



A Critical Examination Of Corporate Governance Systems In India

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Abstract: Corporate governance has evolved as a cornerstone of modern corporate regulation where it ensures the transparency, accountability and provides the protection towards shareholders. In India the corporate governance mainly came after the economic liberalization in 1999 and also major corporate scandals. This paper is focusing on the corporate governance in India by critically examining the its legal framework, regulatory mechanism institutional developments and its challenges also. The study highlight the Companies act 2013, SEBI regulation and judicial cases in shaping governance norms. Instead of seen many progress seen in governance there is also issues present such as promoter dominance, Board independence concerns and enforcement issues also present. This paper concludes with the recommendations aimed at the strengthening enforcement enhancing Board professionalism, and it also improving stakeholders' participation to align with the best Indian practices with global best interests.

Keywords: Corporate governance, SEBI Regulation, Board independence and Shareholder Protection

I. INTRODUCTION

The concept of governance is very old; it can be compared to human civilization.[1]Governance is the process by which decision making happens whether in Favor or against. It has several parts such as corporate, International, National, Local, and even e- governance. In today's world corporate governance has become very familiar word. After the collapse of Soviet Union and the end of cold war in the year of 1990, the world understood the market dynamics plays a pivotal role in one's economy. The states went through the change and the movement gained further wave with policy implementation in Deregulation, Liberalization and Privatization. Also, the corporate governance practices increase in Modern Corporation after the collapse of some high-profile large firms like Enron Corporation and WorldCom. These factors made sure that all the corporations follow the governance and make this an Integral part of the organization which helped them to track their wealth creation and maintain transparency over a Period of time.

Good governance is very important for the existence of the company. It increases the confidence of the investors by ensuring the commitment of the company to grow higher and increase its value. It boosts the value of shareholder as well as stakeholder. So, all the authority recognizes the need of good governance practice in the corporation. They think some governance issue is crucial to achieve one's goal. Member Includes Board of Directors. Audit, Remuneration Committee, Shareholders Grievance Committee, General Body Meeting, Disclosures of Related Parties, Means of communication and general share holder Information. Corporation adapts Corporate Governance due to various Benefits offered by the it. It is one of the most important things in increasing economy, grow together and enhancing the confidence of Investors. Good Governance provides various benefits in the interests of corporations and their employee.

There are many corporate governance models are present around the world and it differs on the basis of variety of capitalism in which they are embedded into .[2] The liberal model is very easy access to Anglo-American countries tends to the give the priority to the interest of shareholders. The corporate governance system followed in Continental Europe and Japan gives importance not only to shareholders but also to

other stakeholders such as employees, managers, suppliers, customers, and the wider community. Both this model and the Anglo-American model have their own strengths and advantages, but they differ in their approach and focus.

After economic liberalization in 1991 and greater integration with the global economy, India largely adopted the main features of the Anglo-American model, which emphasizes both external and internal control mechanisms. For the improvement of corporate governance standards, the Indian government and industry bodies formed three committees which is examine the existing practices and recommend the reforms based on internationally accepted the best practices. The push for stronger disclosure requirements and better corporate governance in India began mainly after the 1992 stock market scam. Additionally, it increased the global competition following economic liberalization created pressure on Indian companies to improve transparency, accountability, and governance standards.

1.1 Meaning and Definitions

It is described by the as a process by which companies are directed and controlled, It also helps in the encouragement to the company's compliance with codes in present in corporate guidelines and also investment techniques based on the active ownership . The concept of corporate governance mainly highlighted after the adoption of new policy in 1991. [3]In the initial time period corporate governance is not mandatorily till 1998, as it recommended by CII .[4] But mandatory provision also inserted by SEBI through clause 49 and revised clause 49 of the Listing and SEBI LODR regulations 2015.

1.2 Importance of Corporate Governance:

According to Henry Bosch, there have been two reasons why effective corporate governance has been desirable and essential. [5] First, in a well-governed organization, the risk of fraud and corporate failure has decreased, and second, there have been mechanisms in place to reduce the possibility of company controllers acting in their own self-interest at the expense of investors.

