AN ANALYSIS OF CORPORATE GOVERNANCE IN GOVERNMENT COMPANY: IS IT 'STATE' FOR CONSTITUTIONAL LAW?

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ABSTRACT

The current business dynamics of the market have transformed, necessitating a renewed emphasis on transparency within companies. Consequently, corporate governance has emerged as a critical factor across all sectors, encompassing government companies. The focus of corporate governance remains steadfastly directed towards cultivating trust amongst numerous stakeholders, namely customers, suppliers, employees, shareholders, financial institutions, and society as a whole. The concept of 'company' needs a definitive legal or formal elucidation. Etymologically, this term predominantly stems from the Latin expressions '*Com*' (signifying togetherness) and '*Panis*' (denoting a meal).

Consequently, it pertains to a congregation of individuals partaking in communal repasts and engaging in diverse discussions. Companies can manifest in many configurations, encompassing even a governmental enterprise. In this discourse, we shall delve into this subject matter, focusing on the ownership and control of government companies. Additionally, this paper will expound upon the government's legal position as a 'State' under the Indian Constitution and the corporate governance principles within these entities. Given that these companies assume social responsibility roles, it becomes paramount for them to abide by these regulations, considering that taxpayers fund their operations. Owing to the corporate governance framework of rules, practices, and processes, corporations are subject to direction and law. The corporate governance structure of any government company rests upon four fundamental pillars: transparency, comprehensive disclosure, independent oversight, and equitable treatment for all stakeholders. This study scrutinizes the present climate of corporate governance and the prevalent practices and institutional framework within Indian government companies. Also, this study seeks to analyse the many reasons behind these companies' inability to adopt corporate governance in India and, as a result, provides suggestions to enhance corporate governance implementation.

Introduction

A 'company' may be defined as a collective of individuals collaborating to achieve a shared objective or objectives. Individuals may join organizations for many reasons, including economic and non-economic aspirations. Nevertheless, in everyday language, the term 'company' is typically reserved for interconnected individuals for financial purposes, specifically, engaging in business activities for monetary gain.[1] The Companies Act of 2013 does not explicitly characterise a corporation. A company established under this Act or any preceding legislation about companies, as delineated in Section 2(20),[2] acquires legal existence solely upon registration. In the matter of GV Pratap Reddy Through GPA TSR Research (Pvt) Ltd. v. KVVSN Associates,[3] the Supreme Court determined that when the Telangana Government stipulated that the bidder must be an individual or a company, the term 'company' in the Notice Inviting Tender (NIT) could solely be interpreted following its definition under the Companies Act, excluding the inclusion of a firm. Consequently, the bid of the respondent, which was not an individual or a company but rather a firm, was justifiably rejected by the State.

Article 12 of the Indian Constitution elucidates the concept of "the state."[4] The explication stipulates that within this provision, "the State" comprises the Government and Parliament of India, the Government and Legislature of each state, and all local or other authorities within the territorial confines of India or subject to the governance of the Government of India. The interpretation of the term 'State' is contingent upon the specific context in which it is employed. The terminology within Parts III and IV of the Constitution does not exclusively pertain to the Union of India or the constituent states. As per Article 12, 'the State' encompasses the Government of India, the Parliament of India, the Government of each state within the Union of India, the Legislature of each state within the Union of India, all local authorities within the Indian territory, all local authorities under the jurisdiction of the Government of India, and all other authorities within the Indian territory.

A Government Company does not pertain to any of the aforementioned designated classifications. The administration executes its functions through natural persons (such as

[1] Dr. GK Kapoor & Dr. Sanjay Dhamija, Taxmann's Company Law, 10-11, Taxmann Publications (P.) Ltd., 2022
[2] The Companies Act, 2013, s.2(20), No.121-C, Acts of Parliament, 2013 (India)
[3] [2016] 70 taxmann.com 34 (SC)
[4] The Constitution of India, 1949, Art.12

officials, civil servants, and bureaucrats in conventional government departments) and legal entities (such as autonomous bodies functioning outside the departmental structure, including companies and corporations). Although Government departments may be construed as falling within the ambit of the concept of 'state' as delineated by Article 12, the query arises regarding whether autonomous and non-departmental entities also come under the purview of the definition of 'state' within the realm of 'other authority.' An autonomous entity can be statutory, established directly via legislation, or non-statutory, set up under general law, like the Companies Act.

Government Company: What does it mean?

