CORPORATE GOVERNANCE AN INDIAN PERSPECTIVE AND ICGN

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ABSTRACT

Corporate governance has risen to prominence in recent decades. The critical nature of a solid system of corporate governance standards has been highlighted as a result of the growing number of frauds and scams plaguing the business worlds of practically all industrialized and developing countries. The rapid rise of globalization, which has altered the economy of nations and the nature, structure, duties, and several other vital nitty-gritty of businesses, is one of the most promising and forthcoming issues of corporate governance today. As a result of the proliferation of business firms establishing offices in various world regions, the number of stakeholders in such multinational organizations has expanded dramatically, necessitating the implementation of a robust corporate governance framework. As one of the world's fastest growing economies, India has enacted a slew of new rules, regulations, and laws to tackle the scourge of corporate irresponsibility better. Despite the governments and regulatory bodies efforts, Indian society continues to experience a slew of financial and corporate scams each year, which have a disastrous impact on the Indian economy and the global market. This study intends to put out an in-depth picture of India's corporate governance framework as well as analyze the global corporate governance principles set out by the ICGN that Indian companies can embrace. It will objectively examine current regulations to maintain a system of appropriate corporate governance and conduct a comparison analysis of the ICGN principles and the Indian regulatory environment to give critical recommendations for strengthening the current set of standards.

Keywords- Corporate Governance, Globalization, Global Governance, ICGN

RESEARCH QUESTION

This research paper has been undertaken with the aim of answering the following research questions-

1. Are the measures taken by India's government and regulatory bodies to improve the corporate governance system effective in preventing corporate fraud and scams?
2. What are the key points of difference between the ICGN global governance principles and The Indian Corporate governance model?
3. What other techniques could be used to improve India's corporate governance structure?

RESEARCH OBJECTIVE

The fundamental of this paper is on studying and reviewing India's existing system of corporate governance, its impact on the country's economy and society, and how it contributes to the perpetration of scams.

To also gain an overview of the Corporate Governance mechanism operating in India since the early 1990s and to understand the progression of these rules and regulations till date.

The aim of this paper is to gain an understanding of the present scenario of governance along with its complexities, problems and overall effectiveness.

This paper seeks to determine the relationship between a sound Corporate Governance and Globalization.

To critically examine the role of international organizations promoting corporate governance standards and to make a comparative analysis of the same with the Indian Corporate

Governance system.

1. INTRODUCTION

If we look at some of the world's most successful corporations, it is clear that they have implemented a good corporate governance model. In today's increasingly globalised world, corporate governance is essential to protect the interests of the people who have placed their trust in a few individuals who run these companies and thus the corporate world. Since the 1990s, when a slew of high-profile corporate scandals rocked the Indian market, a slew of new rules, regulations, and laws governing the corporate world have been introduced. A company's ethos, principles, rules and regulations are implemented to ensure maximum transparency in the day-to-day business operations and overall satisfaction of all shareholders and key stakeholders. According to the corporate governance framework, management (the agent) must operate the company in the best interest of one or more stakeholders (principals). Participants in a company's success are stakeholders such as shareholders, creditors, suppliers, clients, employees, and other parties.[103]

Corporate governance is a practise used in a company to ensure effective governance. A strong corporate governance system is required to increase the company's market value and thus its growth. The OECD, an international, intergovernmental organisation of 38 countries, defines Corporate Governance as: Corporate governance requires cooperation among a firm's shareholders, board of directors, and other stakeholders. It also establishes the company's goals and mission, as well as how to achieve them.[104] To achieve a company's ultimate goals, corporate governance considers all aspects of management and control.

A company's corporate governance demonstrates its strategy and corporate integrity to investors. Good corporate governance helps businesses build trust with investors and the public. As a result, corporate governance promotes economic viability by providing market participants with a long-term investment option. Large annual profits are not enough to ensure a good company buildup; proper governance and an efficient Board of Directors are required.[105]

The true firm's owners, as well as their personal role as trustees," according to the SEBI's Narayan Murthy Report of 2003. It's also about separating personal and corporate securities in the management of the Company." Corporate governance engages and reflects a company's culture as well as its legal concerns. Government legislation and rules alone will not improve corporate governance efficiency[106]. To maximise the company's benefit and growth, all stakeholders must work together, and strong governance can facilitate this.

Globalization and corporate governance have a deep connection in the 21st century. It has impacted businesses and corporations globally in various ways. Globalization increases economic, social, and cultural interdependence among countries. Globalization affects all aspects of life. Technology advances have increased the volume and speed of global exchange of ideas, information, goods, and services. As a result, the corporate world has been impacted by globalisation, making it necessary to study emerging global corporate governance trends.

