ISSUES AND CONCERNS OF CORPORATE GOVERNANCE IN INDIA

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Abstract

Corporate Governance conceptually is highly associated with ethical business. It is "A set of systems, processes and principles which ensure that a company is governed in the best interest of all stakeholders." It provides a commitment of transparency and observance of ethics in code of conduct and discharge of duties by all the persons involved in the affairs of the company. They are the ones who agree to take responsibility towards the shareholders. Corporate Governance is a broad term is today's business environment. Good Corporate Governance became a key word to handle accounting scandals and to mitigate growing concern about the quality of financial statements. In short Corporate Governance is about promoting corporate fairness, transparency and accountability. Corporate Governance is now an issue and important factor that can be used as tool to maximize the wealth of shareholders of a corporate. Corporate Governance aims are the Vision, Values and Visibility. In this paper we will study the concept, origin, principles, Issues and Concerns of Corporate Governance from the viewpoint of India.

Keywords: Corporate, Governance, Stakeholders, Ethical and Responsibility

Introduction: Corporate Governance is the system of rules, practices, and processes by which a firm is directed and controlled. Corporate Governance essentially involves balancing the interests of a company's many stakeholders, such as shareholders, senior management executives, customers, suppliers, financiers, the government, and the community. Corporate Governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate Governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.

Evolution of Corporate Governance

There have been several major corporate governance initiatives launched in India since the mid-1990s. The first was by the **Confederation of Indian Industry** (CII), India's largest industry and business

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ISSN: 2278-4632
Vol-11 Issue-01 2021

association, which came up with the first voluntary code of corporate governance in 1998. The second was by the **SEBI**, now enshrined as Clause 49 of the listing agreement. The third was the **Naresh Chandra Committee**, which submitted its report in 2002. The fourth was again by SEBI — the **Narayana Murthy Committee**, which also submitted its report in 2002. Based on some of the recommendation of this committee, SEBI revised Clause 49 of the listing agreement in August 2003. Subsequently, SEBI withdrew the revised Clause 49 in December 2003, and currently, the original Clause 49 is in force.

Meaning and Definition of Corporate Governance

Corporate Governance in a set of acceptable, transparent, ethical, responsible, reasonable actions clerihew through the value system having large societal acceptability so as to achieve the vision of an organization. Corporate Governance in also concerned with developing and maintaining a balance between economic and social goals of an organization while also justifiable fulfilling the individual goals of the promoters and key investors.

The Corporate Governance framework should promote transparent and fair markets, and the efficient allocation of resources. Effective corporate governance requires a sound legal, regulatory and institutional framework that market participants can rely on when they establish their private contractual relations. In shorter terms `Corporate Governance' in related to how well, cohesively and with transparent efficiency the board of an organization leads it towards its goals. `Corporate Governance' has a relationship with the values and moral of a company and its directors. Corporate governance acts as a bridge between shareholders, stakeholders, and board of directors. It should be able to restore the trust and confidence of management and the company to the shareholders in the company.

The main function of Corporate Governance is to make agreements that describe the privileges and tasks of shareholders and the organization. In case of disagreements because of conflict of interest, it is the responsibility of corporate governance to bring everyone together. An important role of corporate Governance in to create vendors and benchmarks for the conduct of its directors and to ensure that they abide by their duties, responsibilities and obligations in the best of the interest of their shareholders, stakeholders, employees and society at large.

Significance of Corporate Governance: A corporation is a congregation of various stakeholders, namely customers, employees, investors, vendor partners, government and society. In this changed

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ISSN: 2278-4632
Vol-11 Issue-01 2021

scenario an Indian corporation, as also a corporation elsewhere should be fair and transparent to its stakeholders in all its transactions. This has become imperative in today's globalized business world where corporations need to access global pools of capital, need to attract and retain the best human capital from various parts of the world, need to partner with vendors on mega collaborations and need to live in harmony with the community. Unless a corporation embraces and demonstrates ethical conduct, it will not be able to succeed. Corporations need to recognize that their growth requires the cooperation of all the stakeholders; and such cooperation is enhanced by the corporations adhering to the best Corporate Governance practices

