



Listed PSUs - Governance Gaps

Corporate Governance Research
Proxy Advisory Services
Corporate Governance Scores
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EXECUTIVE SUMMARY

PSUs occupy an important position amongst listed companies. Top 42 listed companies (excluding PSU Banks) are part of BSE 500 space and constitute 8% by number and 10.93% by market cap. Historically, PSUs have been found wanting on compliance with governance norms. All stakeholders have been paying price for compliance shortfall in terms of lower market cap resulting from lower PE ratios compared to its peers.

SES has been on yearly basis analysing non compliance at PSUs for last couple of years. The objective is to drive home the point that small steps taken in right direction may result in improved valuation and gain for all stakeholders.

It is heartening to note that instances of non compliance have reduced over last couple of years. In following 6 categories there is vast improvement in compliance. However, PSUs are still far short on board independence requirements.

	% of Companies compliant			
Area	2018	2017	2016	2015
Board-Independence	54.16	11.00	9.38	7.41
Audit Committee	95.83	77.00	68.75	18.52
Nomination & Remuneration Committee	85.41	75.00	64.52	14.82
CSR Committee	91.67	77.00	78.13	51.75
Woman Director	95.83	83.00	68.25	74.08

On number of non-compliances, there seems to be very little change, however the same is on account of the fact that data for 2017 had only 36 PSUs whereas in 2018 number of PSUs have gone up to 48.

Number of Non-Compliances	Number of Companies	
	2018	2017
1	17	17
2	10	8
3	6	4
4	1	3
5	0	1

On duration of Non- Compliances, there is not much change, on the other hand there is slippage.

Non-Compliance Duration	No. of Companies			
	2018	2017	2016	2015
>10 Years	3	4	4	3
>3 Years	18	21	12	
>1 Year	14	8	13	14

INTRODUCTION

A public corporation besides being governed by its own Memorandum of Association & Articles of Association is governed by various other applicable Regulations. In India, regulations applicable for listed public companies are Companies Act and various other Regulations of SEBI, with SEBI (Listing Obligations and Disclosure Requirement) Regulations 2015 being the most prominent one. All these laws put together can be comprise of the Corporate Governance (CG) framework in India. CG framework evolves around transparency, accountability and integrity in all the business practices, which are core values of Corporate Governance. It is the system of rules, practices and processes by which a company is directed and controlled. Corporate governance essentially involves balancing the interests of a company's diverse stakeholders for maximum overall good. Therefore, logically most companies strive to have a high level of corporate governance.



Since good governance is associated with good of stakeholders, it is logical that all corporations must imbibe good CG. There is no reason why there must be any dilution for any set of companies. In Indian context, a large number of PSUs are listed and these listed PSUs constitute a substantial portion in listed space. While in individual/ family controlled listed companies, main stakeholders are promoters and shareholders therefore benefit of good governance extends mainly to shareholders. Whereas in PSU listed companies, state being the main shareholder in the capacity of being a promoter, benefit of good governance not only goes to individual shareholders but extends to public at large being a constituent of state. Therefore, state strives to follow best possible governance norms, as evident from DPE guidelines on CG. However, on ground level the situation is significantly different. Rather than PSUs being role model of Good Governance, they are by and large found to be laggards. While the situation is disappointing, it is not a case that things are not improving as is brought out by this research.

In 2018, Stakeholders Empowerment Services (SES) covered AGMs of 767 listed companies till 30th September, 2018 and issued its Advisory Reports. Out of 767 Companies covered, 48 were Public-Sector Undertakings (PSUs). This Report highlights the status of adherence to Corporate Governance norms by these 48 PSUs for FY 2017-18.

Legal Framework

Corporate Governance norms for PSUs emanate from the following Laws, Rules & Regulations:

- The Companies Act, 2013
- SEBI (Listing Obligation and Disclosures Requirement) Regulation, 2015 ('SEBI Listing Regulations')
- Guidelines for Central Public-Sector Enterprises (hereinafter referred to as **CPSE Guidelines**) issued by Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises, Government of India.

The Office memorandum dated 14th May, 2010 issued by DPE ([weblink](#)) stated that after introducing the CPSE Guidelines on experimental and voluntary basis in 2007 and implementing for full financial year 2008-09 and in light of experience it has been decided to implement the guidelines on MANDATORY basis with slight modifications. It also directed all the administrative ministries to ensure implementation of Guidelines prescribed on mandatory basis and ensure submission of quarterly progress report within 15 days from end of each quarter. It further directed administrative ministries to consolidate the reports on yearly basis and submit a comprehensive status report of compliance with Corporate Governance Guidelines for financial year by 31st May of each year.

Further, the relevant extract from CPSE Guidelines is as under:

"CPSEs listed on Stock Exchanges:

2.2 In so far as listed CPSEs are concerned, they have to follow the SEBI Guidelines on Corporate Governance. In addition, they shall follow those provisions in these Guidelines which do not exist in the SEBI Guidelines and also do not contradict any of the provisions of the SEBI Guidelines."

This makes it very clear that all listed CPSEs have to follow, at the least, corporate governance norms as prescribed by SEBI. In addition, wherever, CPSE guidelines are more stringent than SEBI norms, the same should be followed.

There is no change in these Guidelines even after coming into force of Companies Act 2013 and SEBI Listing Regulations. This indicates that stricter provisions amongst all applicable guidelines, Regulations and Act would apply to PSUs.

On the other hand, PSUs also enjoy various relaxations under the provisions of the Companies Act, 2013 as per the Circular issued by the MCA ([weblink](#)). The intent of such relaxation provided is to ensure that:

- Stringent compliance does not hamper the operations of the Enterprise; &
- Non-material disclosure relating to remuneration are exempted since, the remuneration is governed by the pay scale determined by the Govt. from time to time.

