

CORPORATE GOVERNANCE IN INDIA: EMERGENCE AND BARRIERS

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ABSTRACT

The purpose of this study is to review the different developments in Indian corporate governance. In the age of globalization and liberalization, the introduction of new technology completely altered the character of business connections. As corporate life cycles developed, business transactions became increasingly complicated and organizations found it difficult to manage risk. However, incidences of firms giving their promoters preferential shares at substantially discounted rates, various scam were the main causes of corporate governance concerns in India. In order to manage accounting scandals and relieve growing worries about the accuracy of financial accounts, good corporate governance has emerged as a crucial term. To sum up it briefly, corporate governance aims to encourage accountability, transparency, and fairness in business.

Keywords: Corporate, governance, globalization, liberalization

INTRODUCTION

The main focus of corporate governance is on how businesses are run, controlled, directed, and answerable to its shareholders. The issue of corporate governance has mostly surfaced in India as a result of company and industry deregulation and economic liberalization. Due to the accelerated speed of globalization, many businesses now have to access global financial markets, which means they are up against more competition than they were previously. The significance of higher corporate governance standards has become more widely recognized by both business management and regulators. India has one of the greatest rules for corporate governance, but it has been impacted by socialistic policies from before the reform and bad implementation. The corporate environment in India is characterized by concentrated share ownership, pyramiding, and tunnelling of funds among group companies.

RELEVANCE

A company is a collection of several stakeholders, including customers, employees, shareholders, vendors, the government, and the general public. An Indian company, like any other organization operating in this altered environment, should treat its stakeholders fairly and openly in all of its transactions. In today's globalized business environment, this has become essential as companies must access global capital pools, recruit and retain the best human capital from around the globe, collaborate with vendors on massive projects, and coexist peacefully with the community. A company cannot succeed unless it embraces and exhibits ethical behaviour. Companies must understand that all stakeholders must work together for them to grow, and that cooperation can be encouraged when they follow the finest corporate governance principles.

OBJECTIVES

1. To identify the emergence of corporate governance.
2. This Paper primarily addresses the problems and obstacles facing corporate governance in India.
3. The study also examines corporate governance's regulatory shortcomings.
4. To offer recommendations based on research

RESEARCH METHODOLOGY

The research design used for the study is of the descriptive type, taking into account the needs of the objectives. The study made extensive use of secondary data that was readily available. The researcher used the secondary survey approach to obtain the necessary data. Various books, news items, and websites were used, and they were listed and documented.

MEANING OF CORPORATE GOVERNANCE

There are many different definitions of corporate governance. "Governance" is not a novel idea. It predates human civilization by the same amount. In a nutshell, "governance" refers to the decision-making process and the method by which decisions are carried out (or not). Corporate, international, national, and municipal governance are just a few of the situations in which governance can be used. It is accountable, focused on reaching an agreement, and transparent, receptive, efficient, effective, inclusive, and compliant with the law. It guarantees that the opinions of minorities are considered, corruption is reduced, and the voices of the

most vulnerable members of society are heard when decisions are being made. Additionally, it adapts to the requirements of society both now and in the future.

EMERGENCE OF CORPORATE GOVERNANCE IN INDIA

Since Chanakya (Vazir of Parliputra) described the four duties of a king Raksha, Vriddhi, Palana, and Yogakshema in the third century B.C., the concept of good governance has a long history in India. Protecting shareholders' wealth (Raksha), increasing it through methodical asset use (Vriddhi), maintaining wealth through profitable business ventures (Palana), and, most importantly, safeguarding the interests of the shareholders (Yogakshema or safeguard) are the tenets of corporate governance, which substitute the CEO or board of directors of the company for the king of state.

Corporate governance was not a priority for Indian businesses until the early 1990s, and the subject was not well covered in the legal literature prior to that time. Due to systemic issues such as negative stock market practices, boards of directors lacking adequate fiduciary duties, insufficient disclosure procedures, a lack of transparency, and chronic capitalism, India urgently needed reforms and improved governance. The budget crisis of 1991 and the ensuing need to approach the IMF prompted the government to adopt reformatory measures for economic stabilization through liberalization. Stricter corporate governance regulations became essential after the economy was opened to foreign investment and the liberalization process started in the early 1990s (1991), and momentum started to grow, albeit slowly. The corporations Act of 1956 established the legal framework for corporate governance in India by regulating the formation, management, and dissolution of corporations. The Companies Act of 1956 was modified by the government in 1999 as part of the liberalization drive. Later on, in the years 2000, 2002, and 2003, there were more revisions. India began implementing significant corporate governance initiatives in the middle of the 1990s. There are various reforms which were channelled through a number of different paths with both the Securities and Exchange Board of India (**SEBI**) and the Ministry of Corporate Affairs, Government of India (**MCA**) playing important roles.

