Conceptual framework and historical prospective of Corporate Governance

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Abstract

In this review article, the primary subject is to articulate a conceptual framework and historical perspective of Corporate Governance. This paper started with evolution of Corporate Governance from ancient era, where all state property came under the purview of King and then covered all modern aspects related to corporate governance. This paper Started from the global evolution and moved to elaboration of Indian evolution of corporate governance. After discussing various corporate governance models this paper focused on initiatives taken by government and industry in India in the process of corporate governance reforms. In this article author made a small attempt to organise these historical events into a chronological order.

1. Introduction

Let's start with, how firms came into existence? (Lipton) it had been observed that because of division of lab our and economies of scale in production, team work is more productive than individual. So there were two possibilities, either there can be sequential spot contracts between the individuals or there can be existence of separate legal identity called Firm. Sequential spot contracting was very expensive as well as time consuming. (Braendle) historical evolution and empirical evidences conclusively indicate that market economy is more efficient than planning. However existence of firm within the context of market economy had been a source of intense debate as market mechanism is suspended and planning by the management take precedence within a firm. Ronald Coase explained this apparent paradox in 1937 with the help of the concept of Transaction cost as to why a firm exists? As a result firms came into existence. Along with firm, governance issues also came into existence. And these governance issues vary from one ownership pattern to another ownership pattern as a result concept of "Ideal Corporate Governance" is considered to be a black box, whose definition varies widely. But one attempt is made to explain this concept through narrow and wider dimension. Corporate governance's narrow view focuses on creation an environment of trust at firm level. Here corporate governance is a set of relationships amongst all the stakeholders like shareholder, BOD, auditor and management. And broader view focuses on creation of confidence at economic level. Means good corporate governance leads to efficient resource allocation, overall excellent market confidence, and good industrial growth of that country.

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2. Evolution of corporate governance in global context

(Hay 1990) the emergence of Joint Stock Company has been traced during sixteenth century, when the foreign trade expanded to newly discovered parts of world and as a result demands for capital increased. Initially there was dominance of "Memberships limited" firm which was restricted to particular merchant group for capital and management skills. As in these firms owner, director and manager was the same person, so there was no governance issue. As the demand for capital increased, so Private Limited got transformed into Joint Stock Company with dispersed ownership structure. (Lipton) in beginning Joint Stock Company was a loose association of merchants and profits were divided after each voyage. After the revolution of 1688, most of the features of modern listed companies had been established. At that time due to path dependency of trust and trustworthiness, an informal constraint mechanism was setup which encouraged trust and cooperation between the various parties of a firm, so there was no governance issue. Social norms and strong cultural factors resulted in share market booms in the 1690s, 1719 and 1720, collectively known as **south sea bubble**. One turning point came in 1856 when Joint Stock Companies was given legal recognition under "Joint Stock Companies Act" in England; as a result it was treated as separated legal identity. After establishment of strong financial market, investor protection laws and internal governance mechanisms were formulated, like provisions related to, appointment of board of directors, organising annual general meetings of shareholders, appointment of external auditor, right to shareholder to access company's books etc.

The concept of Joint Stock Company born in UK but gradually it spread throughout the world, especially in USA. (Armour et. al) this was shown by a book (Modern corporation and private property) of Berle-Means in 1932. In this book author explained that in most of the American corporations there is no single shareholder or group of shareholders, who owned a significant amount of share, so actual control lay with managers. This was the scenario of "Managerial Capitalism" in USA because most of the resources were in the hands of few managers. This was the major issues of concern during next four decades. During this era corporate governance is considered to be good only when management is able to maximize the profit. Major issues of corporate governance arise due to gap between the interests of management and dispersed shareholders like excessive executive compensation, transfer pricing, managerial entrenchment, sub optimal use of free cash flow and insider trading etc. Later on it was observed that as the dispersion of ownership in an enterprise increases, a point is reached where achieved liquidity cost and reduction in risk-bearing got compensated by increase in managerial agency cost. Thus a mixed equilibrium is expected for an economy in which both concentrated as well as dispersed ownership firm's lies.

(Bowen 1953) Then during 1950s Howard Bowen coined a term CSR (corporate social responsibility), this CSR with broader connotations termed as stakeholder theory. This was a paradigm shift because earlier major issues of concern were limited to owners only now management have to consider the interest of all stakeholders (customers, suppliers, employees, society etc.).

(Cosans 2009) during 1960s Milton Friedman gave a quotation in a news article that "Business of business is business". According to him a firm should focus on profit maximisation only and management is responsible toward shareholders only.

