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A Critical Analysis of Corporate Governance and Board Management

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To govern the behaviour of a system, an authority, or a significant number of individuals, a set of rules and regulations, policies, and methods are useful. Corporate governance refers to the application of this governance to a business or corporate organization. Every nation needs to have a democratic government required to ensure the efficiency of all its systems and to control its people's behaviour. Similarly to this, a committee or a body is required in a firm to control how the business is managed and how all of its employees behave. The board of directors of a firm is often charged with carrying out this duty, but even their behaviour is governed by laws to prevent abuse and arbitrary use of their position of authority.

Keywords: *govern, corporate, behaviour, control board, board of directors, authority.*

INTRODUCTION

Corporate governance refers to the set of guidelines, rules, and procedures that regulates and controls a business. Corporate governance generally means striking a balance between the needs of all of a company's many stakeholders, including shareholders, senior management, clients, suppliers, financiers, the government, and the local community. Corporate governance, which includes almost every aspect of management from action plans and internal controls to

performance assessment and corporate disclosure, serves as the foundation for achieving a company's goals[1].

Specific rules, regulations, policies, and resolutions put in place to guide corporate behaviour are referred to as the governance framework. In governance, a board of directors is essential. Shareholders and proxy advisers are significant stakeholders with influence on governance. The majority number of businesses mainly aim for excellent corporate governance. Simply being profitable is not sufficient for many stockholders. Additionally, it must exhibit excellent corporate citizenship through a commitment to the environment, moral conduct, and effective corporate governance.

The number of companies and the complexity of their work have grown over the past ten years as a result of technological and commercial improvements. They now need to assure competent management personnel and shareholders in addition to focusing on clients and products to establish themselves and make a name for themselves. This can only be accomplished if their strategies and plans are carried out effectively, on schedule, by the appropriate framework, and without engaging in any illegal actions. All of this falls within the purview of good corporate governance.

We are all aware that a corporation is a distinct legal entity with its rights to sue and be sued, to possess assets and properties, to hire personnel, to engage in contracts, and to have its seal. As a result, it is important to regulate its behaviour to prevent illegal behaviours and the liabilities that may result from them. This also implies that its activities are distinct from those of its members. The Cadbury Committee was established in 1991 by the Financial Reporting Council of the London Stock Exchange to investigate company governance. A system or method by which a firm may be directed and regulated in regulating its affairs and activities is referred to as corporate governance by this committee[2].

[1] Donald Nordberg, 'Edging Toward 'Reasonably' Good Corporate Governance' (2018) 17 Philosophy of Management <https://doi.org/10.1007/s40926-017-0083-9> accessed 27 January 2023

[2] *Ibid*

CORPORATE GOVERNANCE'S AMBIT

Corporate governance covers not just how a company's members behave and how its affairs are managed, but also how those members interact with one another, the firm, and the general public. To strive toward winning the trust of their clients and the general public, it also stipulates that the relationships among the company's employees must be positive. Additionally, this will assist them in improving their performance[3].

Additionally, it offers guidelines for deciding wisely and moving forward with implementation. The board of directors, chosen by the shareholders, has been granted complete authority to decide on all significant issues following the necessary deliberation and consultation with the company's members, and they must behave by the established corporate governance principles and regulations. Corporate governance covers a wide range of development, hence its application is considerably broader and they are as follows:

Financial Expansion - Transparency and reliable interactions between members and the general public are guaranteed by corporate governance. A corporation can draw clients because of its dependability and accountability when it can win over people's faith and trust.

Social Accountability and Sustainable Development - Corporate governance guarantees that resources are used effectively and efficiently without being wasted or misused. This further assures that every business has a social duty to the community and environment[4].

Expansion of the Company - A Corporation may grow its business and trade not only within its own country but also in foreign markets with the aid of efficient business strategies and governance. The acts and business dealings of the corporation affect the customers' rising expectations. To foster positive interactions with the company's management, clients must be satisfied with how a firm handles mistakes and complaints. If customers are pleased with the company's services, the market will undoubtedly grow.

