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Mahesha NM
Assistant Professor,
Department of Commerce &
Management, Government
College for Women
(Autonomous) Mandya,
Karnataka State, India

Correspondence
Mahesha NM
Assistant Professor,
Department of Commerce &
Management, Government
College for Women
(Autonomous) Mandya,
Karnataka State, India

Corporate governance in public sector undertakings in India: Issues and challenges

Mahesha NM

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 stake holders including Customers, Suppliers, employees, shareholders, Bankers and Society at large. As these Public-Sector Undertakings (PSUs) 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 Undertaking 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 PSUs 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 through 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 literatures available in the journal. It is purely conceptual paper based on the author's recommendations.

Keywords: Corporate governance, stakeholders, *Accountability*, transparency

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 governments are the owners of the public-sector undertakings (PSU) or Public-Sector 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. Company's Act makes the government a major stakeholder in public Sector Units. Central Public-Sector Units (CPSUs) 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. Minority shareholders in CPSUs 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.

In post LPG era bribery, corruption, scandals, corporate frauds like creative accounting are on rise. In the present day business world, the business enterprises are directly or indirectly involved in all these unethical and socially unacceptable practices. Accountability and Responsibility in Corporate Governance is a debatable issue world over.

Corporate Governance is a mechanism or system of directing and controlling the Corporate Organizations. It is the overall control of activities of corporate organizations. Good corporate governance is nothing but the formulation of long-term plans and effective management structure to achieve the objectives of the corporate body. The structures of effective governance include the Board of Directors, the CEO's, Shareholders, Creditors and others. This structure spells out the rules and procedures for making decisions on corporate affairs.

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 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.

(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) [10] 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.

Lisma L *et al.* (2017) [7], 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 applyingthe 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 issues &challenges faced to adhere the corporate governance

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. 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 fulfil other than make profits also come under the scanner because they use the tax payers money for their operations 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 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 are 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, 2013, 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 that 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 Government 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 PSUs

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.

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.

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 Public Accountability:
These sectors are larger responsible to public for their performance and result

6.6 Current Scenario
Due to ineffective Corporate Governance of corporate bodies in the countries like Mexico, Indonesia, USA and other developing countries, the economies of such countries are badly damaged. The collapse of US economy due to Wall Street Crash, Sub-Prime Crisis is the results of non-accountability and irresponsibility in corporate governance. Indian corporate bodies are not exception to these corporate frauds..At present, corporate organizations world-over are going for good corporate governance. The concept of Corporate Governance is much debatable issue in academic and policy making circles. The mechanisms of governance are in place for a longer time in most developing countries. In India the issue of Corporate Governance gains momentum after the liberalization process was initiated in the year 1991.

7. Critical issues inCorporate Governance
1. Leading to reduction of legal costs, improved social and labour relations.
2. Deteriorating of Ethical and Moral values in BOD's, CEO's and managers and the active role played by lower level personnel of the Corporate Bodies
3. Negligent and irresponsible shareholders who are sending their proxies to attend and vote at general meetings
4. Accountability of senior executives is not clearly defined
5. Inefficient Board of Directors who are incapable of monitoring the functions of managers
6. Lack of Recognition of the need for effective Strategies
7. Non-availability of quality data and improper interpretation of data in key decision making leading to bad governance
8. Improper documentation of policies, procedures, rules and so on
9. Too much domination of own family members and parities in the board composition.
10. Lack of dynamic Professionalism in the top management executives
11. Lack of suitable methods for Value monitoring and reporting in measurable terms
12. Absence of Ethical and Moral values in people governing the corporate enterprises

8. Challenges Faced By PSUs
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.

8.1 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.

8.2 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.

8.3 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.

8.4 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 fulfil 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.

8.5 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.

8.6 Confirming 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 straight 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.

8.7 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

8.8 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).

8.9 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.

9. Indicators ofGood Corporate Governance
- Compliance to the Laws of the Land
- Transparency in all business practices
- Responsiveness of management
- Accountability of board members and senior executives of the corporate enterprise
- Existence of well-defined Strategic Mission and Vision for corporate governing body
- Equity and Justice in all dealings with all stake holders
- Respect and Tolerance and so on are the indicators of good corporate governance

10. Need for good Corporate Governance
- Effective Corporate Governance minimizes the corporate scandals
- Effective Corporate Governance promotes strong **financial system** and helps economic growth and poverty eradication
- Effective Corporate Governance promotes easy accessibility of external sources of finance leading to greater investment growth accompanied with increased employment opportunities
- Poor Corporate Governance affects the establishment and growth of new companies
- Effective Corporate Governance reduces the cost of capital[k] and enhances the value of the company [V]
- Effective Corporate Governance reduces the distrust between various stakeholders

11. 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 of 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 depend 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. 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

For better performance of corporate organizations, the Accountability & Responsibility in Corporate Governance is a must and an acceptable practice. In India all PSUs are required to draw and enforce codes of conduct, follow accounting standards, follow strict disclosure norms; more important thing in Corporate Governance is socially responsible governance. CSR is such an important area of corporate behaviour and governance, which needs to be addressed and effectively implemented by all corporate organizations. To make Corporate Governance more accountable and Responsible, the Board of Directors role and responsibilities should be clearly defined and fixed for them. The Board vests with authority, power and which is responsible for taking strategic decisions. The Board of Directors who are in key positions should be made socially accountable for all affairs of the organization.

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