On the other hand, Justice Owen has stated in the Report of the Royal Commission that the advantages of sound corporate governance processes have been likely to create an environment that has been conducive to success or has influenced success in the context of the relationship between good corporate governance and effective performance . However, it has not implied that those who have had a sound governance system have performed well or have been immune.

The OECD has also provided and highlighted the significance of corporate governance, which has been outlined in the OECD Principles of Corporate Governance (2004). The OECD has found that corporate governance has been a crucial factor in enhancing economic efficiency and growth, as well as investor confidence in the market. In the Australian context, it has been observed that sound corporate governance has added value to the organization.

1.3 Principles of Corporate Governance:

The main basic principle or pillar of corporate governance are honesty, trust and integrity openness, responsibility, mutual respect, transparency with the business organization.[6] The OECD also defined in the year 1999, in which it is said that corporate governance as a set of relationship amongst company management, board directors and also other stakeholders. Good corporate governance should always provide the incentives for the board and the management to pursue objectives which are in the interest of company and its shareholders.

The main principles of corporate governance which is given by the OECD are as follows:

- Rights and obligation of the shareholders
- The equitable treatment for shareholders
- The board of director
- Non-executive of director

According to the [7] King's Report (2002) there is seven principles are identified for the better corporate governance. The principle includes Honesty, discipline, independence, impartiality, responsibility and social responsibility.

1.4 Corporate Governance system:

It is aimed to check whether the organization will survive or not, it is very helpful for investors to check its credibility so that they can invest. In an organization rules and regulations are under corporate governance system . The power influence exercise such as the behaviour of all the parties along with the economic efficiency all come under the same. [8]So, it is assumed that a good corporate governance system may act as a balance between power and trust. Power, which is inherent in shareholder and fiduciary roles, is

exercised by the board of directors. Since managers have to allocate resources efficiently, more calibration and better decision-making lead to the creation of value in organizations.

1.5 Corporate Governance Mechanisms

This literature differentiates between corporate governance system and corporate governance mechanisms. A corporate governance system is the way a country sets up its rules, systems, and practices to control and guide how companies are managed. It includes the country's laws, institutions, and cultural values, which together influence how managers make decisions in a company. Corporate governance mechanisms are the methods and tools a company uses to handle its corporate problems and ensure it is managed properly (Moustafa, 2007). [9] It is a set of monitoring and controlling procedures for creating balanced coordination between owners and agent's relationship. It includes two types of monitoring and controlling tools including internal mechanisms and external mechanisms. Internal mechanisms incorporate the board of directors, other stakeholders, compensation of employees, other internal processes and systems, etc. They are the main set of rules for corporate bodies and play a very pivotal role in monitoring the progress & activities of corporations for taking action against any faults in the regular course of business. Internal mechanism helps in maintaining the internal order of the companies and support in achieving the determined objectives. External mechanisms of corporate governance include outside factors that influence how a company operates. These include auditors, competition in the market, branding and selling strategies, government rules and regulations, codes of conduct, stock market changes, creditors, and debtors.[10]

Other studies also say that corporate governance mechanisms involve internal factors such as the size of the board, how independent the board members are, whether the CEO and Chairman roles are held by different people, and the role of auditors in monitoring the company (Nasr & Natim, 2018).

1.6 Indian Model of corporate Governance

The Indian corporate sector is not only private sector but also a mix of public sector organization. Public sector enterprises have been those in which the majority of equity has been owned by the government, whereas In private sector organizations have been those in which the majority of equity has been owned by individuals, members of company or family members of the founders

Similarly, the corporate governance system in India.[11] It has been a mix of the Anglo-Saxon model and the German model of corporate governance. In family-owned businesses or privately controlled firms, the German corporate governance system has been adopted, whereas in the case of publicly traded corporations and state-owned enterprises, the Anglo-Saxon model has been followed.

