Alleyway of Corporate Governance under the purview of Kotak Committee Report

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Abstract
The SEBI appointed committee which had the aim to provide the recommendations for the purpose of effective implementation of good corporate governance and this committee proposed the separation of roles of Managing Director and the Chairperson of the company, increment in the powers of directors, and called for the superior focus on the concepts such as ‘transparency’ and ‘disclosure of information’ for the same. Moreover, the committee proposed the eligibility criteria for the independent directors, schedules for conducting board meetings and its procedure to take the level of transparency and disclosure to the superior level and includes the intention to improve the quality of governance. After all the analysis, it can be said either which way the scope of this report is implemented into the mechanism of corporate, but the report will undeniably impact the traditional system of family business. This can be said on the grounds that this report endeavors to install the system which will provide balance in the interests of the owner (or, in terms of the ancient kingdoms, Raja) and the stakeholders (or, in terms of the ancient kingdoms, Praja). Therefore, if the recommendations of the report are being followed by the corporation with full consideration, then, in that case, it will provide the best results to the stakeholders and the directors and owner itself. Consequently, this report can be considered as the prominent step for having a sound and prosperous corporate governance structure.

Keywords: Corporate Governance, Corporate Frauds, Transparency, Kotak Committee

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Paper Classification: Conceptual Paper
Introduction

The topicality of the phrase ‘corporate governance’ is increasing with the changing dates and evolutions that all are occurring within the macro terms of the Indian industries (Bhasin, 2018). Subsequently, in order to address this specific issue, SEBI worked upon various processes and fought many battles which were made ultimately to establish fair corporate governance among various industries (Shroff & Patnaik, 2018 & Avwarpuncva, 2018). Remarkably, the concept of fair governance in the broader perspective of Indian economy cannot be said as new as because the Indian ancient scriptures such as Arthashastra, Mahabharata, Manusmriti, and so on explains the same concept of governance without prescribing the particular name to it (Joshi, 2016; Sridhar, 2015 & Mukherjee, 2010). These scripts mention the role of the king and the ministers in following the code of conduct to address the issues and interests of the subjects or in Hindi- ‘Praja’. Consequently, on the basis of it, it can be said that history always repeats itself in every era (Haque, 2018).

As the business environment in India is much dynamic frequently with the shifting time, so it requires the sustainability and the sound corporate governance in a perfect blend which will make the results fruitful for both the company and the stakeholders (Pondiuni, 2018). Meanwhile, the financial crisis occurred during the years 2007 and 2008 which has been adopted by the corporates with the name of ‘new normal’ to carry out the business from the changeover period (ET Contributors, 2018). But still, the truth is situating way behind the ideal situation. So, in order to solve such situation of unfair governance, the arrangement of Kotak committee was made which was headed by Mr. Uday Kotak. With all the necessary analyses, the Kotak Committee submitted their report on the date of 5th October 2017 to SEBI with all the recommendations that they found to be implemented in the corporate framework to establish the system of ‘good governance’ (Shroff, 2018).

The prominent issue that has been addressed under this report is the ‘concentration of ownership’ to which they are saying is the reason of fluctuation in the quality of corporate governance in the company (Claessens, Djankov, & Lang, 2000 and Sarbah & Xiao, 2015). The negative role of the concentration of ownership can be better understood by the concept that has been given by Harvard Business School during the session of the 1990s, to which they gave the name of ‘Three-Circle Model of Family Business System’. This said model itemizes (as shown in figure 1) three interdependent and entwined circle with names family, business and ownership on each of the circle, that can be collectively said as the ‘family business framework’ (The Business Times, 2016). Such a framework will result in poor communication, fiduciary conflicts and lack of a sense of responsibility amongst the members of the top management. So, in order to keep such issues aside, the report recommends the separation of the roles of the MD and the Chairperson of the company. This means that they have mentioned in their report that the role of these two positions should be handled by different individuals with the prime objective to safeguard the checks and balances given there (Zala, 2018). So, in overall, it can be said that the report has its role in the process of curtailing the abuse of power that is exercised by the top management including the independent directors, and so on.
Need for the Study

