ABSTRACT

This paper is a conceptual paper and is an attempt to make the concept of Corporate Governance understood in a very simple manner. The paper looks at the issues like how the concept of Corporate Governance is important in organizations, the objective of this concept, the performance expectation of all the stakeholders, and the need for corporate governance for Strategic Thinking and Strategy Implementation in an Organization. The mechanisms and controls, the impact of corporate governance on productivity for an organization and the recent research done in the Indian context is also looked in this paper. The various codes on corporate governance, which have evolved in India is also looked into in the paper.

Keywords: Corporate Governance; Public Sector & Private Sector in India; Strategy Implementation Issues; Corporate Governance Codes in India

INTRODUCTION

Corporate Governance refers to the relationship that exists between the different stakeholders for an organization, and defining the direction and performance of an organization or a corporate firm. The relevance of understanding the issues and concerns and to have good corporate governance in letter and spirit has always been there for a sustained, sustainable growth for any organization. This issue has gained more importance, when we see many corporate scandals coming out in India as well as other parts of the world in recent past as those organizations did not apply good principles of corporate governance. The following bodies are the main actors in Corporate Governance.

1) The Chief Executive Officer, i.e. the top person in the organization & the top management of the organization
2) The board of directors
3) The shareholders

The other actors who influence governance in corporations or firms are the employees, suppliers, customers, creditors and the community i.e. all the stake holders for the organization. A corporation can be defined as an instrument or a body by means of which capital is acquired, used for investing in assets producing goods and services, and their distribution (Prasad, Kesho, 2006) [1].

In simple words the essence of corporate governance is set of mechanisms used to manage the relationship among stakeholders and to determine and control the strategic direction and performance of organizations. At its core, corporate governance is concerned with identifying ways to ensure that strategic decisions are made effectively (Hitt et al., 2012) [2]. Fernando (2012) [3] gives the concept of what is Good Corporate Governance? He emphasizes that terms “Governance” and “Good Governance” are being increasingly used in development literature. Bad governance is being recognized now as one of the root causes of corrupt practices in our societies. He also emphasizes the
company including its officers, including the board of directors and officials, especially the senior management, should strictly follow a code of conduct, which should have the obligation to society at large including the National interest, Political non-alignment, Legal compliances, Rule of law, Honest and Ethical Conduct, Corporate Citizenship, Social Concerns, Corporate Social Responsibility, Environment – Friendliness, Healthy and Safe working environment, Healthy Competition, Trusteeship, Accountability, Effectiveness and efficiency, Timely responsiveness, and Corporations should uphold the fair name of the country.

This direction and subsequent performance will determine the success/failure of the organization. Hence the need to understand the issue of Corporate Governance is examined in the next section.

Why The Issue Of Corporate Governance Is Important?

The Corporate Governance reflects the company’s values. Corporate governance has been emphasized in recent years because it has been shown in many companies worldwide, the governance mechanisms occasionally have failed to adequately monitor and control top-level managers’ decisions. Misangyi & Acharya (2014) [4] findings suggest that high profits result when CEO incentive alignment and monitoring mechanisms work together as complements rather than as substitutes. Furthermore, they show that high profits are obtained when both internal and external monitoring mechanisms are present. Their findings clearly suggest that the effectiveness of board independence and CEO non-duality—governance mechanisms widely believed to singularly resolve the agency problem—depends on how each combine with the other mechanisms in the governance bundle. This situation has resulted in changes in governance mechanisms in corporations throughout the world, especially with respect to efforts intended to improve the performance of boards of directors. Robert Monks (2005) [5], in his paper “Corporate Governance-USA-Fall 2004 Reform-The Wrong Way and the right Way”, concludes that almost there is a universal that the Corporate Governance in America is failing. Andrea Georgesencher and Guiclo Palazzo (2011) [6] in their paper “The New Political Role of Business in Globalized World: A Review of New Perspective on CSR and its implications for the Firm, Government and Democracy”, conclude that under the conditions of globalization, the strict division of labor between private business and nation-state governance does not hold any more. Many businesses firms have started assuming social and political responsibilities that go beyond legal requirements and fill the regulatory vacuum in the global presence. A second and more positive reason for this interest is that evidence suggests that a well-functioning corporate governance and control system can create a competitive advantage for an individual firm. This is true for organizations worldwide including India.

OBJECTIVES OF CORPORATE GOVERNANCE

1. To build up an environment of trust and confidence amongst those having competing and conflicting interest.
2. To enhance the shareholders’ value and protect the interest of other stakeholders by enhancing the corporate performance and accountability.

The Stakeholders – As Human Being in Business

The stakeholders are the principal players in inception, sustainability, development and growth of any organization. They are shareholders, all employees of the company or organization, suppliers, customers, investors, banks, regulating agencies, government and community at large. All the means of production in an organization are utilized to create wealth for the community in general and stakeholders in particular. Everybody from supplier to customer, from investors to lenders, and from shareholders to stakeholders to the government is important in an organization. Manpower, Machinery and Money may travel from person to person, from place to place but the core of all the activities remains “People”.

