MBA JOURNALS

NOLEGEIN Journal of
Corporate & Business Laws

ISSN: 2581-7779
Volume 5, Issue 1, 2022
DOI (Journal): 10.37591/NJCBL

http://mbajournals.in/index.php/JoCBL/index

Review NJCBL

Role of Corporate Governance and Self-Regulation Process in India-detailed Analysis

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Abstract

Corporate governance is a result of the interaction of best practices, self-regulation, security regulation, and legal standards. Recent scandals and scams led governments to change their corporate governance rules; while this process moved quickly in some nations, it took longer in others. Only when harm has been done and misconduct is obvious do law and regulation step in and start to work. Contrarily, self-regulation has a significant influence on the interaction between businesses and their environment and is a speedier and more adaptable reaction to shifting market conditions. As fantastic professionals who are fully informed about how the market operates, SRO offers significant benefits through gaining experience. It also aids in upholding high standards of corporate governance since it establishes guidelines and rules that organisations must abide by in order to act ethically.

Keywords: Corporate, governance, self-regulation, process, organizations

INTRODUCTION

Corporate Governance is considered as a wide concept which first emerged in U.S.A. The American government saw that the corporations were engaged in illegal political practices to bribe the government officials. The Treadway Report highlighted the importance and the need of proper control environment in the year 1987. In UK, the government observed that the existing legislations and self-regulation process were also not working too. Therefore, the issue of corporate governance became prominent in the 20^{th}/ 21^{st} century with respect to the emergence of globalisation in the countries. Whereas in India, the concept of Corporate Governance emerged after the second half of 1996 because of liberalisation and deregulation by the government.

According to Goldberg and Desai, corporate governance is defined as:
"*Corporate governance is the entire system of rewards, sanctions, Co-ordination and conflict-resolution mechanisms used to order and arbitrate the economic interests of shareholders, lenders, managers and employees*" [1].

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Received Date: July 12, 2022
Accepted Date: August 01, 2022
Published Date: August 26, 2022

Citation: Gauri Sharma, Ruchi Sharma. Role of Corporate Governance and Self-Regulation Process in India-detailed Analysis. NOLEGEIN Journal of Corporate & Business Law. 2022; 5(1): 1–8p.

Corporate Governance has made governments to alter their law policies but on the other hand self-regulation process followed by the organisations playa great role and such process is considered to be more flexible and quicker. The self- regulation process is followed by corporations to reduce the risks that may arise in future and therefore, it is a necessary measure that shall be followed by every organisation. However, some organisations sometimes put unnecessary stress on the process of self-regulation and it may lead to increased cost of production. Some self-regulatory organisation are also setup for the same purpose. These include Association of Mutual Funds in India (AMFI) and others include Foreign Exchange Dealers' Association of India (FEDAI), etc. These are considered as self-regulatory organisation as its main task is to exercise some regulatory control over a particular profession or an industry. Such SRO's are in the position of the government regulation or can be applied to its addition. Other self-regulation developments that are performed by the corporations may include the change in the composition of the board, Controlling the position of the Chief Executive Officer, introducing employee's stock option plans, etc.

RESEARCH OBJECTIVES

The research objectives are as follows:

1. To comprehend the meaning and implications of corporate governance and self-regulation process in corporate firms and organizations.
2. To understand the need of corporate governance in India.
3. Toascertainthestepsthatarerequiredtobefollowedintheself-regulationprocess.
4. To ascertain the model of self- regulation process and analysing such process in various corporate organizations such as FEDAI and AMFI.

LITERATU AND REREVIEW

There has been a variety of research done and therefore, the work has been analyzed as follows which will be helpful for the present research-

The book of A.C. Fernado's on *Business Ethics and Corporate Governance* provides thorough discussion of corporate governance and business ethics perspectives [2]. It places emphasis on the value of ethical principles in today's dynamic business environment. The book explains the concept of self-regulation process in a simple and a lucid style.

Also, there are various articles available such as *Benefits and Limitations of Industry Self-Regulation, The role of self-regulation in corporate governance, Self-Regulation, Normative Choice, and the Structure of Corporate Fiduciary Law, etc.* [3, 4] that are being used in the research to understand the meaning and steps of self- regulation process across the world and identify the need of such process in corporate governance. The process also includes regulatory styles vary considerably from country to country and industry to industry.