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[3] Rashid Zaman et al. 'Corporate Governance Meets Corporate Social Responsibility: Mapping the Interface' (2020) 61(3) Business & Society <https://doi.org/10.1177/0007650320973415> accessed 27 January 2023

[4] *Ibid*

Objectivity and Accountability - The type of governance a firm chooses exposes its level of accountability and encourages openness. The effectiveness of the members and the organisation is further improved by appropriate governance, which reduces the likelihood of mismanagement. Corporate governance makes ensuring that the selection process for directors, executives, and other managerial staff in a corporation is transparent. Therefore, corporate governance and its regulation of the business are essential to achieving market growth and development.

CORPORATE GOVERNANCE'S GOALS

Corporate Governance establishes a solid foundation for the administration and control of an organisation. It offers the board and its members a framework. A board needs members who can uphold their commitments and duties and are knowledgeable, competent, and experienced. It creates a procedure for making decisions that are moral and just. Corporate Governance looks after the proper information disclosure within the allotted time[5]. Corporate governance Upholds stakeholders' and shareholders' rights, promotes organisational efficiency, encourages long-term expansion, ensures appropriate remuneration, and cuts down on fraud, swindles, and lawsuits.

CHARACTERISTICS OF CORPORATE GOVERNANCE

The characteristics of corporate governance are as follows:

Competent Board of Directors: Every public company in India must have a minimum of 3 directors, while private companies must have a minimum of 2 directors, according to Section 149 of the Companies Act, 2013. They are limited to a maximum of 15 members. As a result, a

[5] Charkham, Jonathan P., 'The Essence of Governance', *Keeping Better Company: Corporate Governance Ten Years On*, 2nd edn (Oxford, 2008; online edn, Oxford Academic, 3 Oct, 2011), https://doi.org/10.1093/acprof:oso/9780199243198.003.0001, accessed 13 Feb. 2023.

business needs to select a board of directors that can adhere to all rules and carry out their tasks diligently.[6]

Defined Duties and Obligations: To manage a company effectively, the board of directors, secretary, chief executives, and others must each have specific roles and responsibilities that are outlined in the Articles of Association. This ensures that, should anyone act outside of their designated authority, they will be held accountable for their unlawful actions. A corporation makes sure of this through its many committees and meetings. This is yet another crucial aspect of corporate governance that aids in establishing a hierarchy in organisations where the duties and obligations of each employee are specified.

Promotes Integrity: It promotes integrity in the dealings and affairs of the company when all the policies and strategies are carried out properly and implemented effectively.

Risk Management: Corporate governance helps in mitigating the risk, which is possible if there is no governance in the company. It helps in identifying potential risks like financial, operational, legal, etc.

Commitment: With the help of governance and rules and regulations, the board of directors and management are bound to adhere to their commitment and fulfill their responsibilities, which is another important feature of corporate governance.

Universally Regarded: Every firm in the world uses corporate governance and its guiding principles, such as accountability, transparency, fairness, etc., to ensure the efficient operation and effective administration of their commercial affairs. Every business has its management team, who are in charge of running things daily without any confusion or interference from outsiders. Several laws that fall within the corporate governance category limit and control their behaviour and authority. These make sure that no one in a position of responsibility in a corporation abuses their authority.

[6] Barry D. Baysinger & Henry N. Butler, 'Corporate Governance and the Board of Directors: Performance Effects of Changes in Board Composition (1985) 1(1) Journal of Law, Economics, & Organization <http://www.jstor.org/stable/764908> accessed 28 January 2023

Systematic: The fact that corporate governance offers a structured strategy and procedure for the governing and administration of a corporation is another crucial aspect of the practice. Different models use various methods and techniques. For instance, the Continental Model is structured so that the supervisory board and management board have the power to govern, but the Anglo-American Model is intended so that the board of directors and shareholders work hand in hand.