Because of the condensed propensity of corporate governance, there is an increase in the fraudulent activities within the boundaries of the corporates. Consequently, the reckless individual or group of individuals use such flaws to formulate an ominous strategy whose execution will provide benefits to them in the personal sense (Salleh & Othman, 2016). Furthermore, such activities will directly or indirectly cause negative reactions to the company and in the macro term, will affect the general public adversely. This will also give the opportunity to befool the public and eat-up their investments, that what exactly been done by many reputed companies such as AirAsia, PNB, ICICI Bank, Fortis Healthcare, and with the endless list of companies which all used this opportunity (Seth, 2018). Some got caught due to the active implementation of rigidly and cognitively formulated Kotak Corporate Governance report. Accordingly, there is an immense need to understand the tits and bits of this report which are formally preventing the companies to perform an unethical act within and outside of the physical boundaries of the company.

Objectives

- To understand the relation of bad corporate governance and corporate frauds.
- To evaluate the recommendations of the Kotak Corporate Governance Committee with the company perspective.

Thematic Review

Corporate Fraud

As per the definition that is been mentioned in the report of U.S. Department of Justice, 2010:

‘The corporate fraud can be defined as the falsification of corporate financial information, self-dealing by corporate insiders, and obstruction of justice, perjury, witness tampering and other obstructive behavior relating to falsification or self-dealing activities. Also, the report
of Fraud Act of 2006 defined this term as the dishonest conduct that is done cognitively by the managers, employees or any of the related parties with the prime intention to get maximum or irregular benefit out of any work or done with the intention to harm any other entity or entities or individual(s) (Fraud Act, 2006). Also, one of the reports explains that this concept as the conduct of any person or entity that incorporates the intention to deceive any other personal entity for the purpose of gaining something out of that conduct and keeping the other said person or entity into the part of losses (Doody, 2009). Also, it has been added into one of the reports that ‘The act of deceiving or tricking another person that is practiced deliberately to gain some advantage dishonestly.’ (Graycar, 2000 and Chapman & Smith, 2001). So, it can be said after analyzing the whole of definitions said by various reports that corporate fraud means the act made to get the maximum benefits on the sake of others in the corporate world. Such fraudulent activities include acts such as theft of information, financial misrepresentation, theft of finance, bribery, and so on (Doody, 2009). Also, it has been said by one of the works of the literature that such fraudulent activities increase during the duration of economic hitches (Levisohn, 2009). And this statement got the support of survey which serves its findings with the writing that 85per cent of the surveyed companies have got agonized by these activities in the year 2008 and the percentage in 2007 illustrates the greater number onto the board (Doody, 2009).

**Corporate Governance**

Now, onto the context of the broad concept ‘corporate governance’, there are various definitions provided under the different reports and papers. In one of the works of literature, it has been defined as the actions related to the supervisory and control activities that are been conducted with an intention to act as accordance with the interests of the stakeholders (Kooskora, 2008 and Lawrence & Lorsch, 1967). Although, another work defines it as the whole of the activities that are conducted with accordance of the regulations of the business that are been positioned by the legal norms and the owner that includes the control and supervision upon the assets, operations and management activities (Cannon, 1994). Still, the propensity of corporate governance is being interrogated and this got questioned mainly after the disgrace of giant corporates such as Xerox and Enron. This is there as because of the belief that has got incorporated which says that the decrease in the potential of the corporate governance is the prominent reason behind the financial crisis that is suffered by the Easter Asia in the previous epoch (Salleh & Othman, 2016). Contradictory to the above statement, from the perspective of Indian corporate culture, the role of corporate governance is to provide empowerment to the directors so that they can perform the obligations of themselves, so that, in the case of an adverse situation, they will not be blamed for that situation as because the condition for that specific situation is out of their control or scope (Pandey & Kapoor, 2017).

