

Corporate Criminality and Accountability of Corporate Governance

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ABSTRACT

“The corporate bodies, such as a firm or company undertake serious of activities that affects the life, liberty and property of the citizen. Large scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industries, commercial and sociological sector that amenability of the corporation to a criminal law is essential to have a peaceful society with stable economy.”

K.G. Balakrishnan J.¹

Key Words : Corporate Accountability, Criminal, Stakeholders

INTRODUCTION

Corporate accountability means the moral or legal obligation for companies of being accountable to shareholder or stakeholders of the organization or even to the society at large. Corporate failures in the recent past such as Satyam, Sahara, Kingfisher raised the fact that the Companies Act, 1956 (“1956 Act”) which existed over a period of 50 years was ineffectual at controlling some of the present issues of growing industry and interests of increasing classes of stakeholders. The Companies Act 2013 has been legislated with a vision to meet the modern challenges of corporate governing arising from stakeholders’ expectations. The Companies Act, 2013 and SEBI (LODR) 2015 have escorted in a new era of corporate governance, by growing the roles and responsibilities of the board, protecting of shareholders as well as stakeholder’s interest, bringing in a disclosure-based regime and built-in prevention through self-regulation. The Companies Act, 2013. SEBI (LODR) Regulation, 2015 and various legislations has duties and liabilities of directors and imposition of stringent penal

provision in case of breach of any statutory provisions on the corporates as well as the management.

However, with increased shareholder’s activism, tighter disclosure regime and elaborate compliance, the number of corporate crime have also surfaced in the Indian market. The legislation, as well as the judiciary, have tried hard tremendously in discouraging these corporate misconduct. The legislation, as well as the judiciary, have prescribed and assigned criminal liability on the corporate as well as the directors of such companies, to limit the criminal activities. However, several corporate governance issues and the concerns in attributing criminal liability to corporate as well as the problems of punishing of punishing the corporates, have not yielded the desired result of cutting down the corporate crime rate in India.

The necessity of corporate accountability in the corporate governance structure. The also established the criminal liability is attached to corporate governance violation as well as for corporate crime. It also informs this chapter also justifies the need for criminal sanction for corporate governance flaws. It also studies the

1. Standard Chartered Case.

requirement to develop laws on corporate criminality in India. It discusses the reason for the decriminalization of certain penal provision under the Companies Act, 2013. It also establishes that business ethics as well as the principle of corporate citizenship, is the solution to control corporate crime and better governance. It explains that corporate governance mechanisms are the solution to prevent crime from germination.

Corporate accountability: main pillar of corporate governance² :

The corporate scandals have led to public pressure to reform business practices and increase regulation. The public outcry over the recent scandals has made it clear that the status quo is no longer acceptable: the public is demanding accountability and responsibility in corporate behavior. We cannot be unconscious to the corporate actions that are injurious to civilization as we do possess own responsibility at the first place. If somebody is injuring us directly or indirectly, we ought to be the one opinion against it.

Corporate Accountability is not an innovation issue but its attaining rapidity in debates and application these days. Over the last few years, attitudes towards this issues of corporate accountability have come full circle, beginning and ending with an emphasis on rules and regulation for corporation accountability.

Accountability is a vital column of corporate governance. In absence of it, the agency problem would be hard to defeat. With it, the dignity of stakeholders is amplified. It is attained with legitimacy in various features of corporate governance. A number of international organizations, have drafted policies plus programmes, envisioned to direct corporate activity, and diverse regions bring into play of their own standardization systems. But there is a problem of little control of guiding principles, and no punishment to violate them. There is a necessity for extra stringent national and global regulation, and more efficient oversight of corporate accountability.

Meaning of corporate accountability:

To understand the concept of corporate

accountability primarily we should see what accountability means. The term accountability is used here in the sense of being answerable for what one has done. Accountability means as to give a description or depiction of something that happens or happened. Accountability means as to give a description or depiction of something that happens or happened. Accountability would for that reason literally means that the process of giving an account of an incident. The tricky part; about it is that for the people to whom the account is saving given the accuracy and probity of the tale is crucial. There is a little harmony regarding what corporate accountability means actually, no generally accepted definition of corporate accountability has come.

According to Business Dictionary³. The act of being accountable to the stakeholders of an organization, which possibly will include, customers, the local community, shareholders, employees, suppliers and even the particular country(s) that the firm operates in. In most jurisdiction, a body of corporate legislation has been formed in order to make official these necessities.

Corporate accountability may be understood as the ability of those affected by a corporation to hold corporations to account for their operations. This concept seeks straightforward changes to the legal structure in which companies operate. These include insertion of environmental, economical and social duties on directors to complement existing duties on financial matters along with the legal rights for local communities to look for compensation when they have suffered as a consequence of directors failing to uphold those duties analyzing the literature on political accountability, corporate accountability could be understood as corporate control; that is, the establishment of clear means for sanctioning failure⁴.