Safeguards the Interests and Rights of Shareholders: The protection of the rights and interests of shareholders and other stakeholders is one of the board of directors' main responsibilities. They have a responsibility to make sure that everyone receives their shares on schedule and is not deprived of any of the rights granted to them. This can only be accomplished if the directors chosen for the board of directors are trustworthy, impartial, and qualified to uphold all governing principles and legal requirements.

IMPORTANCE OF CORPORATE GOVERNANCE

The government is important since it aids in the expansion and development of any business by addressing issues like appropriate financial support, organisational structure, market strategies, etc. It mitigates risk and lowers the likelihood of fraud, scams, and other unlawful actions by ensuring the efficient operation of all divisions inside a corporation. A company's employees will become effective and accountable at their jobs if it is effectively governed and operated according to ethical ideals[7].

The protection of the interests of the shareholders and the development of positive connections with them are the ultimate goals of corporate governance. This benefits the corporation by raising both the number of shareholders and they're worth. It increases the effectiveness of the firm and its services. It cultivates public trust in a particular company, preserving its reputation even when the company is experiencing a crisis. By increasing investors' confidence in a firm,

[7] Dorothy S. Lund & Elizabeth Pollman, 'THE CORPORATE GOVERNANCE MACHINE' (2021) 121(8) Columbia Law Review <https://www.jstor.org/stable/27093857> accessed 29 January 2023

good corporate governance and oversight of audits, accounts, and financial data may assist a company to attract numerous large investors and therefore increase capital investment.

During periods of mergers, acquisitions, and rebuilding, corporate governance is crucial. It distinguishes the fraudulent firm from rivals and aids a business or corporation in determining whether the deal is the best one to break. It guarantees that a business also develops plans and strategies for efficient corporate social responsibility and welfare. A company's worldwide market and economic development are increased if the standards and principles of corporate governance are upheld. It promotes moral behaviour in the organization's management and business interactions.

CORPORATE GOVERNANCE IN INDIA

The number of products and companies available on the market has greatly increased as a result of technical development and inventiveness. At the same time, several scams and frauds were occurring around the nation. Some of these include the frauds at Satyam Computers, Kingfisher Airlines, ILFS, and PNB, among others. To prevent such swindles and frauds and to provide the authorities of a firm more control, it was necessary to regulate the behaviour of businesses and their management[8].

EVOLUTION AND ORIGIN

There are two stages in the development of corporate governance in India. They were during the First phase (1996-2008) and the Second phase: accountable and responsible (after 2009).[9]

INDIA NEEDS CORPORATE GOVERNANCE

There are various individuals in a corporation, and each one has a unique attitude and perspective on the world. To satisfy both the shareholders and the employees, management must operate by their requirements and the challenges they encounter. This is only conceivable

[8] Donald Nordberg (n 1)
[9] Dorothy S. Lund (n 7)

if there is a system in place that governs and supervises everyone's conduct and behaviour[10]. Another difficulty a firm has is the rise in demand for investment as a result of the expansion in the number of businesses over time. Only a positive workplace culture and honest business practices could win over any investor. Therefore, adhering to specific principles and norms as well as good management and governance is required if one wants to develop trust.

A firm has obligations beyond just conducting business professionally. Modern standards and values dictate that a business must ensure it does not break any laws, insult people's religious beliefs, cause environmental harm, or fail to fulfil its social obligations. This is feasible by using corporate governance. To maintain such high standards of management and draw more foreign investment, companies conducting trade and commerce in international markets and nations are obliged to adhere to a certain code of conduct.

