

SHAKEN INDIA INC. IN THE YEAR
2009: A STUDY IN THE LIGHT OF
INDIA'S CORPORATE GOVERNANCE
GUIDELINES.

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I. INTRODUCTION

- ❑ **Corporate Governance Voluntary Guidelines 2009** mainly emphasized upon –
 - ✓ **Appointment of independent directors,**
 - ✓ **clarifying their roles and responsibilities and**
 - ✓ **fixing appropriate remuneration for them.**

- ❑ The primary concerns , and the response of the Government of India to governance scandals are enumerated as:
 - ✓ ***First*, it evaluates the substantive provisions of the Guidelines and finds that while the Guidelines do contribute to enhancement of the existing corporate governance framework in significant ways, they fail to satisfactorily address some of the shortcomings in the prevailing regime that have surfaced in the recent past.**

 - ✓ ***Second*, it seeks to determine the efficacy of the “voluntary” approach followed by the Government of India rather than through the imposition of mandatory rules.**

II. EVALUATING THE SUBSTANTIVE PROVISIONS

The other provisions can be broadly categorized in **four** parts:

- Board structure and directorship matters;**
- Audit matters; and**
- Other incidental matters.**

III. ASSESSING THE APPROACH FOR REFORM

- ❑ **SEBI** made laws which were voluntary rather than more of; mandatory made **Ministry of Corporate Affairs(MCA)**.
- ❑ **First**, SEBI has not taken any significant measures aftermath of the recent governance scandals. On the contrary, MCA that has taken regulatory measures in the light of recommendations.
- ❑ **Second**, Corporate Governance efforts in India began on a voluntary basis, they acquired mandatory status, which was further reinforced by the introduction of stringent penalties for violation of the norms.
- The Guidelines mark a reversal of approach whereby there has been a preference to revert to the voluntary approach, as opposed to a more mandatory approach that had become prevalent in the form of Clause 49.

IV. COMPARING VOLUNTARY AND MANDATORY APPROACHES

- Voluntary Approach:
 - ✓ It is often referred as “soft law” i.e. “comply or explain” approach. Ex- Combined Code in U.K.
- Mandatory Approach:
 - ✓ “One size fits all” approach. Ex- Sarbanes-Oxley Act in U.S.

V. Vantage point of the voluntary approach

- It is not rigid in its application.
- It provides sufficient flexibility.
- It is also cost-effective.

VI. EVERYTHING IS NOT A HUNDRED PERCENT IN NATURE IT DOES HAVE A BLACK SIDE TOO

- ❑ The inadequate sanctions under the voluntary system may encourage non-compliance.
- ❑ Conflicts of interest, due to which proper supervision and enforcement of the code cannot be guaranteed.
- ❑ **“Checks the box”** approach by complying with the form and not substance of the code.

VII. VOLUNTARY APPROACH: EVALUATING THE EVIDENCE

- Reliance on industry-based regulation through codes in other corporate spheres.
- Enabling regime governing the corporate sector through codes.
- Monitoring the performance of companies within the parameters of the “comply-or-explain” rule.
- System of legal institutions with strong foundations, in the form of company law.

VIII. Voluntary code In India: Will it Work?

In the present scenario, Voluntary approach is prevailing in India rather than Mandatory approach.

IX. CONCLUSION

The Government has adopted care and caution not to legislate hastily in the wake of a crisis, but rather to introduce guidelines that may be voluntarily adopted by industry. Even if given the track record of effectiveness of voluntary codes in other countries, particularly those that are emerging economies with concentrated shareholding, there is less chances of its succeeds chart in Indian conditions. The key to the lock is to find an optimal mix of mandatory rules that are accompanied by a code of corporate governance standards. At the same time, mere addition of rules and codes may not yield results. We should ensure greater compliance of codes or sterner enforcement of rules, both of which continue to be far from desired levels in India.