IS CORPORATE GOVERNANCE BECOMING NEED OF HOUR FOR THE DEVELOPING ECONOMIES AS A SUPER POWER?

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ABSTRACT

The issue of corporate governance is always been the central concern to financial and economic development. One of the question that come to mind while thinking about corporate governance is why do different countries follow or do not follow same corporate governance practices. As for the emerging economy, it has its own sets of challenges and weaknesses. The look at how following good corporate governance practices are not only necessary for any firm but is essential for the benefit of the countries economy too.

The main theme of the corporate governance is to integrate the sound management policies by bringing the economic efficiency in the organization by maximizing the profit and also to look for the welfare of the shareholders. All the corporate failures have exposed the weakness and the insufficiency of the Corporate Governance practices in India.

Various benefits of following Corporate Governance for the better economic growth have been observed. A framework for the effective and efficient Corporate Governance needs to be developed and properly implemented, as many of the cases of failure are the result of bad implementation by providing a broad overview of recent Corporate Governance research. Each and every aspect has its own importance from board structure to ownership structure. In 26 developing and developed countries major Corporate Governance reforms took place.

KEYWORDS - Clause 49 of Listing Agreement, Corporate Governance Practices, Shareholder, Economy, Corporate failures. Economic Efficiency

"Corporate Governance is the application of best management practices which will inculcate the spirit and adherence to the ethical standardss for the effective management".

INTRODUCTION

The father of corporate governance Sir Adrian Cadbury defines corporate governance as "*the system in which companies are directed and controlled*".[1]

A corporate entity has to maintain a balance between the individual interest and the overall goals of the organisations, as well as economic and social goals. As the word corporate suggests management of a company, which involves the activities of directing a part of the business and on the other hand governance means studying the conditions within which others can manage effectively and efficiently. Corporate Governance is about how corporations are detected, managed, controlled and held accountable to their shareholders. The structure of Corporate Governance in a organization speicifies the distribution of responsiblities, rights and duties to different

[1] Report of the committee on the Financial Aspects of Corporate Governance, given by Sir Adrian Cadbury

members who are there working like the board members, shareholders, stakeholders and it also lays down the principles and procedures for decision making process.

Corporate Governance in India has developed at the same time as it developed in UK and USA and from that, over the years it has shown great developments. Corporate Governance that has been developed is an great influence of the Anglo – Saxon model. Under this model shareholders rights are recognized and given more importance they even have the right to appoint the board members and now the board directs the working management of the companies. The Organization for Economic Co-operation and Development (OECD, 1999) were the first one to introduce the principles of the corporate governance. The organization has at present 29 countries as its member. The principles of Corporate governance includes public disclosures as appropriate, internal communications, other external communications etc. Such disclosures must enable the stakeholders to take the all the important and essential decisions.[2]

CHANGES SINCE LIBERALIZATION

Over the years after the liberalization various changes have been seen in laws and regulations in corporate governance. The most critical development over the years have been made is the establishment of Securities and Exchange Board of India (SEBI) in 1992. The main focus was made on to regulate and monitor the stock tading and with the changing economy we have seen the grounds which were set to have good governance in the country. The concerns about the governance of the companies were being raised from the stemming corporate scandals as well as the increase in the global competition in the country gave rise in the approach to fix the corporate governance state of affairs in the country.

The first committee was formed in 1996 under the chairmanship of Rahul Bajaj which brought the changes in CII Code for Desirable corporate governance and submitted the report in April 1998. Later on, SEBI constituted the committee to check on the issue of company's governance chaired by Kumar Mangalam Birla Committee that submitted its report in the early 2000's. They made certain recommendations which were accepted by the SEBI for changing the corporate governance situation in India. Narayana Murthy committee also submitted its report in 2003. During the peak period of growth after the economy was opened up towards the liberalization process began in the early 1990's. In 1999 the Government amended the Companies Act, 1956, as part of the liberalization phase. Afterwards various initiatives were taken place by the Indian Government for channelizing across variety of different directions, with both SEBI and MCA playing significant roles.[3]

WHAT IS GOOD CORPORTE GOVERNANCE

The key element that is important for good corporate governance is economic efficiency of the firm. It enhances access to external financing by firms, which leads to greater investment, and higher growth and

[2] Neeti-Rishika Mishra, *Corporate governance in India – battle of stakes*,10 INT. J. CORPORATE GOVERNANCE 20 (2019)

[3] Prof. Mamata Sawakar, *Corporate Governance in India- Evolution and Challenges*,6 IJCRT|274 (2018)

employment for the people. It also helps in ensuring that the corporations take into account the interest of a wide range of constituencies and the community within which they are operating. The tool of corporate governance mechanisms ensures better resource allocation and management for raising the return to the capital invested in it. Further to be successful it needs to ensure that their board is accountable to the shareholders. By cultivating such a working environment balancing the interest of the shareholders alone will ensure the survival and growth of the corporation in the long run. The credibility which is offered by good corporate governance procedure it helps in maintaining the confidence of the investors of both domestic and foreign investors to attract more capital as a more stable source of finance as it reduces the risk of nationwide financial crises.