ADVANTAGES OF CORPORATE GOVERNANCE

Corporate governance aids in the orderly operation of a business and its operations on a national and worldwide scale. The advantages of corporate governance are as follows[11]:

- It aids in effective leadership, which safeguards a company's shareholders' and debenture holders' interests.
- It assists in developing a lucrative domestic and international market and, thus, aids in the growth of a healthy market.
- It encourages good connections between the firm and its members and among its members.
- It provides long-term financial security, which promotes growth and development and draws in additional investors to the company's stock.
- It lessens the likelihood of hazards and difficulties.
- It boosts employee productivity, which benefits both the firm and its members.

[10] Stephen Bainbridge, *The New Corporate Governance in Theory and Practice* (Oxford Academic 2008)
[11] Donald Nordberg (n 1)

- It boosts employee productivity, which benefits both the firm and its members. It minimizes the likelihood of lawsuits and disarray among rivals. Corporate governance may be used to effectively manage and utilise a company's assets and resources.

BOARD AND MANAGEMENT DONE BY THE BOARDS

An elected body of people known as the board of directors (BOD) represents shareholders. The board, which oversees the corporation, often meets regularly to decide on policies for directing and administering it. For any company that is publicly traded, a board of directors is necessary. A board of directors is also a feature of several private and non-profit organisations. The most direct stakeholder affecting corporate governance is the board of directors[12].

Directors serve as the company's shareholders and are chosen by shareholders or selected by other board members. The board has the authority to decide on significant issues like CEO compensation, dividend policy, and the designation of corporate officers. In certain circumstances, such as when shareholder resolutions demand that specific social or environmental issues be prioritised, a board's duties go beyond financial optimization. Frequently, both internal and external members make up boards. Insiders include major stockholders, founders, and executives. Independent directors lack the insider contacts of insiders and are chosen based on their track record of managing or leading other large organisations. Because they help balance the interests of shareholders and insiders by limiting the concentration of power, independents are viewed as being advantageous to governance.

BOARDS AND THEIR STRUCTURE

Members of corporate boards sometimes referred to as "directors," are chosen by the investors. In the normal run of events, the board members of a privately owned corporation are chosen by the founders without a formal election. The corporation creates slates of board candidates and offers them to stockholders for a vote when the company becomes public and the number of stockholders significantly increases. The shareholder has several options, including accepting

[12] Stephen M Bainbridge, 'The Board of Directors' in Jeffrey N. Gordon, and Wolf-Georg Ringe (eds), *The Oxford Handbook of Corporate Law and Governance* (Oxford Academic 2015)

the suggested slate, selecting one of the alternatives, naming additional candidates not on the list, and designating alternates by proxy (vote-by-mail)[13].

If a board member is a member of management, they are referred to as inside directors, and if they play no direct part in the business, they are referred to as outer directors. To offer the board of directors important advice and guidance, outside directors are frequently well-known members of the business world who are not necessarily rivals' executives or board members. Additionally, outside directors may come from community groups that occasionally represent the legal, labour, academic, or other sizable constituencies or interests. Because they are not influenced by the corporation's CEO, outside directors are also known as independent directors. Directors in publicly traded corporations are paid for their work. Privately owned businesses may also pay compensation.

BOARD'S EVOLUTION

The board of a small privately owned company will often be a "working board," with each member actively involved in the company. The board may also include one or two other family members who are not involved in day-to-day operations. Because operational and board decisions are made at the same time in these circumstances, board meetings tend to be quite casual. The paperwork associated with board activity—such as documenting legally required board meetings—will be viewed as more of a hassle. The board will probably change if and when the company starts to expand[14].

A developing company will often invite new investors to join its board, or it may be necessary to accept a new investor (or his or her agent), voluntarily or not. The owners frequently perceive considerable value in hiring people who can help the business as it develops, frequently into uncharted waters, by bringing fresh perspectives and crucial skills and expertise. Thus, an "advisory board" forms. At this point, the usefulness of board meetings becomes apparent. They

[13] Donald Nordberg (n 1)

[14] Naomi Chambers & Chris Cornforth, 'The role of corporate governance and boards in organisational performance' in Kieran Walshe , Gill Harvey and Pauline Jas (eds), *Connecting Knowledge and Performance in Public Services: From Knowing to Doing* (CUP 2011)

serve to gather information and clarify instructions. By outlining the company's operations to the board, management gains a clearer, more cognizant perspective of itself. Members of the board provide ideas, establish networks, refocus efforts with wise counsel, spot possibilities, and engage in other consulting activities.

