



CORPORATE GOVERNANCE IN INDIA: THE OUTLINE AND THE REGULATORY FRAMEWORK

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Abstract

At present, corporate governance has attained significance all over the world. It becomes very essential for every organization. The important point is that the pillars on which the edifice of corporate governance stands are Fairness and Accountability. Thus, sound corporate governance practices ensure a company's long-term success, weak practices often lead to serious problems. In recent years, the scope of corporate governance in India has increased largely. Firms in India are currently following governance practices by following binding and non-binding guidelines issued by SEBI in clause 49 of listing agreement regarding corporate governance. In spite of this, many of the reforms that have been adopted fail to address the basic areas of concern like as the relationship between controlling and minority shareholders, the role of promoters, the limited activism of shareholders, including institutional investors, and issues with director will provide the future scope of the corporate governance of the country. It will also highlight the important policies and regulatory framework relating to corporate governance of India. The modest attempt of the paper is to examine the accountability, transparency and ethics followed by different sectors in India. Moreover, the progress and failure of Indian Corporate Governance will be analysed. Some important suggestions will be offered for future prospect of corporate governance in India.

Keywords: Accountability, Ethics, Prospect, Reforms, Transparency.

Introduction

Corporate Governance in simple words means the extent to which companies are run in an open honest manner (Aggrawal, 2013). It is the set of processes, customs, policies, laws, and institutions affecting the way a corporation (or company) is directed, administered or controlled. Corporate governance also includes the relationship among the many stakeholders involved and the goals for which the corporation is governed (Mallik, 2012)

Good corporate governance is not just a matter of prescribing particular corporate structures and complying with a number of hard and fast rules, but there is a need for broad philosophy along with principles and all concerned should then apply these flexibly and with common sense to the varying circumstances of individual companies (Ravi, 2007). Actually, the essence of the corporate world lies in promoting transparency and accountability and in fulfilling the fair expectations of all the stakeholders and to give them benefit. Furthermore, corporate governance is one such tool to achieve this goal and to safeguard the interests of various stakeholder groups.

The area of corporate governance has acquired heightened attention in the last decade because of various notable corporate scandals and collapses, such as Enron, WorldCom, Satyam, etc. which involved unethical business practices (Aggrawal, 2013). For effective corporate governance, its policies need to be such that the Directors of the company should not abuse their power and instead should understand their duties and responsibilities towards the company and should act in the best interests of the company in the broadest sense (Soni, 2013).

In India, the concept of corporate governance emerged after the second half of 1996 due to economic liberalization and deregulation of industry and business. With the changing times, there was also need for greater accountability of companies to their shareholders and customers. However, the Indian Companies Act of 2013 introduced some progressive and transparent processes which benefit stakeholders, directors as well as the management of companies. Investment advisory services and



proxy firms provide concise information to the shareholders about these newly introduced processes and regulations, which aim to improve the corporate governance in India (Mc Ritchie)

Review of Literature

A large number of studies have been carried out to procure knowledge of corporate governance in India. In this regard, an attempt was made to know the various scopes, concerns and regulatory framework relating to Indian corporate governance. The available literature related to topic are as follows:

Varma (1997), discussed how corporate governance in India is exceedingly different from those found in the Anglo-Saxon world. Indian corporate sector is that of disciplining the dominant shareholder, who is the principal block holder, and of protecting the minority shareholders. But the remarkable point is that the basic objectives of corporate governance in different countries are same.

Mukharjee and Ghose (2004), portrayed a dismaying scenario and concluded that corporate governance in India is still in a young and developing stage and that the investment decisions of Indian investors are volatile, not based on governance practices of firms. It is also mentioned that in today's era of globalization, the corporate world requires a world-class governance system.

Nadkarni et al (2008), discussed how the comprehensive approach for the execution of sustainability strategies can strengthen the connection between corporate social responsibilities and global competitiveness. It is also found that few Indian companies have evolved a collective commitment to evolving stronger connections between their values and first-in-class business practice – not by putting either one ahead of the other, but by finding mutually beneficial bridges between them.

