Addressing Accountability Failures of Public Listed Companies under Modern Corporate Governance Codes: Projected Goals, Failures and Mistreatments

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***Abstract*— This paper in its legal theoretical analysis examines the success, failures and mistreatments of modern Corporate Governance Codes of companies. The Codes of most countries followed the common pattern of recommendations, pervasively expanded globally, in addressing the accountability failures of modern companies. The analyses of this paper find that the most important mistreatments under the Corporate Governance Codes stems from the failure to consider the presence of divergent interest-centric shareholder groups in modern public listed companies, who are fundamentally different in character in respect of their attachment and detachment to the actual business of the company and share market dynamism— the diffused 'free-rider public investors' who are loosely connected to the company's substantial business, and the 'entrepreneur shareholders'. Thus the modern public listed companies can no longer be equated with the classical companies. Also there are debenture holders, creditors, suppliers, dealers, employees, etc. The Codes' defect is a 'general accountability' framework, not designed upon the interest-specific concerns and oversight performed by/for those different groups. Further that, the codes provisions in an attempt to bring accountability produced a conflicting Board structure by recommending the board's composition with two types of directors, 'executives' and 'non-executives/supervisory/monitoring', whereas nothing is provided to address this conflict perspective. This paper intends to provide insight in formulating the accountability program under the Codes upon pragmatic treatments to the issues of modern companies, and ways for removing its shortcomings.**

***Keywords:* Accountability of Companies, Corporate Governance Codes, Company Law Reformations, Modern Companies, Protection of Investors, Public Listed Companies.**

INTRODUCTION

A broad comprehensive definition of the term 'corporate governance' refers to the 'corporate functional mechanism' covering a broad set of relationships between different corporate actors, such as, shareholders, directors, auditors, corporate regulators, as well as corporate employees, suppliers, dealers and the society at large. This article relates to the term 'corporate governance' to its more direct and strict concept referring to 'the corporate functional system' with the performance of respective roles of some key corporate actors, e.g., the shareholders, directors, auditors as distinct from the wider societal goal, e.g., embracing the relationship of corporate employees, suppliers, dealers and society at large which may well be the topic for discussion under 'corporate social responsibility'.

The rising concern for reshaping the accountability framework of companies under modern 'corporate governance codes' can be traced back to the series of corporate collapse events occurred at or around the beginning of this present century, like Polly Peck (1990), HIH Insurance (2001), One.Tel (2001), WorldCom (2001), Enron (2001), Adelphia Communications (2002), Arthur Andersen (2002), Lehman Brothers (2008), AIG (2008), etc. Such corporate collapse events called upon the attention of policy makers, Government authorities, corporate regulators, legislators, various national and international organizations and all those having economic or business connections with the company. To make a policy effective to treat the problems of an area, the first and foremost requirement is to understand the specific context in which the policy is to be implemented, problems to which policy designed to address, and contingencies affecting the policy intervention in attaining the goal and such other related issues. Where it is the aim of a policy intervention to establish the 'accountability' of something, the first thing is to identify to whom the accountability is due, what are the types of accountability to each of those groups and how that accountability can be implemented and monitored. After charting the above mentioned first requirement, the second that would be required is to provide a continuous research on the assessment of impact of the policy intervention and bring necessary changes removing the perceived shortcomings to fit the context.

The study of this paper finds that major problems exist in the policy intervention of the modern Corporate Governance Codes in treating the accountability problem of modern public listed companies, especially, the approach on which accountability is destined to achieve is inappropriate to the special context of modern public listed companies which is characterised by the presence of diverse interests motivated investors, e.g., the entrepreneur class and free rider short term share market profit seekers. The general accountability framework under the codes suffers from inherent lacks of not taking into account the different accountability needs of diverse interest groups in modern companies. The said untreated inherent lacks all along led to the modern corporate governance code least effective to attain the intended goal.

The discussion of this paper is organised into four parts. Part-I discusses on 'the accountability framework under the Corporate Governance Codes; Part-II is about 'finding effective accountability mechanism for modern Companies and its contingencies'; Part-III discusses the 'areas of mistreatments' under the accountability measures of present Corporate Governance Codes; and Part-IV is on the conclusion and recommendations of this paper.