The board may eventually transform into a "governing board" in the next stage when the firm "goes public" and becomes a publicly listed corporation, either to sell off its assets to the owners or to raise money for the next stage of development. At that moment, the SEC takes over the regulation of the corporation. The harsher and chillier winds of securities legislation are now blowing in the direction of its board members. Even if the board's inner management maintains power by holding onto more than half of the outstanding shares, the board's personality will alter on its own. A public board's most crucial responsibilities include choosing top executives, sanctioning the issuing of new shares, declaring dividends, and monitoring financial activity through its auditing committee. Board members are accountable for the proper performance of their obligations under securities laws; failure to do so might result in significant penalties and jail time.

To manage a company's business, a combination of people, regulations, processes, and procedures is needed. We define corporate governance as follows. Corporate governance lays the groundwork for businesses to make decisions that take into account a variety of contexts, including the economic, social, governmental, and market environments. To generate long-term value and sustainability for all stakeholders, corporate governance has its origins in ethical conduct and business principles. Coordinating the interests of the board, management, investors, shareholders, and stakeholders is a constant struggle for corporate board directors. They carry out their tasks and duties with complete consideration for transparency and accountability.

It is frequently stated that corporate boards must provide supervision, judgement, and foresight. In the complicated and unstable market of today, that's a big task. The job that board directors conduct is fundamentally based on good governance principles. Here, we go through the

function of the board of directors, the makeup of the board, stewardship, and how board management technology may improve productivity and decision-making.

BOARD COMMITTEES' FUNCTION

To enhance corporate governance, the committees have been included in the business. The following committees will make up the board of the company:

i. Audit Committee: According to Section 292A of The Companies Act, 1956[15], any public limited company (listed or unlisted) with a paid-up capital of at least Rs. 10 crores must establish a board committee to be called the Audit Committee.

This committee should be together at least twice or three times a year, ideally before each Board meeting. According to the statute, the Audit Committee must include a minimum of three directors with a majority of independent directors. The Audit Committee's duties include recommending the selection, compensation, and conditions of employment for the Company's auditors; reviewing and monitoring the auditor's independence, performance, and efficiency of the audit process; the financial statement's analysis and the auditor's report thereon; approval of any alterations to a future transaction between the corporation and connected parties; examination of investments and loans between corporations; valuation of the company's undertakings or assets, as necessary; evaluation of the risk management and internal financial controls systems; keeping an eye on how money received through public offerings is ultimately used, among other things[16].

Before submitting the financial statement to the Board, the committee may also request the auditors' feedback on the internal control mechanisms and the examination of the financial statement. One of the largest examples of a flaw in the internal auditing process is the Satyam incident. The auditors' efforts produced no positive results, and they signed the financial statements without doing any preliminary investigation.

[15] Companies Act 1956, s 292A

[16] Donald Nordberg (n 1)

ii. Nomination and Remuneration Committee: This committee's goal is to establish guidelines for the compensation and hiring of directors, key managerial employees, and senior management staff. This committee is made up of three or more non-executive directors, at least half of whom must be independent. This committee's duties include identifying individuals who are competent to serve as directors and recommending their appointment to the Board. It will develop the standards for judging a director's qualifications and suggest to the Board a compensation plan for directors and other workers. The committee should ensure that the compensation policy is appropriate and encourages directors who possess the qualifications necessary to operate the business.

iii. Stakeholders' Relationship Committee: This committee will be established if the Board of Directors of the firm includes more than one shareholder, holder of a debenture, depositor, or holder of any other security during the fiscal year. The head of the aforementioned committee will be a non-executive director, along with any additional members that the Board may elect to include. This committee's goal is to address the complaints of a company's stockholders. According to SEBI rules, the committee must convene for at least one year. The secret to effective governance is to conduct business in a way that safeguards stakeholder rights and interests and upholds openness to guarantee that stakeholder confidence in the firm is not affected. As a result, this committee is crucial to accomplishing the goal of excellent corporate governance.

