A STUDY OF AN EFFECTIVE CORPORATE GOVERNANCE - THE ANALYSIS OF NEEDS AND CHALLENGES WITH REFERENCE TO INDIAN SCENARIO

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Abstract

Corporate governance is the mechanisms, processes and relations through which corporations are controlled and directed. It stipulates the structure and principles which identify the distribution of rights and responsibilities among different participants in the corporation such as the board of directors, managers, shareholders, creditors, auditors, regulators and other stakeholders in general. Corporate governance includes the rules and procedures for making decisions in corporate affairs. In simple words it is the code of conduct in business for the good management of the companies with standard operating procedures. The concept of corporate governance was introduced to stop the entrepreneurs and the management from doing injustice act against the organization. The core concept on why corporate governance was introduced still stays the same but some modifications have been made to include all the ways a company should represent in order to foster the trust of investors and all other stakeholders. Most of the codes of governance include Independent Leadership, Transparency, Accountability, Fairness and Rule of Law.

Corporate Governance in India is a standard of principles, rules, customs, policies and regulations adopted to regulate and administer an organization. The hype and demand of good corporate governance and the awareness elevated more with a plethora of corporate scandals and scams. Notably of which is the landmark case of Satyam Computers Services Limited. The case apparently pointed out the attar failure of corporate governance. Therefore, there are multiple regulatory bodies in India to hold a very infirm monitoring system.

Key words: Independent leadership, Transparency, Accountability, Fairness, Rule of Law.

Introduction

Initially, Corporate Governance was brought in to act to prevent the board of directors form taking any prejudice to the company using powers and authenticity. Later it become an integral part of management which helped the directors and chief executive officers of the company to stay abide to the principles of corporate governance and navigate towards the greater success of the company. The corporate governance directly reflects the company's image and reputation. But, the poor governance policies can land the company in lawsuits and financial losses. Although most of the key governance issues differ according to the variations such as country, stock exchange and management. But, most of them are common in terms of transparency, authenticity, independent leadership, fairness and accountability. The corporate sector is full of challenges and the leader of a company should excel proficiently in management skills to drive overall organizational growth and development. Maintaining an ultimate balance between every department, managers, the board of directors, investors, shareholders and stakeholders, the corporation should move towards its objectives abide by corporate policies and procedures. The code of conduct in business administration which ultimately pilots to good management of the organizations is referred to as corporate governance.

There are many regulators of corporate governance in India which include Securities Exchange Board of India, Institute of of Company Secretaries in India, Institute of Chartered Accountants of India. The Company's Act 2013 and Standard Listing Agreement of Stock. The SEBI holds many guidelines and principles concerning corporate governance whose violation can cause heavy penalties for the company. As per ICSI, there are certain general meetings that the managers and directors are obliged to conduct. While ICAI deals with the accounts and finance-related issues for the company. Corporate governance is an universal term in business environment and it is a system where corporate organizations are guided and managed. The promoters of company and equity shareholders does not administer or manage the organization, they only hold the ownership and administration power given to the board of directors. Then we will discuss the various issues and challenges related to governance of corporate company.

Literature Review

- **Year 2012, Rujith** studied Regulatory issues in Corporate Governance and found that the loop holes in the provisions have to be corrected.

The companies should not be left to escape by taking advantage of the limitations of the clause 49 of the listing agreement. The function of the audit committee has been expanded to include oversight of risk management control systems to create an environment for the adherence to the practices of good corporate governance.

✧ **Year 2013, Aggarwal** examined the impact of corporate governance on financial performance of firm in an Indian context through different statistical tests and inferred that government rating of company has a significant positive impact on its financial performance.

✧ **Year 2017, Unadkat** found that India has witnessed several enactments which have contributed significantly in strengthening governance norms and in increasing accountability by way of disclosures. Interestingly, these changes have been inspired by the Anglo-Saxon or Anglo-US model of corporate governance. But achieving desired results in India, it is an essential that regulatory measures to be adopted based on the practices and business environment.

✧ **Year 2019, Robin** studied the importance of good corporate governance and discussed issues and challenges in the way of corporate governance in India. This study suggested that the credit rating agencies need to rate corporate governance practices of different corporations which will create competition for having best governance practice.

