

CORPORATE GOVERNANCE AND SECURITIES LAW: EVALUATING DISCLOSURE NORMS IN LISTED COMPANIES

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BEST CITATION – NITI NANCY, CORPORATE GOVERNANCE AND SECURITIES LAW: EVALUATING DISCLOSURE NORMS IN LISTED COMPANIES, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (6) OF 2026, PG. 362-368, APIS – 3920 – 0001 & ISSN – 2583-2344.

Abstract

In the contemporary financial markets, regulations on securities and corporate governance have an important role to play in promoting transparency, accountability and investor protection. Framed by disclosure requirements (including, e.g., the SEBI (Listing Obligations and Disclosure Requirements) 2015, disclosure norms play a key role in ensuring market integrity and informed decision-making. The following paper will discuss the effectiveness of listed company disclosure requirements in India particularly in terms of adequate disclosure requirements, their enforcement and practical difficulties. It assesses the use of the current norms in light of the issues, including; information asymmetry, insider trading, and corporate mismanagement. Judicial interpretation and regulatory intervention by Securities and Exchange Board of India are also discussed in the study. The paper highlights the necessity of more effective monitoring mechanisms and more corporate responsibility by finding the gaps in compliance and enforcement. Finally, it even claims that strong disclosure norms cannot be neglected in promoting investor confidence and the sustainable practice of corporate governance.

Introduction

Corporate governance is now the staple of new era corporate regulation especially in the capital markets where open participation occurs on a large scale. In India, the disclosure norms have been developed inextricably with the securities regulation enacted by the Securities and Exchange Board of India Act, 1992 and gradual advancements in the disclosure norms following the Act. Due to their access to public funds, listed companies have high disclosure requirements, which seek to promote transparency, fairness, and accountability.

The disclosure norms can be a useful tool to minimize the information asymmetry that exists between corporate management and investors. Periodic financial reporting, disclosure of corporate governance, and material event reporting provided in the SEBI (Listing Obligations and Disclosure Requirements), 2015

have greatly enhanced the regulatory environment. Nonetheless, even though there is an elaborate legal framework, issues remain in the enforcement of and enforceable compliance. Examples of delayed disclosures, selective reporting, corporate fraud have put into question the suitability of existing norms.

In addition, judicial review and regulatory intervention have been significant to influence the practice of disclosure. The principle of full and fair disclosure has been highlighted by courts and tribunals to help safeguard the investors and market integrity. Simultaneously, the changing market, technology, and complicated financial products are a new challenge to regulators.

The aim of this paper is to critically assess the effectiveness of disclosure norms of listed companies in India. It seeks to discuss the suitability of the current regulatory frameworks

in balancing the flexibility of corporate interests and the security of investor interests and also identify the gaps that should be met by legislative and regulatory changes.

MAIN BODY OF THE PAPER

1. Conceptual Framework of Corporate Governance and Disclosure Norms

Corporate governance can be defined as the rules or practices and procedures through which companies are managed. Fundamentally, the governance aims at balancing interests of the stakeholders, such as the shareholders, the management, customers, creditors, as well as the regulators. Another key element of this construct is the disclosure norms which provide the stakeholders with accurate, relevant, and timely information on the financial and operational health of a company.

In Indian contexts disclosure norms have changed in fidelity with the liberalization of the economy and the growing capital markets. The regulating focus has changed to a focus of compliance to a focus of substantive transparency. Disclosure is not only restricted to financial statements but also to business conduct or corporate governance practices, transactions involving related parties, risk management policies as well as material developments impacting the business. Such a wider understanding can be traced to the realization that governance failures are generally due to informational non-transparency.

The theoretical basis of disclosure norms is the principle to minimize the information asymmetry. When all the management has more information than shareholders, the management will have the opportunity to exercise opportunistic actions, such as insider trading and misrepresentation of financial. The purpose of disclosure obligation is to fill this gap thus improving investor confidence and market efficiency.

The effectiveness of norms of disclosure however, does not merely rely on the amount of information disclosed but also the quality of information disclosed as well as its clarity and availability. Unnecessary or complicated disclosures can be simply too much and in that case, the essence of transparency is beaten. Therefore, in accordance with modern regulatory practices, meaningful disclosure as opposed to volume is highlighted.

2. The Laws of disclosure norms in India.

The Indian securities market is mainly controlled by the Securities and Exchange Board of India (SEBI) that has its powers based on the Act, the securities and Exchange Board of India Act, 1992. SEBI has over the years enacted detailed disclosure regulation of listed companies, the largest of which is the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations).

LODR Regulations integrate and harmonize different listing requirements, transforming disclosure requirements into a more organized and enforceable form. They require periodical releases like quarterly and annual financial outcomes, shares, and corporate administration reports. Also, they demand constant disclosure of material events, such as mergers, acquisition, change of management and material litigation.