PART- I: EVOLUTION OF MODERN CORPORATE GOVERNANCE CODES THAT INFLUENCED THE GLOBAL PATTERN ON ACCOUNTABILITY TREATMENT

The accountability framework under the 'corporate governance codes' followed a certain pattern that may be discussed with reference to the reformations in UK, the USA, the EU, and the OECD Codes because of their international influence. Besides, those the Corporate Governance Codes of some other countries— Bangladesh, India, Hong Kong, Australia, etc., are also taken for reference to exemplify the pattern of adoption influenced by the said global trend. The individual analysis of those codes is not possible considering the breadth of this paper. However some of the Codes that have the pervasive influence over the Codes of different countries and thus provided the basis for 'global trend' are shortly mentioned below:

The Cadbury Committee is seen as **the first formal start for modern corporate accountability programme.** The Committee was set-up in May 1991 by the Financial Reporting Council of the London Stock Exchange following a series of corporate collapse events of 90s. The committee provided a set of 'governance guidelines' formulating a 'corporate governance code' in its final report published in December 1992 (hereinafter referred as 'Cadbury Report, 1992'). This 'governance guideline' latter became widely known as the 'Cadbury Code 1992' and provided a great influence over framing corporate governance codes of different countries. The Cadbury Code subsequently went on several revisions with supplementations and amendments at different times. The special feature of UK Corporate Governance Codes is the adoption of 'comply or explain' approach as the basic mechanism in implementing the codes' standards, an approach widely commented and followed in many corporate governance codes all over the world. Under the 'comply and explain' approach, the companies are required to mention in their corporate disclosures about what recommended standards under the codes they have complied with, and if they have any departure give reasons therefor. The rationale of the approach is 'mandating the compliance standards with flexibility upon the companies where the reason exists for departure'.

In USA, the investigation reports of series of corporate collapses towards the end of past century and the beginning of 21st century launched the corporate governance major reorganization program. The lead is taken with the passing of the Sarbanes-Oxley Act, 2002 (hereinafter mentioned as the SOX) and subsequent legislative reformations in USA required under this Act (which may be termed as the "2002's legislative reformations under SOX"). The full name of the SOX is 'An Act to Protect Investors by Improving the Accuracy and Reliability of Corporate Disclosures Made Pursuant to the Securities laws, and for other Purposes.' The SOX was passed by the US Congress in response to a number of corporate and accounting scandals, such as, Enron, Tyco International, Adelphia, WorldCom events that took place at the beginning of this 21st century. Following the 2002-legilstive reforms led by SOX, a rule based compliance program introduced at different States of USA.

Following the SOX, the New York Stock Exchange (NYSE) Corporate Governance Rules 2003 introduced a range of new mandatory requirements concerning board structure to reflect generally accepted best practice in corporate governance. The NYSE corporate governance rules under section 303A provided that, the listed companies must have a majority of independent directors (s. 303A.01); must have separate executive meetings of non-management directors (section 303A.03); must have a nominating/corporate governance and compensation committee composed entirely of independent directors (ss. 303A.04-05); must have an audit committee with a minimum of three members, all of whom must be independent (ss. 303A.06-07); must adopt corporate governance guidelines and a code of business conduct and ethics (s. 303A.09-10); and that the CEO of a listed company must certify to the NYSE each year that he or she is not aware of any violation by the company of the NYSE corporate governance listing standards (s. 303A.12). The recommendations corresponds majority of the 'corporate governance' standards formulated in UK.

In Australia, the ASX Corporate Governance Council adopted the 'Principles and Recommendations on Corporate Governance' in 2003 to apply to the ASX listed entities. A third edition of it was issued in 2014. The corporate accountability program under the ASX Code echoed with the UK Cadbury Committee recommendations (ASX Corporate Governance Council, 2014, p. 3). Like the UK Corporate Governance Code, the ASX principles adopts the Board's composition with a balance mix of Independent and Executive Directors, separation of CEO and Chairman role, 'if not why not approach' a variant term of UK 'comply or explain approach' in implementing the code's recommendations, corporate reporting and audit standards, shareholders engagement, risk management committee etc.

The European Union Corporate Governance Framework was developed with the report of the High Level Group of Company Law Experts in 2002. The EU Corporate Governance Framework adopted the 'comply or explain' approach in implementing the recommended best practice standards , i.e. companies that depart from complying a recommended standard, require to explain in their corporate governance statement which parts of the code they depart from and the reasons for doing so [19].

The Organisation for Economic Cooperation and Development (OECD) adopted a very comprehensive definition of 'corporate governance' under its *Principles of Corporate Governance, 2015*. This Code also echoed with accountability framework with Board of Directors composition, the set standards and disclosure as the conceptualization of UK Cadbury Committee (See explanatory note-1 for the OECD initiative at the end).