**About Committee**

At the present point in time, the practice of good governance is one of the crucial constituent for the purpose of stimulating the confidence of the investors (Pandey & Kapoor, 2017) and are considered as the indication of innocuous and healthy market that is conducive for the investments crossway the world (Xiaolu, Jieji, & Jian, 2016). Though, in order to address the shortcomings that are faced by the companies in India are taken into consideration regularly to make the mechanism of corporate governance stable and firm.

So, with the perspective of removing the flaw that was creating the environment better for the frauds, the committee was constituted by the SEBI that was named as Kotak Committee which
was chaired by Mr. Uday Kotak. This committee had the objective to promote and improve the governance structure of the Indian companies that all are listed (Seth, 2018). Besides, it also had the objective to promote the transparency and fairness, strengthen the independent board, improve the standards of disclosure and also to recommend the changes that can be made for effective corporate governance (Unadkat, Bagdi, & Vij, 2017).

On 5th October 2017, this committee submitted their report along with the key recommendations they found lacking and that should be implemented into the governance structure to make that flaw-free. This report is being submitted to SEBI that is considered as the regulator of the corporate governance in India. And in order to respond the submission of this report, SEBI accepted 40 recommendations out of 80 without any amendments, 15 recommendations accepted with amendments and 18 of them were directly rejected (Shroff & Patnaik, 2018).

**Need of this committee report’s recommendation implementation**

At the same time as the major part of Indian companies govern their entities in a practical method, who all are acting on the multi-generational base, and an ample number of minorities have not. As, the positive instances of most of the companies are usually get submerged under the sea level as because of their nature of not publicizing such things, which can be said in another name as ‘publicity shy’, and the negative instances rises out of the sea and gets captured by our eyes. So, these bad apples usually are guilty of their actions of extinguishing the value of shareholders, but often they are found to put the life-savings of the small-size investors and businesses into jeopardy. This overall scenario is prevalent over this situation because of the weakening norms of governance. So, the owner or the chairman of the company exemplifies the role of being a ‘Raja’ in the field with all his/her authority to control the matters of his/her kingdom. So, in that particular situation, the kingdom which includes the stakeholders, that in other terms can be known as the ‘Praja’, had got the position of mere onlookers who all can just see what is happening and can do nothing other than that. The said statements are not referring its words towards the direction to say that all owners or ‘corporate Rajas’ are bad for the well-being of society as because Indian ancient documents contain the proofs that are showing the beautiful examples of governance of historical and corporate Rajas (Shroff, 2018).

Therefore, such a bad execution of governance of the entities is taking a phase in which the economy, at large, is facing a significant loss. Additionally, it had dented the confidence of the investors, either large or small, so, there was a requirement of reform in the corporate governance to make the transition from ‘Raja’ model to the form of ‘Trusteeship’ model. In the raja model of governance, the interest of the owner, i.e., the Raja, is been kept ahead of the interest of the stakeholders. This basic flaw is being identified by the Kotak Committee which was prevalent in most of the entities playing in the different corporate fields. So, because of this reason the Kotak Committee recommended implementing the model of ‘Trusteeship’ or ‘Custodian Model’ which includes the policies of ‘Gandhian Principles’, in which the owners, directors, and the management gets the hats of being a trustee of the company and they act according to the interest of the stakeholders, including shareholders and investors of the company (Shroff & Patnaik, 2018). The implementation of this model will protect the interests of the minorities and will instill a much broader sense of accountability for the engaged stakeholders.
Major Evolutions under the Report

The report of Kotak Committee incorporates the key factors that are responsible for taking the direction of corporate governance towards the path of ethical principles. For such conduct, the report includes points or factors such as roles’ separation, the ceiling to the number of directorships, the disclosure of the information related to the directors and audit (SEBI, 2018).