The Objectives of the study

(1) The company can progress forward along with the board of members and shareholders.

(2) The proper mentoring of the employees while handling the daily functionality of an organization.

(3) The company should never hide its losses or multiply its profits but should maintain transparency in the market.

(4) The board of directors to be ethical while dealing with the business transactions and work coordinately for the greater good of the company.

Conceptual framework

Independent leadership

Having an independent leadership is vital for the compliance of the principles of corporate governance such as an independent chairperson or an independent director. The director who invites friends and family for a seat at the board runs the risk of nepotism and prejudice. For this reason SEBI had introduced guidelines to the corporate company emphases the need for independent leadership.

Transparency

One of the most important purpose of corporate governance is considered transparency for the organizations to develop a business procedure so that all of the company's transactions remain traceable. The other aspect includes having a clear and easy to understand company policies.

Accountability

The principle of accountability states that the company must be accountable to everyone who is being affected by the decisions made by the company. Accountability is an assurance that an individual or organization is evaluated on its performance or behaviour related to something for which it is responsible. The term is related to responsibility but is regarded more from the perspective of oversight. Accountability is a global consulting and standards firm that works with businesses, investors and governments.

Fairness

The company undertakes to protect shareholders rights and ensure equal treatment of shareholders. There should be an effective redressal mechanism established by the Board of Directors to protect the rights of the equity shareholders. Fairness is the quality of making judgments that are free from discrimination. The corporate governance framework shore holders rights. Fairness is the one where an equitable treatment of all shareholders.

Rule of Law

The company must abide by the legal frameworks established by the regulatory institutions such as Securities Exchange Board of India in case of India. These are penal provisions imposed by these regulatory bodies for the violation of rules and guidelines.

The rule of law is a system of legal and governance principles that ensures that all individuals, communities and governments are governed by consistent, fair and published laws that are accessible and applied uniformly. Hence, A good governance refers to how those laws are developed, implemented and enforced.

Research Methodology

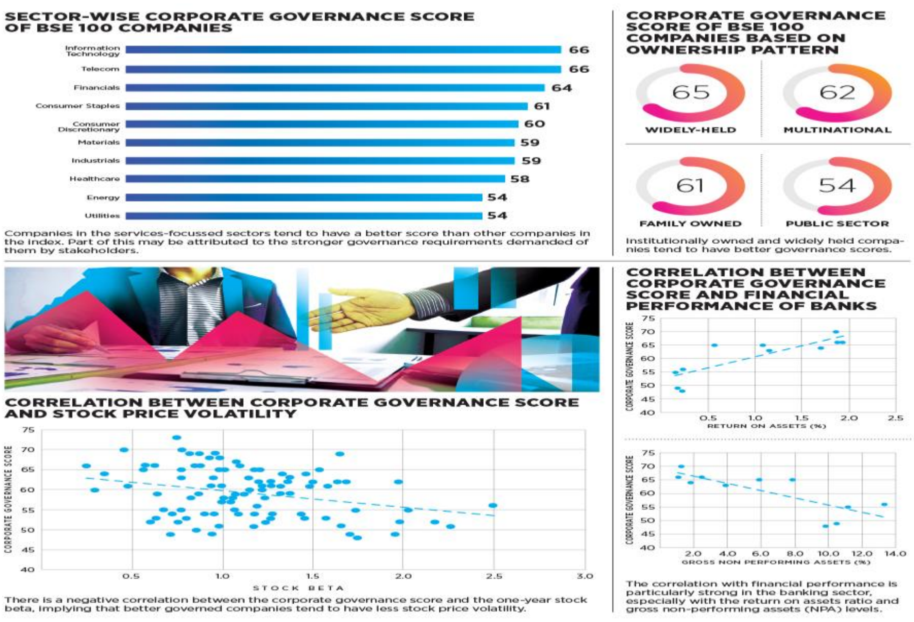
The study has been carried out based on the collection of the relevant secondary data which was collected from the various sources and this paper is a descriptive in nature. The sources which are used for this study are published reports, books, articles published in different journals and newspapers, periodicals, conference papers, working paper of different organizations or individuals and blogs and websites, etc.

