CORPORATE GOVERNANCE AND ITS EVOLUTION

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ABSTRACT

Corporate governance is the system of rules, procedures, and processes that guide and regulate a firm by. Corporate governance ultimately includes balancing the interests of several stakeholders in a company, such as shareholders, senior managers, consumers, suppliers, financiers, government and the community. Since corporate governance also provides the basis for achieving a company's goals, it covers almost every management area, from action plans and internal controls to performance assessment and corporate disclosure. In the past around 3 decades there has been immense growth and various reforms which made emergence of corporate governance as an importance center of corporate law in countries across the globe, so much so that it is present in all kind of countries which are developed, developing and under developed. The main reason for this diversification is due to evolution and trends of globalization, it has been presumed by many scholars that the principle of corporate governance will emerge more with corporate laws gradually. However, the corporate governance guidelines/ principles are neither mandatory nor prescriptive and have been designed as evolutionary concept which is accepted at global level. Without parallel developments in public policy and governance, corporate governance cannot advance, since it is a multi-targeted and highly efficient policy instrument. For a few countries with highly sophisticated stock exchanges or eager to draw foreign investment, it is not a privilege for the developing markets. This paper attempts to deal with international convergence on corporate governance principles. Further, the paper deals with the changes brought in the Companies Act and SEBI for the incorporate of corporate governance along with the models of corporate governance.

Keyword: corporate governance, principles, globalization, companies, and evolution.

Introduction

Corporate Governance (CG) definition by OECD, "Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the mechanism by which the company's objectives are set, and the means to achieve those objectives and track performance are decided."[1]

The development of corporate governance in the United Kingdom in the course of recent decades, starting with the 1992 Cadbury Report followed by Greenbury (1995), Hampel (1998), Turnbull (1999), Higgs (2003) and Smith (2003), offered ascend to a far reaching Corporate Governance Code, the substance of which includes the compensation of workers and directors.

In the year 1993, the CalPERS (California Public Employees Retirement System) a system which come up with good corporate governance focusing on the foundation for

[1] Definition of Corporate Governance, https://www.applied-corporate-governance.com/definition-of-corporate-governance/

accountability between a corporation management and its owners by virtual measure in US.

Corporate Governance was not in agenda of Indian Co. until early 1990s and no one can find much reference to this topic in book of law till then. In India, weakness in the structure such as undesirable stock market practices, boards of directors without sufficient fiduciary duties, inadequate disclosure procedures, lack of accountability and systemic capitalism were all crying for reforms and better governance. The fiscal crisis of 1991 and the consequent need to tackle the International Monetary Fund led the government through liberalization to implement reform measures for economic stabilization. While the momentum grew gradually after the economy was opened up and the liberalization process began in the early 1990s. In 1999 the Government amended the Co. Act, 1956, as part of the liberalization drive. The main corporate governance initiatives initiated in India since the mid-1990s. Various reforms have been channeled across a variety of different directions, with both SEBI and Ministry of Corporate Affairs playing significant roles.[2]
It is a truism that globalization is a magnet that draws all aspects of business to one direction including corporate governance. As corporate practices such as accounting and auditing are increasingly harmonized globally which further results in the fact that there is no doubt about corporate governance. India has taken steps to improve its governance practices in its quest to draw foreign capital inflows.

Hence it can be said that global free movements of capital as well as corporate multi-nationalization are considered to be the key force for CG's convergence evolution.

Evolution and Development

- ***Evolution of International Convergence***

The Organization for Economic Co-activity and Development (OECD, 1999) built up the main arrangement of internationally acknowledged standards of corporate administration. The association contains 29 nations altogether. A considerable lot of the standards demonstrated equals to the Cadbury Code (1992) and talked about issues, for example, reasonable treatment of investors, investor rights, responsibility and divulgence as far as corporate announcing and review, the position and commitments of chiefs' corporate sheets and the significance of non-official executives. For the requirements of the OECD Principles, organization administration was sketched out as, that structure of connections and comparing duty among a center comprising of investors, board individuals and directors intended to best encourage the serious exhibition expected to arrive at the arrive at essential objective“ (International Monetary Fund, 2001). The issue with the OECD Principles and code of watch was their feebleness, as they need no authoritative force. Nations have utilized them as a perspective for self-evaluation and for building up their own codes of best practices in organization administration. Also, they are received as one in all the twelve key guidelines for sound fiscal frameworks by the

[2]Prof. Mamata Sawakar, “Corporate Governance in India- Evolution and Challenges”, 2018 IJCRT|Volume6, April 2nd, 2018. http://ijcrt.org/papers/IJCRT1893330.pdf

money related Stability Forum.[3] Appropriately, they kind the premise of the organization administration component of the World Bank/International Monetary Fund Reports on the Observance of Standards and Codes.