Roles’ Separation. The crucial information that can be extracted from the report of Kotak Committee can be named as the step taken to abolish the system of ‘concentration of ownership’ (Claessens, Djankov, & Lang, 2000 and Sarbah & Xiao, 2015). The negative role of the concentration of ownership can be better understood by the concept that is been given by Harvard Business School during the session of the 1990s, to which they gave the name of ‘Three-Circle Model of Family Business System’. This said model itemizes (as shown in Figure 1) three interdependent and entwined circles with names family, business and ownership on each of the circle, that can be collectively said as the ‘family business framework’ (The Business Times, 2016). Such a framework will result in poor communication, fiduciary conflicts and lack of sense of responsibility amongst the members of the top management. So, in order to keep such issues aside, the report recommends the separation of the roles of the MD and the Chairperson of the company. This means that they have mentioned in their report that the role of these two positions should be handled by different individuals with the prime objective to safeguard the checks and balances given there (Zala, 2018). So, in overall, it can be said that the report has its role in the process of curtailing the abuse of power that is exercised by the top management including the independent directors, and so on.

There is a prevalence of many examples that are showing the availability of some owners that are acting many roles in a single company. Reasonably, if they relinquish the role of Chairman, then, they would lose influence over the board and if they lose the role of MD, then, in that case, they will lose their control over the day-to-day actions of the company. So, because of this reason, the report asked to segregate these two roles, with the effect of which, the chairperson will have to act objectively as per the views of board members. The objectivity can come with allowing the least control for the day-to-day activities of the business. Henceforth, this report has recommended that the chairperson has to be the non-executive director of the company with the identity of not having full-time membership (SEBI, 2017). At the same time as, this pill of separation to too bitter to swallow, but in real terms, this separation has the potential to increase the efficacy of the company as, here, the key participants will concentrate their efforts towards the achievement of goals.

Author Analysis: Even though the separation of roles of individuals as a chairman and the CEO/MD is a new-fangled footstep, the efficacy of this specific step is dependent on the
inclination of interest of the owner or promoter of the company. So, if they wish to embrace the recommendation then in that case only it will be thought of as the successful implementation of the step.

**Disclosure of expertise of directors.** It has been mentioned under the purview of the report that all the listed Indian companies will have to disclose their matrix that is setting out the proficiencies of the directors that the companies feel like that they should possess and the skill-set they actually possess. Along with this, the report has mandated to show-up the names of the directors along with the possessing competencies and skill-set after the date of March 2020. For this purpose, they may have to constitute a board, because Indian companies have seen individuals making a huge positive irregular change which are incomparable to the qualifications they possess (SEBI, 2017).

**Author Analysis:** Here, the suggestions to incorporate the present and required competencies among the directors of the companies can be said as the better footstep in the right direction. This is said on the grounds that it will define the role of any director and will help in evaluating the person to check his/her suitability for the organization.

**Board Composition and Ceiling of Directorship**

**Revision in Provisions of Independent Directors.** This report incorporates the robust character of independent directors. The prevailing legal context allows the owners to have a major influence on the selection of the directors. In this case, there will be an inflating number of chances to select the director who will provide more support to the goals of the family business, or even to the person who has better consideration to the owner’s goals. So, this report has suggested that the strength of the board should be raised to 6 directors from the prevailing number of 3.

Earlier, the promoters become the independent director of each other companies which was giving the situation of ‘board interlocks’. So, in order to thwart such situation, the report commends that the group of promoters will be unentitled to become an independent director of the company (Unadkat, Bagdi, & Vij, 2017 and SEBI, 2017).

In order to illustrate the situation, it can be said that ‘if Mr. A is an executive director of the company XYZ Co. and also an independent director of ABC Co., then, in that case, the non-independent director of the ABC Co. can’t be an independent director of the XYZ Co.’s board. (Shroff, Patnaik, & Keshari, 2018)

Furthermore, to thwart female relatives from being appointed as a nominal women director, this report commends the recruitment of at least one ‘independent’ woman as a board member as per the potential skill-set that woman possesses (SEBI, 2017).

Additionally, for the purpose of alignment in the appointment of the executive and non-executive directors, the report commends that the non-executive directors can continue to work beyond the age of 75 years along with the clause of a special resolution by the shareholders. And also, the non-executive directors should meet their senior management for at least one time in a year (SEBI, 2017).