List of certain exemptions provided to government companies, are as under:

1. Section 178 (2), (3) & (4) of Companies Act, 2013 related to power and duties of Nomination and Remuneration committee is not applicable.
2. Section 188 - provision related to Related Party Transactions.
3. Section 196 (2), (4), & (5) related to appointment of Managerial personnel.



GOVERNANCE COMPLIANCE AT PSUs

In this backdrop, while reviewing Annual Reports, Notices for AGM and other disclosures made by the concerned company, SES has come across various non-compliances of governance related guidelines by listed PSUs. For the purpose of this Report, compliance with following ten provisions only have been evaluated i.e.– **Board Independence, Woman director** on Board, Composition of **Audit Committee, Stakeholders Relationship Committee, Nomination and Remuneration committee & CSR committee, Dividend Distribution Policy, Business responsibility Report, Separate meeting of the Independent Directors** and **Retirement of Directors by rotation**. In addition, spending on CSR activities by PSUs has also been analysed. Of the sample size of 48 PSUs (AGM) covered by SES in Proxy Season 2018, distribution of the Companies based on above compliance parameters is as under:

The compliance status of these 48 PSUs on above ten parameters is summarized as under (Table-1 A & 1 B). Out of these 48 PSUs, only 13 PSUs were fully compliant as on 30th September 2018. Balance 35 PSUs were non-compliant for one or more reason(s):

✓ - Compliant, ✗ - Non - Compliant, NA - Not Applicable, WD – Woman Director, AC – Audit Committee, SRC – Stakeholders Relationship Committee, NRC – Nomination and Remuneration Committee, CSR – Corporate Social Responsibility Committee, DDP – Dividend Distribution Policy, BRR – Business Responsibility Report, ROR – Retirement by Rotation, I - Board Independence.

Table – 1 A- Compliant PSUs

Sr. No.	Index	Company	Mkt. Cap ('000 crore)	I	WD	AC	SRC	NRC	CSR	DDP	BRR	ID Meeting	ROR	CSR Spend/Requirement (%)*
1	Sensex	Oil & Natural Gas Corpn. Ltd	227.47	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	103.37
2	Sensex	Coal India Ltd	165.64	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	308.50
3	Sensex	NTPC Ltd	137.37	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	109.42
4	Sensex	GAIL (India) Ltd	85.37	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	131.55
5	Sensex	BPCL	81.06	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	90.56
6	BSE 200	General Insurance Corporation of India	57.41	✓	✓	✓	✓	✓	✓	NA	NA	✓	✓	25.18
7	BSE 200	Steel Authority of India Ltd	28.17	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	NA
8	BSE 500	Hindustan Aeronautics Ltd	26.14	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	116.38
9	BSE 200	NHPC Ltd	23.19	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	64.77
10	BSE 100	Rural Electrification Corporation Ltd	19.29	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	30.53
11	BSE 200	National Aluminium Company Ltd	11.71	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	104.05
12		Rites Ltd	4.90	✓	✓	✓	✓	✓	✓	NA	NA	✓	✓	100.20
13		Mishra Dhatu Nigam Ltd	2.18	✓	✓	✓	✓	✓	✓	NA	NA	✓	✓	99.39

Table – 1 B - Non-Compliant PSUs

Sr. No.	Index	Company	Mkt. Cap ('000 crore)	I	WD	AC	SRC	NRC	CSR	DDP	BRR	ID Meeting	ROR	NC score out of 10	CSR Spend/Requirement (%)*
14	Sensex	Indian Oil Corporation Ltd	148.78	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	1	100.95
15	Sensex	Power Grid Corporation of India Ltd	98.59	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	1	100.03
16	Sensex	Hindustan Petroleum Corporation Ltd	38.21	✗	✓	✓	✓	✗	✓	✓	✓	✓	✓	2	124.13
17	BSE 200	New India Assurance Company Ltd	36.94	✓	✓	✓	✓	✓	✓	✓	NA	✗	✗	2	58.75
18	BSE 100	NMDC Ltd	35.78	✓	✓	✓	✓	✓	✓	✗	✓	✓	✓	1	139.95
19	BSE 100	Container Corporation of India Ltd	30.44	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓	1	64.31
20	BSE 100	Bharat Heavy Electricals Ltd	25.11	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	1	70.77
21	BSE 200	Oil India Ltd	24.78	✗	✓	✓	✓	✗	✓	✓	✓	✗	✓	3	162.86
22	BSE 100	Power Finance Corporation Ltd	20.10	✗	✓	✓	✓	✗	✗	✓	✓	✓	✓	3	79.20
23	BSE 100	Bharat Electronics Ltd	19.54	✗	✓	✓	✓	✓	✓	✓	✓	✓	✗	2	41.41