The emphasis on corporate governance disclosures as provided in Regulation 27 of the LODR Regulations is another aspect that is significant to the regulatory framework. Listed entities must disclose comprehensive information on the structure of the boards, audit committees, transactions with related parties as well as the adherence to the standards of governance. Such disclosures are supposed to make sure that companies practice best governance and accountability.

SEBI has also developed a regulation on insider trading and fraudulent practices, which are also directly connected with the norms of disclosures. The necessity to disclose unablated

price-sensitive information (UPSI) as quickly as feasible is important in averting market misuse.

Although the regulatory framework is strong, there are issues with regard to its implementation. The degree of compliance usually differs among various companies with larger companies tending to exhibit higher rates of compliance as opposed to smaller companies. This gap demonstrates a necessity in implementing more efficiency in enforcement and capacity building of listed companies.

3. Types of Disclosure Requirements in Listed Companies

The following broad categories of disclosure requirements in listed companies may be distinguished: periodic disclosures, event-based disclosures and governance disclosures. The categories that are used have different roles in advancement of transparency and accountability.

Financial statements, annual reports, quarters, and green book are some of the periodical disclosures. Such disclosures give the investors information about the financial position and performance of the company. They play a critical role in making informed decisions and securing the securities. The accuracy of such disclosures however relies on the transparency of accounting activities and effectiveness of audits.

The disclosures that are event based are induced by certain events that could affect the operations of the business or its stock price materially. These involve mergers and acquisitions, replacement of key management department staff, and major litigations. Such events are very important to be disclosed in time to avoid insider trading and create a level playing ground to all investors.

Governance reporting matters are concerned with the processes that are going on within the company, such as the composition of the board, independence of the directors, and the operations of the committees. Such reports give a clue about the quality of corporate

governance and enable investors to evaluate the risks linked with the management practices.

Although such categories help improve transparency, there is a challenge in defining what is considered to be material information. There are cases where companies take the quite narrow meaning with the intention of not being disclosed thus compromising on the aim of the regulation. This underscores the significance of more specifications and harsh implementation.

4. Disclosure Norms and Investor Protection and Market Integrity.

Norms of disclosure are crucial in safeguarding investors and ensuring integrity in financial markets. They guarantee availability of up-to-date and reliable information that can guide investors make well-informed choices and minimize the chances of losses through the spread of misinformation or fraud.

Protection of the investors is especially relevant in emerging markets such as India where the retail capital market participation has grown massively. Effective disclosure norms in such a situation are a protectionist against malpractices of companies. They also build trust on the regulatory system, promoting more investment and more market involvement.

Fairness is a closely related concept to market integrity. Distributing the same information to all the investors minimizes a chance of unfair gains, and facilitates fair trading environment. Disclosure norms also play a role in the price discovery because the prices of the stocks are a reflection of information in the market.

Nevertheless, the outcome of disclosure norms in realizing these goals relies on the enforcement. Lack of proper enforcement might result in selective disclosure, delayed reporting and manipulation of information. Regulatory bodies, therefore, need to take a more proactive role towards compliance control and penalties in case of violations.

5. Problems of Enforcement of Disclosure Norms.

In spite of the detailed regulatory environment, there are a number of obstacles to the disclosure standards in implying the disclosure standards in India. The inability to steadily act in uniform among companies is one of the main problems. Although big companies that have a strong governance system would tend to meet the disclosure requirement, small firms would have difficulty since they lack resources and expertise.

Another critical problem is the selective disclosure issue. Corporations can decide to release only positive news and withhold bad news. This is a violation of the principle of full and fair disclosure and may misguide investors.

Late disclosures are an issue of concern as well. The issue of disclosure timeliness is important because the disclosed information might be outdated and it may not be effective to achieve its intended objectives. Sluggish reporting of material events may lead to the possibility of insider trading and manipulating the markets.

The intricacy of disclose rules may as well be an obstacle to obedience. The detailed and technical standards of reporting might be hard to understand and apply in companies. Meanwhile, over-disclosure may create information overload and it is hard to recognize the relevant information among the information.

On top of that there are also the issues related to enforcement since there are only limited regulatory resources available and the issue of financial transactions are getting more and more complex. This necessitates a shift to the use of modern technologies and data analytics to bolster monitoring and enforcement.

6. Indian Judicial Practice of Disclosure Norms.

The courts have helped in strengthening the disclosure norms in corporate governance. Transparency and accountability in corporate behaviour has always been a major focus by courts and tribal courts. Cases decided by

courts have highlighted that the issue of disclosure should not be regarded as a mere procedural issue but rather a substantive provision that aims to defend investors.

In a number of instances, courts have ruled that omission to disclose material information amounts to a breach of securities laws and may attract hefty punishment. The principle of full and fair disclosure has been identified as being a fundamental principle to securities regulation.