The Indian economy is characterized by a mixed structure, where public and private sectors play vital roles in advancing the nation's overall economic well-being. Private businesses are predominantly motivated by profit-seeking objectives rather than welfare or public welfare considerations. Consequently, private entrepreneurs demonstrate minimal interest in establishing or investing in sectors requiring substantial capital outlay unless the potential profits are significantly high or can be realized over a prolonged period. In situations demanding large-scale capital investments, the government intervenes directly by establishing government-owned enterprises controlled by the central or state authorities.[5]

As per Section 2(45) of the Companies Act 2013,[6] a government company is identified as a company where at least 51% of the paid-up share capital is controlled by the Central Government, State Government(s), or a combination of both. A Government Corporation's subsidiary is also classified as a Government Company. Despite government management, these entities are registered as private limited companies, with shareholders comprising private individuals and the government, making them mixed-ownership entities.

Under Section 617 of the Company Act 1956,[7] a 'government company' is described as any company outlined in Section 3[8] concerning establishing and registering such entities. Consequently, government-owned companies were granted various exemptions and benefits.

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[5] Pallavi Vartak, Corporate Governance: A Literature Review with focus on Public Sector Undertakings in India, Vol 4 Issue 1, IJSS, 17, 18-19 (2018) https://www.researchgate.net/publication/323782889_CORPORATE_GOVERNANCE_A_LITERATURE_REVIEW_WITH_A_FOCUS_ON_PUBLIC_SECTOR_UNDERTAKINGS_IN_INDIA

[6] The Companies Act, 2013, § .2(45)

[7] The Companies Act, 1956, §.617

[8] The Companies Act, 1956, § .3

However, following the enactment of the new Act in 2013, government enterprises faced challenges due to specific provisions like appointing independent directors, which posed difficulties in implementation. Notable examples of government corporations include Steel Authority of India Limited, Bharat Heavy Electricals Limited, Coal India Limited, and State Trading Corporation of India.

Government companies' governance is regulated and sanctioned by the central and state governments, emphasizing societal benefits and fair economic development over profit motives. These companies are predominantly government-owned under the Companies Act, which distinguishes them from private firms. They exhibit unique characteristics such as government involvement, ministerial directives, delays in appointing independent directors, non-compliance with disclosure norms, and being accountable to the public and government. Companies with strong corporate governance find it easier to secure funding from the market. Minority shareholders in these entities have rights that include information access, notifications, participation in shareholder meetings, share transferability, and dividend receipt. Nevertheless, they can file complaints with the Ministry of Corporate Affairs or the SEBI if crucial decisions are made by the government without their consent, despite owning more than 51% of the company.

The Comptroller and Auditor General of India conducts audits of government companies, with the authority to engage an auditor and specify the scrutinization of finances. They hold the power to determine the audit activities and receive the audit report for review before the annual general meeting.[9]

In the case of government companies, an annual report must be presented to both chambers of Parliament under the Central Government's jurisdiction, focusing on operations and affairs during annual general meetings. The Comptroller and Auditor General of India must receive and comment on the audit report before the annual general meeting, following the same procedure. On the other hand, government corporations must present reports to both Parliament chambers, overseen by the Central Government, concentrating on activities during annual general meetings.

[9] Gitika Jain, Indirect ownership and control of government company : a conceptual view, iPleaders, https://blog.ipleaders.in/indirect-ownership-control-government-company-conceptual-view/ (Last visited on September 21,2023 at 11:34 PM)

Government companies or public sector undertakings (PSUs) in India comprise departmental undertakings like railways, postal services, and broadcasting under a government ministry's governance. Statutory Public Corporations are established by Acts defining their powers, functions, and structures, such as the Food Corporation of India and Life Insurance Corporation of India. Government corporations are categorized as PSUs if the government holds 51% or more of the paid-up capital, including companies like Hindustan Machine Tools Limited and Steel Authority of India Limited.

It is essential to note that government-owned businesses are subject to the "*Right to Information*," allowing requests for operational information and ensuring accountability. This can confuse the public, as the Right to Information pertains only to government bodies, while a Government Company transcends mere governmental agency status.[10]

The characteristics of a government company are as follows:

- A government company constitutes a separate legal entity.
- The selection of personnel in a government company is regulated by a memorandum of association and articles of association.
- Typically, a government company is examined by a designated agency appointed by the central government, namely the Comptroller and Auditor General of India.
- Funds for government companies are sourced from private and public investments and the capital market.