24	BSE 200	Mangalore Refinery & Petrochemicals Ltd	12.65	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	1	33.97
25	BSE 500	SJVN Ltd	10.81	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	1	103.36
26	BSE 200	NBCC (India) Ltd	10.53	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	1	102.28
27	BSE 500	NLC India Ltd	10.17	✗	✓	✓	✓	✓	✓	✓	✓	✗	✓	2	116.80
28		KIOCL Ltd	10.02	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	1	1600.00
29	BSE 200	Gujarat State Petronet Ltd	9.87	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	1	85.07
30	BSE 500	Housing & Urban Development Corporation Ltd	9.26	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	1	34.95
31	BSE 500	Gujarat Gas Ltd	8.53	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	1	102.65
32	BSE 200	Engineers India Ltd	7.45	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	1	62.14
33	BSE 500	ITI Ltd	7.32	✓	✓	✓	✓	✗	✗	✗	✓	✓	✗	4	NA
34	BSE 500	Cochin Shipyard Ltd	5.32	✓	✓	✓	✓	✗	✓	✓	NA	✓	✗	2	100.35
35		Bharat Dynamics Ltd	5.16	✗	✓	✓	✓	✓	✓	✓	✓	✓	✗	2	100.00
36	BSE 500	Hindustan Copper Ltd	4.73	✗	✓	✓	✓	✓	✓	✓	✓	✗	✗	3	233.33
37	BSE 500	Chennai Petroleum Corporation Ltd	4.16	✗	✓	✓	✓	✓	✓	✗	✓	✓	✓	2	100.99
38	BSE 500	MOIL Ltd	4.14	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	1	104.34
39	BSE 500	MMTC Ltd	4.13	✗	✗	✓	✓	✓	✓	✗	✓	✓	✓	3	38.89
40	BSE 500	Rashtriya Chemicals & Fertilizers Ltd	3.29	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	1	100.78
41	BSE 500	Gujarat Mineral Development Corporation Ltd	2.97	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	1	227.33
42	BSE 500	India Tourism Development Corporation Ltd	2.77	✓	✓	✓	✓	✓	✓	✗	✓	✓	✗	2	101.69
43	BSE 500	BEML Ltd	2.55	✗	✗	✓	✓	✓	✓	✓	✓	✓	✓	2	274.59
44	BSE 500	Balmer Lawrie & Company Ltd	2.13	✗	✓	✗	✓	✓	✓	✓	✓	✗	✓	3	97.99
45	BSE 500	IFCI Ltd	2.01	✗	✓	✗	✓	✗	✗	✓	✓	✗	✗	6	103.77
46	BSE 500	Shipping Corporation of India Ltd	1.95	✗	✓	✓	✓	✓	✓	✓	✓	✗	✗	3	29.06
47		Dredging Corporation of India Ltd	0.94	✗	✓	✓	✓	✓	✗	NA	NA	✓	✓	2	101.87
48		Mahanagar Telephone Nigam Ltd	0.85	✓	✓	✓	✓	✓	✓	NA	NA	✗	✓	1	NA
Issue wise Non-Compliance			22/35	2/35	2/35	0/35	7/35	4/35	5/35	0/35	11/35	12/35			

Note: The companies which have spent less than the required amount on CSR activities, have provided reasons for not spending full amount. The explanation technically meets the requirement of Companies Act 2013.

Out of above 48 companies, 3 companies were not required to spend on CSR activities, as they had incurred loss. Out of the balance, 45 Companies 17 Companies failed to spend the required amount on CSR activities. However, these companies have provided reason(s) for inadequate expenditure, as required by law. Coal India Ltd, has spent more than 3 times on CSR activities as against the amount required to be spent as per law

22 PSUs are non-compliant with the requirement of law relating to Composition of Board of Directors. The Board of such Companies do not have required number of Independent Directors (IDs) as per the mandatory requirement. This is turn results in further non-compliance like composition of committees, separate meeting of IDs etc.

PSU Companies are exempted from disclosing the role and terms of reference of Nomination & Remuneration Committee as the same is handled by the Government.

Out of 48 PSUs, 13 PSUs were compliant with governance norms in all respects. Of the balance 35 non-compliant PSUs, distribution of non-compliance is as under:

Table - 2

Number of Non-Compliances	Number of Companies
1	17
2	10



3	6
4	1
5	0
6	1

As can be seen, there is no Company which is non-compliant in all ten parameters, however, there is only one company (IFCI) which is non-compliant in 6 parameters (highest in sample). Most (77%) of the companies are non-compliant in only one or two parameters. This indicates that majority of non-compliances can be corrected with **small steps**.

NON-COMPLIANCE OVER THE YEARS

Comparison of non-compliance score of 36 companies common in sample for FY 2016-17 AND FY 2017-18 based on Board Composition, Woman director on Board, Composition of Audit Committee, Stakeholders Relationship Committee, Nomination and Remuneration committee & CSR committee is as under:

Table - 3

Sl. No	Company Name	Non-Compliance Score	
		2017-18	2016-17
1	Oil & Natural Gas Corpn Ltd	-	1
2	Coal India Ltd	-	1
3	NTPC Ltd	-	1
4	GAIL (India) Ltd	-	2
5	Bharat Petroleum Corporation Ltd	-	2
6	Steel Authority of India Ltd	-	1
7	NHPC Ltd	-	1
8	Rural Electrification Corporation Ltd	-	0
9	National Aluminium Company Ltd	-	1
10	Indian Oil Corporation Ltd	1	2
11	Power Grid Corporation of India Ltd	1	1
12	Hindustan Petroleum Corporation Ltd	2	1
13	NMDC Ltd	-	1
14	Container Corporation of India Ltd	1	2
15	Bharat Heavy Electricals Ltd	1	3
16	Oil India Ltd	2	4
17	Power Finance Corporation Ltd	3	4
18	Bharat Electronics Ltd	1	1
19	Mangalore Refinery & Petrochemicals Ltd	1	3
20	SJVN Ltd	1	1
21	NBCC (India) Ltd	-	0
22	NLC India Ltd	1	2
23	Housing & Urban Development Corporation Ltd	-	1
24	Gujarat Gas Ltd	-	2
25	Engineers India Ltd	-	1
26	Hindustan Copper Ltd	1	1
27	Chennai Petroleum Corporation Ltd	1	2
28	MOIL Ltd	1	1
29	MMTC Ltd	2	2
30	Rashtriya Chemicals & Fertilizers Ltd	1	0
31	Gujarat Mineral Development Corporation Ltd	-	3
32	BEML Ltd	2	1