(Geva 2008) after that in 1971 CED (committee for economic development) proposed an ethical dimension of corporate governance by giving CON (concentric circle) model, according to which firm have four responsibilities these are economic, legal, ethical and philanthropic. In short a firm should be constructively profitable. (Davis 1973) and in 1973 Davis coined a new term "corporate citizenship" which means a firm is also a part of society so it should behave like a good citizen. (Eisenhardt 1989)Later on in 1976 Jenson and Meckling proposed "agency theory, which is concerned with resolving two problems that occurs in agency relationship. First is "Moral Hazard" under which the principal have doubt if the agent has put in the maximum efforts to achieve the objective. The second is the problem of "Adverse selection" according to which manager may choose an investment project which is most suitable to his skills rather than selecting the one having highest NPV. Such selection may increase the value of manager not the value of firm. In simple words focus of agency theory is to determine most efficient contract between principal and agent, and to determine a governance system that limits the self-centred behaviour of agent. Then some researchers proposed various mechanisms to minimize principal-agent problem, like in 1976 Jenson and Meckling proposed "stock options", in 1980 Fama talked about the role of efficient labour and capital market as information system, in 1983 Fama and Jensen discussed the role of board of directors as an information system, in 1983 Jensen and Roeback coined two concepts "Golden parachutes" and "Corporate raiding". (Hay 1990) principal do have two options to resolve agency problem, either through "voice" or through "exit". "Exit" means when shareholder are dissatisfied with management and they sell their share to control management because as ownership is dispersed, so it is difficult for individual investor to monitor manager because of two reasons one is free rider problem and another reason is possession of Defacto-power rather than actual power. Usually this happens in USA where ownership is dispersed. (Millar et. Al 2005) "Voice" means where shareholder tries to change either strategy or management. (Roloff 2008) then in 1984 Freeman proposed stakeholder theory of corporate governance through the publication of R. Edward freeman's "strategic management-A stakeholder approach". They appreciated stakeholder theory by giving an argument that once the objectives of original shareholders who setup the firm have been achieved then the firm should behave like a trust and shareholder should be treated like supplier of capital rather than owner.

Usually this tactic is adopted in Japan and Germany where financial institutions consider themselves long term investor. Second channel of influence on manager is through board of director. The efficiency of the role of board of directors as an information system can be measured in terms of characteristics such as number of subcommittees of board, number of industrial experience directors, number of directors representing specific group, number of director with long tenure and frequency of board meetings etc.

The contribution of agency theory is in two forms, first is change in "treatment of information" because it projected information as a valuable commodity, as a result firms can invest in information systems to control agency problem and second shift in perception about risk because now it is treated as risk/reward trade-offs.

Corporate governance as a term gained importance during 1970s after Watergate political scandal in USA. And then during 1980s, an event occurred that was "LBO boom" in which public companies were purchased by private equity bidders. So there was shift in ownership pattern from dispersed to concentrated. On the one hand this was the critical time for USA firms and on the other hand German and Japanese firms were outperforming. As a result USA formulated first committee "Tradeway committee (1987)" to improve corporate governance practices.

(Baxter 2010) in UK seeds of modern corporate governance were sown in 1991 after BCCI (Bank of credit and commerce international) scandal. As a result COSO (committee of sponsoring organisations) was formed. Subsequently five committees, Cadbury (1992), Ruthman, Hampel(1995), Greenbury(1995) and Turbull(1999) were formulated.All these committees focused on improvement in this "Governance Control Mechanism" of corporate governance where managers are monitored through the terms of their relationship with the firm and its shareholders for Example by giving more decision making power to shareholders in certain circumstances for example, removal of CEO duality, increasing number of independent director in board and in all committees etc.

(Carroll 1991) in 1991 Carroll gave pyramidal model of four responsibilities of a firm these are economic, legal, ethical and philanthropic respectively. This model concludes that corporate governance is considered to be good if a firm is full filling these four responsibilities. (Donaldson et. al 1999) then in 1999 Donaldson and Dunfee proposed ISCT (Integrative social contract theory) in which they integrate socio-cultural aspects with practical management aspects. (Murphy et. al 2005) in the early 2000s, the massive bankruptcies like Enron scandal raised a question on accounting practices and led to increased political interest in corporate governance as a result new accounting law was formulated in 2002 that is Sarbanes-Oxley act which is also known as "corporate and auditing accountability and responsibility act" or "SOX" to improve the accounting practices in all public companies.

If we talk about different corporate governance systems, then USA and UK adopted market oriented system in contrast of long term investor system adopted by Germany and Japan. In Germany the board is separated from management; in Japan, top management act as board where as in USA board has both executive and non-executive directors and in UK executive directors dominate. (Bhasa M.P. 2004) in UK a greater proportion of outstanding shares are in the hands of institutional investors, where as in USA it is in the hands of retail investor. If we talk about Anglo-Saxon model of USA main purpose of a firm is to maximize shareholder value in contrast with German and Japanese social institution view of firm. (Murphy et. al 2005) researcher never pointed out one system better over another but they appreciated German and Japanese system during 1980s when these two economies were performing well and they favoured UK's and USA's system during 1990s when these two economies were outperforming. After transformation of USSR, newly independent states from Soviet Union adopted "Transition governance model".