Government-owned enterprises can be classified either as public or private entities. A public enterprise typically involves the participation of at least two individuals, with one potentially holding a governmental position, such as the President or Governor, and the other being a government official. However, it is expected to categorize government-owned enterprises as part of the public sector. The government exerts indirect influence on private sector operations through fiscal and monetary policies while implementing direct administrative and physical controls to ensure that private investments and production align with the government's critical socioeconomic goals. The government's regulatory role in business, commerce, and industry primarily focuses on delineating the boundaries within which private enterprises operate and involves various responsibilities such as imposing restrictions on private businesses,

[10] Harshit Jain, Government Company and Article 12 of the Indian Constitution, Vol.1 Issue 9, IJRESM, 517, 518-519 (2018) https://www.ijresm.com/Vol_1_2018/Vol1_Iss9_September18/IJRESM_19_124.pdf

preventing monopolies and excessive corporate dominance, promoting the development of public enterprises as alternatives to private businesses for competitive purposes, and maintaining a suitable socio-economic infrastructure. The government is crucial in stimulating industrial growth by providing financial assistance, offering incentives, and establishing necessary infrastructural facilities to encourage expansion and investment. For instance, the government may designate certain regions as "No Industry Districts" to promote balanced growth and address regional disparities. Furthermore, the government actively supports the development of small businesses, as evidenced by its provision of financial aid through development banks to contribute to the country's industrial advancement.

Government Companies as "State" under Article 12

This fact is apparent from numerous judicial decisions wherein the Supreme Court has determined that governmental entities fall within the term 'state' scope as delineated in Article 12. In Som Prakash v. Union of India,[11] the critical inquiry revolved around whether Bharat Petroleum Corporation, a government establishment formed under the 1956 Act, should be classified as an authority or state following Article 12 of the Indian Constitution. The Court adjudged that the corporation should indeed be encompassed by Article 12. It should be regarded as the government's representative.

A decade after the ruling in Som Prakash, the Supreme Court issued another verdict in the case of Chander Mohan Khanna v. National Council of Educational Research and Training.[12] This ruling posited that Article 12 should not be interpreted to include any autonomous organization with ties to the Government as a 'State.' Irrespective of the degree and pervasiveness of the government's oversight over an entity, it cannot determine whether the entity qualifies as a 'State.' There has unquestionably been a discernible evolution in the judiciary's understanding of the scope of Article 12 over time. Nevertheless, the influx of lawsuits alleging breaches of Article 12 by public entities has remained the same.

In the case of Hindustan Steel Works Construction Co. Ltd. v. State of Kerala,[13] it was established that despite the significant control wielded by the Government, the Government Company does not fit the definition of a Government department or establishment and thus does not constitute a state entity. Similarly, in the case of Andhra Pradesh Transport

[11] AIR 1981 SC 212
[12] (1991) 4 SCC 578
[13] (1998) 2 Co. LJ 383

Corporation v. ITO,[14] the Supreme Court determined that even if a state government maintains full ownership of a corporation, the corporation maintains its distinct legal identity, and its earnings cannot be ascribed to the state government. The employees of a Government Company are not acknowledged as government officials, depriving them of the legal right to seek additional compensation from the government. This judgment was rendered in the case of A. K. Bindal v. Union of India.[15]

The central issue in the case of Mysore Paper Mills Ltd. v. Mysore Paper Mills Officers' Association[16] revolved around whether a Government Company, as outlined in Section 617 of the 1956 Act, meets the criteria to be considered a "state" under Article 12. It was established that the state government significantly influences the firm's operations and daily functions. Consequently, the corporation was deemed an extension or tool of the government, aligning with the principles outlined in the RD Shetty case. Therefore, the Court determined that the Government Company should be recognized as a state entity according to Article 12.

In the case of R.V. Dnyansagar v. Maharashtra Industrial And Technical Consultancy Organisation Ltd.,[17] the court's ruling emphasized the necessity to evaluate a company's qualification as a state under Article 12 based on various factors. These considerations involve examining whether the entity is subject to government oversight and whether its financial or operational activities are government-controlled. In this instance, the verdict concluded that the organization did not satisfy the prerequisites outlined for a government-owned enterprise as per the 1956 Act, thus precluding its classification as a state entity according to Article 12 of the Constitution.