Committee on Corporate Governance

Reforming the Corporate Governance in India since **1990s**.

1. **Confederation of Indian Industries (CII):** In 1995, a taskforce led by renowned industrialist Rahul Bajaj was established by the Confederation of Indian Industries. The

- CII published the "Desirable Corporate Governance" code in April 1998. It examined several facets of corporate governance, was the first to advise diluting the government's ownership in businesses, and criticized nomination directors.
2. **Kumar Mangalam Birla Committee Report:** Although the CII code was positively embraced by the corporate sector and several forward-thinking companies also adopted it, it was believed that a statutory code would have greater significance in India than a voluntary one do. The Securities and Exchange Board of India (SEBI) thus took the second significant step, establishing a committee in 1999 with Kumar Mangalam Birla as its chairman with the aim of advancing and elevating the standards of sound corporate governance. Clause 49 of the Listing Agreement of the Stock Exchanges contained the main recommendations of this committee, which were approved and ratified by the SEBI Board at the beginning of 2000.
 3. **Department of Corporate Affairs (DCA):** A broad-based study group was established by the Department of Corporate Affairs (DCA) in May 2000, with Dr. P.L. Sanjeev Reddy, DCA Secretary, serving as its chairman. In order to "sharpen India's global competitive edge and to further develop corporate culture in the country," the group was tasked with the lofty goal of looking into ways to "operationalise the concept of corporate excellence on a sustained basis." The organization established the Task Force on Corporate Excellence, which in November 2000 issued a report with several suggestions for improving governance practices across all Indian businesses.
 4. **Naresh Chandra Committee Report:** In August 2002, the Ministry of Finance and Company Affairs established a committee, chaired by Naresh Chandra, to review and suggest changes to the legislation, among other things, pertaining to the roles of independent directors and auditor-client relationships. The committee's proposals focused on two important areas of corporate governance: independent audits, board supervision of management, and financial and non-financial disclosures.
 5. **Narayana Murthy Committee Report in 2002:** A committee headed by Narayana Murthy was established by SEBI to examine how listed businesses were implementing the corporate governance code and to propose revisions to clause 49. The committee's main recommendations mostly dealt with independent directors, related party transactions, risk management, directorships and director compensation, audit committees, audit reports, codes of conduct, and financial disclosures.

6. **Clause 49 of the Listing Agreement:**With SEBI creating the corporate governance-related Clause 49 of the Listing Agreements, significant efforts have been undertaken to reform the system since deregulation. On December 31, 2005, clause 49 of the Listing Agreement with the Indian Stock Exchange goes into force. It has the following essential components:
 - a. **Board Independence:** Listed businesses' boards of directors are required to include a minimum number of independent directors.
 - b. **Audit Committees:** Board audit committees for listed firms must consist of at least three directors, two-thirds of whom must be independent.
 - c. **Disclosure:** To maintain transparency, listed firms are required to make a number of disclosures on a regular basis about their finances and other issues.
7. **J.J. Irani Committee Report:** On the advice of the Bhaba Committee, which was established in 1950 with the goal of combining the current corporate laws and offering a fresh framework for business operations in an independent India, the Companies Act 1956 was passed. The Companies Act of 1913 was repealed with the passage of this law in 1956. As the business sector expanded in tandem with the Indian economy, there was a growing need to streamline this Act, and since 1956, up to 24 revisions have been made. After taking into account the Sachar Committee's recommendations, the Companies (Amendment) Act of 1998 made the most significant changes to the Act. These were followed by additional amendments in 1999, 2000, and 2002, and lastly in 2003 by the Companies (Amendment) Bill 2003, which was based on the R.D. Joshi Committee's report. India began its economic reforms program in the 1990s after a sluggish start in 1980, and a thorough examination of the Companies Act 1956 was deemed necessary. Therefore, the government took a new step in this direction and established a committee in December 2004 to advise the government on the proposed amendments to the Companies Act 1956. Dr. J.J. Irani served as the committee's head.
8. **Central Coordination and Monitoring Committee:**The Department of Corporate Affairs established a powerful Central Coordination and Monitoring Committee (CCMC), co-chaired by the Secretary of the Department of Corporate Affairs and the Chairman of SEBI, to oversee the actions taken against the disappearing companies and dishonest promoters who embezzled the public funds. This committee determined that seven Task Forces should be established in Hyderabad, Ahmedabad, Chennai, Mumbai, Delhi, and Kolkata.