1.7 Key Corporate Players of Corporate Governance

The main participant in corporate governance has been the governing authority, which has both internal and external participants. Internal participants include chief executive officers, boards of directors, administration, workforce, etc., and external participants includes of suppliers, creditors, investors, financiers, customers, society, and the government.[12]

Some other researchers have stated that corporate participants have encompassed the governing authority, such as chief executive officers, boards of directors, administration, shareholders, suppliers, workforce, creditors, customers, and authorities involved which is other categories of stakeholders. [13]

II. LAW AND REGULATIONS IN INDIA:

There are some following rules and regulations are present for the corporate governance [14]

1. The companies Act 1956: Earlier in India listed or unlisted companies both are covered under the companies Act 1956. This act is coming through the Department of the companies act. Mainly this act is deals with the procedure, allotment and preference of shareholders, and it also includes the power of investigation by the government and it also includes the power of CLB. After that companies act 2000 introduced significant changes and it focused on the modern corporate Governance.
2. The securities Contracts (Regulations) Act 1956: This act covers the all-different types of tradable government paper, shares, stocks, debentures, and it also covered the other forms of marketable securities issued by the companies. The SCRA also covers the parameters of conduct of stock exchange as well as its powers.
3. The securities and Exchange Board of India (SEBI) Act 1992: Independent Capital market regulatory authority established by this act. The main purpose of this act is to protect the interest of investors in securities, and promote and regulate the securities market. This act was amended twice in the

year 1995 and 1996 and then it clarifies the disclosure norms and further it also empowers SEBI to protect the interest of investors and it also secured the stock market.

4. The Depositories Act, 1996: This act talks about the share and securities depositories, and created legal framework for dematerialization of securities.
5. Listing Agreement with stock Exchanges 2000: It defined the rules, processes, and disclosures that companies must be the follow to remains as listed companies.
6. Companies Act 2013: This act provides a guideline related to the corporate Governance.

2.2 Corporate Governance Reforms in India

The corporate sector in India had influence of UK in it changes as in UK. The discussion and awareness started about corporate governance in the country, which eventually led the government and regulators to establish proper rules and guidelines for it.[15] After the Cadbury Committee report attention was drawn to corporate governance so organizations like the Confederation of Indian Industry, the Associated Chambers of Commerce and Industry of India, and the Securities and Exchange Board of India (SEBI) studied the issue carefully and worked on it in detail. Some studies discussed shareholders' rights, such as the right to vote by ballot, and other general issues .[16] However, none of them were as effective as the Cadbury Report. Important committees and reports in India include.[17] Working Group on the Companies Act (1996) Kumar Mangalam Birla Committee Naresh Chandra Committee Securities and Exchange Board of India Follow-up on the Birla Committee (2002) Narayana Murthy Committee J. J. Irani Committee Corporate Governance Voluntary Guidelines (2009).

III. JUDICIAL CASES:

1. Satyam Scandal Case (2009) [18]

Satyam was a public listed company and it enjoying a good reputation in market. The scandal involved the chairman of the company named B. Ramalinga Raju who confessed the massive fraud, inflating the company's profit and assets for years. The matter started with the Satyam attempt to invest 7,000 crores in Mayats properties and infrastructure. These firm are regulated by the family members of Raju. The investment are cleared by the Board in board meeting but it was opposed by the investors. The accounts of the firm were manipulated by assets like cash and bank deposit being overstated debts being understated. After seeing as a result, investors filed various lawsuit against the Satyam.

After the Satyam case rules become strict and greater focused on the role of independent directors. Supreme court rulings and some legislative changes occur such as companies Act 2013, and also revised the SEBI guidelines and also understood the importance of independent directors in safeguarding the interest of company and stakeholders.

2. Arun Kumar Jagatramka v. Jindal Steel and Power Ltd 2021[19]

This is a landmark case which is deals with the Insolvency and Bankruptcy code 2016. The case addressed the major and crucial aspect of corporate governance the right of a promoter of a company to bid for the company assets when it enters into the insolvency process. The Supreme Court ruled in this case those promoters who are disqualified under section 29A of the IBC cannot participate in the bidding process, even if they have settled all their dues.