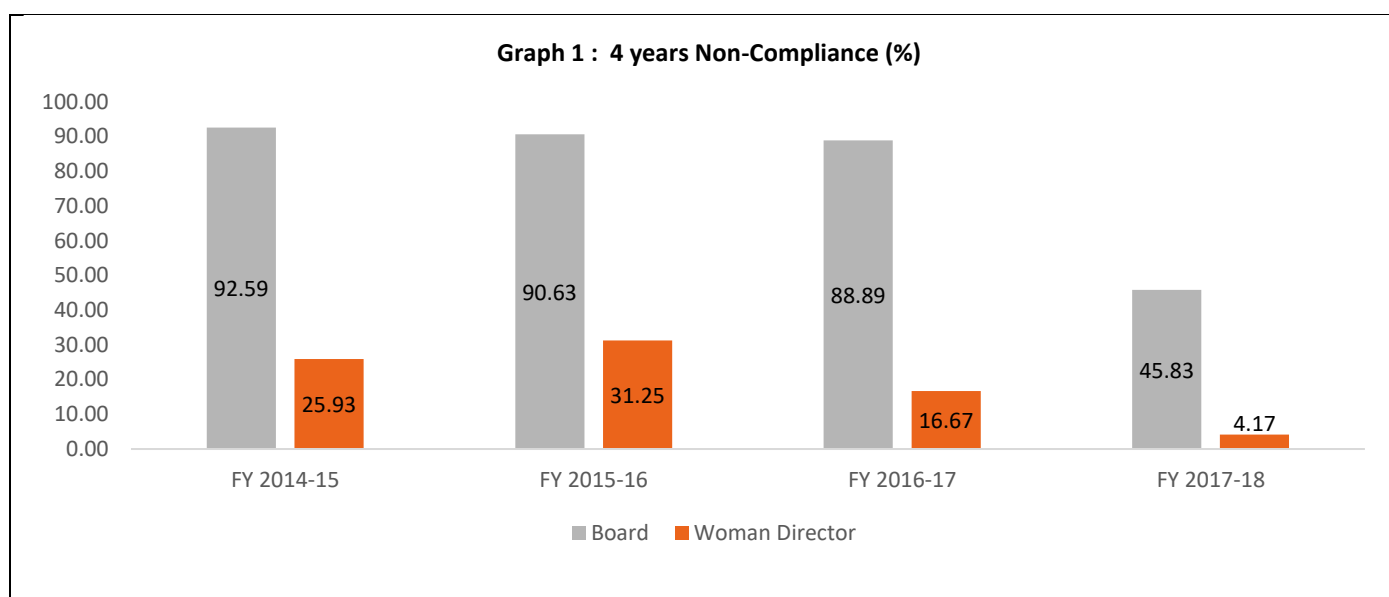


33	Balmer Lawrie & Company Ltd	2	4
34	IFCI Ltd	4	5
35	Shipping Corporation of India Ltd	1	3
36	Mahanagar Telephone Nigam Ltd	-	1

Note: Non-compliance for FY 2016-17 were evaluated on 6 parameters while that for FY 2017-18 were evaluated on 10 parameters, therefore, the compliance score may not be strictly comparable.

In 2016-17, out of 36 Companies, only 3 companies (8.33%) were compliant in all six parameters and remaining 33 Companies were non-compliant for one reason or the other. Further, this year (2017-18) out of sample size of 48 companies, **13 (27%)** were compliant based on the above-mentioned parameters, signifying almost 3-fold increase. **This may indicate that the PSUs are moving towards improved Compliance.**

NON-COMPLIANCE TREND FOR 4 YEARS



Based on last 4 years data, a comparison has been made considering two parameters i.e. Board non-compliance and Woman director. The graph shows that the Compliance in the PSUs on these parameters during last 4 years is showing an improving trend. During FY 2014-15, 92.59% Companies did not comply with Board Independence and 25.93 % Companies did not have any woman Director on the board. In FY 2017-18, only 45.83% did not comply with Board Independence and only 4.17% Companies did not have woman director on the Board. A positive development with improvement due to marked reduction in non-compliance.

NON-COMPLIANCE SPECTRUM

Important areas of corporate governance at the AGM time, where PSUs have been non-compliant are as under (Table 4):

Table – 4			
Area	Compliant PSUs	Non-Compliant PSUs	% of Companies compliant
Board-Independence (Inadequate IDs)	26	22	54.16
Audit Committee	46	2	95.83
Nomination & Remuneration Committee (NRC)	41	7	85.41
CSR Committee	44	4	91.67
Woman Director	46	2	95.83
Dividend Distribution Policy	38	5	86.48



Independent Director Meeting	37	11	77.08
Retire by Rotation	36	12	75

The most significant corporate governance issue (Non Compliance) currently faced by the PSU companies is relating to lack of adequate number of independent directors. It is observed that, out of the 48 PSU's, 22 companies were non-compliant with the requirement of Board Independence. 2 PSUs failed to meet the requirement of woman director on the board. 2 PSU's did not have a compliant audit committee and 7 (15%) PSUs did not have a compliant nomination & remuneration committee. As on 30th September 2018, there was only 1 company where there was not even a single ID (IFCI). 5 Companies have failed to disclose Dividend Distribution Policy on their Website. 23% PSUs did not disclose whether the Independent Directors met at least once without the management during the financial year. 25% PSUs failed to comply with the provisions of Section 152 of the Companies Act, 2013 relating to Directors liable to retire by rotation.