9. **National Foundation of Corporate Governance:** Recently the Ministry of Company Affairs has set up National Foundation for Corporate Governance (NFCG) in association with Confederation of Indian Industry (CII), Institute of Company Secretaries of India (ICSI) and Institute of Chartered Accountants of India (ICAI).
10. **Voluntary Guidelines issued by Ministry of Corporate Affairs:** In December 2009, the Ministry of Corporate Affairs released the Voluntary Guidelines on Corporate Governance. There aren't many rules worth mentioning.
 - a. The chief executive officer and board chairman positions must to be distinct. A majority of independent directors, including the chairman, may serve on the businesses' nomination committee.
 - b. Independent directors shouldn't get commissions based on profits or stock options.
 - c. The directors should receive training from the Board.
 - d. There should be a minimum of three members on the Audit Committee, with an Independent Director serving as the chairperson and Independent Directors holding the majority of the seats.
 - e. The firm should be rotated every five years, and the audit partner should be changed every three years.
 - f. An internal auditor may be appointed by the Committee.
11. **Ownership structure:** Regarding the ownership structure of India's listed corporations, there are two categories of concerns. The majority of businesses, including publicly traded ones, are actually or effectively controlled by a small number of individuals or families due to the high concentration of ownership. Second, many Indian businesses are consolidated under the collective management of a single family or shareholder.
12. **Establishment of the NSE Centre for Excellence in Corporate Governance:** The NSE established a Center for Excellence in Corporate Governance (NSE CECG) in December 2009 to promote the highest standards of corporate governance among Indian corporations and to keep them informed of new and developing concerns. This impartial expert advisory board is made up of distinguished practitioners, scholars, and topic specialists.
13. **Corporate Governance provisions in the Companies Act:** One significant advancement in corporate governance in 2013 was the passage of the Companies Act 2009. The new Act, which supersedes the Companies Act of 1956, intends to advance

minority shareholder interests, streamline laws, and raise corporate governance standards.

- a. *Board of members (Clause 166)*: According to the new Act, the firm may appoint up to 15 members to the Board.
- b. *Independent Director (Clause 149)*: This notion was first presented in Indian firm Law on the subject of independent directors (IDs).
- c. *Related Party Transactions (RPT) (Clause 188)*: According to the new Act, no business may enter into RPT agreements for the supply, purchase, or sale of any materials or goods.
- d. *Corporate Social Responsibility (CSR)*: The new Act requires profit-making businesses to invest in CSR-related initiatives (Clause 135).
- e. *Clause 139, Auditors*: An individual cannot be appointed or reappointed as an auditor by a listed business for more than one term of five years in a row.
- f. *Disclosure and Reporting (Clause 92)*: Compared to the previous structure under the firms Act, 1956, the new Act significantly alters the non-financial yearly disclosures and reporting by firms.
- g. *Class action litigation (Clause 245)*: For the first time, a provision under which the Tribunal's ruling will be binding on all parties involved, including the firm, all of its members, depositors, and auditors, has been made.

BARRIERS

1. In every transaction, a company should treat its stakeholders fairly and openly. In today's globalized economic environment, when companies must access global capital pools and recruit and retain the greatest human capital from around the globe, this has become essential. A corporation cannot succeed unless it embraces and exhibits ethical behavior.
2. “Corporate Governance”: What is it? It is well known that an organization's ability to mobilize and use a wide range of resources to achieve the goals established during the planning phase is essential to its success.
3. Corporate governance is the study of ethical business practices. The set of beliefs and principles that give someone the ability to decide what is right and wrong is the primary objective of ethics. In addition, opposing interests between the parties create challenges to ethics.

4. In an attempt to achieve the best possible financial or business outcomes, it is highly probable that attempts will be made to do things that are almost or actually illegal. Grey areas, in which an action is deemed unethical but not unlawful, are another alternative. They bring up ethical questions.
5. The four components' quick movement across borders. These include (i) labor; (ii) financial capital; (iii) technology; and (iv) physical capital, such as equipment and machinery.
6. Strong corporate governance is indispensable to resilient and vibrant capital markets and is an important instrument of investor protection. Companies raise capital from market and investors suffered due to unprincipled managements that performed much worse than past reported figures. Many corporates did not pay heed to investors' grievances.
7. When it comes to the hardware aspect of corporate governance, we go into the issue of a code, which becomes a reference point for behaviour. But the sad fact in our country is that even though there is a lot of talk about corporate governance, when it comes to reality, nothing much happens.
8. In the Indian context lack of transparency that leads to corrupt or illegal behaviour.
9. Perhaps the most important challenge we face towards better corporate governance is the mindset of the people and the organisational culture. This change will have to come from within.
10. Another important aspect is to realise that ultimately the spirit of corporate governance is more important than the form. Substance is more important than style. Values are the essence of corporate governance and these will have to be clearly articulated and systems and procedures devised, so that these values are practiced.
11. We then come to a common moral problem in running enterprises. One can have practices which are legal but which are unethical. In fact, many a time, tax planning exercises may border on the fine razor's edge between the strictly legal and the patently unethical.
12. Openness, integrity and accountability are the key elements of Corporate Governance for any corporate entity. These factors assume greater importance in case of Public Sector Banks.