Principles of Corporate Governance

- **Recognition to each shareholder**: Small shareholders in an organization have little impact on the stock price and so their interests generally disregarded and more importance is given to interests of majority shareholders and the executive in board. But principle of corporate governance says that organizations must value the rights of each shareholder and make sure that all shareholders are allowed to participate.
- **Duties toward other stakeholders**: Every organizations should be aware of that they have legal, social, and market driven obligations to non-shareholder stakeholders i.e. employees, creditors, suppliers, customers etc. And fulfilling of these obligations is must for the good corporate governance.
- **Board Size**. In determining appropriate board size, directors should consider the nature, size and complexity of the company as well as its stage of development. Larger boards often bring the benefit of a broader mix of skills, backgrounds and experience, while smaller boards may be more cohesive and may be able to address issues and challenges more quickly
- **Board Meetings**. The board of directors, with the assistance of the nominating/corporate governance committee, should consider the frequency and length of board meetings. Longer meetings may permit directors to explore key issues in depth, whereas shorter, more frequent meetings may help directors stay current on emerging corporate trends and business and regulatory developments.
- **Effective role of the Board**: The board needs to be of adequate size and have appropriate levels of independence. It also needs relevant skills to review and challenge management performance.

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All board members must be on the same page and share a similar vision for the future of the company.

- **Remuneration to the Board of Directors**: The board of directors' overall remuneration and benefits shall be decided by the annual general shareholders´ meeting. Considerations related to the company's size and complexity, the members' expertise and the amount of time committed as well as the possibility of recruiting suitable members shall be considered when evaluating the level of board fees.
- **Ethical behavior**: Every organization should develop such a code of conduct for their directors, executives and other members that promote ethical and responsible decision making.
- **Transparency**: Organizations should clarify the roles and responsibilities of board and management to provide stakeholders with a level of accountability. All the relevance matters concerning the organization should be made available to concerning party timely.

Review of Literature

- **Yoshikawa and Rasheed** (2009) The Governance codes become a source of normative institutional pressure for convergence within a country.
- **Rujitha** (2012) studied Regulatory issues in Corporate Governance and found that the loop holes in the provisions have to be removed. Companies should not be left to escape by taking advantage of the limitations of the clause 49 of the listing agreement.
- **Unadkat** (2017) found that India has witnessed several enactments which have contributed significantly in strengthening governance norms and in increasing accountability by way of disclosures. Interestingly, these changes have been inspired by the Anglo-Saxon or Anglo-US model of corporate governance.
- **Arora and Bodhanwala** (2018) Corporate Governance aims at facilitating effective monitoring and efficient control of business. Its essence lies in fairness and transparency in operations and enhanced disclosures for protecting interest of different stakeholders.

Objectives of the Study

- ✓ To understand the concept and origin of Corporate Governance.
- ✓ To Study the principles of Corporate Governance.
- ✓ To Study the Issues & Concerns on the way to Corporate Governance.

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ISSN: 2278-4632
Vol-11 Issue-01 2021

Research Methodology

This paper is a descriptive in nature. The study is based on secondary data. The secondary data was collected through internet and print sources. Internet source is the main source of data for the data collection. Also, secondary data was collected from books, magazines, journals, Newspapers, past researches and various websites.

Issues & Concerns in Corporate Governance

- **The gap between the interest of management and isolated shareholders**: The constitutions of many companies stress and underline the business is to be managed "by or under the direction of" the board. In such a practice, the responsibility for managing the business is delegated by the board to the CEO, who in turn delegates the responsibility to other senior executives. Thus the board occupies a key position between the shareholder and the company's management.

- **They represent shareholder's interest by monitoring managers, approving strategies and policies and disciplining poorly performing managers**. A family owned controlled and managed business with intergenerational time horizons and material, direct shareholding may present far lower governance risks to long term investors than a listed company controlled by a foreign multinational where management have little incentive to grow the value of the local subsidiary.

- **Selection procedure and term of Board:** Selection procedure adopted in Indian corporations is biggest challenge for good corporate governance. Law requires a healthy mix of executive and non-executive directors, independent directors and woman director. Most companies' in India tend to only comply on paper; board appointments are still by way of "word of mouth" or fellow board member recommendations. It is common for friends and family of promoters and management to be appointed as board members. Life-term board members can pose many problems to business say fixed beliefs, power gaining etc. so no business prefers to appoint board members for life-term.