The International Corporate Governance Network (ICGN) is an international body composed of several organizations involved in improving corporate governance. The company, inter alia, represents the needs of creditors, financial intermediaries and businesses. The International Corporate Governance Network Universal Principles of Corporate Governance were initially adopted in 1999. We offer instructions to businesses on how to execute the Principles by providing the substance of the Principles in a statement of corporate governance principles in a "working package." The OECD Principles approach to ICGN has been replicated in Monks and Minow (2001). Since 1996 the members used to meet and share information.[4]

The European Commission of the European Union (EU) has spent years deliberating concerning the ways in which within which it might offer steering on corporate governance to its members. The report from the Centre for European Policy Studies (CEPS, 1995) documented the substantial reforms that are taken place in recent years in Western European countries‟ company governance systems. There square measure at gift forty two company governance codes of follows existing in EU member countries. In Gregorian calendar month 2003, Frits Bolkestein, EU Commissioner for the Internal Market and Taxation, printed the high regulative priorities for the monetary Services Action set up and company governance. The commission is that specialize in increasing transparency and speech act, furthermore as rising the effective exercise of investor rights. The Commission needed listed corporations altogether EU member states to publish associate degree annual statement of their structures and practices for company governance and additionally needs institutional investors to disclose their policies for investment and therefore the exercise of option rights.[5]

After the Edinburgh Heads of Commonwealth Conference, CACG was founded and its mission is to foster excellence in corporate governance in Commonwealth countries. To date, it has conducted workshops in some 25 countries, and supported institution-building in all of these countries that promote corporate governance through education and knowledge. Over the last couple of years, the Commonwealth's corporate governance principles have concentrated attention on the development of corporate governance frameworks in a variety of African emerging economies.[6]

The following principles where lead down:

1. Leadership: In managing the corporation, the board will exercise leadership, enterprise, honesty and judgment in order to achieve continued success for the

[3] Shamsher Mohamad And Zulkarnain Muhamad Sori, “Corporate Governance from a Global Perspective”, SSRN Electronic Journal, April, 2011. https://www.researchgate.net/publication/228247817_Corporate_Governance_from_a_Global_Perspective

[4] Supra 3

[5] Supra 3

[6] Officially by Commonwealth, “CACG Guidelines”, Final version, November, 1999. http://www.nfcgindia.org/pdf/cacg_guidlines.pdf

corporation and function in the best interests of the business enterprise in a manner focused on openness, accountability and responsibility.

2. Board Appointments: The board needs to guarantee that choices are made into a controlled and proficient procedure board that offers a blend of experienced chiefs, every one of whom can include esteem and present autonomous judgment as a powerful influence for the dynamic procedure.

3. Strategy and value: The board will decide the mission and values of the corporation, evaluate the plan to accomplish its objective and enforce its values to ensure that it succeeds and prosper, and ensure that policies and processes are in place to protect the assets and integrity of the corporation.

4. Company Performance: The Board will track and review approaches, procedures, success improvement requirements and strategic plans for implementation.

5. Compliance: The board will ensure that the company complies with all applicable best practice rules, legislation and codes.

6. Communication: The board will ensure the company interacts successfully with shareholders and other stakeholders.

7. Accountability to Shareholders: The board will represent the legitimate interests of the corporation's shareholders and fully report to them.

8. Relationship with Stakeholders: The board will define the internal and external stakeholders of the company and decide on a policy or policies which will dictate how the company will respond to them.

9. Balance of Powers: The board will ensure that no one person or group of individuals has unfettered control and that the board has an appropriate balance of power and authority, which is generally expressed, inter alia, by separating the positions of the chief executive and chairman, and by striking a balance between executive and non-executive.