In India the modern corporate governance standards are embodied in the Rule on Listing Agreement of the Securities and Exchange Board of India (SEBI) and the new Companies Act, 2013. The SEBI adopted its Corporate Governance Codes for listed companies under Clause 49 of the Equity Listing Agreement issued by it in February 21, 2000. After several amendments present version was released by SEBI in April 2014 that became effective from October 1, 2014. Clause 49 of the Listing Agreement provides for the composition of the board with sufficient mix of executive and non-executive independent directors (NEDs), lay down code of conduct for all the members of the Board, requirement upon the company to establish a 'vigil mechanism' to report unethical behaviour and any sort of violation of company's code of conduct or any actual or suspected fraud, establishment of audit committee with at least two third majority of independent directors, nomination committee, risk management committee, disclosure on related party transactions, reporting certifications, etc. These recommendations do as like as Corporate Governance Codes of most of the countries provided. In India, a great number of modern corporate governance standards are now also embodied in the new Companies Act, 2013.

In Bangladesh, The Securities and Exchange Commission (SEC) adopted its Corporate Governance Code in 2006. Thereafter a revised version of it was issued on 7th August 2012. Presently another revised version of it 'the Corporate Governance Code' 2018' was issued by the Gazette 10th June, 2018. The code embodies the recommendations of UK type concerning the Board's composition with a mix of Executive and Independent Directors, Criteria for Independence, Directors' reporting obligation to shareholder, recommendation on audit committee, external auditors, reporting on compliance to the code by the company etc. One exception is that, Bangladesh firstly adopted the 'comply or explain' approach in 2006. But in its revised code of 2012, the codes' standards made mandatory. This approach is retained in 2018 revision also.

THE KEY POINTS ON ACCOUNTABILITY TREATMENT UNDER THE CODES

The accountability generating program under the Codes which became the global trend can be summarized as follows:

(i) Accountability framework of the company's Board of Directors: The special feature of the modern Corporate Governance Codes is the introduction of the role of Non-Executive Independent Directors (NEDs) within the Board's Composition as monitors over the Executive Board, Defining the Boards responsibility, Boards Committees: Remuneration Committee, Audit Committee, Risk Management Committee etc.

(ii) Companies Financial Disclosures: Requiring the companies to issue its financial public disclosure with complying the accounting and financial standards recommended by Codes. Here it is special to mention about the 'comply or explain' or its variant term 'if not why not' approach in imposing compliance obligation upon the companies.

(iii) Encouraging increased shareholders participation over the corporate affairs.

PART- II: THE DEFINITIONAL CHANGE IN CLASSIC COMPANIES AND TYPES OF ACCOUNTABILITY NEEDED FOR MODERN COMPANIES

Any analysis on the effectiveness of 'corporate governance' recommendations can only be made on the analysis of the context of modern companies to which the Codes' provisions intended to apply.

Modern public listed companies show a dramatic shift form the classic investor-corporate relationship pattern. In the classic companies the accountability of the companies could follow a simple accountability framework devised on corporate Board-Investors single type economic dynamism. The Board is to discharge the entrepreneurial function delegated upon them by the investors, i.e., the company's shareholders. On the other hand, the shareholders who are holding the entrepreneurial stake of their investment extracted or enforced the Boards performance upon examining the annual accountability shown by the Board. But the modern public listed companies, there is no more any such single corporate-shareholder economic dynamism. There is a marked difference characterized by the differing economic dynamism among the shareholders. A vast majority of shareholders from among the public are loosely connected to the actual business of the company, a situation created on the spreading of company's capital among a large number of investing public who are dispersed to form in any collective action to the corporate decision making in one hand, and on the other hand are greatly diverse in their investment relationships. Their character no how can be equated with the classic entrepreneurs evidenced by the liquidity of their investment in the modern capital market. Thus the accountability of modern companies cannot be framed on the classical accountability disclosure of the Board to the entrepreneur. Accountability for modern public listed companies has a definitional change on multi-motivated economic dynamism of investors. Unless and until that definitional change could be properly appreciated no effective accountability mechanism would be established under the recommendations of 'corporate governance codes'.

In modern companies, in one side there is a group of classic entrepreneurs who have aligned their interest with the long term interest of the company. On the other hand, there is the diverse interest of the equity market participants who joined by their investment to the company with focus solely on the liquidity of the equity market. Their interest on the corporate performance is the reliability, stability and rise or fall of the share value in the equity market, i.e., if the fair play in the equity market is secured, they are happy to see their interest is best protected. Their investment to the company's capital is no less important than the class mentioned in the first category as they are the suppliers of ready capital to the company's business. On this definitional change in 'accountability', the modern 'corporate governance codes' have a marked failure to enforce accountability on participation and monitoring of the respective interested groups.