Regulations may put restrictions on the conditions which may include price controls, market-terms, or social obligations, etc. Dr. Sanjay Bhayana's *Corporate Governance in India* has also been used which perfectly describes the framework of Corporate Governance with its empirical analysis [5].

RESEARCH AND METHODOLGY

The authors have used secondary type of data. Secondary data refers to the data which is collected by someone else and used by others for their own research work. Common sources of secondary data include the data of organisations, newspapers, magazine and surveys published by government, research papers published in journal, Ph.D. thesis etc.

Secondary data helps us to provide data within no time as such data is easily available and it saves time of the researcher. Not only time saving, but secondary data is also an inexpensive /less expensive and economical mode of data collection which helps a researcher to spend less time and effort to complete his research work.

Meaning and Importance of Corporate Governace and Its relevance in India

“Governance” is defined from the word, '*Gurbernare'* which means to rule or to steer. Though such concept has been set up for normative framework for the exercise and accountability in the kingdoms, or for other various towns or regions, it now plays a significant role in the corporate world. The word, corporation means a legal entity that exists independently which consists of person or group of persons that are granted a charter of creating it and are invested with the rights and such rights are given or provided to an individual. Appling this concept, Corporate governance comes into existence, which has its application in corporate world. The corporate world constitutes of companies, firms, proprietors, etc. Corporate governance can be viewed as a theory through which businesses are directed, monitored, managed, and regulated [6].

Corporate Governance can be understood as a concept of maximizing the long-term shareholders value in a legal, transparent and in an ethical manner by ensuring fairness and dignity both within and outside an organisation. The concept of corporate governance helps to provide a framework which ensures efficient functioning of an organisation which is based on ethical and value principles, so, that the culture of the organisation can be maintained. It can be said that corporate governance consists of two elements which are as follows:

1. Long term relationship which deals with checks and balances, incentives that are given to the managers in the organisation and communication between the management and its investors.
2. Transitional relationship deals with the matters that consist of disclosure and authority.

In United Kingdom, the Cadbury Committee was formed in the year 1991 by Financial Reporting Council of London Stock Exchange and the Accounting Profession. This report is considered to be as the foundation of corporate governance. In India, the history of corporate governance can be traced in the year 1992 by seeing the effects of the Cadbury Committee. The Confederation of Indian Federation framed a voluntarily code for the companies who are listed in the year of 1998 which was later followed by the Kumar Mangalam Birla Committee Report in the year 1999 formed by SEBI by introducing clause 49 of the Standard Listing Agreement which empowers SEBI to monitor and regulate corporate governance in India. Currently, the *Companies Act, 2013* has introduced various progressive benefits for the shareholders, directors and for the management to improve the situation of corporate governance in India. It also includes investments in advisory firms and proxy firms that helps the shareholder by providing them concise information and the new regulations and process. Other provisions include policies such as *Whistle Blower Policy* which is a mandatory provision by SEBI to report for any unethical behaviour of the director of the company, the *Related Party Transaction(RTP)*, where the company is required to publish the terms for transaction on its website with the other party and such terms and conditions must be approved by the shareholders by passing the Special Provisions under the ambit of Companies Act, 2013, etc. [7].

The relevance of corporate governance can be understood in India in the light that good corporate governance followed by the company has better opportunity in the eyes of the shareholders. The active and good conduct of the Directors not only helps in building the conduct of Company's image but also affects the price of the shares. Corporate governance is one of the main criteria which help the foreign investors to decide and make decision regarding which company to invest and develops the capital market [8].

Business governance is necessary to develop an open, transparent, and conscious corporate culture. It leads to an increase in consumer satisfaction, shareholder value and wealth. Good system of corporate governance ensures a long-term partnership that helps in reaching the quest of higher growths and profits. It not only provides direction for forming long-term strategies and vision of the business but its main aim to create a self-driven, self- asses and self-regulated organisation.

Therefore, corporate governance is truly relevant to the Indian corporations/organisations as it helps to maintain the welfare of the organisation.