Judicial intervention has also played role in aiding in clarifying the ambiguity of the regulatory provisions, especially the definition of materiality and the extent of disclosure requirements. Through a purposive interpretation of these provisions, courts have enhanced the disclosure norms.

The judicial process is however time consuming at times and hence the penalties and dispute resolution can take long before it can be enforced. This brings into the limelight the necessity to have specialized tribunals and expedited adjudication mechanisms to deal with disclosure norms violation effectively.

7. International Disclosure Standards Comparative Analysis.

India and international jurisdictions have similarities and differences in their disclosure norms. The developed markets like the United States and the United Kingdom have well-developed disclosure systems that have stiff enforcement mechanisms.

The United States: In the United States Securities and Exchange Commission (SEC) requires a high level of disclosures in the laws like the Securities Act of 1933 and the Securities Exchange Act of 1934. These rules focus on accountability, transparency and protection of investors. Likewise, the UK is subjected to stringent disclosure requirements by the financial conduct authority (FCA).

The disclosure system in India especially the provisions of the LODR Regulations is consistent with most of the global best practices. There are

however differences in terms of the enforcement and compliance culture. The levels of compliance are usually more in developed markets, which have stronger institutional structures and the awareness of investors.

Global best practices, especially in the areas of real-time disclosures, technology utilisation, and improved enforcement systems is an area that India can gain out of it. Meanwhile, regulatory reforms should be affected by the needs and issues of the Indian market.

8. Reform and Strengthening of Disclosure Norms required.

Based on the changing dynamics of financial markets, there is a constant interest in changing and reinforcing disclosure norms. Among the areas of reform is in materiality provisions to make sure that companies report all the relevant information. The unclear boundaries and requirements can be mitigated by better definition and limits to enhance compliance. Embracing technology-based solutions in monitoring and enforcement is another significant reform. Artificial intelligence and data analytics can assist regulators to detect trends of non-compliance and act in time. Investor education is also crucial in enhancing the effectiveness of disclosure norms. Informed investors will be in good position to analyse the disclosures and make informed decisions. This, on its part, puts the companies under the stress to be more transparent.

Moreover, tougher consequences whenever there is non-compliance may serve as a deterrent to the violations. Regulators should make sure that punishment is commensurable to the magnitude of the offense and should be applied continually.

Lastly, ethical governance culture among companies needs to be encouraged. The norms of disclosure should not be perceived as some legal requirements but rather as the constituent elements of responsible corporate conduct. With the help of such a culture developed, corporations are able to build on their

credibility, and aid in financial market stability as a whole. An analysis of the disclosure standards in listed firms shows that India has come up with a strong regulatory system, but much still needs to be done to promote proper implementation and enforcement. The norms of disclosure are vital in ensuring transparency, safeguarding investors and integrity of the market. They, however, have a bearing on how effectively they are disclosed, how timely they are reported, and how well the disclosure mechanisms are enforced.

The interaction of the regulatory frameworks, judicial interpretation and corporate practices determines how effective the disclosure norms can be. As much as has been achieved, more needs to be done so that the gaps can be filled and solutions should be given to emerging challenges. Regulatory strengthening of disclosure norms is not only necessary but also the basis of sustainability of corporate governance and economic development.

CONCLUSION

Conclusions about disclosure norms as an indispensable tool in enhancing corporate governance and the proper operation of securities markets are presented in the assessment of disclosure norms in listed firms. In India the regulatory system under the chairmanship of the Securities and Exchange Board of India and under the instruments provided under the laws like SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 has made a huge progress in establishing standards of transparency and accountability. The norms have led to minimization of information asymmetry, increased confidence among investors and just fair market practices.

Nevertheless, the discussion shows that it is not enough to have comprehensive regulations. The continued existence of challenges like selective disclosure, delayed reporting, and the degree of compliance across firms, are continuing to compromise the performance of the framework. The regulatory environment is aggravated by

the challenges of enforcement, as well as the growing complexity of financial transactions.

Court interventions and regulatory measures have been critical on fortifying the principle of full and fair disclosure. However, an urgent necessity exists to close the gap between the intent and practical implementation of a regulation. Implementing better mechanisms of monitoring, using technology to monitor compliance in real-time, and enforcing stiffer penalties to contravene disclosure norms can help a great deal to enforce compliance with disclosure norms.

In addition, there is the need to promote a culture of ethical governance in corporations. Non-disclosure is not supposed to be that of a statutory requirement but rather one of the elements of responsible business. The better utilization of disclosed information can also be provided with the help of more effective investor awareness and education.

Finally, despite the positive steps taken by India towards the establishment of a strong disclosure regime, there is still a need to move towards the unceasing reforms and aggressive implementation of the disclosure on the changes brought with time. A moderate theme of regulation coupled with corporate responsibility will also be vital in achieving sustainable corporate governance and a stable market over the long run.

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