Pande and Kaushik (2012), found that corporate governance restructuring in India are at a crossroads and there are no precise guidelines for corporate governance in India. In this context, there is still a need to focus on developing good corporate governance system so that it can tackle the India-specific challenges more efficiently.

Kumar and Zattoni (2012), showed that now-a-days, Good corporate governance is more noteworthy, because corporate frauds are increasing. In this situation, the role of Board has been transformed from being spectator to evaluating and monitoring the performance of management. The interesting fact is that the recent fall of big companies on account of corporate misdemeanour had put members of board under critical scrutiny of the regulatory bodies and investing community.

Aggrawal (2013), has examined the relationship between corporate governance and corporate financial performance, but the results have been mixed and inconclusive. In these research paper emphasized has given two key elements of corporate governance, i.e Board of Directors (BOD) and Exclusive compensation, to ensure sustainable growth of the organization.

Gowd et al, (2013), discussed how poor corporate governance of the organization can drive the market to lose confidence in the ability of a organization to properly manage its assets, liabilities and deposits. This may create liquidity crisis and then it might lead to economic crisis in a country. This could also affect the whole society at a large.

There is a considerable gap in the research area associated with the issues, concerns, regulation and policies relating to Indian corporate governance. There is considerable variance in practices of corporate governance being followed by the different sectors in India. Hence, a comprehensive study incorporating the issues, concerns and regulatory framework is felt necessary. Against this background, it is proposed to study the regulation, ethics, issues and policies relating to corporate governance in India.

Methodology

This study on corporate governance in India is based on secondary data. In the course of analyzing the issues, a number of text and references books, different publications, press release and other published and unpublished documents relating to the study have been considered. The data has been



collected from various websites also. Many books on corporate governance have studied and adequate number of information have been selected and then carefully analyzed.

To know the present status of corporate governance of India with respect to Asian Governance Regimes, Eight Asian countries have been selected. These countries are China, Hong-Kong, Indonesia, India, Korea, Malaysia, Singapore, and Thailand. While selecting the Eight Asian countries, due considerations have been given on location, geography, size of the markets, etc. The data regarding to Asian governance has collected from CLSA Asia-Pacific Markets: Asian Corporate Governance Association, available at www.acgs.asia.org.

Present status of corporate governance in India

In India, certain positive developments in the post liberalization period paved the way for the adoption of Indian corporate governance system on the lines of Anglo-Saxon model. Some significant developments include entry of multinational corporations, emergence of new breed of enterprising entrepreneurs, development of professional and management education system leading to increase in number of professionally managed companies and more discipline by the capital markets (Kumar, 2014). As a result Indian corporate bodies having adopted good corporate governance will reach themselves to a benchmark for rest of the world; it brings laurels as a way of appreciation (Soni, 2011).

It is also found that the Asian financial crisis proved that conventional corporate governance mechanisms can have limited effectiveness in systems with weak institutions and poor property rights. However, a lot of improvements have taken place in the governance structures and practices of the Asian countries including India in the aftermath of the Asian crisis 1997 and opening up of the economies (Kumar, 2014).

Considering the importance of Good Corporate Governance, Asian corporate governance association (ACGA) has made a report during 2004-05. The report is basically based on the state of affairs of corporate governance standards such as rules and regulations, enforcement, political and regulatory environment, the adoption of international accounting standards, and corporate governance culture (Deb, 2012).

The systematic changes in corporate governance in Asia over the past two years are more positive than negative. The main findings of Asian corporate governance association, 2012 were (i) Rising markets are mostly in Southeast and South Asia, including Singapore, Thailand, Malaysia, India, and the Philippines, (ii) Failing markets are mostly in North Asia, including Japan, Taiwan and China, (iii) Hong Kong rose slightly, but remained second in the rankings after Singapore, (iv) Korea rebounded from its low base, (v) Indonesia slipped back (again) to bottom of the survey. Asian crisis has shown that poor corporate governance contributed to the collapse of many organizations and corporate firms in Thailand, Malaysia, South Korea and Indonesia. Since then, there has been a genuine effort to improve corporate governance in the crisis ridden countries (Somon, 2000).

