

**IMPORTANCE ON CORPORATE GOVERNANCE AMIDST COVID-19****-RASHI CHOUDHARY<sup>1</sup>****ABSTRACT**

*The global slowdown caused in the wake of COVID-19 has led to a disruption economically, socially, and mentally. It is thus crucial time to ponder upon the aftermath of the pandemic and arrive at possible solutions to combat the devastating outcomes. This research paper focuses particularly on the importance of corporate governance amidst COVID-19. It tries to analyze and comprehend the present situation in India regarding the corporate sector, corporate governance, and the possible business decision that might prove to be useful given the pandemic. It also seeks to analyze the long- and short-term business risk, operational risks, business affected thereby in the wake of present scenario, the possible recovery rate post-pandemic, organizational skill requirement vis-a-vis corporate governance, GDP growth rate, dealing with unemployment claims, etc. Also, the fiduciary duty which the board and management assume amidst this crisis.*

**PRINCIPLE OF CORPORATE GOVERNANCE IN INDIA**

The corporate sector or the business sector includes the companies, government ventures in the economy, private households, and also non-profit organizations working under this sector. It also includes all the investments made in the sector, which helps the economy maintain the right flow of goods and services and also the cash flow in the economy. Corporate governance, on the other hand, is a concept dealing with the managerial aspects related to this corporate sector. All the corporate concerns pass through corporate governance and scrutiny. Given the wide area of this sector, governance is necessary. To incorporate various stakeholders having a different attitude, and to build public trust in this sector in the backdrop of various corporate frauds that take place. The concept of 'corporate social responsibility' also creeps in this, where the corporates are expected to take care of the quality of goods and services, environmental issues, sustainable development, etc. Huge capital inflow post-globalization also

---

<sup>1</sup> SEMESTER-9, B.A. LLB(H), AMITY LAW SCHOOL, AMITY UNIVERSITY, NOIDA

is a matter of concern as it affects the Indian business ventures though it had led to an increase in global ties and more capital influx. There are various principles of corporate governance which include efficiency in dealing with various corporate affairs, transparency in disclosing all relevant information to the concerned authorities, other people associated and accountability to the shareholders and other creditors who should have access to that piece of information since they form an integral part of the organization.

### **FRAMEWORK OF CORPORATE GOVERNANCE**

Chapter XI of the companies act, 2013<sup>2</sup> talks about the appointment of directors to the company. There is a provision for the appointment of independent director and the selection process to ensure impartiality. Chapter XII talks about board meetings and the power it possesses. All these provisions ensure that a great deal of transparency and accountability is maintained while they function according to the set rules and norms.

The SEBI, i.e. Securities and exchange board of India also contains the provision for the protection of investors. The SEBI Act,1992<sup>3</sup> was formed with one of its objectives to protect the investors from all the malpractices of corporate affairs. It also provides for the constitution of investor education and protection fund to help them. Similar provisions are contained in ICSI (Institute of Company Secretaries of India).

### **CHALLENGES FACED**

While analyzing the contribution of the corporate sector in India, we can say that this sector has made a tremendous contribution in the field of employment, increasing trade, and corporate culture- like private offices, etc. However, today we witness a global slowdown in this sector. If we try to analyze the recent trends of the world bank, IMF, Barclays, and other prominent newspapers like the financial express, the economic times<sup>4</sup>, it is estimated that India is expected

---

<sup>2</sup> <https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>

<sup>3</sup> [https://www.sebi.gov.in/sebi\\_data/attachdocs/1456380272563.pdf](https://www.sebi.gov.in/sebi_data/attachdocs/1456380272563.pdf)

<sup>4</sup> <https://economictimes.indiatimes.com/news/economy/policy/pm-reviews-impact-of-covid-19-on-economy-2nd-stimulus-in-consideration/articleshow/75181012.cms?from=mdr>

to grow 1.5% to 2.8% as per the world banks estimation given the situation prevailing now. IMF has also projected the growth rate for the financial year 20-21 to be 1.9%. This pandemic has hit various sectors hard like finance, aviation, hospitality, agriculture, manufacturing, and other allied sectors which are suffering great losses. Small business ventures which started recently are on the verge of complete shutdown. Thus, this drip in the economy poses a great threat and a challenge to combat the losses.