10. Internal Procedures: The load up will audit procedures and methodology all the time to guarantee the proficiency of its inner control components, with the goal that its dynamic capacity and the nature of announcing and budgetary execution are saved at an exclusive requirement consistently.

11. Board Performance Assessment: The board will periodically review its overall performance and efficiency, and that of the individual officers, including the chief executive.

12. Management, Appointments and Development: The board will select the chief executive and at least engage in nominating senior management, ensure the corporate-intrinsic incentive and security of intellectual property, ensure sufficient preparation for management and staff in the company, and a succession plan for senior management.

13. Technology: The board will ensure that the technologies and systems used in the company are adequate to operate the business properly and remain a viable competitor for it.

14. Risk Management: The board will identify and track key risk areas and business organization success metrics and these factors.

15. Annual Review of Future Solvency: The board must ensure that the organization

continues to be a priority for the next fiscal year on an annual basis.[7]

➢ ***Models of Corporate Governance***

1. Anglo-American Model:

The Anglo-American model is based on a system of individual or institutional shareholders who are the corporate outsiders as well as the management and the board of directors. This model is structured to isolate every company from control and ownership. The Anglo-American structure relies on good cooperation between shareholders, management and board with major decisions being put to the shareholders vote.[8] This model is followed in India, US, UK, and Canada majorly.

2. Japanese Model:

The Japanese model includes a high degree of ownership by banks and other related companies as well as "keiretsu," industrial groups connected by trade and cross-shareholding ties. The main players in the Japanese system are the bank, keiretsu (both major shareholders inside), management, and government.[9] Government has consistently has an impact on corporate management through policies and regulations. External control is by main-bank. This model is followed in Japan only.

3. German Model:

There is a two-tier board structure comprised of a board of directors and a supervisory board. The management board is made up of the company's in-house executives and the supervisory board is comprised of individuals such as members of labor and shareholders. Both boards are entirely independent, and the size of the supervisory board is laid down by statute and the shareholders cannot change it. In the German model, the owners are also subject to voting rights limits.[10] They can only vote a certain percentage of the share, irrespective of their ownership. This model is followed in European Continents majorly.

4. Family-based Model:

Under this model the major holdings of the co. lies with the family and relatives, and the shareholder is considered as minority. The Chairman has to follow the orders of the family strictly and this further increases the changes of mismanagement. 80% of the said business belongs to the family. This structure is followed in East Asia, US, etc.

➢ ***Analysis of Indian Legal Provisions***

Though the principles of Corporate Governance are not mandatory codified but they accepted worldwide by most of the economies doesn't matter whether it is developed or developing. Every country has its own regulatory bodies and statute for proper governance of CG.

Multinational Corporations are the Co. which leads to international Corporate Governance. MNCs (Multinational Corporations) are considered to be among the most influential types of organizations in the world because they account for a large proportion of IPR, are large employers and contribute to the economic growth of the foreign countries where they work (Williams, 2009). Multinational corporations, such as MNC subsidiaries with their parent corporation, the

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[7]Officially By Commonwealth, "CACG Guidelines", Final version, November, 1999. http://www.nfcgindia.org/pdf/cacg_guidlines.pdf

[8]Ben O'Connell, "Models of Corporate Governance", January, 2019, https://bizfluent.com/list-6710522-models-corporate-governance.html

[9] Supra 8

[10] Supra 8

MNC, operate in more than one country and may be listed in the host company. The MNC subsidiary must therefore determine which institutional pressures are more important: internal pressures which would allow it to become legitimate within the working environment of MNCs or external pressures which would enable it to gain external legitimacy within the host country's legal system.[11]

"As a written and codified law has more effective interpretation and relevance of mandate provision is more."