Corporate accountability can be understood as a voluntary activity and away to increase profits. It means the accountability of corporations for the social, economic and environmental impacts of their doings. It means that a corporation is accountable to all stakeholders to whom its operations are affecting. Corporate accountability initiatives encourage independent monitoring, complaints

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2. TripathiKanchanLata "Corporate Accountability" A Review" SSRG International Journal of Economics and Management studies volume 3 issue 12 2016.
 3. <http://www.businessdictionary.com/defination/corporate-accountability>.
 4. Political theory and the European Union. Legitimacy, constitutional choice and citizenship (London Routledge) 34-98 Ladrech 1999.

procedures, compliance with national and international law and other agreed standards, mandatory reporting and redress for malpractice⁵.

Need for corporate accountability⁶:

Companies have enormous influence on people's lives and the environment in which they operate. At times this impact is progressive – jobs creations, technology improvements, amenity enhancements and investment in the community benefits which give huge positive boost for the people who live there. But there are various instances of corporations abusing weak and feebly enforced domestic regulation with shocking effects on stakeholders as well as shareholders. Corporate accountability is the answer to this negativity impact of corporate on the society. Corporate accountability adopts the ability of companies to pay attention to their stakeholders and to ensure that they benefit as much as possible from business operations.

The matter of corporate accountability seems essential in present days. Corporations have been gaining rising power, in definite cases, especially more power than a few states, without involving in the betterment of the public good⁷. The situation realized that the growth of truly multinational companies, the environmental degradation, the race to the bottom in employee, environmental and the standards of the welfares, the excess commercialization of the cultural values, and moral values – has provoked the debate on the control of corporations.

The concept of corporate accountability talks about the legal obligation on a company to do the right thing. The objective of corporate accountability is to assure that company's products and operations are serving the

interests of society and are not detrimental in any way. This thought addresses the dilemma of those companies which reject to act responsibly; it also addresses the situations in which companies and employees are held guilty by the competitive demands of economic system and forced to choose the end result. The neoclassical vision of corporate sees companies as accountable only to shareholders since they are accountable to the legitimate owners of the firm⁸. But today the accountability aspect of the corporates has increased tremendously, it is argued that the corporates are accountable not only to shareholders but stakeholders also.

The trend towards responsibility and accountability can be noticed from the very beginning of the evolution of company law in India. Various strategies aimed at controlling corporate crime have been put forward. Different schools of thought offer divergent views as to the best way to regulate corporate illegality. Some Scholars are of the view that since corporations are engaged in socially productive activities, they should be persuaded, educated and allowed to self-regulate corporate crime. Prosecution should be adopted as a last resort⁹. Some other argue for the increased use of criminal law because it remains the most powerful expression of moral disapproval of harmful activities¹⁰.

The following are the main corporate governance mechanism employed to ensure corporate accountability: Corporate governance is the system of rules, practices and processes by which a firm is directed and controlled the corporate, the conduct of the corporation or employees acting on behalf of the corporation which is punishable by administrative controls¹¹, disclosure requirements¹², accounting and auditing¹³, doctrine of ultravires¹⁴,

5. Ulteng. P. Clapp, J (2008) Corporate Accountability and Sustainable Development; Delhi Oxford University Press India.

6. Supra Note 1 page 1

7. D.C. Korten, when corporations rule the world (London: Erthscan, 1969), report page 59

8. Strenberg (1997), The Defects of Stakeholder theory

9. Gray, "The regulations of corporate violations" 46 Brit. J. Crim 875 (2006)

10. Ibid

11. The Companies Act, 2013 provides a variety of power to the central government to monitor, regulate and control the officers of the companies

12. The Indian Companies Act, 2013 mandates disclosure of all important financial and non-financial information regarding the Company.

13. Ibid

shareholder controls and rights¹⁵ stakeholders rights¹⁶ and by imposing Civil and criminal sanctions on the officers of the company¹⁷ for breach of their duties to the company¹⁸.

Conclusion:

In the above discussion it is concluded that the concept of accountability of corporate has not been rewarding. The number of corporate governance's regulation has not helped much in declining the corporate frauds, crimes and scandals in India. It is contended that instead of begging companies to willingly give an account of their activities and impacts, and if they voluntarily improve their social, economic and environmental

performance, it will be more trusted mechanism. The corporate accountability movement believes corporations must be "held to account" implying enforceability¹⁹. If we, the citizens as a prime stakeholders are still not serious about sustainable development, social and environmental justice, there can't be anything more compelling to the corporations to take seriously this issue. The time has now come to cumulate the efforts of strict governmental legislations that would facilitate people to hold corporations accountable for their social, economic and environmental performance and to compel them to think seriously of their social, economic and environmental performance.

14. Ashbury Railway carriage and Iron co. v. Ritche (1875) L.R. 7 H.L. 653.
15. The Companies Act 2013 enumerates in detail about stakeholders Rights
16. Ibid
17. The Companies Act, 2013 list in the civil and criminal liability of the directors, officer in default in instances of breach of duties and crimes.
18. Singh, Dr. Vijay Kumar 209-2011 Corporate power to corporate crimes: Understanding Corporate Liability in India (Satyam Law International, New Delhi, 2013)
19. Report of United Nations Research Institute for social development (UNRISD) conference 17-18 Nov. 2003, Geneva