The above mentioned contextual change of investors-corporate relationship has several times discussed in many previous researches and widely termed as 'separation of ownership and control'. Most remarkable of those is the Berle and Means research. Their empirical research titled 'Modern Corporation and Private Property' (1932) was the first most dominating in presenting the dimension of such contextual change. They described that modern corporations represent large aggregations of wealth from investing public through the securities available in the open market. In such corporations part or most of the owners have almost invariably surrendered their control over the investment to a centralized management [4]. From this 'the modern corporatism' gave rise to a system distinct from classical entrepreneurial activity in that 'the property circulation' in modern companies exists in disconnection of entrepreneurial activism of its owners. The analysis made by the Berle and Means finds support by many other subsequent researches also [7, 8, 9, 10, 11, 12, 13].

In the said context of modern public listed companies, what is needed is to provide the respective 'interest specific accountability' program of multi-variant groups of modern companies as discussed above after a study on identifying some key issues, such as— whose role should be brought into accountability, to whom they are accountable, what types of accountability ought to be reflected for particular group, and enforcement mechanism of that particular type of accountability by or on behalf of the respective group.

The modern 'corporate governance codes' have the basic failures arising from lack of such considerations. The following discussion study will show how the general accountability framework of the modern 'corporate governance codes' is unsuited to the present context of modern companies.

PART- III: MISTREATMENTS UNDER THE PRESENT CORPORATE GOVERNANCE CODES

Independent Non-Executive Directors (NEDs):

The modern 'corporate governance codes' introduced the role of NEDs to independently criticize the executive performances and decisions of the Board. The Codes invariably recommended the Board's composition with a mix of adequate number of NEDs and Executive Directors. The aim on introducing the NEDs role may be appreciated from the following comment contained in a policy paper of the Commission of the European Communities:

> The presence of independent representatives on the board, capable of challenging the decisions of management, is widely considered as a means of protecting the interests of shareholders and other stakeholders. In companies with a dispersed ownership, the primary concern is how to make managers accountable to weak shareholders. In companies with controlling shareholders, the focus is more on how to make sure that the company will be run in a way that sufficiently takes into account the interests of minority shareholders. Ensuring adequate protection for third parties is relevant in both cases. Whatever the formal board structure of a company, the management function should therefore be subject to an effective and sufficiently independent supervisory function. Independence should be understood as the absence of any material conflict of interest; in this context, proper attention should be paid namely to any threats which might arise from the fact that a representative on the board has close ties with a competitor of the company [19].

The above description of the EU policy paper precisely contains the objective, roles and preferred qualification of NEDs. The policy paper recommends that, the Member States to take steps necessary to introduce, at national level, a set of provisions concerning the NEDs' role to be used by listed companies, either through a 'comply or explain' approach or through legislation [19, Clause 1.1, Section I (Recommendations)]. The NEDs should ensure that shareholders are properly informed as regards the affairs of the company, its strategic approach, and the management of risks and conflicts of interest [19, Clause 9.1, 9.2, Section II (Recommendations)].

Provision to Ensure 'Independence' of NEDs' Role:

On the independence quality of NEDs' role, the EU policy paper provides that, "a director should be considered to be independent only if he is free of any business, family or other relationship, with the company, its controlling shareholder or the management of either, that creates a conflict of interest such as to impair his judgment" [19, Clause 13.1, in Section II (Recommendations)]. It then recommends the member States should take measures at national levels through appropriate regulations in conformity of the independence criteria as set out in the EU policy paper [19, Clause 13.2, Section II (Recommendations)]. The EU independence guidelines enumerate a number of situations reflecting the relationships or circumstances which are likely to produce material conflict of interest impairing independence of NEDs. The Corporate Governance Codes of most of the countries (EU or non EU countries) of the world have the similar provision on the NEDs as provided under the EU policy paper. A short account of it given in Note-2 added at end of this paper (See explanatory note-2 at the end of this paper).