- ***Regulatory bodies in India:***

1. The Companies, Act, 2013 contains provisions concerning board constitution, board conferences, board processes, freelance administrators, general conferences, audit committees, connected party transactions, revelation needs in money statements, etc. it is basically the statue which govern CG.
2. SEBI Guidelines: SEBI could be an administrative body having jurisdiction over listed corporations and that problems laws, rules and tips to corporations to make sure protection of investors.
   Standard Listing Agreement of Stock Exchanges: For Companies, whose offers square measure recorded on the stock trade. Clause 49 of The Listing Agreement strictly governs corporate governance.
3. Accounting Standards issued by the Institute of chartered Accountants of India (ICAI): ICAI is an autonomous body, those problems accounting standards providing tips for disclosures of monetary info. Section 129 of the New corporations Act entomb alia provides that the money statements shall provide a true and truthful read of the state of affairs of the corporate or corporations, suits the accounting standards notified below section 133 of the New Co. Act, 2013. It's more on condition that things contained in such money statements shall be in accordance with the accounting standards.
4. Assistant Standards issued by the Institute of Company Secretaries of India (ICSI): ICSI is an autonomous body, those problems assistant standards in terms of the provisions of the New Company Act. So far, the ICSI has issued assistant commonplace on "Meetings of the Board of Directors" and assistant Standards on "General Meetings". Section 118(10) of the New Companies Act, 2013 Segment 118(10) of the New Companies Act, 2013 give that each organization (other than one individual organization) will watch colleague Standards insignificant naturally by the ICSI with importance general and board meetings.[12]

- ***Report of the Narayana Murthy Committee, 2002***

Under Narayana Murthy's chairmanship, the SEBI appointed a committee to study the enforcement of the corporate governance code by listed companies and issue revised clause 49. Some of the committee's key recommendations mainly concerned audit

[11] Madhani , Pankaj M. , "Corporate Governance and Disclosure Practice of MNC Subsidiaries and Cross-Listed Firms: An Institutional Environment Perspective", IUP Journal of Corporate Governance, Vol.14, No.3, July. https://www.questia.com/library/p439823/iup-journal-of-corporate-governance/i4241953/vol-14-no-3-july

[12] Vaish Associates Advocates, "India: Corporate Governance Framework in India", Mondaq, January 8th, 2016. https://www.mondaq.com/india/CorporateCommercial-Law/456460/Corporate-Governance-Framework-In-India

committees, audit reports, independent directors, related party transactions, risk management, directorships and director compensation, codes of conduct and financial disclosures.

Following liberalisation, considerable attempts have been made to reform the SEBI mechanism Clause 49 of the Corporate Governance Listing Agreements; Listing Agreements Clause 49, The Indian stock exchange agreement enters into force as from 31 December 2005. Including the

Key requirements following:

- Board Independence: Listed companies boards of directors must have a minimum number of independent directors.
- Audit Committees: The organizations listed must have board audit committees of at least three directors, two-thirds of which must be independent.
- Disclosure: In order to ensure accountability, listed entities must regularly make different statements on financial and other matters.

- ***Development in The Company Act, 2013 in India***

On the recommendations of the Bhaba Committee set up in 1950 the Companies Act 1956 was enacted with the intention of consolidating the existing corporate laws and providing a new framework for corporate operations in independent India. The Companies Act 1913 was repealed with the passage of this law in 1956. The need to streamline this Act was felt from time to time as the private sector developed in tandem with the Indian economy and since 1956 there have been as many as 24 amendments to it. The major reforms to the Act were made through the Companies (Amendment) Act 1998, after consideration of the Sachar Committee's recommendations followed by further amendments in 1999, 2000, 2002 and finally in 2003 through the Companies (Amendment) Bill 2003 pursuant to the report of R.D. Joshi Committee. After a tentative start in 1980, India embarked on its economic reform programme in the 1990s and felt a need for a thorough review of the 1956 Companies Act. Therefore, the Government took a fresh initiative in this regard and set up a committee under the chairmanship of J.J. in December 2004. Irani to advise the Government on the possible changes to the Companies Act 1956. [13]

"When The Co. Act, 1956 was in force, Clause 49 of SEBI was the primarily preceded corporate governance. But the Implementation of Co. Act 2013 brings new private sector rules and regulations. This Act deals with 470 sections spread through 29 chapters and 7 schedules, which replaced the old 1956 Act. The basic purpose of the Act is to encourage self-regulation and incorporate new concepts including one-person company, small business, inactive company and corporate social responsibility. It also promotes investor security and accountability by introducing insider trading principles, class action suits, the development of an NFRA (National Financial Reporting Authority) and the establishment of Serious Fraud Investigation Office for fraud investigation cases. For greater clarification a mammoth section 2 containing 94 definitions was introduced. "Core corporate governance provisions under the Companies Act, 2013:

1. The new Act implemented broad concepts of stakeholder executives, main executives,

[13] Supra 2.