In India, the corporate governance issues are entrepreneur driven but are imposed on them by the markets (Nambi, 2005). But, corporate governance practices in India show a market improvement over the years in areas like board structure and processes, disclosure, and redressal of investor grievances. This has come about partly as a result of strengthening of the regulatory framework through a series of legal and regulatory measures initiated in the 1990's and partly out of the desire of the companies to benchmark corporate governance practices to attract foreign capital.

Issues, Policies and Regulatory Framework of Indian Corporate Governance

In India, government and judiciary have enacted several laws and regulations like SEBI, FEMA, Cyber laws, Competition laws etc and have brought several amendments and repeal the laws in order that they don't act as barrier for these corporate bodies and country as well. Judiciary has also helped



in great way by solving the corporate disputes in speedy way (Soni,2011).These laws and regulations are really significant for good governance system in India.

Organizational framework : The organizational framework for corporate governance initiatives in India consists of the Ministry of Corporate Affairs (MCA),the confederation of Indian Industry (CII) and the Securities and Exchange Board of India (SEBI).

In 1998,the Confederation of Indian Industry (CII), “India’s premier business association,” unveiled India’s first code of corporate governance (Bhat,2007).Soon after SEBI accepted the recommendations of the Kumar Mangalam Birla Committee to design the code of corporate governance .In 2000,SEBI accepted the recommendations of the Kumar Mangalam Birla Committee and introduced clause 49 into the Listing Agreement of Stock Exchanges.In 2003,SEBI instituted The N.R.Narayan Murthy Committee to scrutinize India’s corporate governance framework further and to make additional recommendations of the N.R.Narayan Murthy Committees and the latest revisions to clause 49 became new law on January 1,2006(Bhat,2007).

The Ministry of Corporate Affairs (MCA) had appointed a Naresh Chandra Committee on Corporate Audit and Governance in 2002 in order to examine various corporate governance issues.It made recommendations in two keys aspects of corporate governance :financial and non financial disclosures and independent auditing and board oversight of management.The Ministry of Corporate Affairs(MCA)had also set up a National Foundation for Corporate governance (NFCG) in association with the CII and ICAI(Institute of Chartered Accountants of India)as a not for profit trust to provide a platform to deliberate on issues relating to good corporate governance , to sensitize corporate leaders on the importance of good corporate governance practices as well as to facilitate exchange of experiences and ideas amongst corporate leaders , policy makers, regulators , law enforcing agencies and non government organizations (Corporate Governance,2012).

Legal framework:An effective legal framework is indispensable for the proper and sustained growth of the company.In rapidly changing national and global business environment, it has become necessary that regulation of corporate entities is in tune with the emerging economic trends, encourage good corporate governance and enable protection of the interests of the investors and other stakeholders (Kishore,2007).The legal framework for corporate governance consists of two components:

1)Company Laws : The Companies Act,1956 is the central legislation in India that empowers the central government to regulate the formation ,financing , functioning and winding up of companies (Kishore,2007).The Companies Act,1956has elaborate provisions relating to the Governance of Companies,which deals with management and administration of companies.It contains special provisions with respect to the accounts and audit ,directors’ remuneration,other financial and non financial disclosures, corporate democracy,prevention of mismanagement , etc.The main two sections of this Act related to the Corporate Governance are Section 292A and Section 211.

The concept of Corporate Governance receives statutory recognition,with the inspection of Section 292A in the Companies Act,1956 with an amendment made to it through the Companies (Amendment)Act, 2000.The New Section 292 A made it obligatory upon a public company having a paid capital of Rs. 5 crores or more than to have an audit committee comprising at least three directors as members.Two -thirds of the total number shall be non-executive directors(Corporate Governance,2012).