Flaws on the Codes' Provisions Regarding NEDs':

The Codes' recommendations on the NEDs role can be questioned from several perspectives. **Firstly**, the "incentive debate" issue — the NEDs who are recommended to be must not have any substantial financial or any other interest link with the company that likely to impair their independence in monitoring over corporate function. The question then arises at what incentive they would perform tiresome analysis and monitoring of corporate function. **Secondly**, the modern 'corporate governance codes' do not contain provisions on the accountability of the NEDs role. Persons for whom no accountability exists, wouldn't the risk remain that they might become corrupt, non-performing or deviated. Wouldn't it be likely that, the corporate misdeeds would find safe harbor with the NEDs role in the disguised security feel among the public. **Thirdly**, the interposing of their role in the UK type 'unitary board' structure of companies is also flawed. *Gower and Davies' Principles of Modern Company Law* pointed out this very well stating that, in a unitary board structure, the NEDs seating with the Executive Directors, have the every possibility of their supervisory role capturing by the executive board members. The clash is obvious to follow if the "executives set the strategy together with the monitors" [6]. The author further describes that, in particular the conflicts might arise in such "board's composition" as follows:

> Since executive management is unlikely easily to accept supervision by the non-executives, the non-executives may well have a battle on their hands to impose their will where there is a divergence of view. Even when explicitly trained, as Higgs recommends, why should the non-executives fight this battle rather than opt for a quiet life? [6].

The empirical studies are also too short to prove the positive connection between the role of the independent directors and corporate performance [9]. The WorldCom's investigation report described that, the Board and its Committees did not function in a way that made it likely that they would notice red flags. The outside Directors had little or no involvement in the Company's business other than through attendance at Board meetings. The CEO of WorldCom controlled the Board's agenda, its discussions, and its decisions. He created, and the Board permitted [17].

Let alone the NEDs seating with the Executive Board in the unitary Board structure of the possibility of their being captured by the later, the evidence in the Enron corporate collapse shows that, even the outside independent auditor of the Enron, found did not fulfill its professional responsibilities in connection with its audits of Enron's financial statements, or its obligation to bring to the attention of Enron's Board (or the Audit and Compliance Committee) concerns about Enron's internal controls over the related-party transactions with the company. In addition, the Enron's Independent Auditor helped structure many of the transactions Enron used to improve the appearance of its financial statements inflated [16].

In introducing the role of NEDs the issues pertaining to the enforcement of their accountability is an important issue on which the Codes' have not provided any rational mechanism for their working.

Flaws in 'Comply or Explain' Approach

The term 'comply or explain' or its variant expression 'if not why not' is an approach used by most of the Corporate Governance Codes of different countries as the dominating mechanism towards enforcing observance by the companies the Codes' standards. The 'comply or explain' approach was first introduced by the Cadbury Committee in its report 1992. This approach is now widely used in most of the 'corporate governance codes' of countries (See explanatory note-3 at the end of this paper).

Under this approach companies are required to disclose about the compliance to the Codes' recommended standards in their public disclosures. If a company for its special reason deviates to or not comply any recommended standards then give explanation in its disclosure about the circumstance for the non-compliance.

The fundamental flaws on such 'comply or explain' approach arise from the following:

> Firstly, on the question who will check out the true or false of the statement of a company in its periodic disclosure?
>
> Secondly, whether the shareholders for whom the disclosure on compliance made can apply their informed judgment about the company?

Relevant to the above questions, may be referred to Andrew Keay who has pointed to the four weak points to the "comply or explain" approach as follows:

> **First,** if directors do not comply shareholders might not realise this failure and, therefore, they will not seek an explanation or decide to take any other sort

> of action against the company. **Second,** if a company does not comply but explains … there were significant problems with the quality of the explanations that were given. **Third,** if a company does not comply and explains it might be difficult for shareholders to appraise the explanation and know whether they are accurate or adequate and whether they should take action. **Fourth,** there are indications that even when given, explanations are not regularly examined [12].

Keay's analysis also finds support in other study also (Arcot and Bruno, 2006; Arcot, Bruno and Faure-Grimaud, 2009; the UK Financial Reporting Council (FRC), 2009). Keay then comments that, "the more a set of explanations (for non-compliance) are vague or incomplete the less accountability there is. The danger with 'comply or explain' is that, to the extent the directors do not comply and choose to explain instead, not presenting explanations clearly, accurately or in detail, and perhaps using boilerplate comments, they failed to be accountable accordingly [12]. The EC recommendations of 2014 commented on the shortcomings of the 'comply or explain' approach stating that, the companies often do not provide appropriate explanations when they depart from the corporate governance codes [20, (recommendations)].

The Enron investigation report provides support for the said comment. Enron's code of conduct prohibited related party transactions of Enron officials in which the conflict of interest may arise. Although this prohibition, Enron allowed some of its senior officials to be engaged in related party transactions with it by their partnership firms. Enron disclosures apparently found provided substantial information regarding most of the related-party transactions at issue, including their magnitude and even some of the 'mechanics' of the transactions. But any reader of those disclosures should have recognized that these arrangements were complex, the dollar amounts involved were substantial, and the transactions were significant for evaluating the Company's financial performance. Nevertheless, the disclosures were fundamentally inadequate [16].

