

Corporate Fraud: It's Time to Regulate

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Abstract

Abstract—Corporate Governance is not a new phenomenon. The belief that directors and chairpersons of the company are striving for the benefit of the shareholders is a fragile myth now a days. It is true that people invest their 'savings' in the companies and thus the persons who are handling the funds of the investors are answerable for the same. The recent stories of scams of Ketan Parekh, Harshad Mehta Scam and others have ignited a doubt in the minds of the investors and the whole regime of corporate that do we really need to have a media for better governance. As such the main purpose of any corporate governance is to improve the tasks of accountability and at the same time to attract the resources. The present research paper aims to study the origin of the development of the corporate governance in India and how effective it can help to improve the importance and momentum in the days to come so that fairness and transparency can be maintained.

KEYWORDS—Corporate Governance, Corporate Scams, Company law, Ministry of Corporate Affairs, Investors

Introduction

Corporate governance has now a day's become one of the most controversial issues for almost all the developing nations. The recent spate of various corporate scandals has become the headlines in many advanced countries. It must be admitted that corporate governance and proper economic development of any nations is greatly linked with each other. The better the country understands this concept, more are the chances to have fairer and transparent corporate governance. Again, an effective corporate governance system will definitely promote the overall development of financial structure of the nation. If the system of corporate governance is working effective it shall definitely lead to better finance option, greater investments, and ultimately higher growth of the country by way of generating more employment. Poor corporate governance shall hinder the development of nation, shall prove to be an obstacle in development of companies and firms. On the other hand good corporate governance shall lower the cost of capital, shall help in reducing the risk for the investors and will ultimately boost the investments and shall endure better returns on the investments. All in all, good corporate governance will help in removing the mistrust between the various stakeholders and improve the relationship between the management, labors and investors.

Objective of the Paper

1. To study the origin of the development of the corporate governance in India.
2. How effective it can help to improve the importance and momentum in the days to come so that fairness and transparency can be maintained.

Discussion

Definition of Corporate Governance

There is no static definition of corporate governance. It varies widely. However the term can be understood by defining as ways of bringing the interests of investors and managers into line and ensuring that firms are run for the benefit of the investors. The term can also be understood by studying the relationship between the internal governance mechanisms of any corporation and what is the society's conception about the corporate accountability. Thus in spirit the term can be understood as the recognition of the precious rights of the shareholders by the management that investors are the true owners of the company and the role of the management/chairperson is like a trustee.

Origin of Corporate Governance in India

Corporate governance lays emphasis on the unconditional commitment to the follow of the principles of ethics in running of the business and making difference between the personal and corporate funds. The land mark case on these lines in India is the Soloman v Soloman & Co, where the court for the very first time laid down the difference between the company and the members that constitute the company. The doctrine of the corporate veil that was coined by the court was, 'lifting or piercing of the corporate veil', the very purpose behind the coining this principle was to make the actual wrong doers liable for their wrongs of misappropriating the funds of the shareholders.

As such any corporation is nothing but a flock of various stake holders such as shareholders, customers, employees etc. In today's era where the concept of accountability is so deeply rooted and more specifically when it comes to funds, the issue becomes more sensitive, it is expected that any corporation is discharging its duties with fair spirit and is maintaining the high standards of transparency in all of its functionaries. Again, in today's competitive market where corporation has to make its efforts at global level to attract best of human capital and large pool of global investors, it becomes so indispensable for any corporation to maintain honesty and high standards of integrity. It is here where corporate governance plays a vital role. It must be understood if a corporation wants to succeed at the global level it must demonstrate to the stake holders that they are following good ethical practices. Continuous maintenance and winning of the trust of the various stake holders is today's mantra for the successful corporate governance. It must be understood by the management that the growth of the corporation is depending on the cooperation of all the stakeholders. Management has to act more as a trustee rather than the owner of the capital.

Deregulation of the private sector is the main reason for difficulty in good corporate governance. Cases of corporate fraud and malpractices are also not a new story now days. Thus there was a need felt for developing corporate governance in India. It is SEBI (Securities and Exchange Board of India) and Ministry of Corporate Affairs who have (an still is) playing very vital role in promoting and maintain good corporate governance.