**Ceiling of Directorship.** As per the words mentioned in the report, the maximum directors in the listed companies held by the single individual will be 8 in numbers from 10 at present after 1st April, 2019 and the same will be reduced to 7 after 1st April, 2020. Furthermore, a person having the position of MD or full-time director in any of the listed company, in this particular
case, that person can’t serve as an independent director in more than 3 listed companies. This recommendation is included into the report for because of the reason that a person as a director in multiple companies will not be able to find adequate time to get indulge into the affairs of every company in which he/she has directorship. Although this particular may create difficulties for the directors in a short term, in a long run, it will reduce the behavior of negligence among the directors having multiple directorships (SEBI, 2017). As per the words of one article, this recommendation will reduce the ‘step-child’ treatment to certain companies by the directors (Unadkat, Bagdi, & Vij, 2017).

**Author Analysis:** After analysis of this recommendation, it is felt that from the practical perspective and in the long run, this policy will be much beneficial for companies for establishing good governance in the companies. This policy will make the companies bound to have a complete evaluation of the existing board structure to affix the new structure as per this recommendation. Furthermore, it was found that the interaction of non-executive directors with senior management is ulterior. As the role of such interactions is always considered useful as it keeps the affairs of the companies abreast with the non-executive directors, but the opportunity of such interactions is not being defined clearly in this recommendation.

**Minimum remuneration.** This report also incorporates the remuneration policies of the companies that should be followed by them in order to govern the company very conveniently. This recommendation says that the minimum annual compensation and the sitting fees for board meetings should be fixed. So, the minimum annual compensation should be fixed at Rs. 5,00,000 for first top 500 listed companies and on either side, the minimum sitting fees should be fixed at Rs. 50,000 for first top 100 companies and Rs. 25,000 for the next 400 companies (Shroff, 2018).

**ID protection measures.** Under the head of this recommendation, the report has explained that there should be the provision of formal training for the independent directors specifically for once in 5 years for the purpose of keeping them abreast with the changing laws. In order to extenuate the liabilities of the independent directors, the report furthermore suggested that the companies should obtain D&O insurance for them. This is limited to the independent directors who all belong to the top 500 listed companies. Also, in the cases of the resign of independent directors, the resigning person should also provide the material reason for his/her resignation to the senior management. And the companies are being furthermore made responsible for the reporting of that reasons to the stock exchanges (Shroff, Patnaik, & Keshari, 2018).

**Author Analysis:** Here, in this segment of recommendations, it is found that the report is trying to furthermore empower the independent directors. As it has been shown in the recommendation where it mandates to disclose the reasons for the resignation, but not at all required in case of the removal of independent directors. The removal can be done by having the majority by the shareholders. Also, the step of D&O insurance is quite a positive footstep, but the exemptions of such policies may not be adequate to provide a shield to them from legal obedience. If this matter will be seen from the eyes of practicality, it will be found that the increased expectation along with obligations from the independent directors and along with lack of protection of them, will make the pathway of companies to find a right individual with the right expertise.

**Board Meetings.** Under the head of this recommendation, it has been said that within the span of one year, the company is required to organize at least 5 board meetings, but at present, the number for the same is 4 meetings. Also, the matter to be discussed added over here. This is being written that at least for once the board should talk upon the strategy, board evaluations, budget,
governance and environment sustainability, succession planning and the risk management. Additionally, the quorum proposed by this report is minimum 3 directors or one-third of the total strength of the complete board, either which is higher. Furthermore, they are required to attend at least half of the board meeting in two successive financial years, which will furthermore honor their fiduciary duties. Also, added the consequences for not having complied with it, which says that in a case of non-compliance, they would require the ratification of the shareholders for continuance (SEBI, 2017) (SEBI, 2018).

Author Analysis: The mentioning of the issues of corporate governance and its mandatory discussion is a very new footstep. This report has mentioned the clause of compulsion to specify some time for each of the topic for at least once in a year of board meetings. This will be able to bring a greater spirit of compliance of laws among the members.