On the weaknesses of 'comply or explain' approach, Andrew Keay further points out that, it is very likely that, the shareholders up to a certain period may be unaware about the wrongful statement by the company on the compliance to the Codes' standards, and thus the company may bypass the immediate consequences for noncompliance in the capital market. This may happen either "due to lack of attention or to the fact that the accuracy of assertions of compliance could be difficult to verify or challenge. The end result is that there are no immediate consequences for directors of their companies, and means that there is a serious breakdown in accountability" [12]. Thus according to Keay, without proper means to assess the explanation provided by the company, the shareholders are blind "either accepting the view of the board or coming to the conclusion that non-compliance was not justified, but being virtually powerless to do anything about it" [12].

Modern corporate governance codes provide three means to enforce compliance to the code: (i) with the Role of NEDs in the Corporate Board; (ii) requirement of review of disclosures by the independent audit; and (iii) the increased shareholders participation in corporate accountability oversight.

The main flaws on NEDs' role discussed earlier. Also the independent auditors' role may be vitiated by the undue connection with the company as evidenced in the Enron and WorldCom collapse [16, 17]. Now the third mechanism, whether the increased shareholders participation in corporate accountability generating program can enforce compliance? It will now be discussed below.

INCREASED SHAREHOLDERS PARTICIPATION SCHEME IN CORPORATE ACCOUNTABILITY PROGRAM: SHORTCOMING UNDER THE CODES' PROVISIONS

It was one of the premises of the Cadbury recommendation that, "the accountability of boards …will be strengthened if shareholders require their companies to comply with the Code" [5, paragraph 6.1]. But in the diversified interest motivated and dispersed shareholders context of modern companies such shareholder engagement plan is a great challenge. A description on the multi-motivated investors context and their economic dynamism in modern companies and diversified interest focus described at the previous part of this paper. Shareholders will show little movement towards gathering or questioning information on compliances from the companies unless they can align their interest with such role or find their voice can influence decision makers of the company. Till now modern corporate governance codes failed to provide any effective mechanism on engaging shareholders to play such role.

For the effective disclosure of accountability the first point is to identify, with whom the accountability is due, secondly, what is the type of accountability owed to each target group, and thirdly, the mechanism with which that accountability be enforced and verified. The Codes' accountability scheme is not devised so as to reflect the economic dynamism of multi-motivated investors context of modern companies. In this respect the following comment of an EU policy paper is worth mentioning:

> Effective, sustainable shareholder engagement is one of the cornerstones of listed companies' corporate governance model, which depends inter alia on checks and balances between the different organs and different stakeholders. If for instance the majority of shareholders remains passive, do not seek interaction with the company and do not vote, the functioning of the current corporate governance system is less effective. In such circumstances, no corrective action can be expected from the shareholders' side and supervision of management rests entirely on the shoulders of the (supervisory) board. [18].

The reality is that, in modern public listed companies majority of shareholders are passive. In another EU policy paper it is commented that, the shareholders engagement plan on the corporate accountability scheme is 'generally understood as an activity which improves long-term returns to shareholders' [22]. Now, even if the long term investors is seen as the key mechanism to enforce the corporate accountability, the success of Codes' recommendation is bound to fail on other considerations, such as, the company might be turned as the instrument to expropriate the short-term investors of the capital market by the long term interested group or controlling shareholders. In modern public listed companies a large number of shareholders form the dispersed investors from the public. Although their individual shareholdings may be too small, the aggregate amount of investment by them to the company's capital may even exceed far the capital contribution of the controlling shareholders. However, in this respect certain EU member State (e.g. Italy) adopted appreciable innovation to secure minority shareholders' voice in the corporate Board, reserving some seats in the Board to be appointed by minority shareholders [22, paragraph 2.7.1].

PART- IV: CONCLUSION

For the effective outcome of any policy intervention affecting a particular field the **first** requirement is to identify the true dimension of problems which are to be treated, **secondly**, to identify the domain or the context to be affected by the particular policy intervention, **thirdly**, to devise the implementation procedure of policy recommendation, and **fourthly**, to adopt a system of continuous research and assessment on the policy impact and consequent adaptation of the policy intervention.