Self Regulation Meaning, Developments and Its Role Under Corporate Governance

There are various initiatives that are taken for the purpose of the regulation such as the formation of the Security Exchange Board of India, SEBI which is a statutory body that regulates all merchant banks and oversees, the working of mutual funds and stock-exchanges. But there is new concept that is followed by the organisations which is more adaptable and brisker, it is known as self-regulation. The *Self-regulation* is considered as the process of controlling the activities within the organisation instead of getting it controlled by an outside organisation that is the government.

Self-regulation process plays a great role in improving the corporate practices. The companies, shareholders, rating agencies and professional bodies have themselves tried to implement some important measures which leads to increased level in corporate governance. The following are the efforts that are followed by organisations under self- regulation mode:

1. *By controlling the position of the Chief Executive Officer:* The responsibilities of the board of directors are to keep a check on the performance of CEO and to take strict action if the situation demands so. Earlier, the CEOs were pampered and protected but now the changes are taking place where the CEOs are being taken into task or are fired from their jobs. Various CEOs have being ousted from their companies and it includes companies such as IBM Corporation Ltd., American Express Ltd., K-Mart and many others [9].
2. *Changes in Composition of the Board:* The percentage of the board of director now compromises are of an outsider and its rates are going higher. Fortune 500 conducted a survey where it was found that 52% firms have now had at least one women director [10]. The composition among the corporate boards is now on the basis of including diverse groups. It is based not only on the basis of gender or minority but board snow also include stakeholders, environmentalists, labors, etc. A perfect example of it can be cited when Ex on placed an environmentalist on its board after Alaskan oil spilled in 1989.
3. *Improvements in Disclosure of Financial and Non-Financial Operation:* In order to achieve high standards of corporate governance, companies are now adopting better and proper practices of accounting, reporting and disclosure which are based on Accounting Standards. Some Indian companies such as Hindustan Lever Ltd., HDFC and Infosys go beyond the statutory requirements and provide more information such as sharing transfer details, stock quotations, providing a redressal forum for the investors, etc.
4. *Reporting Corporate Governance Practices:* Different stakeholders have different interest in the organisation. The interest is not only limited to knowing about the Profit and Loss Account or the Balance Sheet but it also includes one’s interest to know the approach of the organisation towards its stakeholders, composition of the board, executive compensation, etc. Therefore, to disclose the information for the benefit of the stakeholders, the Security Exchange Board of India(SEBI) has made mandatory for all Group ‘A’ companies to submit their annual report along with their corporate governance report.
5. *Linking Managerial Compensation to Performance:* In an organisation, manager is considered to perform all the activities on the behalf of the organisation. Due to difference in opinions of interests between the parties, an agency problem comes into existence. To make the interests symmetrical, the management is tying its level best to link the managerial compensation with the value which is created by the organisation. Therefore, the companies try to reward their managers on the basis of relative performance.
6. *Introducing Employees Stock Option Plan: Section:* 62 of the Companies Act, 2013 provides the provision of Employees Stock Option Plan, ESOP where the companies are providing its employees with stock options to ensure maximum participation of the employees. It is a good way as it helps the management to think like shareholders while predicting risks. Infosys Ltd. introduced the option of ESOP in the year 1994 and till now it has provided its employees with more than 5 crore shares or 1.15% of its stock [11].
7. *Setting up Government Councils:* The success of corporate governance depends upon the effectiveness of the CEOs and the Board of Directors. Earlier the companies used to evaluate their effectiveness by the way of self-appraisal but now, to improve the quality of the corporate governance, companies have taken an initiate against this regard. Such as appointment of Government Council by the TATA Sons [12].
8. *Family-Owned Business following Good Governance:* Today not only the professional

companies follow the practice of good corporate governance but the enterprises which are owned by the families are also following it. For instance, Muruguppa Group turned a family-run business into a successful enterprise. A corporate board was formed for the same and the family chairman stepped down and a new independent director was appointed. The company establishes good system of corporate governance by high quality of disclosure of norms that are based on international standards. Therefore, the group is awarded as a "Distinguished Family Business Award" by IMD, a popular business school in Switzerland.