2. INDIA'S EVOLUTION OF CORPORATE GOVERNANCE

2.1. NEED FOR CORPORATE GOVERNANCE IN INDIA

The primary rationale for corporate governance is that it contributes to the improvement of a company's financial strength by establishing the responsibilities and relationships between shareholders, management, the board of directors, and other key stakeholders, among other things.

We also require corporate governance to increase the company's accountability towards its shareholders and the

[103] Goergen, Marc, International Corporate Governance, Prentice Hall 2012.

[104] OECD Principles of Corporate Governance, 1999.

[105] JAMES CHEN, What is corporate governance?, Corporate Governance, (Oct. 17, 2021, 3:36 PM), https://www.investopedia.com/terms/c/corporategovernance.asp

[106] Report of Shri Narayan Murthy on Corporate Governance, 2003

general public and protect companies from corporate crisis and scams. Other than this, these are the main reasons for which we need more effective and good corporate governance in India:

1. **Protect the money that the investors have invested;**

It is crucial to investors that corporations have effective corporate governance processes, and shareholders have rights and expectations that are protected by sound corporate governance concepts and practices. Because of their ownership stake in the corporation, their investments are less sensitive to system risks.

2. **Ensure the long-term success of the corporation;**

Effective corporate governance principles establish a checks and balances to maintain a healthy balance of power and guarantee that everyone who is involved benefits from the process. In its most basic form, corporate governance is a framework in which the stakeholders own all the operation, the managers run the operation, and the board of directors oversees the business as agents of the investors.

3. **Make it simpler to obtain cheap funds;**

Among the best corporate governance measures include the prevention of insider trading, the prompt resolution of investor complaints, the disclosure of management's interests in financial and non-financial transactions, and other related policies. Such methods increase the credibility of the company and aid in the acquisition and maintenance of the credibility of domestic and international financial institutions, which supply long-term funding at a reasonable cost to the entity.

4. **The building blocks of excellent corporate responsibility and citizenship; and**

A critical objective of corporate governance should be to maximise the overall satisfaction of all stakeholders while also creating long-term value for them, while also maintaining an appropriate range of social and economic gain. Following the implementation of these best practises, a company that was previously considered to be merely 'corporate' is transformed into a virtuous "corporate citizen."

5. **Brings a worldwide viewpoint to the table, which will allow for a further step forward in globalization.**

With the gradual removal of tariffs and the resulting increase in international capital flows, strong corporate governance is more vital for FIIs and those bringing in FDI to a given country or region. These influxes of capital are critical for the economic development of any country. So corporate governance has risen to the top of the priority list for a diverse array of stakeholders, including the government and financial market participants.

2.2. RELATED AND RECENT INCEDENTS

Many provisions and laws were laid, but India's corporate governance provisions were not adopted or implemented. Even after the Uday Kotak Committee's recommendations, there were many gaps in India's corporate governance implementation. Consider the following examples of poor corporate governance in India:

2.2.1. ICICI Bank Case[107]

Recently, the MD and CEO of the ICICI Bank, Mrs. Chanda Kochhar, requested an early retirement from the leadership of the bank, ICICI Bank is the second largest PSB after HDFC Bank in India. The reason behind her requesting an early retirement was on the basis of allegations against her for not disclosing the conflict of interest arising from certain transactions between the borrowers of the bank, especially the Videocon group, and by her spouse Mr. Deepak Kochhar and on the light of this she requested for an early retirement.

The Enforcement Directorate arrested Deepak Kochhar in September 2020 following the filing of a criminal case over money laundering and bank fraud based on a CBI FIR against the Kochhars, Videocon's Dhoot, and others.[108]

2.2.2. IL and FS Case[109]

In the IL and FS case, the firm's auditor discovered that the subsidiary of IL and FS had sustained significant losses,

[107] Chanda Deepak Kochhar v. ICICI Bank Limited and Another, (2020 SCC OnLine SC 969).
[108] *Ibid.*
[109] Hari Sankaran vs. Union of India (UOI) and Ors., MANU/SC/0802/2019 (SC, 04.06.2019).

and that these losses, which were caused by the subsidiary, could have an adverse effect on the company's ability to continue as a going concern. The most significant issue in this case was that the audit report did not identify the subsidiary or even the amount of the deficits; instead, it simply stated that a subsidiary of IL and FS had sustained heavy losses, which was incorrect. So, without mentioning the name or the extent of losses, merely mentioning about the subsidiary was not enough and the audit firm replied that this is out of the scope auditing to disclosure of name of the firm or the subsidiary or the extent of losses.