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Need For Good Corporate Governance

Research has shown that good corporate governance can lead to improved share price performance. There is evidence that there is a great potential for good performance by companies, which have got good corporate governance mechanism and the greatest benefit is in developing companies. Studies have indicated that investors are keener to invest in a better-governed company. Corporate Governance can be a very powerful tool for development especially in country like India.

The following issues are important for good Corporate Governance.

- The rights and obligation of shareholders.
- Equitable treatment of all stakeholders.
- The role of all stakeholders clearly defined and the linkage for corporate governance established.
- Transparency, disclosure of information and audit.
- The role of board of directors clearly defined.
- The role of non-executive members of the board clearly defined.
- Executive management and compensation and performance clearly defined.

Mechanism and Control for Corporate Governance

The mechanism and controls are designed to reduce the inefficiencies that arise from moral incongruities and adverse selection. Ethical diversion is a very important issue for Corporate Governance, while designing mechanism and control. The issues could be:

- Monitoring the Role/effectiveness of the Board of Directors.
- Remuneration of the Board Members and other employees in the company.
- Responsibilities and accountability for Audit Committees- financial reporting process, monitoring the choice of accounting policies and principles, monitoring internal control process and policy decisions for hiring and performance of the external auditors.
- Issues and concerns of Government Regulations
- Understand the strategic issues of the competition
- Management labour market and concerns of control mechanisms.

The Impact of Corporate Governance on Productivity and the Corporate Sector in India

In India, the idea of Corporate Governance is relatively new. Traditionally few researchers have written about it. Narayanaswamy, R. et al (2012) [10] provide a brief overview of corporate governance in India, including a description of Indian contextual differences (as compared to the U.S. and elsewhere) and a discussion of the major events contributing to the evolution of India's corporate governance/accounting/auditing practices since economic deregulation in 1991. They also offer an agenda for future research on important Indian governance/accounting/auditing issues, and briefly address accounting practice implications.

The Corporate sector operated generally on a philosophy of cost of production plus in the protected economy. Since they were not exposed to any serious competition, Indian industries continued with existing technologies and remained insensitive about technological developments and happening, but this trend is changing in many corporate houses in due course of the time and the companies in India some of them are becoming very much competitive and are harnessing technological, process and product innovation to become global players in their field. All such companies in India have given lot of importance to the issue of corporate governance.
Bhattacharya, CB. et al in McKinsey Report (2011) [11] talks about how companies can use Corporate Responsibility towards stakeholders as a conduit for furthering its goals. Ultimately stakeholders prefer companies which produce tangible and psychological benefits – which favor good Corporate Governance. Better governance reforms reduce uncertainty & are engines of stability and continued progress has helped Asian Corporate transform themselves during the period of globalization, as per report by Asian Productivity Organization, Tokyo in 2004 [12] [13].

The private corporate like the Tata Group, Aditya Birla Group, Infosys Technologies, Wipro Technologies, Godrej Group, Mahindra & Mahindra Group and Larson & Toubro (L&T.), of companies are giving a lot of importance to the issue of corporate governance. Some of them had understood this issue much better quite early, when they started their companies. Recently, Public sector companies in India, many of them, which have been, listed companies like Oil and Natural Gas Corporation (ONGC), Indian Oil Corporation Ltd., Bharat Heavy Electricals Limited (BHEL), National Thermal Power Corporation (NTPC), Gas Authorities of India Limited (GAIL), Engineers India Limited (EIL), Gujarat Alkalies & Chemicals Ltd., Bharat Electronics Limited (BEL), and other such companies are applying the codes of good corporate governance for their organizations. The guidelines and codes have evolved over a period in India by Securities Exchange Board of India (SEBI) and various Committee setup by the Parliament to come up with the guidelines on corporate governance to Indian Companies.

Implementation, Key Issues On Various Codes Of Governance For Indian Companies

Shri Kumar Mangalam Birla Committee was constituted in May 1999 to promote and raise the standard of Corporate Governance in Indian Companies.

1) The mandatory recommendations of the Birla Committee (1999) are:
   • Applies to all listed companies.
   • Composition of Board of Directors: - Optimum combination of Executive and Non-Executive Directors
   • Audit Committee: - With three independent Directors with one having financial and Accounting knowledge
   • Issues pertaining to having a remuneration committee to look into the remuneration of the Chairman, Managing Director (Chief Executive Officer) Board Members & other executive and employees of the organization.

2) Board Procedures:
   • At least 4 meetings of the Board in a year with maximum gap of 4 months between two meetings. The meetings should review operational plans, capital budgets, quarterly results, and minutes of committee’s meetings.
   • A Director shall not be member of more than 10 committees and shall not act as chairman of more than 5 committees across all companies.
   • Management discussion and Analysis report covering industry structure, opportunities, threats, risks, outlook, and internal control system.
   • Procedure & mechanisms for information sharing with shareholders.