As to the first question, whether the problems of modern companies have been or properly identified and treated under the modern corporate governance codes, this research points to an important failure of modern 'corporate governance codes' is the absence of effective accountability provisions due to the particular interests of different category of investors of modern public listed companies who are diverse in their investment relationship and economic dynamism to the company. Such lacks in the corporate 'governance codes' produced for not giving due attention to the new economic dynamism at the multi-type investors context in modern companies which is very different from classic investor-corporate relationship pattern. Again such a lack led to the second shortcoming in the policy intervention under modern corporate governance codes, i.e., the failure to identify the impact of policy intervention affecting the domain for its implementation, the rationality, irrationality or mistreatments to the policy area. The absence of appropriate provisions under the Codes' providing for the establishment of specific interest-centric accountability of companies due to different category of shareholders and monitoring of that accountability by or on behalf the respective interest groups, made it evident that, there is a major lack in perception of the domain affected by such policy intervention. To overcome this shortcoming, a study first had to be taken to understand and sort out the types of accountability due to the different interest-groups of modern public listed companies and their economic dynamism.

The third lack under the modern corporate governance codes is about devising the implementation mechanism with some mere hypothetical premises, such as, the introduction of the role of neutral third party monitors (NEDs) in the existing Board structure without addressing the contingencies for the effective performances of their monitoring role; another one is, the stating about the shareholders greater participation in the corporate accountability program, but nothing provided how that participation can be effected in the present multi-motivated shareholders context of modern public listed companies; thereafter, the 'comply or explain' approach to enforce the observance of the codes' standards by the companies, but nothing mechanism provided to monitor the true or false about compliances except that providing for the certification requirement on the authenticity of disclosures by the directors and auditors, etc. The accountability measures on such mere hypothetical standards may sound well, but do not even confirm the rationality.

The fourth requirement for effective policy intervention is to run a system of continuous research. Here a positive comment is that researches at the government and non-government initiatives on the improvement of policy intervention under the codes are all along continuing. But the apprehension on the possible outcome of such researches is that their recommendations may continue to be unfruitful if the fundamental lacks as pointed above are unappreciated or not accounted for.

On the above conclusion about the study on accountability treatment under modern 'corporate governance codes', **this research wants to recommend as follows**:

Firstly, this research wants to invoke greater value to be attached to those researches that have been dedicated to properly identify the contextual changes in modern companies. In the policy framing of modern 'corporate governance codes', those researches should be given the first consideration so that effective accountability program dealing with the respective interests of different groups in modern companies can be provided.

Secondly, the NEDs role should be revised to replace with the role of some certified professionals maintained by the specialized departments of corporate regulatory authorities. For example, a list of certified NEDs under the department of corporate regulators may be preserved to serve in each local areas of the country. The 'incentive debate issue' on their role and the 'independence quality' on their performances may be addressed this way. To remunerate their service an amount may be deducted by the listing authority at a ratio from the dividends of the shareholders and from the working capital of the company annually. They are to serve under the supervision of the respective specialized authority of the government. In this respect, India's initiative is worth referable. The new Companies Act, 1913 of India under section 150 provided for maintaining a list of 'Independent Directors' by a body, institute or association, as notified by the Central Government eligible and wiling to act as such and be published in their websites. The companies will make appointment form the said list and then be approved in the general meeting of the shareholders. Also reference may be made to the UK Financial Reporting Council (FRC) providing for the appointment of firms to be known as the UK Recognized Supervisory Bodies (RSB) or Recognized Qualifying Bodies to perform the independent oversight function over the UK listed Companies, and further that the RSBs' activities also subjected to the independent oversight by the FRC as a process to evaluate the effectiveness of specific aspects of their regulatory systems and procedures whether they continue to meet the requirements to be a Recognised Supervisory Body (RSB) or a Recognised Qualifying Body to conduct their role [23].

Thirdly, the representation scheme in the corporate Board needs to be revised so as to accommodate diversified investors classes in modern companies. Representations of the delegates from the small investors or of the 'equity market' participants in the corporate Board may be an effective mechanism to channel the reciprocity of information between the company and the dispersed public or small investors. Special provisions may be made defining the role and participation areas of such representatives in the corporate Board. In this respect the India's instance is found a step forward, the Companies Act 2013 of India provided for the appointment of directors to represent the 'small shareholders' in the Board. Section 151 of the Act, 2013 provides that, a listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed. It defined the 'small shareholders' to mean 'a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

Fourthly, the 'comply or explain' approach should be revised to ensure meaningful compliance to the Codes by the companies. To improve the 'comply or explain' approach, the Green Paper on EU Corporate Governance Framework 2011 proposed for the creation of public specialized bodies, to act as monitoring bodies authorized under national laws, such as securities regulators, stock exchanges and other regulatory bodies to check whether the available information (in particular, the explanations) is sufficiently informative and comprehensive. The authorities could make the monitoring results publicly available in order to highlight best practice and to push companies towards more complete transparency. Use of formal sanctions in the most serious cases of non-compliance could also be envisaged (The Commission of the European Communities, Green Paper, 2011, p. 19). To introduce such a role of the authorities would be required to place appropriate check upon exercising such monitoring role, in particular not to interfere with content of the information disclosed or make business judgments on the solution chosen by the company [22].