Hari Sankaran, the former vice-chairman of IL and FS, was apprehended by SFIO in Mumbai on April 2, 2019, for issuing loans to business entities that were not creditworthy, causing the company and its creditors to lose money. Later, the ED filed chargesheet and made temporary attachments of people's accounts as well as immovable property totaling Rs 570 crore, and also other assets. Senior management, according to the chargesheet, faked accounts and participated in ambiguous transactions to benefit themselves.[110]

Thus, these two incidents throws light that the corporate governance is weak in India on the basis of these two incidents we will analyze the stages of corporate governance and what are the challenges in the corporate governance in India.

2.3. CONCERNS IN CORPORATE GOVERNANCE SECTOR IN INDIA

The major concerns and challenges that are being faced by Indian corporate governance system are as follows:

2.3.1. Turmoil In Private Sector Bank

Bank financial statements are more complex, making it more difficult for stakeholders and small-investors to supervise managers while also making it simpler for management and major investors to profit from the advantages of control.[111]

2.3.2. Bad Loan Crisis in PSBs

Corporate governance continues to be the main concern of PSBs, and the absence of such governance was a contributing factor to issues such as high levels of bad loans, capital deficiencies, and fraud. Banks may also swiftly change the risk composition with their assets, compared among most non financial firms, and they can easily conceal issues by providing loan to borrowers who have previously failed to meet their debt obligations.

2.3.3. Overstating and Understating in Books

Commercial failures and business scandals occur when trusted executives of large public corporations disclose wrongdoing. Notable Accounting Scandals worldwide since 2000 have used such complicated methods of abusing cash that such scandals could not have been anticipated previous to their revelation.

The Satyam accounting controversy broke on 7th January 2009. The firm arranged for CEO Raju to have falsified cash and bank balances of even more than $1.5 billion, overestimated debtors' positions by $100 million, and undervalued liabilities by $250 million.

2.3.4. Audit Reports

There is a direct link between the board's monitoring role and its delegation to several committees, such as the audit committee. It serves as a watchdog to ensure that risk management methods are transparent, effective, and efficient, and that financial reporting is accurate.

Many of these occurrences, like the IL and FS failure and Punjab National Bank scandals, had a ripple effect that sparked concern amongst investors and other stakeholders. Corporate governance practises in India are at the heart of this.

2.4. COVID-19 WAVE AND ITS IMPACT.

The pandemic has highlighted the close ties that exist between business and society, as well as the dangers posed by risks arising from large-scale societal issues. The pandemic has demonstrated that, theory apart, businesses cannot readily isolate themselves from society.

Covid-19 began as a public health emergency and swiftly morphed into a massive financial and economic disaster. Few, if any, companies were spared as the virus spread around the world. Some businesses experienced a drop in demand overnight, while others

110 *Ibid.*
111 KIRTHANA SINGH KHURANA, Board Committees and Their Role in Corporate Governance in India, 120 taxmann.com 133, 2020.

had a flood of orders. In a matter of days, if not hours, many people had to devise new ways of working. Stock prices plummeted and then rebounded in an unparalleled pattern of volatility. Many corporations stepped up to fill the gap in the face of unequal and, in some cases, incompetent government responses, as well as by the fact that economic recovery was based on the resolution of such public health emergency, all while dealing with their own problems and challenges. Directors found themselves examining management's strategies not just for leading the company through the crisis, but also for combating the virus and aiding in the relief effort, during the many meetings and updates that occurred during this time.

The pandemic, on the other hand, has increased the importance of judgement and, as an outcome, the duration of effort that boards of directors devote evaluating over numerous possibilities and assessing conflicting arguments and points of view has increased significantly. This is mainly because of the fact that directors are working with novel issues and problems for which they do not have policy or experience, which contributes to the situation. Prior to this outbreak, few companies had rules or procedures on online general meeting, so when the prospect of online general meeting arose, boards of directors had to act quickly and thoroughly to investigate and examine the options and repercussions. Whether Covid-19 represents a true watershed moment in corporate governance remains to be seen.