COVID-19 poses a threat to the multinational companies as most of them are yet to review their 'work from home policy', issues regarding promotions, increments, and bonuses. Business trips are not feasible in the present context to which leading companies are of the opinion that they have to "adapt themselves to the new normal".

Also, since companies are trying to cut down their expenditure on various employee welfare programs, many companies are slashing off the salaries of their employees, laying off, putting the freshly hired staff on hold, etc. This has indeed caused a lot of problems for the employees as their future is at stake. According to an online survey conducted by the [EconomicTimes.com](http://EconomicTimes.com) on the impact of Covid-19, as many as 39% of the 3,074 respondents who took the survey are facing a salary cut, while 15% are set to lose their jobs<sup>5</sup>.

Another issue is regarding the honouring of contracts. In accordance with the provisions of the Indian Contract Act, an act to be done under a certain contract renders itself void provided it is impossible to perform. This is referred to as the doctrine of 'force majeure' which basically refers to a situation which obstructs the performance of lawful contracts. This doctrine applies to all the government contracts as well as those private contracts which specifically incorporate the provision of 'force majeure' in their contract. Thus, when a contract becomes incapable of performance or becomes frustrated due to a certain situation rendering its impossibility of performance, the courts usually decline their performance to be void, and null. Now, here what is worth questioning is that should there be a declaration of 'force majeure' given the present circumstances provided it is in good faith or should there be a confidentiality between the client and company regarding the present situation of the status whether the contracts will stand

---

<sup>5</sup> [https://economictimes.indiatimes.com/wealth/personal-finance-news/covid-impact-2-in-5-employees-are-facing-salary-cuts-finds-survey/articleshow/75502876.cms?utm\\_source=ETMyNews&utm\\_medium=ASMN&utm\\_campaign=AL1&utm\\_content=5](https://economictimes.indiatimes.com/wealth/personal-finance-news/covid-impact-2-in-5-employees-are-facing-salary-cuts-finds-survey/articleshow/75502876.cms?utm_source=ETMyNews&utm_medium=ASMN&utm_campaign=AL1&utm_content=5)

cancelled or be in force. All these are major concerns of any corporate sector that require corporate governance.

Also, a matter of concern is regarding the Mergers and acquisition process. Here what requires scrutiny is the fact that if a company had already gone under the process of 'Due-Diligence', a lot of things have changed post-pandemic like business activities, shares, capital requirements, market performance, etc. and thus require to be reviewed now.

The hospitality industry is also likely to suffer losses. "There are about 1.5-1.7 lakh branded rooms in India and 70% are shut right now, and no new demand for hotel rooms is being generated due to the restrictions. This short-term demand destruction will lead to massive supply destruction, and some smaller hotels are likely to shut down," said Patu Keswani, chairman and M.D., Lemon Tree Hotels.

### **ROLE OF CORPORATE GOVERNANCE**

Given the present circumstances in this pandemic and the aforementioned problems as discussed above, it is very crucial that all the authorities in every field which is going through this rough patch assume responsibility and thus work on finding various ways through which there is more preparedness to deal with more difficult times in the present and in future. The situation has almost changed to what was projected initially at the beginning of 2020. Thus, there is a need for more critical analysis. The principles on which corporate governance depends as discussed above-transparency, efficiency, and accountability apart from this also owes a 'fiduciary duty' to the stakeholders, creditors, shareholders, and all other staff working for them. They have to find possible solutions to problems such as:

- Variability in the business arrangement altogether.
- Need for increased capital to meet outstanding needs.
- Compliance with existing norms.
- Reviewing the entire department of 'crisis management'.
- Analyzing the present Demand-Supply situation to make further business decisions.
- Need for employee's safety.
- The outlook of the government on this behalf- possible arrangements, schemes, etc.