CORPORATE GOVERNANCE FRAMEWORK IN INDIA

Indian econmy has been faced with sustainable economic growth during a long period of time and is considered as a one of the emerging economic super power of the future. The corporate sector of the country plays the most important role in the economic growth of the country. Starting from the era of 1980's Indian market has opened up to its economy and is putting in all the efforts and encouragement towards attracting foreign direct investment.

However India was not able to cope with all the high profile corporate failures, which seems to be recurring at a regular interval during the period. The one being of ***PNB SCAM, 2018*** in that scam PNB registered a case against neerav modi and his brother and uncle on 13 Feb. The bank initially reported a scam of Rs 280 corers. Then it was changed to 12,000 crores. LoU gives guarantee to an overseas bank that if it gives money for specified period to identify by the home bank then the home bank will assure that the money will be returned to the overseas bank. PNB auditors worked negligently they gave a guarnatee to the foreign bank in a form of LoU without taking any collateral security from the loan takers. PNB payed back the loan amount by selling of the assets of neerav modi and the other amount by the bank itself and the penalty which was imposed on them was of sec 420 and 120B of IPC[4].

All the corporate failures exposed the weakness and the insufficiency of the Corporate Governance practices in India. While, Corporate Governance failures continuously increasing in India, the developed countries like North america and Europe has taken such effective measures to prevent the recurrence of the same frauds.

The Ineffective Corporate governance in India can scare away both domestic and the foreign investors and can be detrimental to the economic growth of the country. Although it is difficult to detect the cases of fraud in the corporate company at the earlier stage, still the government of India is trying to take effective legal control over such fraudulant acts by implementing various policies, laws and methods which are designed to achieve success before corporates can be blown up by the scams. The main body which is in-charge of fraud prevention in public companies is the SEC (Securities & Exchange Commission). The

[4]https://en.wikipedia.org/wiki/Punjab_National_Bank_Scam

major weakness lies in the implementation of such policies.

LEGAL SYSTEM OF THE COUNTRY

Clause 49 of the Listing Agreement was added on the recommendation of the Kumar mangalam Birla Committee on Corporate Governance constituted by the Securities Exchange Board of India (SEBI) in 1999. It was added to introduce the corporate governance practices in Indian companies it brought number of changes and disclosure in the functioning of the companies.

The clause specifies the minimum number of independent directors required on the board of a company. The setting up of an Audit committee, and a Shareholders' Grievance committee, among others, were made mandatory as were the Management's Discussion and Analysis (MD&A) section and the Report on Corporate Governance in the Annual Report, and disclosures of fees paid to non-executive directors. A limit was placed on the number of committees that a director could serve on. [5]

The introduction of the provisions in the ***Companies Act, 2013*** seeks to achieve the objective by encouraging the efficiency, transparency, accountability for the high standards to be maintained for the good corporate governance in the form of Board compositions, their obligations and responsiblities as being a board member, role and responsibility of the Independent Director, appointment of women director, ensuring the shareholders' rights and participation at shareholders' meetings, Disclosure of Information, Audit Committee, General principles, Corporate social responsibility and mandatory compliance of Secretarial Standards issued by Institute of Company Secretaries of India as per Section 118 of Companies Act, 2013.

COMPARATIVE STUDY OF DIFFERENT COUNTRIES

The term Corporate Governance has gained importance in last one or two decades in the economic policy of every country. There are different systems of the corporate governace structure as much as there are countries. Each country follows its own system of corporate governance. We as a economy has a diverse and different range of the legal and political system.

- ***INDIA AND SOUTH KOREA***

India has one of the best Corporate Governance structure but a poor implementation has been the issue for the country for a very long time. With the changes over a decade, especially with the enactment of the Sarbanes-Oxley type measures in Clause 49 of the listing agreements, Voluntary Guidelines by Ministry of Corporate Affairs and legal amendments and the changes in the Companies Act, 2013 helped in creating a Good Governance Practices in the country. Companies were under the impression of the dominant family business structure which has shifted from that to the individual shareholder as their central focus. According to the Asian Corporate Governance Association, India ranks 7th whereas South Korea is on 8th rank.