Research Analysis

Shareholders and Board of Directors	• Whenever any conflict of interest arises between them in such case it is vital to avoid the conflict of interest, so that the company can progress forward along with the board of members and shareholders.
Management	• Keeping track of profit and loss for the company is a crucial factor and detects its financial stability in the market. A company should maintain transparency in the market.
Employees	• Proper mentoring of the employees plays a key role while handling the daily functionality of an organization. Ignoring the mistakes of the department employees can directly affect the shareholders interest in the company.

Inference

Due to some inevitable reasons, a conflict of interest may arise between board of directors and shareholders. No matter how major the disagreement between them, it is necessary to avoid any such conflicts, so that the company can progress forward. But, ignoring the mistakes of the board members and employees may directly affects the company's financial condition and reputation. Apart from that, violation of regulation might lead the company to suffer fines and penalties. A company should never hide its losses or multiply its profits but should maintain transparency in the market. The company is accountable to work in favour of the shareholders and it is the ethical duty of the board of directors to be ethical while dealing with the business transactions and work coordinately for the greater good of the company.



Source: SEBI reports published in WWW.forbesindia.com

Significant features of good corporate governance

There are eight significant features of good corporate governance which include:

Analysis

Good Corporate Governance aims to minimize corruption by considering the views of the stakeholders and holding up their voice in the decision-making process. Good governance must be dynamic and responsive to the needs of society. It shall facilitate the firms in guiding through effective use of the resources, thereby encouraging the firms to formulate effective monitoring means to regulate the company's conduct. The corporate governance structure in a given country is determined by many factors namely the legal and regulatory framework, the corporate environment in the country and corporation's articles of association. There are three models of corporate governance is developed capital markets such as Anglo-US model, The Japanese model and The German model.

Satyam Computers Ltd.

CASE STUDY	EXAMPLE	BEST SOLUTION
India's largest corporate frauds where satyam computer founder R Ramalinga Raju resigned after admitting to the fact that they had been overstating their profits and cooking their books since a long period of time.	Satyam Computers Ltd scam is an example of bad corporate governance due to which frauds like this happen and in many cases, the culprits walk out scot-free. One must aware of this case which is considered to be India's largest scam.	In an effective corporate governance, a company can excel in all aspects as it provides an assurance that management is acting in the best interest of corporation. thereby contributing to business prosperity and accountability.

Legal Framework of Corporate Governance

In India, the corporate governance regulatory framework functions in accordance with the statutory laws which have been simplified for clear interpretation and to cater to speedy economic growth.

- The Companies Act, 2013
- Securities and Exchange Board of India (SEBI)
- Standard Listing Agreement of Stock Exchanges.

The Companies Act, 2013

The Companies Act, 2013 is the key legal framework in terms of Corporate Governance in India. There are many landmark changes have begun in the arena of corporate governance with the commencement of this Act. Prominent changes could be noted in the provisions relating to the composition of the board of directors that mandated the appointment of at least one resident director and nominee directors have been considered to be the independent directors. The Act mandated the listed and specified classes of public companies to appoint independent directors and women directors in their Board of Directors. This Act codified the duties of the directors and mandated constitution of committees to effectuate better administration.

Provisions

This Act dictates the provisions in the following terms:

(1) The board meetings

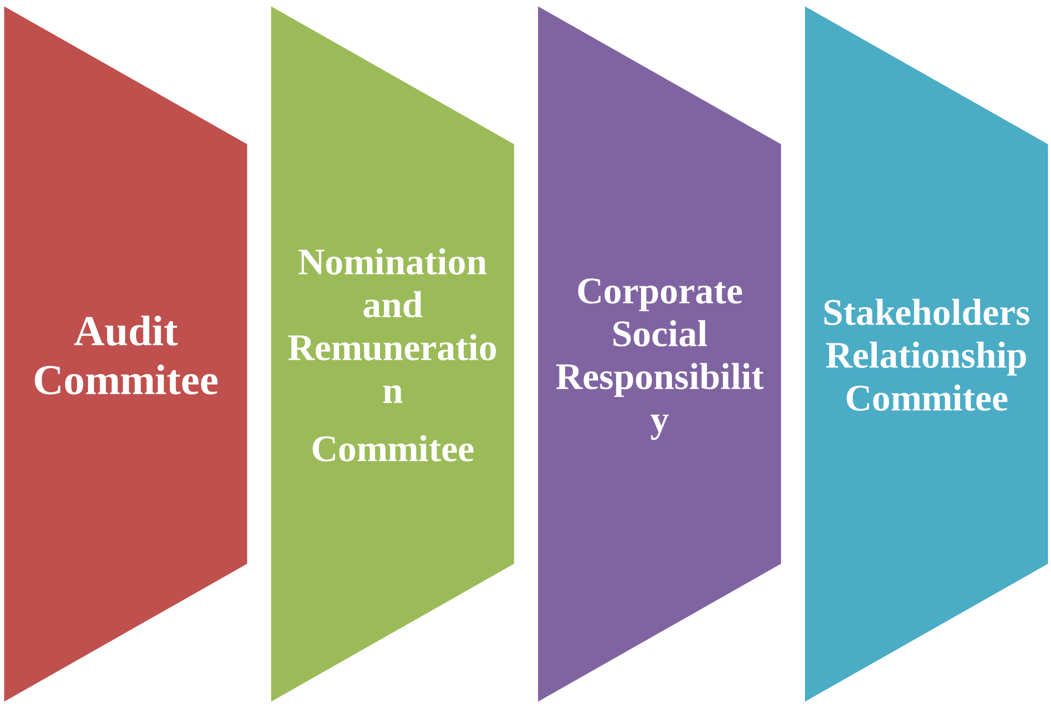
(2) The audit committees

(3) The disclosure requirements in financial statements

(4) The constitution of the board

(5) The related party transactions.

Mandated Constitution of Committees



Securities and Exchange Board of India - SEBI

SEBI is a regulatory authority responsible for monitoring and regulating the corporate governance of listed companies by virtue of clause 49, which has been incorporated in the listing agreement of stock exchanges with companies. SEBI works to ensure the protection of the investors and it is compulsory for the listed companies to abide by the provisions of clause 49 of SEBI Act. Companies have their listed in stock exchanges and are popularly known as the 'listed companies'. Clause 49 is a firm step towards strengthening and the corporate governance in India.

Standard Listing Agreement of Stock Exchanges

Clause 49 mandated the constitution of the following procedures that aimed for fair and good governance among the listed companies:

SL.No	Clause 49 of SEBI	Mandated Procedures
01	The Composition of Board of Directors	At least one-third of the Board shall be comprised of independent directors wherein the Chairman of the Board is a non-executive director
02	The Audit Committee	It is comprised of at least three directors as members and two-third of such shall be the independent directors.
03	Disclosure of Financial Information	The system of periodical disclosure of the financial and commercial information relating to the specified transactions and the detail about remuneration of the directors is to facilitate and ensure transparency in regulating the administration of the corporations.
04	The CEO/CFO Certification	The certification is mandatory to ensure that the financial statements have been duly reviewed and ensure that they are prepared as per the compliance with laws and regulations.
05	The Report and Compliance	The compliance officer or the CEO signs the quarterly compliance report to the stock exchange. The company shall disclose in the annual reports the compliance with the non-mandatory requirements.

Conclusion

The sector-wise Corporate Governance Score of BSE 100 Companies stats that the companies in the services focused sectors tend to have a better score than other companies in the Index and part of this may be attributed to the stronger governance requirements demanded of them by stakeholders. The corporate governance score of BSE 100 Companies based on ownership pattern defines that the Institutionally Owned and widely held companies tend to have better governance.

The correlation between corporate governance score and stock price volatility expresses that there is a negative correlation between the corporate governance and one-year stock beta, implying that better governed companies tend to have less stock price volatility. In case of Banking Sector, the correlation between corporate governance and financial performance is considerably strong especially with the return on assets ratio and gross non-performing (NPA) levels.

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(6) For bes India web page India Inc Improved Corporate Governance.