Legal Measures for Effective Corporate Governance

Historically speaking there are various committees that were formed with a purpose of promoting Corporate Governance in India. The roots go down the line in the year 1990. It is importance here to have a bird eye view of the recommendations of the committees:

1. In 1998 there was the first recommendation by the Confederation of the Indian Industries whereby they came up with the 'desirable corporate governance code'. It was the first ever code that criticized the role of the role of directors.
2. SEBI laid down a Commission with a sole view to protect the rights of investors.
3. Department of Company Affairs made certain amendments in the Companies Act 1956 and introduces certain reforms pertaining to nomination facilities for the share holders.
4. In the year 2002 a committee was constituted by Dept. of Corporate Affairs, for the sole purpose to discuss the highlight the role of statutory auditor, rotation of partners, appointment of auditors etc.
5. Duties and responsibilities of auditors were made clearer by SEBI in the year 2002. It also discussed on the issues pertaining to financial disclosure.

After liberalization serious efforts have been made towards overhauling the system with SEBI. Clause 49 of the Listing Agreement aims to improve the corporate governance of all the listed companies. Clause 49 insists for minimum numbers of the board of directors which should be independent directors. It also emphasis on the fact that listed committees with independent directors. Listed companies must also make periodically financial disclosures. And lastly, the annual reports must also show compliances regarding corporate governance.

Ministry of Corporate Affairs has also come up with the certain guidelines [3]. It says:

1. Companies must issue a letter of appointment to Non Executive Directors and Independent Directors. Such a formal letter should form a part of the disclosure to shareholders.
2. It is recommended that the offices of chairman and chief executive officer should be separate.
- 3 Nomination Committee is required. Annual Report must show that all guidelines are being followed by the Nomination Committee.
4. Independent Directors should hold no more than seven directorships.
5. The Board should also specify the positive attributes of Independent Directors.
6. Independent Directors should provide a detailed Certificate of Independence.
7. Independent directors must not be paid with stock options.
8. Audit Committee should be composed of at least three members, with Independent Directors in the majority and an Independent Director as the chairperson.

The legal system plays a very important role in over regulating and development of the good corporate governance, and India is not an exception to this. The legal protection talks on two aspects, one-the protective measure provide in the law and secondly-how

and upto what extent these laws are enforced. Both these feature play significant role in determining good corporate governance in the country.

The companies in India have to comply with the provisions of the Companies Act, 1956, the SEBI guidelines, the Kumaramangalam Birla report on corporate governance, the Accounting Standards issued by the ICAI and the listing agreements with the stock exchanges in which they are listed. The Companies Act, 1956 is the relevant statute in India that governs the incorporation, functioning and winding up of the companies.

The period of 1950s and 1960s was a period of setting up of industrial activities and cost plus regime. The genesis was the demand for very many products for which the Government administered Fair Prices. This was the time when the Tariff Commission and the Bureau of Industrial Costs and Prices were set up by the Govt. 1951 – India's development Regulation Act 1956 – Companies Act came into existence. Development and Banking institutions came into existence. The period between 70's to mid eighties was an era of Cost, Volume and Profit analysis, as an integral part of the Cost Accounting function.

Conclusion

In India enforcement of corporate law has been gradually developing. In the report of World Bank it was observed that India is observing most of the principles on corporate governance and it was suggested in the report that it could do better in certain areas. The contribution of nominee directors from financial institutions to monitoring and supervising management is one such area.

Issues pertaining to jurisdiction and powers of the SEBI are some of the grey areas that require attention. However, in this era of liberalization a great piece of development was establishment of SEBI in 1992. It was initially established to regulate stock trading, but over the years it has played important role in establishing the minimum rules for good corporate governance. With the outburst of scams of Harshad Mehta in 1992 the concept of corporate governance got in more limelight.

From 1990 important steps have been taken by the Government to promote corporate governance. After Satyam scam both government and industry has put hand by hand to promote corporate governance and transparency. The present form of corporate governance is still developing and it follows both voluntary and mandatory legal requirements. It remains to see how much effective the revision of the Companies Act will prove to regulate corporate governance in days to come. It is also a time now for the investors to be more proactive.

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