International Journal of Applied Research

ISSN Print: 2394-7500
ISSN Online: 2394-5869
Impact Factor: 5.2
IJAR 2018; 4(10): 339-342
www.allresearchjournal.com
Received: 15-08-2018
Accepted: 16-09-2018

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Corporate governance in India

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Abstract
Corporate governance has succeeded in attracting a good deal of public interest because of its apparent importance for the economic health of corporations and society in general. It has been a central issue all over the world long before the recent corporate scandals in developed and developing countries. This gained much more importance due to economic liberalization and deregulation, as well as the demand for a new corporate ethics. Although relatively, a new concept was noticed, after Cadbury committee submitted its recommendations in 1992, but the concept of corporate governance In India had not been well – understood upto early 1990s. With the liberalization of the economy, several positive developments emerged on corporate governance front. Serious efforts have been made at overhauling the system with the SEBI instituting the clause 49 of Listing Agreements. Corporate governance is about adhering to values and ethics and providing structure as to how an organization is managed and maintaining transparency in conducting its affairs.

Keywords: Corporate Governance, Corporate Law and Fraud, Good Governance, Best Practices of Corporate Governance, Cadbury Committee, Need for Corporate Governance

Introduction

Corporate Governance is a multidisciplinary field of study and it covers a wide range of disciplines – accounting, consulting, economics, ethics, finance, law, and management [1]. More than two decades, it is travelling through pre – 1992 American discussions on disassociation of power and money [2], post – 1992 Cadbury Committee Report on Corporate Governance codes and OECD principles [3], even thereafter it has not yet settled any universally accepted definition.

Cadbury Report described Corporate Governance as '*the system by which companies are directed and controlled'* [4]. Corporate is derived from the Latin word '*corpus'* which means *a body*. *'Governance'* means *'administering the processes and systems placed for satisfying stakeholder expectations*'. Corporate Governance when combined, means *a set of systems, procedures, policies, practices, standards put in place by a corporate to ensure that relationship with various stakeholders is maintained in a transparent and honest manner.* It is far or less an umbrella term which includes specific issue arising from interactions among senior management, shareholders, boards of directors, and other corporate stakeholders [5].

The concept primarily rests on basic principle i.e. fairness, integrity, transparency and accountability of management [6], with a focus on investor protection and maximizing of shareholder wealth [7]. In corporate sector, the whole structure is based on relationship among people who are involved directly or indirectly in business ventures [8]. It ensures:

- Adequate disclosures and effective decision making to achieve corporate objectives;
- Transparency in business transactions;
- Statutory and legal compliances;
- Protection of shareholder interests

Sir Adrian Cadbury [9] defines the concept of Corporate Governance as holding the balance between economic and social goal. 'It is a system of structuring, operating and controlling a company with the objective of fulfilling strategic goals of owner maintain excellent relationships with customers and suppliers and it also helps in proper compliance with all the legal and regulatory compliance. The Corporate Governance framework encourages the efficient use of resources and it equally helps in maintaining accountability for the stewardship of those resources. According to him the aim of Corporate Governance is to

align as nearly as possible the interest of individual, corporation and society. It helps the corporation is to achieve their corporate aims and to attract investment and also helps the state to strengthen their economic and discourage fraud and mismanagement' [10].

The OECD provides the most authoritative functional definition of Corporate Governance *"the system by which business corporations are directed and control"*. According to them the Corporate Governance specifies the distribution of rights and responsibilities among different participant in the corporation such as the board, managers, shareholders and stakeholders, and spells out the rule and procedures for making decisions on corporate affairs [11].

According to Kumar Mangalam Birla Committee [12] "Strong Corporate Governance is indispensable to capital markets and it is an important instrument for investor protection. It helps in maintaining the transparent corporate culture and high-quality accounting practices. It is the muscle that moves a viable and accessible financial reporting structure."

As per the Report of N.R. Narayana Murthy Committee [13], "Corporate Governance is the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct and about making a distinction between personal and corporate funds in the management of a company."

Need for corporate governance

There has been increase in the interest in Corporate Governance in modern era since 2001 [14], particularly due to number of high profile corporate scandals of large corporation, most of which involved in accounting fraud such as Satyam Computers, Enron Corporation etc.

Rapid pace of globalization and liberalisation compelled companies to have effective Corporate Governance strategy and to opt improved standards of governance so to minimize cases of fraud, malpractices and financial instability [15]. Both policymakers and business managers stressed the need and on international level OECD and World Bank continuously worked upon for better Corporate Governance and adopted a set of principles to strengthen the structure of companies. Similarly, in India there were several reforms taken through a number of different paths from the Securities and Exchange Board of India (hereinafter "SEBI") and Ministry of Corporate Affairs (hereinafter "MCA").

In spite of strict governance, some corporations are still continuing in committing frauds. Though, the US has a powerful system to prevent fraudulent corporate activities, still they have witnessed many frauds in capital markets, banking and financial sector frauds [16]. Actually, Enron, MCI and Arthur Andersen's [17] fall led the way to more fraud scandals in the USA. Hence, US government enacted Sarbanes – Oxley Act to regain the confidence of general public [18].

It is also to be noted that there are millions of registered companies in India and cross-border, which are increasingly looking beyond domestic boundaries to access to capital [19]. Foreign investors are looking towards India as an attractive investment destination. In such a situation, it becomes the responsibility of the Government of India and also as per the policy of attracting investment for '*make in India'* program, to provide an effective legal structure for corporate (say Good CG) [20]. The financial development of any nation depends on strong investor protection and good governance [21].

