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DIFFERENT SYSTEMS OF CORPORATE GOVERNANCE AROUND THE WORLD

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ABSTRACT

This research paper delves into the multifaceted landscape of corporate governance across various global contexts. Through a comparative lens, it investigates the distinctive frameworks, mechanisms, and practices employed by different nations to govern corporate entities. By synthesizing empirical data, theoretical perspectives, and case studies, the paper elucidates the nuanced interplay between cultural, institutional, and regulatory factors shaping corporate governance systems. Additionally, it scrutinizes the implications of these diverse governance models on firm performance, stakeholder interests, and broader socio-economic outcomes. Through comprehensive analysis and critical insights, this paper contributes to a deeper understanding of the complex dynamics underpinning corporate governance worldwide, offering valuable insights for policymakers, practitioners, and scholars alike.

INTRODUCTION

Just the way morality and ethics have slightly different standards at various places despite the fact of a basic notion of right and wrong, so does have the system of corporate governance, 'the synthesis of corporate morality. B. Minoru Makihara, former CEO of Mitsubishi Corporation, rightly points out that as governments throughout the world reduce barriers to trade and as investors insist on being able to purchase securities in any company, regardless of its domicile, understanding and evaluating corporate governance systems is absolutely essential.[1] Thus first to understand how these systems are different from or similar to each other, is important before reflecting on how globalization has had its impact on this idea of corporate governance.[2]

Based on various capital markets, social and political milieu, different nations have developed their own systems of corporate governance. Here the affecting factors have been diverse and interrelated.

M.M. Blair opines that legal rules that influence corporate governance vary from country to country, but generally they include corporate and securities law, as well as rules from contract, bankruptcy and antitrust areas of law. Other factors responsible for development of corporate governance practices are market pressures, tradition, and structure of equity capital.[3]

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[1] B. Minoru Makihara, in Forward to the book by Robert A. G. Monks and Nell Minow, *Corporate Governance*, ed. 2nd ,(2001), xv.
[2] *Ibid*
[3] M.M. Blair "*Corporate Governance*", Neil J. Smelser and Paul B. Batles (ed.-in -chief), "International Encyclopedia Of The Social And Behavioral Sciences", Vol.4, 1st ed. 2001, 2797.

The major systems of corporate governance, discussed here, are:

1. The American Corporate Governance System
2. The British Corporate Governance System
3. The German Corporate Governance System The Japanese Corporate Governance System
4. The French Corporate Governance System

THE AMERICAN CORPORATE GOVERNANCE SYSTEM

Corporate Governance has been a topic for discussion in the USA for a very long time, and the materials on corporate governance in the USA are extensive. In such a dominant world economy, United States debates on corporate governance will almost invariably influence corporate governance debates in other jurisdictions.[4] It is, therefore, important to deal with corporate governance debates in the USA to lay the basis for understanding corporate governance models in other parts of the world.[5]
Scandals Enron and WorldCom focused largely criticism on the United States corporate governance. Some critics used these occasions to amount a strong challenge to the prevailing wisdom about systems of corporate governance. Others strain the overall performance of the United States economy, and see the rise of the equity-based pay for the managers and the stock market boom as triggering short-term and illegal behavior as "side effects" of a sound system.

The American system saw a sea-change in its direction. This system had an organization control perspective from the middle of 19th century to the near end of 20th century, from when it saw a shift towards shareholder control perspective.

Though the United States of America has been the leader in promoting the shareholder control perspective by showing that the market forces find their own way for the best governance of the corporations, while at the same time with Sarbanes Oxley Act in 2002, it marched on the road of state regulation of corporations.

Historical Background

After the civil war (1861-65), US economy expanded rapidly, which made the capital requirements for corporations greater than before. Now this requirement could be met by bringing the small investors' money in the business. But these small investors could not make the administration effective unless they work collectively, and working collectively due to their diverse number was not a possibility.

Experts notice two types of concentration during latter half of 19th century. Firstly the businesses got concentrated in few companies, and secondly, the resources of these companies got concentrated in the hands of handful of managers. Even further in the management, concentration was in the hands of CEO or other top level managers. A survey in 1904 showed that more than 5000 independent businesses had been combined into just 300 industrial trusts. And further the 1 share, 1 vote norm led the way to capital concentration. This entire scenario overall empowered US economy to shine more than ever before.[6]
Prior to 1933, the federal government left corporate practices to the states, despite infrequent suggestions that a federal corporation law be developed. Things changed with the establishment of SEC in 1933. Shortly after the inception the SEC was delegated power to regulate proxy solicitations in response to congress realization and lack of information typically rendered shareholder votes meaningless, despite shareholders' state law voting rights.