Fifthly, considerations must be given not to create undue regulatory burden upon the companies. The increase of regulatory prescriptions may result in detraction by the companies from listing their shares to the security market. This in turn might give to the negative impact on investment and production.

EXPLANATORY NOTES:

1. The OECD first released its Corporate Governance Principles in May 1999, and then it was revised in 2004. A further review of it was started in 2014 and concluded in 2015. The revised draft of the text was kept by the OECD for receiving public comment from 14 November 2014 and 4 January 2015 via an online public consultation. The updated Principles then were launched at the meeting of G20 Finance Ministers and Central Bank Governors in Ankara held on 4-5 September 2015. Subsequently they endorsed it at the G20 Leaders Summit in Antalya on 15-16 November 2015. The full text of the updated principles can be downloaded from the link: https://www.oecd.org/daf/ca/principles-corporate-governance.htm, (last accessed on 30.10.2016).

2. The Codes' provisions on the independence quality of NEDs have the general trend of providing that, such persons must not have any substantial or financial tie with the company by reason of shareholding or other financial relationship that may impair their independence quality of oversight role. For illustration of this may be referred to: provisions contained in 'Section B' of the UK Corporate Governance Code, 2014; section 303A the New York Stock Exchange (NYSE) Corporate Governance Rules, 2003; Condition 1(2) and its sub-clauses of the Revised Corporate Governance Code, 2018 issued on 10th June, 2018 by the Bangladesh Securities and Exchange Commission (SEC); Section 149(6) of Indian Companies Act, 2013 etc. Such provisions raises fundamental question of rationality, that its, why the persons who are stated to be not connected with company by any financial or business relationship would exercise their tiresome monitoring role criticising the executive functions of the Board in the company. Thus this is an important issue raising the 'incentive debates of the monitors' to be addressed under the modern Corporate Governance Codes.

3. Illustrations may be made to some Codes that adopted the 'comply or explain' approach or its variant term 'if not why not' approach in implementing their recommended standards. The UK Cadbury Committee Report, 1992 stating that 'companies as a continuing obligation of listing, to state whether they are complying with the Code, and to give reasons for any areas of non-compliance', (paragraph 1.3 of the Cadbury Report). Further that the UK Corporate Governance Code, 2014 published by Financial Reporting Council states that "the 'comply or explain' approach is the trademark of corporate governance in the UK. It has been in operation since the Code's beginnings and is the foundation of its Flexibility … and has been widely admired and imitated internationally". The European Commission paper *Recommendation on the Quality of Corporate Governance Reporting (Comply or Explain)* dated 9 April, 2014 states that "the 'comply or explain' principle laid down in Article 20 of Directive 2013/34/EU is a key feature of European corporate governance. According to this principle, companies that depart from the relevant corporate governance code are required to explain in their corporate governance statement which parts of the code they depart from and the reasons for doing so" (EC Paper No. 2014/208/EU, dated 12.04.2104, p. 43). In USA the 'comply and explain' approach is embodied under sections 406 and 407 of the Sarbanes-Oxley Act of 2002; in Australia the ASX Corporate Governance Principles and Recommendation 2014states that the "if not, why not" approach is fundamental to the operation of the Principles and Recommendations," (the ASX Corporate Governance Principles and Recommendations, 3rd ed., 2014, p. 3). Bangladesh adopted the 'comply and explain approach' in its first issued Corporate Governance Code, 2006 (Bangladesh Securities and Exchange Commission notification No.

SEC/CMRRCD/2006-158/134/Admin/44 dated 20th Feb 2006), however, this ‘comply or explain’ approach later was discarded by its revised codes issued dated 7 Aug 2012, which is also retained in the revised Code 2018 issued 10th June, 2018. The OECD Corporate Governance Principles adopting the ‘comply and explain’ approach states that, “the legislative and regulatory elements of the corporate governance framework can usefully be complemented by soft law elements based on the ‘comply or explain’ principle such as corporate governance codes in order to allow for flexibility and address specificities of individual companies” [15].

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