THE BOARD OF DIRECTORS FUNCTIONS IN CORPORATE GOVERNANCE

Corporate boards are charged with a variety of tasks. Every choice the board takes must take into account how it will impact their staff, clients, vendors, communities, and shareholders. The duties of managers and board directors must be very clear to have effective corporate governance. The board of directors was never supposed to be intimately involved in a corporation's day-to-day operations, and they shouldn't micromanage the management either. Board members' primary responsibilities include planning and supervision. Despite the variations, board members may give the CEO or CFO specific authority as necessary.

Additionally, boards frequently assign certain responsibilities to board committees. The committees on corporate boards function as a division of the main board. Issues that need more time and resources than the board as a whole are handled by committees. Committees investigate complex topics and frequently enlist the help of specialists. The board receives frequent updates from committees on the issues they are responsible for resolving.

WHAT MAKES A GOOD BOARD OF DIRECTORS?

Early on in their growth, boards frequently take on multiple appearances. One or more founders are frequently present on early-stage boards. Early on, boards are generally smaller, consisting of five to seven directors with a range of specialties. Tie votes are avoided by odd numbers. Each director on the board has one vote. The size of boards often rises with business expansion and is frequently influenced by the requirements of the firm as well as customary business procedures. Boards typically offer the CEO a seat on the board when they add investors. Some investors will also want a board member so they can supervise their money in person. Recruiting independent board members, who have a growing impact on the board and the firm as it expands, is another area where investors frequently have a say[17].

Corporate governance best practices advise boards to give independent directors the majority of board seats. A diversified approach to board members is necessary to represent the larger interests of different stakeholders, shareholders, and local communities. This strategy brings with it a breadth of experience, viewpoints, and information. The need for boards to take into account diversity in a variety of areas, including age, gender, experience, ethnicity, colour, religion, skills, and experiences, is being strongly pushed by regulators, investors, and others.

RELATIONSHIP BETWEEN THE BOARD AND MANAGEMENT

Building strong working connections with managers is excellent for the board. When the board and senior management have the same ideas on strategy, goals, and risk management, corporations perform at their best. A crucial aspect of effective corporate governance is

[17] Rashid Zaman (n 3)

communication. For confidence and trust to grow between boards and their managers, communication must be transparent and timely. It's crucial for board members to regularly discuss risk prevention and mitigation with management. Risks must be understood by managers to put procedures in place that will safeguard the business. Boards and management should discuss a variety of risks, including Economic hazards, Market dangers, and Risks associated with operations including operational risks, acquisition risks, disposition risks, infrastructure risks, technology risks, reputation risks, disclosure risks, and compliance risks.

CONCLUSION

A company is seen by the law as an artificial person with no actual existence, body, or soul. Directors are the people who represent it as a result. They are chosen by the company's shareholders to establish the general corporate policy. By giving strategic advice to the top management and making decisions, the BOD supports corporate governance. Depending on the job held and the company they work for, the board of directors' function and duties change. To ensure excellent corporate governance, the board committees are made up of a specialist group of individuals who concentrate on particular job areas. The rules outlined in the company's articles of incorporation and the Companies Act govern the duties and roles of the board of directors in India[18].

The board of directors develops policies, creates an organisational framework for putting those policies into practice, and aids in attaining the goals stated in the memoranda. The trustee role is held by the board. They are charged with the duty of acting in the business's best interests. Without board approval, the board of directors has no managerial authority over the business of the corporation.

[18] Donald Nordberg (n 1)