- **Performance Evaluation of Directors**: SEBI, India's capital markets regulator, has released a 'Guidance Note on Board Evaluation' in January 2017. Which cover all major aspects of Board Evaluation including the Subject & Process of Evaluation, Feedback to the persons being evaluated, Action Plan based on the results of the evaluation process, Disclosure to stakeholders,

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ISSN: 2278-4632
Vol-11 Issue-01 2021

Frequency & Responsibility of Board Evaluation. But for achieving the desired objectives from performance evaluation, they need to make the evaluation result public and these disclosures may put the corporate in big trouble.

- **Missing Independence of Directors**: Independent directors' appointment was supposed to be the biggest corporate governance reform by Kumar Mangalam committee on corporate governance in 1999. However in reality independent directors have hardly been able to make the desired impact. Till now the appointment of directors in most of companies is made at the discretion of promoters, so it is still questionable. For providing the true success it is necessary to limit the promoter's powers in matters relating to independent directors.

- **Removal of Independent Directors**: Under law, an independent director can be easily removed by promoters or majority shareholders. When an independent director doesn’t take the side with promoter’s decisions, they are removed from their position by promoters. So to save their post directors have to work for the interest of promoters. To resolve this issue SEBl's International Advisory Board had proposed an increase in transparency for the appointment and removal of directors

- **Liability toward Stakeholders**: Indian company act 2013 mandates that directors owe duties not only towards the company and shareholders but also towards the other stakeholders and for the protection of environment. But generally board tries to limit and escape from these kinds of accountability. For this it may be a good idea to require the entire board to be present at general meetings to give stakeholders an opportunity to pose questions to board.

- **Protection of minority shareholders**: The protection of minority shareholders affected more by national legislation rather than the behavior of individual companies much of global corporate governance focus on boards and their committees, independent directors and managing CEO succession. In the Indian corporate, boards are not as empowered as in several western economies and since the board is subordinate to the shareholders, the will of majority shareholders prevails. Therefore there is a conflict in India between the majority and minority shareholders. The minority shareholders themselves have today a distribution that varies significantly from the past. Only the supervision boards and the institutes of ethics will be main safeguard of interest of minority shareholders.

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- **Founder/Promoter's extensive Role**: In India, instead of separate entity of businesses, promoters or founders continuously influence the business decisions Family owned Indian companies suffer an inherent inhibition to let go of control. They affect the decisions by influencing the board and management. This is done because they had the significant portion of company's share. So to remove this issue it will be good idea to amplify the shareholder base and reduce the shareholding of founders.

- **Transparency and Data Protection**: Corporate Governance is based on the principle of transparency but it cannot be defined what information is to be disclosed or not. In today's cut throat environment of competition it can be very dangerous if wrong information be disclosed. In digitalization Privacy and data protection is a central governance issue. For this the board must be capable of handling data and to ensure the protection of such data from potential misuse. And by looking at the importance of data and the potential cost if data be misused, we can say that organization must invest a reasonable amount of resources to protect the data.

- **Business Structure and internal conflicts**: Business structures also put hindrance on the way to governance as they require many layers of management, executives and other officers. This makes it very difficult for the company leaders to receive accurate, important data from the lower levels and to command orders to lower level of the company as the data may be distorted at any point of chain. Board of executives can make much good decisions and policies. But if the internal relationship in organization say between board and managers is not good then the implementation of decisions and policies also get affected.

- **Corporate Governance is about ethical conduct in business**. Ethics is concerned with the code of values and principles that enables a person to choose between right and wrong. Further, ethical dilemmas arise from conflicting interests of the parties involved.

- **Environment of Mistrust**: In recent years, many scams, frauds, misappropriation of public money and corrupt practices have taken place and because of the doubtful practices of key executives and board members, confidence of investors and society has diminished. It is happening in the stock market, banks, financial institutions, companies and government offices. This has made the business environment distrustful.

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ISSN: 2278-4632
Vol-11 Issue-01 2021

Conclusion

In this paper, we have studied the Concept, Origin, Significance and Principles of Corporate Governance to a corporation or organization. In the process of Corporate Governance organizations may have to face some problems in short run, but in long run it will be advantageous and investors would be promoted to act like owners rather than just traders. We also discussed the issues and concerns in the way of corporate governance in India. Directors are appointed by the promoters and then they influence the decisions of directors for their personal interest. These issues can be tackled by regulating the size, selection criteria and procedure of independent directors. And also regulating the role of promoters or founders in corporate, so that directors can take their decisions without any biases. This will create competition for having best governance practice. After studying this paper we can conclude that although India has achieved a significant Corporate Governance regulation but being a developing country, has a long way to go on the path of Corporate Governance.

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