As per this section 211,every profit and loss account and Balance Sheet of the Company shall comply with the Accounting Standards , issues by the Institute of Chartered Accountants of India as may be prescribed by the Central Government in consultation with National Advisory Committee on Accounting Standards, and the Statutory auditors of every company are required to report whether the Accounting Standards have been complied with or not.The Securities Exchange Board of



India(SEBI)has added a new clause in the Listing Agreement to provide that listed enterprises shall compulsory comply with all the Accounting Standards issued by ICAI from time to time.

The Companies Bill 2004 has been introduced to provide the comprehensive review of the company law.It contained important provisions relating to corporate governance,like independence of auditors,relationship of auditors with the management of company,independent directors with a view to improve the corporate governance practices in the corporate sector (Corporate Governance,2012).It is subjected to greater flexibility and self regulation by companies,better financial and non-financial disclosures,more efficient enforcement of law,etc.

The Companies Act,2013 The Act is made fully effective from April 1,2014.It is replacing the old companies Act1956 and makes comprehensive provisions concerning corporate governance in the country.It contains 470 Sections 29 chapters and 7 schedules as against 658 Sections 13 parts and 15 schedules in this old Act.Main provisions of the Companies Act,2013 impacting corporate governance system are : (a) Disclosure of Promoters' Holding (Section 93) (b) National Financial Reporting Authority (Section 132 (c) Corporate Social Responsibility (Section 135) (Kumar,2014).

II)SEBI laws: Improved corporate Governance is the key objective of the Regulatory Framework in the securities markets.Accordingly ,Securities and Exchange Board of India (SEBI) has made several efforts with a view to evaluate the adequacy of existing corporate governance practices in the country and further improve these practices .It is implementing and maintaining the standards of corporate governance through the use of its legal and regulatory framework(Corporate Governance,2012).

The different laws and Act for good Corporate Governance in India are namely ,The Securities Contracts (Regulations) Act,1956,Securities and Exchange Board of India Act,1992,The Depository Act,1996,The Securities and Exchange Board of India(Issue of Capital and Disclosure Requirements)Regulations,2009,The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations,2002, The Securities and Exchange Board of India (Merchant Bankers) Regulations,1992,The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations,1997,The Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations,2003 and clause 49 of SEBI (Kumar,2014).

Clause 49 of the SEBI guidelines on Corporate Governance as amended on 29 October 2004 has made major changes in the definition of independent directors,strengthening the responsibilities of audit committees,improving quality of financial disclosures,including those relating to related party transactions and proceeds from public/rights/preferential issues,requiring Boards to adopt formal code of conduct ,requiring CEO/CFO certification of financial statements and for improving disclosures to shareholders (Kumar,2014).

Important Issues:There are several important issues in Indian Corporate governance and they play a great role, all the issues are inter related,interdependent to deal with each other .Each issues concerned with corporate governance have different priorities in each of the corporate bodies .The issues are -(a) Value based corporate culture (b) Holistic view ,(c) compliance with laws,(d) disclosure,transparency,and Accountability,(e)Corporate governance and human resource management,(f) innovation ,(g) Necessity of judicial reforms,(h) Globalization helping Indian companies to become global giants based on good corporate governance ,(I)Lessons from corporate failure.

The corporate practices in India emphasis the functions of audit and finances that have legal,moral and ethical implications for the business and its impact on shareholders.The rules and regulations are measures that increase the involvement of the shareholders in decision making and introduce transparency in corporate governance ,which ultimately safeguards the interest of the society and shareholders.The Indian Companies Act of 2013 introduced innovative measures to appropriately



balance legislative and regulatory reforms for the growth of the enterprise and to increase foreign investment, keeping in mind international practices (Mc Ritchie, 2015)