Similar deliberations took place in the P.B. Ghayalod v. M/S. Maruti Udyog Ltd. case,[18] where it was ascertained that substantial foreign ownership in a Government Company grants the foreign stakeholder the power to influence the Board's decisions. Furthermore, most of the corporation's determinations necessitate the foreign partner's consent, negating its classification as a state-affiliated entity or instrumentality. This determination stems from the fact that the Indian government did not exercise absolute authority over the firm and was not its exclusive financial supporter.

[14] 1964 AIR 1486
[15] (2003) 5 SCC 163
[16] (2002) 2 SCC 167
[17] [2003] 46 SCL 153
[18] AIR 1992 Delhi 145

Provisions of Government Companies under the Companies Act, 2013

Section 2(45) of the Companies Act 2013 defines a "Government Company" as a company where the Central Government, a State Government, or a combination of both hold at least fifty-one percent of the paid-up share capital. This definition also encompasses companies that are subsidiaries of such Government entities. It is important to note that under this clause, "paid-up share capital" is interpreted as the "total voting power," particularly when shares with differing voting rights are issued.

Section 2(64) of the Companies Act 2013 provides clarification on the term "paid-up share capital" or "share capital paid-up." This refers to the total amount recognized as paid-up, equal to the sum received for shares issued. It also includes any amount credited as paid-up for company shares, excluding other funds received for such shares under different designations.[19]

The Ministry of Corporate Affairs (MCA) issued a notification on June 05, 2015, granting several exemptions to Government Companies under the Companies Act 2013. Subsequently, on June 13, 2017, the MCA released another notification amending the initial one from 2015. Government Companies are eligible for various concessions under the Companies Act 2013, provided they have yet to default in submitting their Financial Statements or Annual Returns to the Registrar.

According to Section 4(1) of the Companies Act 2013,[20] the company's memorandum must indicate the name, including the term "Limited" for public limited companies or "Private Limited" for private limited companies. However, Government Companies are exempt from including "Limited" or "Private Limited" in their name.

Section 56(1) of the Companies Act 2013,[21] concerning the Transfer of Shares does not pertain to Government Companies regarding Securities held by government nominees. When a person acts as a government nominee, a Government Company is not obligated to file Form SH-4 for share transfers.

The requirement in section 56(1) for an adequately stamped instrument of transfer executed by the transferor and transferee does not apply to bonds issued by Government companies. Instead,

[19] The Companies Act, 2013, § 2(64)
[20] The Companies Act, 2013, § 4(1)
[21] The Companies Act, 2013, § 56(1)

the transferee must provide the company with their information and the bond certificate or letter of bond allotment.

For the transfer of Bonds issued by a Government Company, an Instrument of transfer is unnecessary as long as the Company receives notification of the transfer along with details of the transferee and the corresponding bond certificate.

Section 89: Declaration in respect of beneficial interest in any share

Where an individual's name is recorded in a company's register of members as the shareholder of shares, despite not possessing the beneficial ownership of said shares, said individual is required to submit a declaration to the company within the stipulated timeframe and in the prescribed format, detailing the identity and relevant information of the beneficial owner of the shares. Any individual who possesses or obtains a beneficial interest in a company's shares must provide a declaration to the company elucidating the nature of their interest, details of the registered shareholder in the company's records, and any other specified information. This provision is inapplicable to Government Companies.[22]

Section 90: Register of significant beneficial owners in a company

1. Each person, whether acting individually or collectively or through one or more entities or trusts, including those located outside of India, who holds beneficial interests of at least twenty-five percent or any other percentage specified in the shares of a company or possesses the right to exert significant influence or control, as defined in clause (27) of section 2, over the company, is obligated to disclose to the company the nature of their interest and relevant details, in the manner and timeframe specified upon acquisition of the beneficial interest or rights and any subsequent changes: However, the Central Government may identify certain classes of individuals exempt from this declaration requirement.
2. Every corporation must keep a record of the disclosed interests by individuals under subsection (1) and any updates, including the individual's name, date of birth, address, ownership particulars in the company, and other specified information.
3. The register maintained under subsection (2) must be inspected by any company member upon payment of the designated fees. Furthermore, each company must submit

[22] The Companies Act, 2013, § 89

a report on significant beneficial owners and any modifications to the Registrar, containing specified names, addresses, and details, within the designated timeframe, in the prescribed format and method.

This provision does not extend to Government Companies.[23]

Section 96(2): Place of Annual General Meeting

The convening of the Annual General Meeting (AGM) is scheduled to take place within the standard business hours, specifically between 9 a.m. and 6 p.m., on any non-National Holiday. The meeting will be at the company's registered office or an alternative venue within the same locality as the registered office.