MARKET CAPITALIZATION: DISTRIBUTION OF 48 PSU AS PER MARKET CAP

Table - 5

Market Cap ₹. Crore	No. of PSUs	Name
1,00,000+	4	ONGC, COAL INDIA, IOC, NTPC
50,000-1,00,000	4	POWERGRID, GAIL, BPCL, GICRE
50,000-25,000	7	HINDPETRO, NIACL, NMDC, CONCOR, SAIL, HAL, BHEL
25,000-10,000	11	OIL, NHPC, PFC, BEL, RECLTD, MRPL, NATIONALUM, SJVN, NBCC, NLCINDIA, KIOCL
Below 10,000	22	GSPL, HUDCO, GUJGASLTD, ENGINEERSIN, ITI, COCHINSHIP, BDL, RITES, HINDCOPPER, CHENNPETRO, MOIL, MMTTC, RCF, GMDCLTD, ITDC, BEML, MIDHANI, BALMLAWRIE, IFCI, SCI, DREDGECORP, MTNL
Total	48	

As on 28th September 2018, the total Market Cap of these 48 Companies was ₹ 14,91,915 Crores. The highest Market Cap was that of ONGC i.e. ₹ 2,27,469 Crores whereas MTNL had the lowest Market Cap of ₹ 854 crores.

Except IOC, all three ₹ 1 Lakh+ market Cap Companies are compliant in all parameters.

Except POWERGRID, all three ₹ 50,000 to ₹ 1 Lakh Market Cap Companies are Compliant in all parameters.

INDEX WISE DISTRIBUTION OF 48 PSU

There are 8 PSUs in Sensex, forming 16% by number and 12.24% in Market Capitalisation. In BSE 100 companies (including 8 PSUs Companies which are part of BSE Sensex) 14 PSUs accounted for Market Cap of approximately ₹ 11,32,777 Crore, 14% by number and 11.49% in Market Capitalisation. Total Market cap. of 24 PSU companies in BSE 200 is ₹ 13,55,471 Crore which represents about 11.42% of total Market Cap of BSE 200 companies.

Out of these 24 PSUs companies in BSE 200, 14 are non-compliant with mandatory corporate governance requirement for one reason or the other.

Table - 6

Ranking	Cumulative Market Cap. ₹ crore	No. of PSUs	PSUs Market Cap ₹ Crore	% in Number	% of Market Cap
BSE SENSEX (50)	80,28,533	8	9,82,498	16%	12.24%
BSE 100	98,58,587	14	11,32,777	14%	11.49%
BSE 200	1,18,69,504	24	13,55,471	12%	11.42%
BSE 500	1,34,29,839	42	14,67,859	8%	10.93%
Other		6	24,056		
Total	1,34,29,839	48			



BOARD COMPOSITION OF PSUs

Table 7 shows the numbers of directors across different categories in PSUs.

Table - 7

Type of Directors	No. of Total directors across 32 PSUs	Average	Highest/Lowest
ED	192	4	7/0
NED Non-Independent	102	2	5/1
Independent	255	5	9/0
Total	549		-

SEBI Listing Regulations requires that the Board of directors of a listed Company shall have an optimum combination of executive and non-executive directors with not less than fifty percent of the board of directors comprising of non-executive independent directors in case there is an executive Chairman. Based on the analysis, 48 companies have total 549 directors out of which 192 are Executive Directors, 102 are Non-Executive Non-Independent Directors and there are 255 directors who are classified as Independent Directors by the respective companies.

The highest number of directors on the Board is 18 in case of NTPC Ltd. The lowest number of directors on the Board is 6 directors on the Board of IFCI Ltd. and Dredging Corporation of India Ltd.

Table 8 shows the numbers of PSUs having different category of directors

Table – 8

Category wise Directors (Number)	Number of PSU Companies		
	IDs	NEDs other than IDs	EDs
No director	1	0	1
1 to 3 directors	7	43	17
4 to 5 directors	15	5	23
6 and above directors	25	0	7

As on 30th September 2018, there was only one company viz. IFCI Ltd. where there was not a single ID. There were 7 PSUs with more than 6 EDs whereas there are 25 PSUs where there were more than 6 IDs.

DURATION OF NON-COMPLIANCE

35 non-compliant companies (out of total 48 companies), have been divided in-to three categories as under (Table-8)

- Non-compliant for more than 10 years
- Non-compliant for more than 4 years
- Non-compliant for more than 1 year
- Compliant Companies

Table - 9

Non-Compliance Period	No. of PSUs	Company Name
>10 years	3	BEL, HINDPETRO, CHENNPETRO
>4 years	18	IOC, POWERGRID, NMDC, PFC, CONCONR, MRPL, NLC INDIA, SJVN, GUJARAT GAS, ENGINEERSIN, BEML, MMTC, SCI, GMDC, BALMLAWRIE, NBCC, GSPL, ITI
>1 year	14	BHEL, OIL, HUDCO, HINDCOPPER, MOIL, IFCI, MTNL, DREDGECORP, NIACL,



		KIOCL, COCHINSHIP, BDL, RCF, ITDC
Compliant	13	ONGC, COALINDIA, NTPC, GAIL, BPCL, GICRE, SAIL, HAL, NHPC, RECLTD, NATIONALUM, RITES, MIDHANI

It is clear that in many cases, non-compliance continued to persist even after it was known. The above indicates that non-compliance is not accidental or temporary or due to oversight but the same is very well known. What is the reason for failure to comply is not known, however, it does give a feeling to common investors that being government companies, either these are above law or there is no fear of law. It also indicates that these Companies are not concerned with reputational risks. SES hopes that this perception of investors is proved wrong and the PSUs need to correct this perception as it gives wrong signal to stakeholders. It also indicates that probably compliance does not get same attention as other aspects of business are getting. Comparing requirements under DPE guidelines with ground level reality, an observer is bound to draw a conclusion that it appears that for such PSUs, CPSE Guidelines and other laws appear to be just one more set of instructions, whose appropriate place is in archives.