3) Non-Mandatory Recommendations of Birla-Committee:
   • The issues pertaining to:
     • Role of Chairman, the Managing Director or the CEO
     • Remuneration Committee of the Board
• Shareholders right for receiving half yearly Financial Performance
• Sale of whole or substantial part of the undertaking
• Corporate restructuring
• Venturing into new Business

4) Implementation of Recommendations of Birla Committee passed by the Indian Parliament.

- By introduction of clauses 49 in the listing agreement with stock exchange. Provisions of clause – 49 are:
  - Composition of Board-in case of full time Chairman, 50% Non-Executive Directors and 50% Executive Directors.
  - Constituting of Audit Committee – with 3 independent directors with Chairman having sound Financial Background, Finance Directors and internal Audit head to be special invitees and minimum of 3 meetings to be convened.
  - Responsible for review of financial performance on half yearly/ annually basis/ appointment / removal / remuneration of auditors, review of internal control systems and its adequacy.
  - Remuneration of Directors: - Remuneration of non-executive Directors to be decided by the board. Details of remuneration package, stock options, performance incentives of Directors to be disclosed.
  - Board Procedures: - At least 4 meetings in a year. Director not to be member of more than 10 committees and chairman of more than 5 committees across all companies
  - Management discussion & analysis report should include:
    - Industry structure & Developments
    - Opportunities & Threats
    - Segment-wise or product-wise performance reports
    - Outlook of the industry and the organization
    - Risks and concerns for the organization
    - Internal control systems & its adequacy
    - Discussion on Financial performance
    - Disclosure by directors on material, financial and commercial transactions with the company.
  - Shareholder’s Information: - Brief resume of new/re-appointed Directors, Quarterly results to be submitted to stock exchanges and to be placed on web site, presentation to analysis.
  - Shareholders/Investors Grievance committee under the chairmanship of independent Director minimum 2 meetings in a year.
  - Report on Corporate Governance and certificate from auditors on compliance of provisions of corporate governance as per clause – 49 in the listing agreement.

Recent Development on the Codes for Corporate Governance for Indian Companies

A committee headed by Shri Naresh Chandra was constituted August 2002 to examine corporate audit, role of auditors, relationship of company & auditor.

The key recommendations of the Naresh Chandra Committee are given below:
• Recommended a list of disqualifications for Audit Assignments like Direct Relationship with company, any Business relationship with the client, and personnel relationship with the directors of the board.

• Audit firms not provide services such as accounting, internal audit assignments etc. to audit clients.

• Audit to disclose contingent liabilities & highlight significant accounting Policies.

• Audit Committee to be first point of reference for appointment of auditors.

• Chief Executive Officer (CEO) and Chief Financial Officer (CFO) of listed company to certify on fairness, corrections of annual audited accounts.

• Redefinitions of independent Directors- Does not have any material relationship with the company.

• Composition of Board of Directors
• Statutory limit on the sitting fee to non-executive Directors to be reviewed.

• These recommendations now have been formed part of companies (Amendment) Bill, 2003 by the Parliament of India.

• Securities Exchange Board of India (SEBI) constituted a committee headed by Shri N.R.Narayana Murthy to review existing code of corporate Governance. The major recommendations were:

• Strengthening the responsibilities of Audit Committee
• Improving the quality of Financial Disclosures
• Utilizations of proceeds from IPO
• To assess and disclose Business risk
• Whistle Blower policy to be in place in a company providing Freedom to approach the Audit Committee
• Subsidiaries to be reviewed by Audit Committee of the holding company.

Companies Act 2013 (CA 2013) [14], which has replaced the Companies Act 1956 (CA 1956), has brought in some significant changes in Corporate Governance standards, including:

Resident Director is a person who has stayed in India not less than 182 days in the previous calendar year. CA 1956 did not require appointment of Independent directors; CA 2013 makes it mandatory in line with Clause 49 of Listing Agreement with Stock Exchange, along with making it mandatory to have at least 1 Woman board director.

CA 2013 has introduced key changes w.r.t. board meetings and processes. It permits directors to participate via audio visual means such as video conferencing, which recognizes the technological advances in communication globally.

CONCLUSION

This paper addresses some of the issues and concerns faced by Indian companies on the issues of Corporate Governance. Due to emergence of vibrant corporate sector post 1991 liberalization, all the developments related to Corporate Governance have occurred after this period. SCOPE is playing an important regulatory role for Public Sector Enterprises (PSEs). Certain large private sectors corporate, such as TCS, are doing credible work in this area. Periodic government intervention, like enactment of
Clause 49 & Company Act 2013 (which has replaced Company Act 1956), is also contributing to both private & public sector enhancing corporate governance standards.

If one has to summarize, the ultimate objective of corporate governance is to attain the highest standard of procedures and practices followed by corporate world so as to have transparency in its functioning with an ultimate aim to maximize the value of various stakeholders of the organization. The issue of understanding and application of Corporate Governance in letter and spirit is very important for any organization to be successful and competitive in the long run.

REFERENCES