In this case Court reasoning was very clear about the IBC's primary objective is to facilitate the resolution of corporate debtor and it also ensure that company management which may base upon the contributed to its downfall does not get a second chance to acquire it. This ruling shows the integrity of the insolvency process must be protected. It also prevents the individual from getting benefited by their own past misconduct and it also ensures the resolution process must be fair and transparent. This case majorly helps in the society by cleaning up the financial system and promoting better corporate governance by holding promoters accountable for their actions.

IV. CORPORATE GOVERNANCE IN IT SECTOR IN INDIA:

Corporate governance is being in talking point across the boardrooms in the world.[20] it applies to all the aspects of a business. Given the fact that technology will be expected to play a key role in helping organizations achieve their business objectives, it is important to discuss the role of corporate governance over technology. India has continued to have one of the best corporate governance laws but poor implementation with the socialistic policies of the pre-reform era, has affected corporate governance. Many companies have concentrated share ownership, and practices like pyramiding and tunnelling of funds between group companies in India are common but after liberalization, serious efforts are made to

improve the system.[21] The Securities and Exchange Board of India (SEBI) also introduces Clause 49 in the Listing Agreement to strengthen corporate governance practices.

The main feature of good corporate governance talks about the transparency, which is shown through the proper disclosures and it also made by companies. it is important because they ensure that stakeholders always receive clear, accurate, and timely information about a company's operations which is benefitted to the shareholders .[22] Transparency means that a company regularly ensures that to shares true details about its activities and honestly informs stakeholders about important events that may affect its value.

Good corporate governance is essential for the sustainable business growth in future perspective. It helps companies to create long-term value and wealth for shareholders and other stakeholders. Some aspects of corporate governance are written into law, they are regulated by the Ministry of Corporate Affairs, SEBI, and other regulators. true transparency, ethics, and responsibility come from the company's own commitment and culture.

The global financial crisis of 2007 and several corporate failures and frauds show that although India's corporate governance system is generally strong but there are still weaknesses. These weaknesses often arise from the internal values and practices of ones companies.

V. CONCLUSION:

Corporate governance has been the framework used to control and guide organizations. It has helped in reducing agency risk that has arisen when executives have placed their personal interests above the shareholders. As a result, effective corporate governance systems have been required to monitor management and restrict any potentially self-serving behaviour. Additionally, it has improved the firm's capacity to deliver reliable information. A problem of confidence has emerged when ownership and administration have been separated. The executives of the organization have been assigned the responsibility of running it in a manner that has served the interests of its owners and other stakeholders. Corporate governance would not have been an issue if information about the company had been made accessible to all stakeholders at the appropriate time and in a uniform manner. The need for corporate governance mechanisms has arisen from the fact that there has been an imbalance of information among all stakeholders in reality.

VI. SUGGESTION:

Corporate governance in India has witnessed many significant changes but many structural and operational changes hinder its effectiveness. There are some suggestions which helps the strengthen the corporate governance framework in India Firstly there is need to enhanced the regulatory bodies like SEBI and Ministry of Government Affairs. Although there is a major act present like companies act 2013 exist but their implementation remains inconsistent. There is need to strengthen the monitoring system and imposing the stricter penalties for better enforcement. Secondly Board interdependence should be reinforced. Independent directors feel lacks of real autonomy due to dominance of Promoter in Indian companies. Transparent appointment process, fixed tenure of members and protection from undue influence should be ensured to improve their effectiveness. Thirdly promoter control should be balanced with minority shareholders interests. It should also gives the protection against related party transaction, and encouraging shareholder activism can reduce the risk of exploitation and also there is need to improve the transparency and disclosure standard. There is need to improve the transparency and disclosure standard. Companies should need to adopt the advanced digital reporting for the accuracy, and accessible information to stakeholders this will enhance the trust between companies and its members. Lastly India should align its corporate governance with the global standards by learning from international frameworks while adapting them in domestic needs. A balanced approach helps combining strict regulation with the ethical corporate culture is essential growth for the sustainable growth.

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