(Geva 2008) in 2003 Jones proposed IC (Intersecting Circle) model where he talked about overlap of three responsibilities of a firm (Economic, legal and oral). (Garriga et. al 2004) in 2004 Garriga and Mele proposed "triple bottom line" principle of accounting which means economic, social and environmental aspects should be considered with profitability.

(Nanda 2006) beside these countries specific efforts, some international bodies like World Bank, OECD and IMF also tried to improve corporate governance practices worldwide. World Bank and IMF forced borrower countries to improve financial crisis 1997 was an alarm for Asian policymakers. This crisis exposed many policy weaknesses, as a result OECD along with Asian economies, organised "The Asian Roundtable on Corporate Governance" in 1999. OECD focused on six major areas these are, ensuring the basis for an effective corporate governance framework, rights of shareholders and key ownership functions, equitable treatment of shareholders, role of shareholders, disclosure & transparency and responsibility of the board. Since then, a corporate governance infrastructure has been implemented in many Asian economies which includes, creation of new category “Maharatna” in India, formulation of “Cabinet Committee on restructuring of Public Sector Enterprise” in Pakistan, set of measure for performance assessment of manager and BOD of an SOEs in China etc.

3. Background of corporate governance in India

Features	Managing Agency Model	Business House Model	Knowledge Professionalism Model	Anglo American Model
PERIOD OF ORIGIN	1836-1947	1947-1980	1980-1990	1991 onward
FORMS OF OWNERSHIP	Managing agent ownership	Government ownership	Professional ownership	Foreign ownership
DOMINANT VALUE	Eco-centric	Social altruism	Social justice	Ego-centric
INFLUENCE BY	Colonial western European	Soviet union	Japan Confucian model	North American model

(Kaushik) let’s begin this story with ancient era, where all state property came under the purview of King, so there was a governance system in which king was the head. During Vedic period King possessed executive, judicial as well as military authority. Collective decision making and centralised administration were the key features of governance. Then Mauryan came into existence with one additional feature of governance that was “appointment of spy” to monitor and control illegal activities in administration. It is same as today, where we appoint internal auditor. Beside this, according to Chanakya’s Arthashastra Mauryan era is considered to be a base of modern corporate governance because state is replaced with the corporation, subject is replaced with shareholder and king is replaced with CEO or Board but core belief is still same. According to Arthashastra “In the happiness of the subject lies the benefit of the king and in what is beneficial to the subjects is his own benefits”. Then it came “Gupta period” which brought some governance reforms like “Decentralised governance” and took development initiatives for poor and needy. (Khanna et. al 2005) then it was the time of “Mughal Empire” where they used to collect tax revenues and tributes with fragmented “National Market”, as a result there was coexistence of diverse principalities of business. Then the British Empire came to India for the sake of business and gradually filled the gap left by Mughals. Due to collapse of Mughal dynasty, traders of the British East India Company became participants in the power politics. They treated India as a producer of raw materials as well as a market for finished goods.

(Kling 1966) during British rule, in 1836 an agency house first promoted and then acquired the management of a Joint Stock Company in Calcutta. From here onward a new corporate governance model came into existence that was “Managing Agency Model”, in which some group of people were capable of managing other’s business and in return they receive a fixed amount of remuneration. This remuneration was based on the performance of the company. As a result they used to exploit customer, employees and government. (Ray 2009) managing agents were controlling the entire operations of the company. They established links with banks for financing the managed companies. As there was unorganised capital market so it was practically impossible to remove managing agents. Later on in 1913, a new company’s act was incorporated according to which every Joint Stock Company should have three independent boards of directors. But later “The Indian Tariff Board” in 1927 observed that BOD was not doing their jobs seriously that is why they did not pose any threat to managing agents and their malpractices were increasing continuously.

(Gopinath 2005) later on during 1940s Mahatma Gandhi introduced “Trusteeship theory” according to which an entrepreneur should consider himself as trustee rather than owner of an organisation. He gave four reasons for adopting “Trusteeship theory” these are, state creates and protects corporations, society provides human resource to an organisation, society act as market for its products and in last corporate activities have a great impact on society. As a result many corporate houses adopted this theory; few of them are Birla group, Medtronics enterprise and Ben & Jerry enterprise etc.