For Government Companies, the provision outlined in Sub-section (2) of Section 96[24] states that the phrase "*alternative venue within the city, town or village in which the registered office of the company is situated*" is substituted with "*another location as approved by the Central Government.*"

AGMs for Government Companies must be conducted at the company's registered office, an alternative site near the registered office, or a venue endorsed by the Central Government.

Section 129: Financial Statements

Section 129 of the Companies Act 2013,[25] about Segment reporting, has been amended to provide relaxation when a company operates in segments. The obligation to comply with Accounting Standard 17 is now optional for Government Companies under the Notification issued on June 05, 2015.

Section 149(1): Appointment of more than 15 Directors

Every organisation is required to establish a Board of Directors composed of individuals serving as directors, with a cap of fifteen directors.[26] However, The Companies Act 2013, under Section 149(1)(b), exempts Government Companies from this provision, stipulating that no company should exceed fifteen directors.[27]

[23] The Companies Act, 2013, § 90
[24] The Companies Act, 2013, § 96(2)
[25] The Companies Act, 2013, § 129
[26] The Companies Act, 2013, § 149(1)
[27] The Companies Act, 2013, § 149(1)(b)

Section 152(6) and (7): Retirement of Directors by rotation

The rules concerning the mandatory retirement of directors through rotation do not extend to Government Companies in cases where they are either unlisted Government Companies or subsidiaries of unlisted Government Companies.[28]

Section 162: Appointment of Directors to be voted individually

Under Section 162 of the Companies Act, 2013:[29]

1. During a company's general meeting, presenting a motion proposing the appointment of two or more individuals as directors through a single resolution is prohibited unless prior approval has been obtained at the meeting without any opposition.
2. Any resolution that violates the aforementioned provision will be deemed invalid, regardless of whether any objections were raised during its presentation.
3. A motion aimed at endorsing an individual for an appointment or suggesting an individual for an appointment as a director is to be regarded as a motion for the individual's appointment.

In the context of a Government Company, Section 162 does not apply to a Government Company where the total paid-up share capital is owned by the Central Government, a State Government or Governments, or a combination of the Central Government and one or more State Governments; a subsidiary of a Government Company as mentioned in (a) above, where the said Government Company holds the entire paid-up share capital. The requirement for individual voting for appointing Directors does not extend to the Government Companies and their wholly owned subsidiaries.

Section 164(2): Disqualifications for Appointment of Director

As outlined in Section 164(2) of the Companies Act, 2013,[30] individuals who have served as directors in a company that either neglected to submit financial statements or annual returns for a consecutive three-year period or defaulted in repaying accepted deposits, interest payments, debenture redemptions, or declared dividends for a continuous one-year period or longer, are disqualified from being reappointed as directors in that same company or appointed

[28] The Companies Act, 2013, § 152(6) & § 152(7)
[29] The Companies Act, 2013, § 162
[30] The Companies Act, 2013, § 164(2)

in another company for five years following the occurrence of such failures. It is important to note that this provision does not extend to Government Companies.

Section 170: Register of Directors

Every Company must maintain a register at its official location containing specific details of its directors and key executives as determined by regulations. This register must include information on the securities owned by each individual in the organization, its parent company, subsidiaries, subsidiaries of the parent company, or affiliated entities. Additionally, a submission comprising the specified information and documentation of the directors and key executives must be lodged with the Registrar within thirty days of the appointment of any director or key executive and within thirty days of any changes occurring. Section 170[31] does not apply to a Government Company where the entire share capital is owned by the Central Government, a State Government, or both, or the Central Government and one or more State Governments.

Section 186: Loan and Investment by Company

In the scenario of a Government Company, Section 186[32] is exempted in the following circumstances:

(a) a Government Company involved in defence manufacturing;

(b) a Government Company, excluding listed entities, upon receiving authorization from the relevant Ministry or Department of the Central Government that operates under the jurisdiction of the State Government before extending loans, guarantees, security, or investments under the aforementioned section.

Section 197: Overall Maximum Managerial Remuneration and Managerial Remuneration in case of absence or inadequacy of profits

The aggregate compensation for management that a publicly traded corporation is obligated to pay its board members, which includes the managing director, full-time director, and manager, for any given fiscal year should not surpass 11% of the company's net earnings for that year as determined following the guidelines outlined in section 198, with the stipulation that the directors' compensation should not be subtracted from the gross profits. The regulations

[31] The Companies Act, 2013, § 170
[32] The Companies Act, 2013, § 186

specified in section 197[33] concerning the remuneration of management personnel do not extend to Government Companies, and the set limits therein are also not considered as part of the company's policy.