NON-COMPLIANCE CATEGORIES

Board-Composition

Regulation 17(1) of the Listing Regulations, 2015 states:

(1) The composition of board of directors of the listed entity shall be as follows:

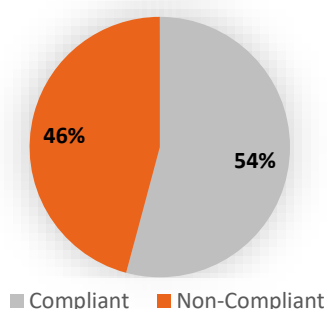
(a) board of directors shall have an optimum combination of executive and non-executive directors with at least one-woman director and not less than fifty percent. of the board of directors shall comprise of non-executive directors;

(b) where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors:

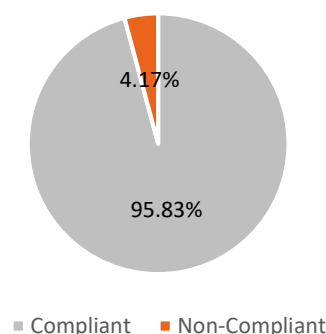
Provided that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.

As per above Regulation the Company should have optimal number of Independent Directors and at least one-woman director. However, out of 48 companies, there are only 26 (i.e. 54%) companies which are compliant with the requirement of minimum numbers of independent directors on the Board. Further, 2 Companies viz. BEM Ltd and MMTC Ltd do not have woman director on the Board.

Graph 2: Board Compliance



Graph 3: Woman director



Committee Compliance**Section 177 (2):**

“The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority”

Section 178 (1)

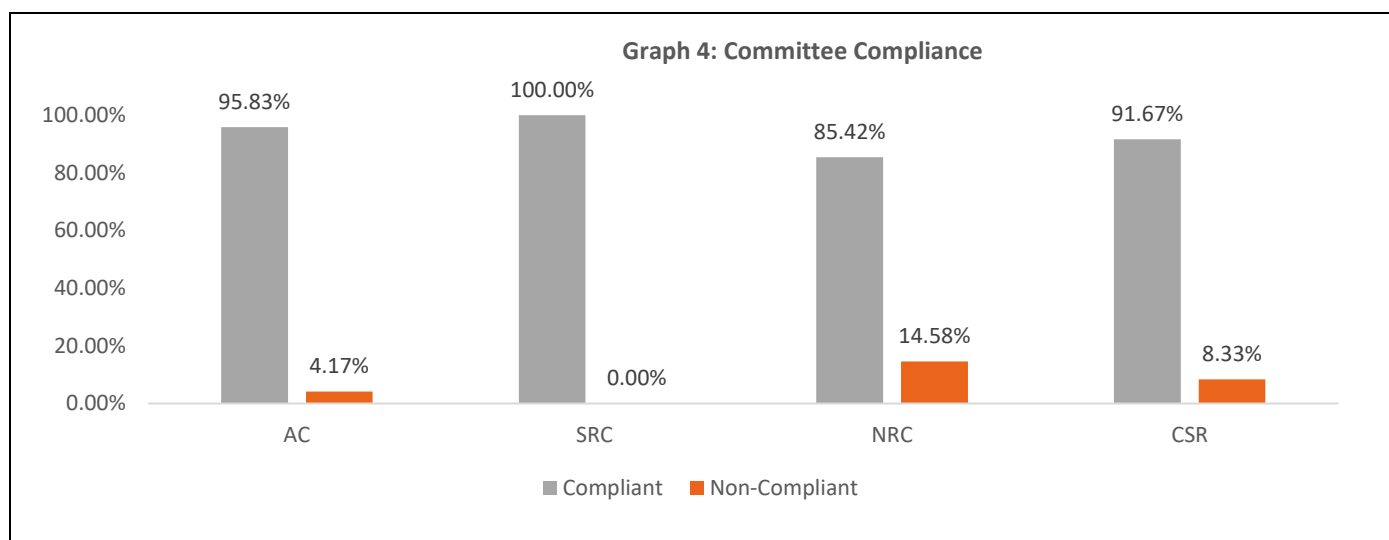
“The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors:

Provided that the chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.”

Section 135 (1):

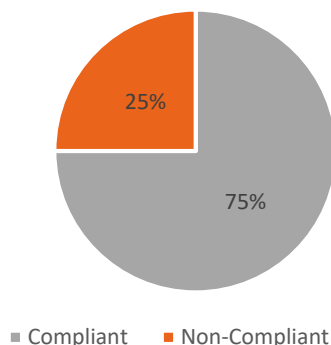
“Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.”

Out of 48 Companies two companies do not have compliant Audit committee, seven companies do not have compliant Nomination and remuneration committee and four companies do not have compliant Corporate Social Responsibility Committee, while all companies are compliant with SRC.



Retirement by Rotation

Graph 5: Retirement by Rotation



Section 152(6)(a) of the Companies Act, 2013 states that:

“(a) Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall—

(i) be persons whose period of office is liable to determination by retirement of directors by rotation; and

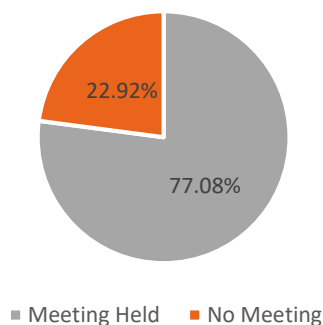
(ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting”.