Whereas if we talk about Indian scenario, the global pandemic has wreaked havoc on India's tiny companies. MSMEs are unsure if they will be able to withstand the onslaught of crisis. COVID-19 has raised the likelihood of corruption, in both of the healthcare sector, as well as in the commercial sector, according to the World Health Organization. Vijay Mallya and Lalit Modi have gone missing after being apprehended for alleged corporate governance violations. Other corporate giants, like Rana Kapoor, Chanda Kochhar, and the Singh brothers, have also been arrested for alleged corporate governance violations.

3. ICGN PRINCIPLES

Various International Organizations have been formed to establish a set of rules and regulations for corporate governance that can be adopted by both developed and developing nations worldwide. The International Corporate Governance Network is one example (ICGN). It is a non-profit organisation whose main goal is to promote good corporate governance globally and ensure company sustainability. ICGN promotes the highest standards of corporate governance and investor management globally, bringing together companies and stakeholders to maximise long-term profits while contributing to sustainable economic sectors, public prosperity, and environmental stability. It is led by investors with over $59 trillion in assets under management and brings together industries, shareholders, and other key stakeholders globally.[112] This investor-led organisation represents investors, financial intermediaries, and companies. The Global Governance Principles (GGP) were introduced in 2001 to promote good governance structures across companies and nations. The GGP were last revised in 2017 and are regularly reviewed to ensure they reflect new regulatory or market-driven corporate governance standards.[113] These principles require maximum transparency, accountability, and shareholder protection-

1. The Board's Functions and Responsibilities;
2. Independence and leadership;
3. Appointment and composition of the board;
4. Culture in the workplace;
5. Remuneration;
6. Oversight of the risk;
7. Reporting on the company;
8. Internal and external audit;
9. Rights of shareholders; and
10. Meetings of shareholders.

[112] ICGN, Global Governance Principles (Mar. 20, 2022, 10:30 AM) https://www.icgn.org/sites/default/files/ICGN%20Global%20Governance%20Principles2021_0.pdf.
[113] *Ibid.*

4. RECOMMENDATIONS AND SUGGESTIONS FOR IMPROVEMENT

Based on the comparative analysis of the ICGN Global Governance Principles as chronicled above and the Indian Legislative and Regulatory framework prevalent in India, the following key points need to be addressed in order to make further improvements in the Corporate Governance code in India.

1. Board Duties and Responsibilities. [114]

The board members must properly oversee the effectiveness of the firm's governance, implementation of environmental policies, and cultural structures, as well as ensure that the company complies with all applicable provisions and regulations. and do not lack in performing their duties. Although a number of rules and responsibilities have been imposed on the Board of Directors of Indian companies in the Companies act, 2013, their absolute implementation is very rare which leads to poor governance practices. The Board members are the very heart and soul of the company and have to embody the highest standards of ethics while enforcing the stringent applications of all the relevant rules and regulations. ICGN recommends that the board must align CEO and senior management remuneration against appropriate performance criteria with the long-term interests of the company.[115] In India, the emolument level of CEOs need to be controlled and has to be on a moderate level.

2. Directorships

In India, an individual can hold the position of a director in a maximum of 20 companies at once. The role of a director of a company assumes utmost importance in the control and management of the affairs of the company. If an individual is engaged in managing the affairs of so many companies at once, then there would be a serious lack of efficiency on their part to work diligently. Hence, ICGN suggests that the number of directorships of the individual should be restricted to a maximum of 5 in order to enhance their working capabilities. The role of the director as an executive or a whole-time director has to also be taken into account while reviewing the directorships.

3. Proper dialogue between the Board and Senior management

The Board of directors of a company, especially a public listed company, shall be diligent to ensure a proper communication channel with the senior management of the company on a regular basis. This provision will help the Board in assessing the daily affairs of the company and to appraise the problems, if any, in the performance of the company.[116] A proper dialogue between the two will also aid the senior executives in divulging any problems that may arise and devise strategies with the Board members to avert the potential crisis in a timely manner.

4. Chairperson to be non-Executive member

The chairperson of the Board is the person who is the head of the Board of Directors. He is charged with the responsibility of being the leader of the Board and assumes the role of a conciliator in case of deadlock of opinions between the Board members. He has to harness the talent of the various board members and provide direction to the Board in initiating their decisions. As a lot of responsibility is delegated to the chairperson, he should be an self-sufficient, non-executive director so as to inculcate the qualities of transparency and accountability among the board members. A number of countries have implemented this rule where the chairperson is an independent director and distinction has also been mandated between the CEO and Chairperson of the Board. Such a rule should be enacted in India as well to ensure greater Board adeptness.

5. Majority of Independent Directors

[114] KIRTHANA SINGH KHURANA, Board Committees and Their Role in Corporate Governance in India, 120 taxmann.com 133, 2020.
[115] *Ibid.*
[116] Khurana, supra, 9.