Section 230 to Section 232: Compromises, Arrangements and Amalgamations

In situations involving government-owned corporations, the Central Government is authorized to sanction compromise arrangements and amalgamations instead of the jurisdiction of the National Company Law Tribunal (NCLT).[34]

Section 439: Offences to be Non-cognizable

As outlined in Section 439(1),[35] irrespective of any provision in the Code of Criminal Procedure, 1973, each violation under this legislation, except those delineated in subsection (6) of section 212,[36] will be classified as non-cognizable as defined in the aforementioned Code. Judicial authorities are precluded from initiating legal proceedings for any transgressions under this statute purportedly committed by a corporation or any of its executives unless upon the formal written complaint of the Registrar, a shareholder, a company member, or an individual duly authorized by the Central Government for such purpose. It is noteworthy that judicial intervention in matters about the issuance and transfer of securities and the non-payment of dividends is permissible upon receipt of a written complaint by an individual authorized by the Securities and Exchange Board of India. Specifically concerning state-owned enterprises, legal action for alleged violations under this law by a corporation or any of its executives can only be instigated upon submitting a written complaint by an individual authorized by the Central Government for such purpose.

Section 182 of the Companies Act 2013[37] prohibits Government Companies from making political contributions. Any form of donation, subscription, or payment made by a company to a person known to be involved in activities that could impact public support for a political party is considered a political contribution. Moreover, any expenditure incurred by a company on advertising in publications like souvenirs, brochures, pamphlets, etc., is also regarded as a contribution to a political party if the publication is linked to a political party or for its benefit.

[33] The Companies Act, 2013, § 197
[34] The Companies Act, 2013, § 230-232
[35] The Companies Act, 2013, § 439(1)
[36] The Companies Act, 2013, § 212(6)
[37] The Companies Act, 2013, § 182

Corporate Governance of Government Companies

Corporate governance is an emerging phenomenon and concept that functions as a mechanism for overseeing and managing enterprises on a global scale by augmenting transparency. Moreover, it guarantees investors, whether individual or institutional, that organizations will not inappropriately utilize their funds in business operations. Government Companies, which have primary social responsibilities to fulfill while generating profits, undergo scrutiny due to their utilization of taxpayers' money in their operations. Corporate governance aims to safeguard the interests of investors while also establishing equity and transparency in interactions with all stakeholders, including consumers, employees, investors, suppliers, the government, and society as a whole. Shareholders not only possess ownership of the company but also serve as investors, and hence, they are consistently concerned about the company's profitability, equity towards them, and capacity. The corporate governance regulations in India enhance the rights of shareholders while also ensuring the protection of stakeholders' interests.

The Board of Directors is perceived as an integral component of corporate governance. The primary function of the Board is to oversee management activities on behalf of shareholders. The principal duty of governing a company, whether private or Government-owned, rests with its Board of Directors. The Board is expected to operate in the following manner:

- To maintain oversight of the company and supervise its executive management, the Board must convene regularly.
- The Board of Directors must effectively guide discussions during company operations meetings.
- The Board of Directors holds the responsibility for matters related to hiring and terminating the CEO.
- The Board of Directors provides guidance and oversight in the company's senior management's selection, evaluation, etc..
- The Board monitors the company's performance in achieving its business objectives, plans, and strategies. Additionally, the Board ensures proper management of the company.
- Furthermore, the Board guarantees adherence to relevant laws, rules, and regulations, among other things.

Central Public-Sector Enterprises (CPSEs) must adhere to corporate governance regulations

established by the Department of Public Enterprises under the Ministry of Heavy Industries and Public Enterprises, New Delhi. Corporate Governance directives are primarily influenced by the Companies Act, 2013, the Securities and Exchange Board of India (SEBI), and the Department of Public Enterprises (DPE). The DPE has issued governance guidelines on CG for Central Public-Sector Undertakings (CPSUs). Listed CPSUs must comply with SEBI corporate governance guidelines and adhere to provisions not covered in SEBI guidelines or contradicting SEBI provisions. Non-listed CPSUs must follow the obligatory CG guidelines provided by DPE.[38]