As per provisions of Section 149 and 152 of the Companies Act 2013, Independent Directors shall not be

liable to retire by rotation, and, unless articles provide for retirement of all directors at every AGM, at least 2/3rd of office of the Non-Independent Directors should be liable to determination by retirement through rotation. However, out of 48 PSUs, 12 are non-compliant with the provisions of Section 152(6)(a) of the Companies Act, 2013.

Independent Directors Meeting

Graph 6: IDs Meeting



As per Schedule IV of the Companies Act, 2013:

VII. *Separate meetings:*

(1) *The independent directors of the company shall hold at least one meeting in a **financial year**, without the attendance of non-independent directors and members of management;*

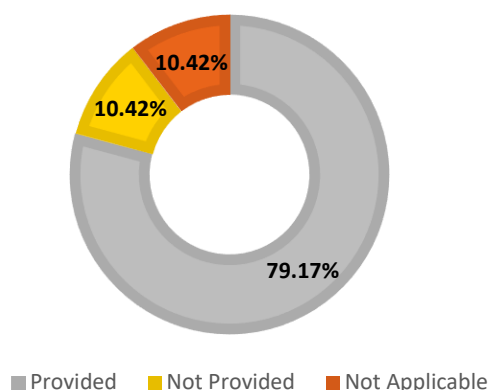
However, eleven companies did not disclose whether the Independent Directors met at least once without the management during the financial year. Therefore, these companies were non-compliant with Schedule IV of the Companies Act, 2013 relating to separate meeting of

Independent Directors.



Dividend Distribution Policy

Graph 7: Dividend Distribution Policy



As per Regulation 43 A of the SEBI Listing Regulations which has come into effect vide notification dated 8th July 2016 issued by the Securities and Exchange Board of India (SEBI) has mandated the formulation of a Dividend Distribution Policy for the top 500 listed entities based on their market capitalization calculated on March 31 of every financial year.

Five Companies have failed to disclose Dividend Distribution Policy on their Website. Therefore, they were non-compliant with the above Regulation.

OTHER GOVERNANCE CONCERNS IN PSUs:

1. Minimum public shareholding less than 25%:

As on 30th June, 2018, out of the 48 PSUs covered, 15 PSUs had less than 25% public shareholding against the requirement of minimum 25% public shareholding.

According to Regulation 38 of SEBI Listing Regulations, companies need to comply with the minimum public Shareholding requirements specified in Rule 19(2) and 19A of the Securities Contracts (Regulation) Rules, 1957. Rule 19(2) and 19A of Securities Contract (Regulation) Rules, 1957 had earlier exempted Public-Sector Companies (PSUs) from maintaining a minimum public shareholding of 25%. However, the said exemption granted to PSUs stands withdrawn vide Securities Contracts (Regulation) (Second Amendment) Rules, 2014 notified on 22nd August, 2014, and a time period of 3 years i.e., till 21st August, 2017 was granted to all PSUs to comply with the minimum public shareholding requirement of 25%.

Further, PSUs, have now been given time till 2nd August 2020 to comply the requirement of minimum public shareholding of 25%.

2. Promoters shareholding shown under public category on BSE:

SES has observed that in following 10 PSUs, the promoter owned entities (Central Government or State Government) are shown under public shareholder's category.

1. Balmer Lawrie & Company Ltd - 61.80%
2. Hindustan Petroleum Corporation Ltd – 51.11%
3. Indian Oil Corporation Ltd – 18.77%
4. Gujarat State Petronet Ltd – 11.43%
5. Oil & Natural Gas Corpn Ltd – 10.09%
6. Oil India Ltd – 9.43%
7. Bharat Petroleum Corporation – 9.33%
8. GAIL (India) Ltd – 7.29%
9. NHPC Ltd – 4.33%
10. NLC India – 1.76%

These Companies have classified certain Central government promoted entities as **Public Shareholders** under shareholding disclosures filed with Stock Exchanges. SES believes that shareholding of these entities should have been classified as



Promoter shareholding as per the provision contained in SEBI (Issue of Capital and Disclosure Requirements('ICDR')) Regulations, 2009.

Regulation 2(zb) of the SEBI ICDR Regulations, 2009 state that:

“(zb) “promoter group” includes:

(i) the promoter;

(ii) an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse); and

(iii) in case promoter is a body corporate:

(A) a subsidiary or holding company of such body corporate;

(B) any body corporate in which the promoter holds ten per cent. or more of the equity share capital or which holds ten per cent. or more of the equity share capital of the promoter;”

It is worthwhile to note that President of India, the Promoter of the PSUs is also the Promoter of other PSU entities shown under public category. Therefore, in the opinion of SES, such classification is against the aforesaid provisions of the Law.

3. Chairman and Managing Director ('CMD')

Corporate democracy and management structure envisages three layers, at the top is General Body of shareholders, which guides and approves proposal of the Board, second in line is the Board, which is directed by General body, AoA and MoA and which sets agenda for Management. The Board is headed by Chairman. The Management which is at the bottom of pyramid is headed by Executive Director(s), who are responsible for day to day management and operational issues. Combining the position of ED and Chairman blurs the demarcation between Board and Management. Therefore, keeping in view the spirit behind the aforesaid amendment, SES is of the opinion that the Company should segregate the position of Chairman and Executive Director.