13. Banks deal in trust. If trust is in suspicion, damaged or lost, the resulting financial loss cannot measure the true risk. Trust being the foundation of banking, the discussion over applicability of good governance has really been a non-issue.
14. The report of the Consultative Group of Directors of Banks/Financial Institutions – chaired by A.S. Ganguly has focussed on more fundamental issues like the supervisory role of boards of banks and financial institutions and functioning of the boards vis-à-vis compliance, transparency, disclosures, audit committees etc.
15. Ethics in managing an organisation are vital for long term survival. As far as business ethics are concerned, a minimum code of ethics has to be practiced in competition, public relations and social responsibilities. Corporate Governance encourages ethical standards and sound business practices.
16. Corporate governance extends beyond corporate law. Its objective is not mere fulfilment of legal requirements but ensuring commitment on managing transparently for maximising shareholder values.
17. Finally, transparency about a company's governance process is critical. Implementing Corporate Governance structures are Important but instilling the right culture – work culture is Most Essential.

SUGGESTIONS

1. Value-based corporate culture: Any firm must have certain ethics and values in order to function effectively. A long-term company must have a corporate culture. It is a collection of unalterable ethics, values, and beliefs.
2. Holistic perspective: This perspective is more or less religious and godly, and it aids in the operation of organizations. Adopting it is difficult and requires extra work, but once done, it fosters the growth of noble, tolerant, and compassionate traits.
3. Law compliance: The Securities Exchange Board of India (SEBI), the Foreign Exchange Regulation Act, the Competition Act of 2002, the Cyber regulations, the Banking Laws, and other regulations are all followed by these companies.
4. Disclosure, accountability, and transparency: All three of these elements are critical to sound governance. It is important to publish timely and accurate information about things like performance and financial status. Customers with options don't switch to other business entities because of the intense rivalry in the industry.

5. Corporate Governance and Human Resource Management: Staff members and employees are like family to any corporate organization. Human resource management plays a crucial role in a company's success; the two are closely related. Each person should be respected for who they are, and their accomplishments should be acknowledged. Every staff member should have the best chance to demonstrate their value, and the human resources department can do this.
6. Innovation: It is essential to corporate governance and every corporate body must accept the risk of innovation, i.e., innovation in products and services.
7. Need for Judicial Reform: In the current era of globalization and liberalization, as well as for a healthy economy, judicial reform is essential. It must quickly settle conflicts in an economical manner.
8. Lessons from Corporate Failure Every tale has a lesson to teach, and every failure has a lesson to teach. Similarly, corporate bodies have policies that, should they fail, they must learn from. In order to practice good governance, corporate entities must learn from their mistakes and adapt to the future. Failure can be internal or external.
9. The selection criterion for independent directors must be transparent, and the BOD appointment procedure needs to be reexamined.
10. The sustainability of company models should be prioritized over only quantity or profitability.
11. It is necessary to oversee management's operations and hold them accountable and transparent to shareholders.
12. Whistleblower and conduct codes must be written in a way that makes them feasible to implement.
13. Regulators should in addition to establishing accountability and stiffening penalties for noncompliance.

CONCLUSION

The foundation of corporate governance is the complete accountability, integrity, and transparency of the board of directors and management. Everywhere, whether it be in banking, taxation, finance, or the law, sound corporate governance is essential.

Corporate Governance is a means not an end, Corporate Excellence should be the end. When effective corporate governance is attained, the Indian corporate body will surpass all others globally. In the Indian context, the prevalence of scams since the introduction of the liberalization idea in 1991 has brought attention to the necessity of corporate governance. We

have scams involving Harshad Mehta, Ketan Parikh, UTI, Vansishing Company, Bhansali, and others. Global standards must be incorporated into the Indian corporate environment in order to minimize the possibility of frauds, even though they may still occur. There are several benefits to ethical behavior and corporate governance. First of all, they contribute to the company's positive brand image. An established brand image leads to increased loyalty, which in turn leads to more commitment to the employees. When employees are committed to the brand, they will become more creative to gain a competitive edge in the current competitive landscape, innovative thinking is essential. Since corporate governance in the public sector is unavoidable, it must be accepted. However, because corporate governance offers the public sector so much, it should be adopted. Good governance, good business, and good corporate governance are all interdependent.

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