The optimal blend of the board of Directors consists of the Functional, Nominee, and Independent Directors. The Functional Directors, such as CMD/MD, should be at most half of the Board's capacity. Government/other CPSEs can appoint a maximum of two Nominee Directors. For a CPSU listed on Stock Exchanges with an Executive Chairman, the Independent Directors should make up at least half of the Board Members; for other CPSEs, one-third must be Independent Directors. Two-thirds of the total directors should be Independent Directors, with one serving as the audit committee's chairperson. The auditors of a company should be well-informed about all financial affairs. The Chairman of the Audit Committee must attend the Annual General Meeting to address shareholder inquiries. The Company Secretary is to act as the Audit Committee's Secretary. There are 89 PSUs, including 48 CPSEs, with over fifty-one percent directly held by the central government or other CPSEs. Twenty-five Public Sector Banks are directly owned, while others have fifty-one percent or more ownership by the Central or State government. Five State-level Public Enterprises have over fifty-one percent direct holding by the state government or other SLPEs, and eleven Other Companies have the largest shareholding by Central and/or State Governments and/or Government Companies and/or Government Financial Institutions.[39]

The Comptroller and Auditor-General of India will design the initial auditor within 60 days following the company's registration. If the Comptroller and Auditor-General of India fails to appoint the auditor within this timeframe, the company's Board of Directors is then responsible for the appointment within the subsequent 30 days. Should the Board also fail to fulfill this obligation within the following thirty days, it must notify the company's members, who will

[38] Pallavi Vartak, Supra Note 5, 24-25
[39] Ibid

appoint the auditor within sixty days during an extraordinary general meeting, and this auditor will serve until the conclusion of the first annual general meeting.[40]

The oversight responsibilities of the Board of Directors encompass strategic governance of business activities alongside the direct assessment and incentivization of management's performance. Concurrently, the Board must verify adherence to the legal structure, maintain the integrity of financial reporting systems, and establish credibility with stakeholders by ensuring appropriate and timely disclosures. Notably, in Government Companies, Directors are appointed by the Government itself.[41]

Characteristics of a Government Company in India

The Government Company/Public Sector Undertaking is owned and operated by the Central and State Governments. Their characteristics are as follows:

State Ownership:

The Government wholly owns public undertakings. For instance, the Central Government owns the Reserve Bank of India, while the Government of Maharashtra State owns the Maharashtra State Road Transport Corporation.

Government Control of PSU:

The control of public sector undertakings rests with the Government itself.

Service Motive:

The primary objective of a public sector undertaking is to deliver services to the public. In the process, these organizations may incur losses. The government often provides subsidies for various products and services to uplift society.

State Financing:

The Government of India supplies capital and funds to various states through allocation and appropriate budgeting. Sometimes, they also offer loans to the states.

[40] Institute of Company Secretaries of India, https://www.icsi.edu/media/webmodules/06072022_May_Company_Law_Corner.Pdf (Last visited on May 28, 2023 at 02:02 PM)
[41] Ibid

Bureaucratic Management:

There are clear rules and regulations prescribed and adhered to by the government.

Public Accountability:

These sectors are significantly accountable to the public for their performance and outcomes. The Comptroller and Auditor General of India conducts their annual audits. Furthermore, their annual reports are deliberated in the Parliament or the State legislature.

Challenges Faced by the Government Companies

The government is trying to enhance the transparency and accountability standards of Public Sector Undertakings (PSUs). The focus lies on addressing issues such as non-compliance with clause 49 of the SEBI listing agreement and strengthening the autonomy of PSUs through effective implementation.

Comparison of Corporate Governance Practices in PSUs and Private Sector

Private enterprises demonstrate a higher level of adherence to corporate governance frameworks due to the competitive nature of the global business environment. Their primary goal is to expand their market presence internationally, leading to a proactive approach to governance. Conversely, PSUs need more enthusiasm for market expansion and international competition, adhering strictly to their internal policies and procedures.

- Given the predominant government ownership in PSUs, decision-making authority predominantly rests with the government, often neglecting the interests of minority shareholders. The boards of public sector entities need more complete independence, facing undue interference from various governmental departments.
- Building on the issue of ownership concentration, external shareholders receive limited recognition within PSUs, resulting in inadequate financial disclosures and transparency.
- The government has granted Public-sector enterprises in India varying levels of independence. Yet, their decision-making processes are often constrained by governmental control, limiting their autonomy and impacting their daily performance. Current norms suggest that managerial autonomy and board composition should be

separated. However, due to government interference, filling vacancies for non-executive Directors in PSU becomes impractical and undermines their independence.