Out of 48 Companies, 42 Companies fall in the category of top 500 Listed Entities, 36 out of 42 companies have executive Chairman on the Board and out of 48 Companies, 42 have an Executive Chairman.

While, presently there is no legal bar on the Chairman of the Company holding Executive position in certain cases, however, the amendment to the SEBI Listing Regulations (effective 1st April, 2020) mandates that Chairperson for top 500 Listed Entities (other than professionally managed entities) shall be a Non-Executive director. Therefore, SES is of the view that the companies should follow the same.

4. Special treatment to PSUs for disclosures

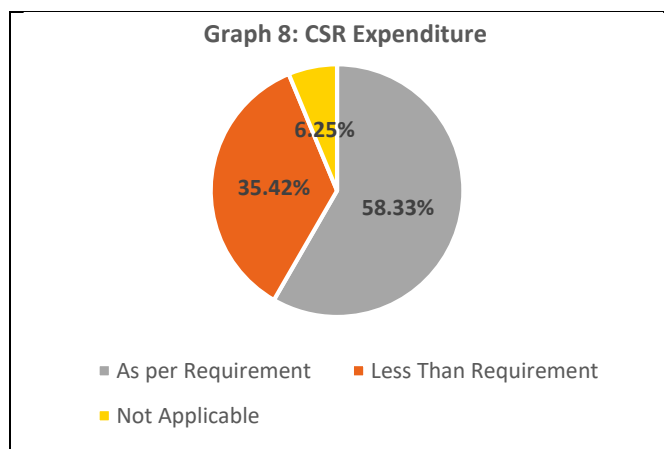
MCA issued a Notification No. GSR 463 (E) dated 5th June, 2015 wherein certain exemptions have been provided to Government Companies (PSUs). While SES cannot question the Government as the Government is law-making body, however SES does question the differential treatment given to PSUs. The Circular has been issued under provision of Section 462 of Companies Act 2013 which provides power to the Government to exempt class or classes of companies from provisions of the Companies Act, 2013. The important point in that Section is that such an exemption is to be provided in **“public interest”**. SES fails to understand what public interest is served by diluting the governance norms. If it is really in public interest, then how public interest will not be served if all the other private companies are also exempted? If the prescription is bad for government companies, it must be equally bad for all private companies. It is not the case that public funds and interest is not involved in government companies or involved in other companies only.

Apparently, SEBI has still not diluted the provisions in its recently notified SEBI Listing Regulations, 2015 even after more than three years of issue of exemptions by MCA and all the provisions continue to be applicable to PSUs with the exception of following exemptions granted by MCA, e.g. disclosure of certain items in the Board's Report relating to ratio of Executive Directors remuneration to median remuneration of employees, related party transactions between Government companies etc.



Regulators viz. MCA & SEBI must take appropriate action against defaulting PSUs to enforce compliance. SES is of the view that the Government must make PSUs as showpieces of Corporate Governance for others to follow rather than making the PSUs weak by shying away from good governance practices.

5. CSR Expenditure



Section 135(5)

“The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy”

Seventeen Companies failed to spend the required amount on CSR activities. However, they have provided explanation, as required by law. Coal India Ltd, has spent more than 3 times on CSR activities as against the requirement of law.

CONCLUSION

SES believes that discipline percolates from the top. For listed CPSEs, Corporate Governance guidelines have been mandated by three government agencies, viz. MCA, SEBI and DPE and it is absolute must that any organ of government must follow guidelines framed by the government itself. From the data analysed, it appears that the lawmaker is lawbreaker. SES is of the opinion that level of governance in PSUs must be of the highest order and exemplary. As leaders, PSUs must show case their governance credentials, create benchmarks so that others in private sector can emulate these PSUs. SES finds that rather than being role model, PSUs have set a bad example of governance and SES can only hope that others do not emulate these PSUs. This wide spread non-compliance makes task of regulators like MCA & SEBI very difficult and puts these regulators in a moral dilemma as, if they (Regulators) do not act against these companies for non-compliance many others will cite a precedent and if they do act it may be seen that the Regulator is acting against the state. However, action by Regulators against PSUs will be sending clear message to all, that laws apply to all uniformly. It will not only set a precedence but will also send warning signal to all non-compliant companies. **Incidentally, such widespread non-compliances have not been observed in listed PSU Banks.** Why and how it is possible that PSU Banks, having almost same ownership pattern as non-bank PSUs, are compliant? Is it because that for banks, compliance is in the hands of RBI and banks are supposed to be strategically important? However, PSUs are, in opinion of SES, equally and strategically important.

Further, SES is of the opinion that there cannot be two set of laws. One for PSUs and other for all other companies. PSUs cannot be treated with kid gloves. Even the diluted laws are not followed by PSUs and no action is taken against defaulting companies indicating that lawmakers have total disregard for enforcing the laws at PSUs that they have made for others to follow. SES has observed that majority PSUs have Executive Chairman on their Board and significant number of PSUs are non-compliant with their composition of the Board. It is also not a case where there is any dilution of laws provided for in the Companies Act for the Company on this account. On the contrary CPSE Guidelines have mandated that all Government companies strictly follow listing agreement (now replaced by the Listing Regulations). Such wide scale non-compliances on continuous basis makes mockery of corporate democracy, governance and shareholders rights. Being a Government Company, it also does not have risk of any penal action from regulators and banks. Such unwritten privileges allow non-compliance to go on unchecked. Shareholders must express their dissatisfaction over sad state of governance at listed PSUs.

Though PSU companies have more exemptions for compliance/ disclosure of governance practices as compared to other Public Companies, inspite of this many PSUs are not Compliant. This reflects poorly on the governance practices followed at PSUs.



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