Apart from these, there might be other concerns as well to deal with while arriving at possible administrative decisions which might vary according to the corporate concerns. For example,

given the present market situation amidst the global pandemic, the value of shares are hitting really low and will take a considerable amount of time to be back in the game and suppose there is a suggestion for granting bonuses to the executive staff in a year by the company, this steps might not be welcomed or favoured by shareholders though the situation is not under the control of the company and they had to make such policies as a part of welfare legislation towards their staff.

Thus, these decisions require a lot of pre-analysis before being implemented. Also, what is to be kept in mind is the intent with which 'corporate governance' started off. Another crucial part of this paper perhaps more on social lines is that of 'corporate social responsibility', commonly referred with an acronym 'CRS'. It is an entirely different recourse to what normally corporate sector mostly deals with, i.e. making profits. CRS is a means through which companies seek to contribute something for the welfare of the society, to participate in philanthropic work, and to create a more positive working environment. It seeks to identify all the major concerns areas and subsequently work on that. CRS has been incorporated as a legal provision under section 135 Companies Act. Since then, all the major companies like Google, Microsoft, ITC have indeed set an example for others to contribute to sustainability and various other social work. With the announcement made by the government of India, extending a helping hand during COVID-19 should be a part of the CSR of every company. With this announcement, we have seen some big contributions by individuals and companies towards 'PM Relief Fund', and some are helping in other ways such as distributing food, sanitizers, medicine, gloves, and other essential commodities to the people in need and to the hospitals and its staff. CSR not only is beneficial for society but also for the company. It also helps the company to develop more positivity around itself and its brand, there is an improved public image with an increase in the customer base, and thus a clear advantage over other competitors in the market. Thus, the role of corporate governance is very dynamic, and all the more important in the present context to combat all the short-comings that any given company might be facing amidst the pandemic. It should definitely live up to the intent with which it was formed and thus help the corporate sector in the best possible way to deal with the current scenario.

**CONCLUSION AND SUGGESTIONS**

To have a more comprehensive and pragmatic approach while combating this pandemic and also for post-pandemic revival is very crucial. Once the lockdown is lifted or partially lifted, whatever may be the case, companies should start focusing on 'mass-production' and establish ties to keep up the global market working. This will, in turn, create employment in the field of manufacturing and also lead to various public-private partnerships to mushroom nationally and internationally, thus helping to revive the sector and economy all together. Also, companies who have been hit hard by this pandemic and were fairly new in business can foster ties and go for mergers and acquisition processes to avoid a complete shutdown and also rather avoid huge losses of set-up which they might have incurred while the company was formed.

Employee benefit captive programs have been playing a significant role in terms of more organizational control, flexibility, oversight over the life, dignity, and healthcare programs all over the globe. These employee benefits programs for any company having a significant number of employees require a lot of capital. For example, companies that exceed 10,000 employees globally, it is not uncommon for the global life, disability, and healthcare costs to be upward of \$20 million per annum. And with over two-thirds of this spend being allocated to company-sponsored healthcare benefits, which are increasing at an average rate of over 7% per annum globally according to our latest Global Medical Trends Survey<sup>6</sup>, these costs could be cut-down given the epidemic which we are facing globally and thus should act as a priority for most of the companies.

Analyzing customer demand, studying the market trends of Demand and Supply can also prove to be of great help in the future. They can start off their work on certain guidelines formulated on the basis of efficiency, long working hours, speed for a certain period of time to gain back the control of the market, and that the transition to the normal work environment is quick. Today, the internet is playing a very important role in every person's life. The 'work from home' policy is today practised almost all over the globe. Thus it is recommended that companies should engage into reviewing this policy, get in touch with their staff about the pace of work, collect statistical data on market trends and possible growth rate, engage in customer reviews on

---

<sup>6</sup> <https://www.willistowerswatson.com/en-BE/Insights/2020/04/covid-19-survey-report-how-are-employee-benefit-captive-programs-assisting-companies-to-respond>

the same and conduct surveys, last but not the least conduct sessions on mental health which is really important as we all are home stuck for such a long duration of time through online portals for their staff.