financial statements, accounting standards auditing standards and voting rights, etc. It also created a new class of Co. called 'One Person Company' (OPC), which entitles a person to be able to carry on business with reduced responsibility. [14]

2. “The new CO. Act 2013 brought major amendment in the regulation related to Board of Directors. The Act allows for a corporation to have a maximum of 15 board members. Nonetheless, the company needs special resolution on the necessity of further directors and requires the consent of shareholders. For the first time the Act also defines the position and duty of the board of directors and makes them increasingly responsible for the roles of the company. Failure to perform these duties and obligations would lead to punishment with fine.” [15]
3. The 2013 Act brought about the Concept of Independent Directors (IDs). For five consecutive years, it allows all listed CO.to have at least one-third of the board as independent directors. This also sets out specific requirements for an ID's appointment, such as being an integrity individual, appropriate skills, and needed experience. The ID's responsibility to integrate professional conduct for them through the creation of facilitative positions, such as providing impartial advice on political, efficiency and key appointments matters, and taking an unbiased view of the Board's performance evaluation. The new Act also empowers the ID to some degree because of its greater accountability and transparency in the functioning of the company.[16]
4. This Act made compulsory the appointment of at least one female director to the board of directors of listed companies. [17]
5. After the amendment, The Co. Act, 2013 required that the board of directors form various committees, such as (a) audit committee (b) appointment and remuneration committee (c) stakeholder relationship committee (d) CSR. In fact, in order for the board of directors to work better these committees are needed by the Act.[18] The role of the audit committee and the appointment and remuneration committee is to provide the boards with the resources, whilst the stakeholder relations committee and CSR committee are responsible for maintaining contact with key stakeholders.
6. "Section 135 the Companies Act, 2013 brought CSR into force through statue. Via this clause the businesses that make big profits have to invest on activities linked to CSR. Businesses net worth of Rs 500 crore or more or 1000 crore turnover or Rs 5 crore net incomes shall ensure that these businesses pay at least 2 percent of the average net income for each financial year.
7. The Act has provided additional control and jurisdiction to the Serious Fraud Investigation Office (SFIO) to prosecute fraud of a serious nature within the private sector. Government has the power of prosecution for such crimes and allows penalty for fraud by fine.[19]
8. The Act incorporated class action provisions where a defined number of members, depositors or any class of members is allowed to file an application before the Tribunal for any harm or compensation or to seek some other reasonable action against an audit firm. The order passed by the Tribunal shall be

[14] Section 2 (62) the Co. Act, 2013
[15] Section 149 the Co. Act, 2013
[16] Section 149(4) the Co. Act, 2013
[17] Section 149(1) the Co. Act, 2013
[18] Section 135,177 and 178 The CO.Act,2013
[19] Section 221 and 212 The Co. Act, 2013

binding on all stakeholders, including the co-member, depositors and auditors.[20]

9. Under Companies, Act 2013 National Company Law Tribunal and National Company Law Appellate Tribunal was established in place of Company Law Board.
10. Under section 132 of Companies, Act 2013 a new regulating body was established in place of NACAS (National Advisory committee on Accounting Standard) which is NFRA (National Financial Reporting Authority). The fundamental objectives of this authority are to advise and track compliance with accounting and auditing requirements and to serve as a legislative body for the accounting profession.

Conclusion

In its present form, corporate governance has many new visions for the company. Indian has really some of the strongest corporate governance laws since the implementation of Co. Act 2013. The Co. Act 2013 makes several major changes to the governance, e-management, compliance and regulation, accounting requirements, auditors, and mergers and acquisitions provisions. New concepts such as one-person enterprise, small businesses, dormant enterprise, class action suits, registered values and corporate social responsibility were also included. But it is just the corporate, how they will monitor and implement these new laws in order to improve their governance. CACG gave various guiding principles for corporate governance which are accepted universal which are accountability, transparency and disclosure, shareholders rights and equal treatment, responsibilities of the board which are followed by most Commonwealth countries. Moreover, all whether developed or developing are working toward the concept of good corporate governance, further the importance of CG arises due to door of globalization opened worldwide as trade in international market had opened. More or less countries have mostly same guiding principle under different heading and have own regulating authority established.

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[20] Section 245 the Co. Act, 2013