9. *Changing the face of the Audit Committee:* Earlier the audit committees were required to perform only limited tasks such a review and audit the annual statements, review the reports of internal auditors or maintain interface with the management but now due to public pressure, complexities in business environment and the regulatory requirements, the face of the audit committees have been changed. Now their task is to perform more functions such as to seek information from the employee, when required, to obtain legal and professional advice from outside, to secure attendance of the outsiders with relevant expertise if it is necessary, etc. Therefore, the new face of the audit helps in ensuring more transparency, fairness and disclosures in the operations of the organisation.

Therefore, from the above self- regulation modes, it is clear that these process leads to achievement of good quality of corporate governance by taking measure itself to control the activities in the organisation.

Self Regulatory Organisations in India and their Importance

A Self- Regulatory Organisation (SRO) is constituted to control a particular industry or a profession. These organisations are non- government organisations whose objective is to maintainanorderinthebusinessenvironmentofanorganisationbysettinguprules for them. These organisations exist in the place where there is no such government organisation or it operates with an addition to it. A self-regulatory organisation should possess the following characterizes:

1. *Legislative Power:* ASRO should vest with legislative power so, that it can make rules and policies for the industry or profession and is able to enforce such rules on such industry which it is governing upon.
2. *Management of Conflict:* As the conflict arises in the business environment, it is the duty of a SRO to make a framework or establish a process by which these conflicts are resolved.
3. *Good System of Governance:* SRO must be of transparent nature. It must form a process by which the inputs will be taken to frame rules and regulations.
4. *Enforcement Programs:* There must be a strong program that must enforce a link between the organisation and the government to make sure that the rules are properly followed. This enforcement program also helps in protecting the rights of the members of such organisations.
5. *Formation of a Regulatory Database:* A SRO must maintain a system of regulatory database that helps the investors to ascertain the names of the regulated organisations. Therefore, SRO must also provide the record of disciplinary actions taken by it.
6. *Resolving Disputes:* It is the duty of a SRO to create a process of resolving disputes between the parties by ensuring transparency and fairness and consistency during the treatment of an accused [13].

There are many self-regulatory organisations in India, some of which are The Fixed Income Money Market and Derivatives Association of India (FIMMDA), The Foreign Exchange Dealers' Association of India (FEDAI), and the Association of Mutual Funds in India (AMFI). Therefore, the author shall discuss the functioning of such organisations.

Association of Mutual Funds in India (AMFI) is a self-regulatory organisation that provides benchmarks for the mutual funds sector. The organisation was formed in the year 1995and most of the mutual funds firms of India are its member. The main aim of the organisation is to improve the standards with to respect ethics and professionalism in the organisation. This organisation contains of 44 members and this organisation assists SEBI in regulating the distribution of mutual funds.

Foreign Exchange Dealers' Association of India (FEDAI) is also a self- regulatory organisation which was formed on August 16,1958 due to the increase in the foreign trade in India and several commercial banks were authorised by the Reserve Bank of India to deal with foreign exchange business. FEDAI plays a great role in the development of the foreign exchange markets and it sets ground rules for the code of conduct of such transactions so that it can meet up the international practices. FEDAI closely works with RBI, FIMMDA (Fixed Income Money Market and Derivatives Association of India) and the Forex Association of India [14]. The main function FEDAI is as follows:

1. Providing a basic dispute settlement for all the participants of the market.
2. Represent the banks for their discussions with Government, RBI or other such organisation.
3. Issue guidelines for rates and charges of the commissions, or announce the daily rates to the members of the banks and to provide banks with their periodic review.

The Fixed Income Money Market and Derivatives Association of India (FIMMDA), which aims to ensure welfare in commercial banks, primary dealers, and financial institutions, is another self-regulatory organisation. The business was formed on June 3, 1998 under the terms of the Companies Act, 1956.

FMMDA is a voluntary organisation with the following goals:

1. To function as the key interaction with the regulators on numerous issues that affect how these markets operate.
2. To engage in development initiatives, like the debut of benchmark rates and fresh derivatives instruments.
3. To offer dealers and support staff at member institutions training and development support.
4. To adopt/create international best practises and a code of conduct in the aforementioned domains of endeavour [15].