- By following established regulations, the government should select competent professionals as board members with a firm grasp of the business and sector. Allowing the nomination of board representatives by large shareholders to ensure the independence of board members' powers and any political affiliations from executive management is crucial. Non-executive directors on PSU boards have a significant role in shaping strategic priorities and providing risk oversight in governance.
- Several registered Navratna and Miniratna PSUs need to catch up to meet the minimum requirements outlined in Clause 49 of the SEBI listing agreement. The Ministry of Corporate Affairs' emphasis on enforcing corporate governance regulations significantly delays India's projected growth. Ensuring proper disclosures in directors' and corporate governance reports is essential for accountability and corrective actions. Adherence to rules for CPSEs, both listed and unlisted companies, must be consistent.
- The presence of independent Directors on public sector undertakings' Boards is crucial given the government's interventions in their operations. Independent Directors serve as a counterbalance in a company's interests. Unfortunately, official data indicates that nearly all PSUs, including Navratnas and Maharatnas, need more Independent Directors, hindering efficient management and future planning. The absence of Independent Directors blatantly violates the Companies Act, which mandates their numbers to equal the total of salaried full-time Directors and Government nominees.
- In its capacity as the Promoter, the Government must consistently oversee the performance of its Board of Directors, mainly when it acts as a promoter and majority shareholder of the Public Sector Undertakings (PSUs). The Government must lay out a strategic framework for addressing various issues without compromising the independence and authority of the board of directors. As per the guidelines set by the Organization for Economic Cooperation and Development (OECD), the government is recommended to formulate and release an ownership policy that outlines the overarching goals of state ownership, the state's involvement in the corporate governance of state-owned enterprises, and the proposed implementation of this policy.
- The recruitment of retired public sector staff members as part of the audit committee within Central Public-Sector Units is a practice that needs more efficacy. Consequently, the recommendations put forth by such individuals hold little value.

Conclusion

The analytical framework of State-society relations focuses on evaluating the extent and caliber of the state's connections with society. The relationship between the state and society is characterized by complementarity and supplementation. The state exercises governance over society, while society constitutes the object of the state; both entities serve as sources of mutual empowerment and mutual destruction. Each entity endeavors to exert control and influence over the other in a distinctive manner. Since states are seldom immune to social influences, the latter can constrain their authority.

A Government Company holds a distinctive position according to the Companies Act 2013. Since its inception and ongoing operations, the Government has been entrusted with a specific role. Determining whether a company can be classified as a state is contingent upon the Sovereign's nature and extent of involvement in the company. A mere ownership stake in an incorporated company does not confer upon the company the same legal status as its shareholder. The company's legal status is established based on various factors discussed in legal precedents, indicating the significance of the Sovereign's role. A company is considered a legal entity, with its operations managed by appointed directors daily. The essence of the company's identity is derived from its commercial activities. The individuals responsible for overseeing these activities, namely the directors, play a crucial role in shaping the company's identity. In the case of PB Ghayalod, it was determined that if an external partner holds greater control over the company than the government, the company would not be deemed a state entity. Therefore, a combination of the aforementioned factors aids in determining the statehood of a Government Company. The corporate sector in India has witnessed numerous scandals, ranging from Harshad Mehta to the Sahara fraud. It is imperative for the Government to definitively ascertain the status of Government Companies to safeguard the interests of the general public who rely on these entities and are impacted by any disruptions in their operations. Government Companies can function as private or public enterprises, thereby increasing their accountability to the citizens who invest in them or benefit from their offerings. Legislative amendments should be enacted to formally classify Government Companies as state entities, ensuring greater accountability and clarity, instead of relying on vague and evolving legal interpretations due to a lack of stringent governance.

Corporate governance currently plays a crucial role in sector enterprises (PSEs). Private and public sectors adhere to Clause 49 and the Companies Act 2013, enhancing corporate

governance standards. Challenges include the independence and remuneration of non-executive directors, engagement in unproductive activities, ministerial interference in board matters, effectiveness of the audit committee, the need for increased support for the audit committee, and the protection of minority shareholder interests. Implementing corporate governance under such circumstances can significantly enhance the performance of CPSEs in their respective domains. An independent Audit Committee, in line with corporate governance regulations, can offer valuable recommendations to assist CPSE companies in improving their performance, consequently boosting the confidence of minority shareholders. CPSEs should respect shareholders' rights and encourage involvement in the company's decision-making processes.