Progress, failure and future scope of Indian Corporate Governance

Progress and failure: Several Indian Companies like PepsiCo, Infosys, Tata, TCS, and Reliance are some of the global giants which have their flag of success flying high in the sky due to good corporate governance. The issues pertaining to Good Corporate Governance becomes more critical in banks, because the controlling power of these banks links with the Government. In regard to corporate governance aspects of banking, the Reserve Bank prescribed its policy framework for the private sector banks. It is noteworthy that the Indian banks have made commendable advancement in extending its geographical reach and functional reach. The spread of the banking system has been a key factor in promoting financial inter mediation in the economy. The divergent growths of different Indian banks have also been accountable for enhancing domestic savings and in expanding credit reach. This is possible only for good corporate governance system in different banks of India (Corporate Governance in Banks in India, 2010).

The greatest drawback of financial disclosures in India is the absence of detailed reporting on related partly transactions. In addition, poor quality of consolidated accounting and segment reporting leads to misrepresentation of the true picture of a business group. India's investor-protection laws are sophisticated; litigation must wait a long time before receiving a judgement. But, delays in the delivery of verdicts, high costs of litigation and the lengthy judicial appointment process in courts make the legal enforcement mechanism ineffective (Bhat, 2007). There is no proper system to monitor the work of audit firms or to review the accounts prepared by the company's statutory auditors. Sometimes, there is unseen but the active participation of political class and for that also good governance is exaggerated (Kishore, 2007).

Future Scope: With the integration of Indian economy with Global markets, industrialists and corporations in the country are being increasingly asked to adopt better and transparent corporate practices. The degree to which corporations observe basic principles of good corporate governance is an increasingly important factor for taking key investment decisions. If companies are to reap the full benefits of the global capital market, capture efficiency gains, benefits by economies of scale and attract long term capital, then adoption of corporate governance standards must be credible, consistent coherent and inspiring.

Hence, in the years to come, corporate governance will become more relevant and a more acceptable practice worldwide. This is easily evident from the various activities undertaken by many companies in framing and enforcing codes of conduct and honest business practices; following more stringent norms for financial and non financial disclosures, as mandated by laws; accepting higher and appropriate accounting standards; enforcing tax reforms coupled with deregulation and competition etc. (Corporate Governance, 2012). It is notable that the frequency and scale of scams has been far more in the West than in India. We need to take such types of scams as an opportunity in future for overhauling the system of corporate governance in India (Press Release, 2009).

Corporate Governance from the futuristic point of view has great role to play. The corporate bodies in their corporate have much futuristic approach. They have vision for their company, on which they work for the future success. They take risk and adopt innovative ideas, have futuristic goals, motto, and future objective to achieve (Soni, 2011). As Corporate Governance encourages a trustworthy, moral, as well as ethical environment. Hence, Corporate Governance in India has a broad scope in corporate, social and institutional aspects.



Conclusion

Indian Corporate Bodies having adopted good corporate governance will reach themselves to a benchmark for rest of the world. In this regard, The Indian Companies Act and SEBI Act introduced some innovative measures to appropriately balance legislative and regulatory reforms for the growth of the enterprise and to increase foreign investment, keeping in mind international practices. On the other hand, absence of detailed report, poor quality of consolidated accounting and segment reporting, inappropriate audit system etc make the legal enforcement mechanism ineffective. It is notable that failure to implement good governance procedures has a cost in terms of significant risk premium. For that reason, the corporate practice in India should emphasize the functions of audit and finances that have legal, moral and ethical implications for the business and its impact on the shareholders.

Corporate Governance in India has a broad scope in different aspects like as corporate, social and institutional aspects. Effectiveness of corporate governance system can not merely be legislated by law neither can any system of corporate governance be static. Though noteworthy progress has been achieved in Indian Corporate Governance, clarity at policy making levels are needed to sustain the progress and to gather future momentum. In India, this time requires the well functioning Board, greater disclosures, better management practices, and a more open, interactive and dynamic corporate governance environment. Above all, corporate governance should have approach of holistic view, value based governance, should be committed towards corporate social upliftment and social responsibility and environment protection.

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