Therefore, SRO provides great benefit by achieving expertise as these are great experts and have all the information about the functioning of the market. It also helps to maintain high standards of corporate governance as it sets certain standards and code of conduct for the organisations which should be followed by them to maintain the ethical behaviour. Such a strategy can give investors more self-assurance while making market investments. SROs assist the organisation in developing self-discipline and offer creative suggestions for the growth of the markets. The people who support self-regulation believe that it provides direct benefit and is more flexible than that of a statutory regulation imposed by the government.

CONCLUSION AND SUGGESTIONS

Good corporate governance guarantees that businesses consider the interests of a broad range of stakeholders as well as the communities in which they operate. A company's proper governance is dependent on a number of elements, including professionalism, transparency, involvement, and the proportionate weight assigned to stakeholder interests. Understanding the factors that affect the quality of corporate governance requires a careful consideration of the membership, composition, organisation and the information provided to the board.

Although there are changes in the company law, corporate accounting, disclosure norms, setting up of audit committees, power of boards, etc. have been recommended for improving corporate governance in India yet some more efforts are required in this direction. Such as for *corporate sector*, for good governance requirement, the shareholders must participate in the meetings. The attendance must not be merely based on providing snacks but it should be based on the principles of democracy which should intend to inform the shareholders or seek their concurrence before taking any strategically major decisions. It is the duty of the company to make necessary arrangements enabling shareholders to reach the meeting places conveniently.

There must be a formation of additional board committees as the Kumar Managalam Birla Committee on corporate governance made mandatory recommendations stating that the companies should set-up audit and investor grievance committees. Another area of concern must include towards the training of the directors as directors have limited understanding in matters of corporate governance issue.

For *Financial Institutions*, such institutions must ensure that the companies in which they have sizeable stake, either in terms of equity or loans remain independent and not dominated by promoter directors. They ought to be concerned with the makeup of the board of directors, particularly the selection of non-executive directors, and ought to keep regular, systematic communication with senior staff in order to share opinions on the effectiveness and strategy of management. The banks and the financial institutions should insist on compliance of certain codes as a condition for granting the loans to the companies. Such institutions must nominate professionally qualified persons preferably company secretaries as their representatives on the company's boards who can act independently and oppose the management, if necessary.

The institutional investors must make positive use of their voting rights and exercise their rights whenever possible on regular basis.

For *Professionals and Professional Bodies*, the auditors should be discouraged from performing other consultancy services for the same organisation. This is because if both the auditing and consultancy are performed by the same person, there will be conflict of interests. For survival the auditors must bring the deficiencies in the accounts to the surface at the right time. Practice of full disclosure of audit and all other fees paid to the audit firm should be adopted.

The process and mode of self- regulation has a great importance under corporate governance, it not only provides means to achieve high standards of corporate governance but to develop better image, goodwill and establishing good system for Corporate Social Responsibility (CSR). The 2013 Indian Company's Act makes compliance with corporate social obligations mandatory. According to Section 135, every business with a net worth over 500 billion rupees, a turnover over 1 billion, or a net profit of 5 billion rupees or more during any financial year must establish a corporate social responsibility committee of the board composed of three or more directors, at least one of whom must be an independent director. The Board will ensure that the company spends at least 2% of its average net profit on CSR each financial year. If a corporation does not dedicate 2% of its annual net profit to CSR initiatives, the board must explain why in its Board of Director's Report.

Generally, the self- regulation process includes the task of creating regulations, monitor such compliances and lastly to enforce such regulations. Self- regulation provides an easy way to govern an industry and it has many benefits on various parties such as consumers, producers, government and the economy of the country. Consumers benefit from this process in various ways such as the company may opt for regulation strategies which reduces the risks to the consumers. Imposing a government regulation puts an unnecessary delay and pressurizes the organisations to take own decisions. Therefore, self- regulation is an easy way to monitor and regulate the activities in the organisation.

It also helps the business to fulfill international standards of social and ethical behaviour as this concept is based on social norms and conduct of an organisation. The process also

Benefits economy as the industry can develop policies which best suits them for the smooth functioning of the firms and to provide with quality products with increased profits.

Therefore, the process of self-regulation plays an important role incorporate governance and both are interlinked with each other that provide an organisation to develop social and ethical conduct and improve its quality of image.

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