The Korean structure of corporate governance is more into family ownership

[5] SEBI | Corporate Governance Sebi.gov.in, https://www.sebi.gov.in/legal/circulars/feb-2000/corporate-governance_17930.html

and family management style authorization and control with the borad range of business related activities involving the vertical and the horizontal relationship and the close integration with the Korean government. After the financial crises in the year 1997 the South Korea made the progress in reforming the financial institutions and the capital markets. They made the progree by strengthing the competitivess by allowing the non Korean people to own land and the real estate properties, and welcoming the FDI in the local economy. Laws based on the Anglo American model were introduced which increased the transparency and accountability between the shareholders and the directors and allowed the minority shareholders to come up with the actions against the corporation and the board taking the decisions[6].

- ***INDIA AND US***

The relationship which US and India share is quite prominent from all time. In order to better understand the corporate governance models within India and US, and the consequences which were faced by the failure of corporate governance, the Enron and Satyam scandal are the best example for that. Enron scandal is one of the largest in the US corporate history. It was reveled in the year 2001. It was the biggest failure of the American capital markets, and the large part of the failure can be attributed by the failure of audit committee which resulted as a inadequate corporate governance model in the country.

Enron Corporation was an energy based company in Texas, one of the America's seventh-biggest companies. The company enjoyed great success until 2000's due to its innovative work culture and gained multi-billion dollar revenueover the time. In October 2001, Enron started inflated the earnings and was removing the financial losses from the financial reports. The audit committee followed all the regulations and made the disclosures about the cracks and loopholes within the US corporate governance model in the early 2000's. Moreover Enron tried to bribe the directors by paying them to align their interest with the shareholders. The crises at Enron can be seen as the manifestation of the failure of the agency theory and stakeholder theory of the corporate governance models.

The **Satyam Computers** scandal in India is one of the biggest corporate fraud which has been committed in India, with the amount of nearly 1.1 billion dollar. The scandal also came to be called as the *Enron of India*. The same happened in this case the company's books were manipulated which consequently caused the loss to the investors. The company was founded in 1987, it was one of the First IT companies in India. The Satyam scandal was also a result of the failure of the agency problem due to the separation of ownership and control. There was a major loss of crediabilty in India which laid the inadequacies within the Indian corporate governance system.

- ***INDIA AND CHINA***

[6]HARISH KUMAR, Corporate Governance at its Core: A comparative Study of India & South Korea, 3 International Journal for Research in Management and Pharmacy , 14 (2014), http://www.raijmr.com/ijrmp/wp-content/uploads/2017/11/IJRMP_2014_vol03_issue_04_02.pdf

India and China both are the world's next major economic super powers. Both have faced a strong growth since 1980 and has opened for the international trade and investments. The Change has been the constant as far as corporate governance norms go in for India. Over the last decade we have seen multiple of iterations of the role and responsibilities of the Board through amendments and restatements of regulation and laws.

Corporate governance in China has shifted the economy from the planned economy to the market economy. With the establishment and growth of the capital markets in China, and the evolution of the enterprise from the government affiliates to modern companies has shown the requirement for the establishment of a new corporate governance structure in China. China's legal framework for corporate governance comprises of four levels they are basic laws, administrative regulations, regulatory provisions, and self-disciplinary rules[7]. More particularly, echoing the "new normal" of China's economy, there is a desire from regulators to improve the self discipline regime of listed companies to addrese the imbalance between controlling shareholders and minority shareholders, the transparency and disclosure obligations, the operation of the board of directors, and the promotion and management of employee share schemes.[8]

CONCLUSION

Corporate governance is one of the strong means to enhance the reputation by improving performance of the board practices and voluntary disclosure of the same can improve a firm's market share and relative growth rate in the market. India has done a great deal to develop a sound corporate governance framework over recent years. Clause 49 of the listing requirement establishes the significant framework.Though India tried to develop a world class regulatory framework for corporate governance, but the unending corporate frauds and failures placing a grim reminder that it is not effective. To achieve the excellence in the corporate governance in the country, laws and regulations have to be strictly made which should restrict the influence over the decision making in the company through the illegal means stop and make it independent on the board of directors without any influence to implement the regulatory framework in letter and spirit and as per the willingness of the company to enforce a voluntary and ethical code of conduct with regards to corporate governance.

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[7] corporate governance of listed companies in china © oecd 2011

[8] Compare & Research | ICLG International Comparative Legal Guides International Business Reports, https://iclg.com/compare