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[4] Jean Jacques du Plessis, Anil Hargovan and MirkoBagaric, *Principles of Contemporary Corporate Governance*, ed.2, (2011), 300.
[5] *Ibid*
[6] *Ibid*

The debate on corporate governance in the USA had started as early as 1932, when Berle and Means published their book, The Modern Corporation and Private Property. The importance of this debate was emphasised further by Mace's book, Directors: Myth and Reality, published in 1971, but the discussion became really heated in 1982 with the publication by the American Law Institute (ALI) of its Principles of Corporate Governance and Structure: Restatement and Recommendations. This project, which had started off quite modestly, resulted in a stream of publications on the topic of corporate governance in the USA. The proposed Final Draft was only approved in May 1992. However, publications on this topic did not stop there. In 1993 alone, 73 articles published in American law review journals dealt directly with the topic of corporate governance. One commentator justly alluded to 'The Emergence of Corporate Governance as a New Legal Discipline' while another remarked that between 1990 and 1993 'events have moved at lightning speed for the world or corporate governance'. That speed has accelerated considerably since the huge corporate' collapses of Enron,[7] WorldCom, Global Crossing, Tyco, Adelphia and others.

DEVELOPMENTS IN CORPORATE GOVERNANCE LAW

In a series of report close attention was paid to governance problem of investment companies, culminating in the 1970 amendments to the Investment Companies Act. These amendments introduced a number of governance devices to mitigate the conflicts of interest between the fund managers and the shareholders of the funds. Specially, the Investment Company Act was amended to require that at least forty percent of the Directors (or trustees) of an investment company be disinterested.

Beginning in the 1980s, with the widespread and dramatic emergence of hostile takeovers in United States, the focus of the Corporate Law scholarship shifted dramatically away from the Eisenberg approach[8] of focusing on the legal and institutional mechanism for controlling management discretion. In its place, scholars looked to the market, and, in particular to the "market for corporate control" to protect the shareholder for managerial abuse.

In the late 1980s, in the wake of the 1987 market crash, the downfall of Drexel Burnham Lambert, the determination by the U.S. Supreme Court that the anti-takeover statutes passed by many states were constitutional,[9] and the decision of the Delaware Supreme Court in the Time Warner case,[10] which was widely interpreted as permitting target managers to "just say no", the age of hostile tender offers died. Suddenly, the shareholders' champion of the 1980s, the market for corporate control seemed to wither away and the takeover bids stopped.

In United States of America, with the collapse of corporate giants like Enron, Tyco, Quest, Global crossings, Adelphia and WorldCom, the legislature rose to the need of developing the law as to governance of these corporations in the most transparent and reliable manner. These developments are seen through following Acts of Legislature: -

Sarbanes Oxley Act, 2002

The Sarbanes-Oxley (SOX) Act of 2002,[11] in which the government bring together a series of corporate governance initiatives, is not just a significant change in law, but also a departure in the mode of regulation. The federal regime had until then consisted primarily of disclosure requirements rather than substantive corporate governance mandates, which were traditionally left to state corporate law. Moreover, federal courts by characterizing efforts of the SEC, had imposed such a view of the regime's strictures, to extend its domain into substantive corporate governance as beyond its jurisdiction. SOX modifies this division of authority by providing explicit legislative directives for SEC regulation of what was previously perceived as the states' exclusive

[7] For a summary of the circumstances that led to the collapse of Enron, see K Fred Skousen, Steven M Glover and Douglas F Prawit, An Introduction to Corporate Governance and the SEC, Mason, Thomas South-West, (2005) 3-5.
[8] Supra
[9] *CTS Corp. V. Dynamics Corp. of America*, 481 U.S. 69 (1987).
[10] *Paramount Communications, Inc. v. Time Inc*., 571 A 2d 1140 (Del 1990).
[11] SOX, Pub. L. No. 107-204, 2002 U.S.C.C.A.N. (116 Stat.) 745. Politicians heralded the Act as the most important financial market legislation since the initiation of federal securities regulation in the 1930s.

Jurisdiction. SOX was enacted in a flurry of congressional activity in the run-up to the midterm 2002 congressional elections after the spectacular failures of the once highly regarded firms WorldCom and Enron.

The Act has ignored the differences in practices and corporate governance systems between the U. S. and other countries, and extended the reach of the U. S. laws to many aspects of the internal affairs and governance regimes of other foreign companies and their auditors. There are of course reliefs for Foreign Private Issuers in the act.

This Act aims at investor protection by improving the accuracy and reliability of the corporate disclosures made pursuant to securities laws and other purposes and at strengthening the system of corporate governance. This Act is applicable to all US based companies; the public company accounting oversight boards; companies which have registered their equity or debt with SEC, and the to the accounting firms providing auditing services to such companies. Some of the Indian companies complying with these regulations are Infosys, TCS, Patni Computers Systems, Satyam Computer Services Ltd. etc.

CONCLUSION

The idea of corporate governance has developed marvelous significance in contemporary corporate law. Corporate governance is apprehensive with direction and control of corporate bodies. These activities are very basic as compared to efficiency and performance of the companies. Corporate governance is the outline that ensures responsibility. When it is in place, the companies are permitted to go about their own way in generating shareholder value and registering progress.

In the developing nations, corporate governance is a precondition of capital market development. The investors may only be encouraged to participate in corporate securities only when there is a trustworthy corporate governance is effective. Lacking in it, stakeholders will not appear to stake their money in companies and also private limited companies shall not appear to list its shares on stock exchanges.

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