Advantages of Good Corporate Governance [22]

- To increase access to external financing by firms. This, in turn, can lead to larger investment, higher growth, and greater employment creation; attract investors – both local and foreign – and assure them that their investments will be secure and efficiently managed, and in a transparent and accountable process; without investment, companies will stagnate and collapse. If business enterprises do not prosper, there will be no economic growth; no employment, no taxes paid and invariably the country will not develop [23].
- It also accelerates better operational performance through better allocation of resources and better management which resulted in the creation of wealth in more efficiently;
- It decreases the cost of capital and associated higher firm valuation. This makes more investments attractive to investors, also leading to growth and more employment;
- This can be associated with a reduced risk of financial crises. This is particularly important, as financial crises can have large economic and social costs;
- This can generally improve relationships with all stakeholders in the corporations which also leads to the improvement of social and labour relationships;
- CG has wider implications and is critical to economic and social well being, firstly, in providing the incentives and performance measures to achieve business success and secondly, in providing the accountability and transparency to ensure the equitable distribution of the resulting wealth [24];
- Efficient, effective and sustainable corporations that contribute to the welfare of society by creating wealth, employment and solutions to emerging challenges including environmental protection and sustainable development etc;
- The better Corporate Governance also benefits the economy of our country [25].
- Lastly, an inclusive approach based on democratic ideals, legitimate representation and participation.

It is pertinent to mention herein that any developing country needs a well – governed business enterprises that can attract investments, create jobs and wealth and remain viable, sustainable and competitive in the global market place. Good Corporate Governance therefore, becomes a prerequisite for national economic development.

It is very important for a enterprise to have an effective Corporate Governance as weak governance leads to oppression, mismanagement, fraud and corruption [26]. It is needed to create a culture of transparency, accountability and disclosure in corporate world [27]. Governance compliance with all the moral and ethical values, legal framework and voluntarily adopted practices [28]. The several important features of Corporate Governance are as follows:

Corporate Performance

Well defined Governance structures and processes ensure quality decision-making, and it encourages effective

planning for senior management and enhances the long-term prosperity of companies. This can also be linked with improved corporate performance either in terms of share price or profitability [29].

Enhanced Investor Trust
Investors consider Corporate Governance as important as financial performance of a company. Investors prefer to invest in those companies where there are higher degree of disclosure and transparency.

Better Access to Global Market
Established Corporate Governance systems is the symbol of transparent and accountable company and it attracts investment from global investors, which subsequently leads to greater efficiencies in the financial sector [30].

Combating Corruption
A transparent and accountable corporate culture provides full disclosure of accounting and auditing procedures, and thus helps in preventing and combating frauds and corruption. Corporate Governance enables a corporation to compete more efficiently and prevent fraud and malpractices within the organization.

Easy Finance from Institutions
Evidences indicated that well- established governance practice of a corporate structure receives higher market valuations. Generally the creditors are inclined to lend to such corporate structure because of transparency and disclosure in accounting and auditing practices. The credit worthiness of such company can be trusted on the basis of Corporate Governance practiced in the company [31].

Enhancing Enterprise Valuation
Better governance improves management accountability and operational transparency. It fulfills the investor's expectations and confidence on management and corporations, and thus in return it can lead to increase in the value of corporations.

Reduced Risk of Corporate Crisis and Scandals
Effective Corporate Governance ensures efficient risk mitigation. It can be done through placing various control systems and facilitate the monitoring of those related issues, thus in this way it can helps in reducing risk of corporate crisis and scandals.

Accountability
Relationship between Investor and other parties are essential part of good Corporate Governance. Investors directly or indirectly entrust management of the company to make benefit out of the company. The company is hence, obliged to make timely disclosures on regular basis to all its shareholders in order to maintain accountable relations with investors. Good Corporate Governance practices create the environment whereby Boards cannot ignore their accountability to their stakeholders [32].

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2. This has been emanated from the Watergate scandal. Available at https://scholarship.law.georgetown.edu /cgi/viewcontent.cgi?article=1003andcontext=ctls_papers (Accessed on 15.01.2018).
3. The Cadbury Report on Governance Codes, 1998 and OECD Principles, 1999.
4. Sir Adrian Cadbury, the Chairman of Cadbury Committee, 1992.
5. Cochran and Wartick, 1988.
6. Good CG aims at ensuring a higher degree of transparency in an organization by encouraging full disclosure of transactions in the company accounts.
7. It is much broader to include a fair, efficient and transparent administration to meet certain well defined goals.
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14. Tough first and foremost attempt for raising the standard of CG and the level of Confidence in financial reporting and auditing was in May 1991, the London Stock Exchange set up a Committee under the chairmanship of Sir Arian Cadbury. The Cadbury Committee Report has since become the basic document for CG all over the world.
15. As per the Leeladhar 2004, the origin of modern CG can probably be traced to a series of scandals and collapses in the UK in the 1980s and 1990s, which were widely attributed to poorly managed business practices.
16. Ibid.
17. Arthur Andersen LLP had provided auditing, tax, and consulting services to large corporations. By 2001, it had become one of the world's largest multinational companies. In 2002, the firm voluntarily surrendered its licenses to practice as Certified Public Accountants in the US after being found guilty of criminal charges relating to the firm's auditing of Enron, an energy corporation based in Texas, which filed for bankruptcy in 2001.
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