According to the current regulations in India, the number of independent directors in a company is one third of the total number of directors. However, ICGN recommends that the Board must comprise of a maximum of independent directors. Independent directors are those who are unaffiliated with the executive administration of the company. The inclusion of independent directors has a significant impact on the efficiency of the Board of Directors. Hence, it is recommended that at least 50% of the Board members be independent, irrespective of whether the CEO is the promoter or chair of the company or not. Appointment of a Lead independent director can also be mandated so that there is a proper communication link between the Chair and the other board members.

6. CEO Succession to Board

ICGN recommends that the retiring CEO should not be given a place in the Company's Board of Directors. This is to ensure that the Board remains independent and faces no hindrance in the exercise of their duties. Additionally, the retiring CEO should not be made the head of a any of the committees appointed by the Board to evaluate the working of the company. A provision of this nature has to be implemented with strict compliance in India. The rules should set out the exceptional conditions in which a retiring CEO can be made a part of the Board of directors after his retirement.

7. Proper Corporate culture

The Board is responsible for ensuring that stringent anti-corruption provisions are implemented to foster growth of the company. The Board must also oversee the implementation of the training programs for the employees to better understand the relevant code of corporate governance and boost a corporate culture based on ethics and responsibility for all. Additionally, the Board must themselves be free from the clutches of the promoters or CEO in a family-owned business while exercising their duties as directors.

8. Risk oversight

According to ICGN's principles, the board should take a holistic approach to risk supervision, covering financial statement, corporate strategy, logistical, physical, and social risks (together with their political and legal implications), and any ethical effects. This helps in effectively mitigating the impending risks and fosters the development of an effective risk management scheme. The need of a proper risk management strategy was accurately felt by the companies in during the Covid-19 pandemic and those companies who had a risk management plan in sight were better equipped to deal with the sudden onslaught of problems arising due to the pandemic. A yearly risk management compliance report can be mandated by the Indian authorities for all public listed companies in India to protect shareholders rights.

9. Auditing standards

Despite implementing a strict code of conduct for auditors and the auditing standards to be followed by the companies and the external auditors, Indian authorities and audit committees are always at heads with each other due to the non-compliance to certain key aspects. The Board must mandate strict adherence to the auditing standards set out by the legislations. The internal auditor must be given more independence and power to scrutinize the financial statements of the companies on a regular basis. An external audit committee appointment can also be made mandatory to ensure strict compliance of the auditing reports every year.

10. Diversity in the Board

In today's modern age, companies must strive to ascertain that the Board of directors is diverse enough to include people from all walks of life. Board diversity has acquired immense importance in recent times and is conducive to securing a good corporate image among the shareholders. In India, it is necessary that there be at least one-woman independent director in companies in listed companies. However, that is not sufficient to keep a check on Board diversity. Appointment of women independent directors must comprise of at least 30% of the total bard strength and efforts must be undertaken to make the Board more inclusive of gender, racial and ethnic diversity.

5. CORPORATE GOVERNANCE – A WAY FORWARD

Following numerous corporate and financial frauds, governments, shareholders, and the corporate industry have realised that good corporate governance is essential for long-term success. The general public, who are the true investors and shareholders in a company, as well as other stakeholders, perceive the company as the best in the industry if the code of corporate governance is strong and diligent. Globalization has created new opportunities for companies to establish themselves and gain global recognition, as well as a global platform for investors from all over the world to invest in these foreign companies' shares. Many international organisations have taken on the task of introducing corporate governance principles and codes that will benefit both people and corporations. These initiatives aim to harmonise and integrate global corporate governance while respecting national differences. Although universal corporate governance is difficult to achieve, the underlying objectives and principles promoted by these organisations can be implemented globally. The Indian government and regulatory authorities have worked hard to improve corporate governance by establishing various committees and enforcing their recommendations. Despite the establishment of various authorities to ensure the highest standards of corporate governance, the economy continues to face corporate scams. But one-sided efforts aren't enough. Many Indian corporations have failed in recent years due to a lack of strong compliance ethics, culture, and disregard for statutory and regulatory corporate governance norms. If a proper corporate governance structure is to be established to protect the company's future and the rights of shareholders, each company must adopt the highest ethical standards and begin enforcing the laws of the country. A good corporate governance code stimulates business and, if followed diligently, will ultimately benefit the company's growth and sustainability. It is a way for businesses to grow and prosper in this fast-paced world.