Audit & Accounts

External opinion. Under this head of the recommendation, it has been provided that the auditors have the right to attain the external opinions independently from the external experts, only applicable in a case when the internal experts don’t agree with the same. Such recommendations will boost the independence of the auditors (SEBI, 2018).

Increase in Disclosures. During earlier times, a variety of transactions that are done by a promoter or promoters’ group entities usually not be disclosed by them as because there was classification with the name of ‘related parties’. This report says that after 1st April, 2018, all promoters or promoters’ group entities that all are holding 20 per cent or more in the listed companies will be considered as ‘related parties’. So, now they will have to disclose their related-parties’ transactions. Furthermore, such parties will be permitted to cast a negative vote on the related-party transactions that are requiring shareholders’ approval (Titus & Mittal, 2018).

The other disclosures that are to be disclosed by the company include the reasons for the resignations of the auditors, auditor fees, audit and non-audit services, etc.

Author Analysis: Under the analysis, it was found that these recommendations are sort of the positive measures to have a check on fraudulent activities, misrepresentations, and the financial health of the listed entity. This recommendation was made by them because of the increasing companies that all are approaching the court to prove their insolvency.

Shareholder meetings. As per the words of this report, the top listed 500 entities should organize Annual General Meetings within five months, which was earlier within six months. And, in order to enable the shareholders to make decisions based on the discussions in meetings, there should be the implementation of the mechanism such as live one-way webcasts and e-voting till specific time by the top 100 listed entities (SEBI, 2017).

Author Analysis: However, the said changes in the recommendations will bring the consideration of the investors towards the meetings which will make the results of the AGMs fruitful.

Capacity building and stricter enforcement. Under this recommendation heading, the report has recommended that in order to build the capacity of SEBI. The recommendations include increasing the human capital, making use of the risk prediction and data science for the purpose of reviewing the financial statements, and having better coordination with the other regulating agencies so that the enforcement of the government norms can be done effectively. So, this
means that the report has also asked for the consideration of other regulating agencies to make the enforcement of the said recommendations very much effectively. The agency such as ICAI can enforce the recommendations related to the auditors’ norms (Unadkat, Bagdi, & Vij, 2017 & SEBI, 2017).

**Author Analysis:** After the analysis, it can be said that as this recommendation does not include the involvement of regulators, it cannot be said as correct. So, because of this, this recommendation got dismissed by them on the basis of not having the committee’s reference. From the author point of view, for an enhancement in corporate governance practices, as is with every single lawful change, a powerful requirement instrument to execute such changes is basic.

**Conclusion**

The complete analysis of this study is based on the corporate governance recommendations that are served by the Kotak Committee in the plate of SEBI, whose implementation will help SEBI to make a proper alignment in the corporate governance procedures or practices. The served recommendations, at present situation, have got implemented into the local companies, where, in case of Indian sub-continent, most of the listed companies are family oriented, and this process have increased the scope of the power of even the minor shareholders. This means that each and every stakeholder has got the consideration under this committee’s report.

This is said on the grounds that the report has suggested that there should be the existence of separation of roles of the ‘managing director’ or the ‘chief executive officer’ and the ‘chairperson’ of the company, which will provide the balance in the governance structure of the company as the whole-sole power will get reduced because of this and every decision will not be based on the sole mindset the chairperson.

Though, the recommendations such as the no requirement of ‘board inter-locks’ in the company, increase in the supervision and requirement of proper disclosure of board-related information, which all cumulatively posing the face of challenges in the coming future for the companies. Particularly the recommendation of ‘no board inter-locks’ is a challenge for the companies who have such inter-locks in their structure as no transition period is been provided for them. In overall, through the analyses, it can be said that the firm governance of the structure has the potential to enhance the trustworthiness among the potential investors in the long-term scenario.

**Limitations of the Study**

1) This study has made its path limited to the door of the recommendations of the Kotak Committee.

2) The perception of different corporate entities towards the recommendations is considered not under the scope of this study which might have given some different perspective of this study.

**References**


**Authors’ Profile**

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