secure further backing while harming the interests of minority shareholders.

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