Then India got independence and after that in 1950, central government formed a committee to hear the demands for abolition of managing agency system and as a result they introduced some amendments in the Companies Act, in 1956. (Ray 2009) Government started abolishing the Managing agency system and in 1970s, all positions of managing agents were abolished. As our first Prime Minister Jawaharlal Nehru was highly influenced from Russian governance system, so after independence we turned towards socialism and (Chakrabarti et. al 2008) during 1950s government formulated “Industrial Development and Regulation Act (1951)” as well as “Industrial policy resolution (1956)”. This was the era of “License Raj” where “Business House Model” of corporate governance was prevalent. During this phase paradigm shift happened in financial market when FERA (Foreign Exchange Regulation Act) was incorporated, according to which MNCs operating in India can possess ownership up to 40%. So as a result MNCs start divesting by offering their shares to retail investors through BSE and the price were decided by a government body “The controller Capital Issues” which offered shares at book value. As a result individual investors became able to purchase shares at very low price which helped in creating a culture of equity ownership. Companies start getting listed on BSE and market infrastructure start developing.(Reed D. 2002) and if we talk specifically about industrial model then “ISI (Import Substitution Industrialization)” model was prevalent. In this model focus was on production for domestic market and government imposed high tariffs to make import costly as well as providing subsidies to make domestic goods cheaper. During 1960s after failure of ISI model India adopted “ELI (Export Led Industrialisation)” model, in this model there were high import tariffs, undervalued exchange rates, large family controlled conglomerates, weak financial market and an ineffective legal system. This model worked till 1980s.

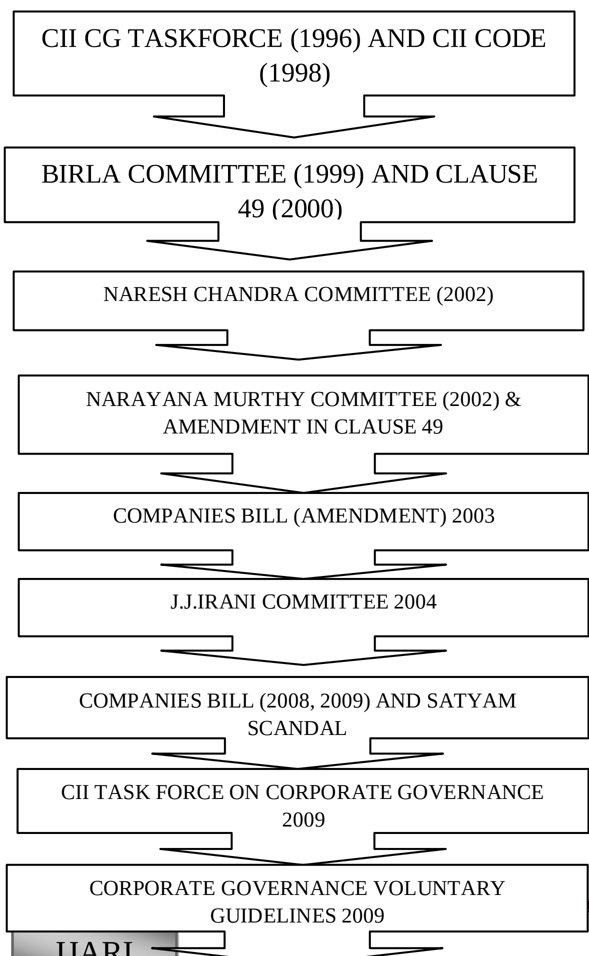
(Gollakota et. al 2006) during 1980s we adopted “Knowledge Professionals model”. Some features of this model were concentrated stock ownership, banks were dominating ownership share and directly involving into operations of that organisations, illiquid capital market etc. (Chakrabarti et. al 2008) as stock market was illiquid, so government developed financial institutions IFCI (Industrial Finance Corporation of India), IDBI (Industrial Development Bank of India), ICICI (Industrial Credit and Investment Corporation of India) and UTI (Unit Trust of India). These financial institutions held large blocks of shares in companies. As during 1980s corporate bankruptcies were increasing continuously so government established SICA (Sick Industrial Companies Act) in 1985, which declare a company sick after erosion of its entire worth and refer it to BIFR (Board for Industrial and Financial Reconstruction) for turnaround. A few companies emerged successfully from BIFR and for liquidation legal process took over ten years, so creditor’s protection was limited to papers only.

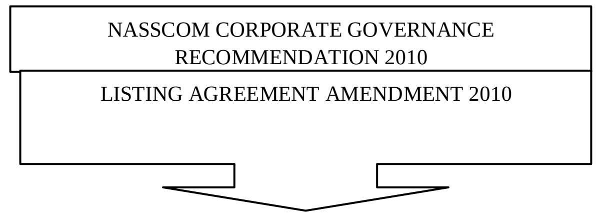
As during late 1980s India was suffering from financial crisis so it took loan from IMF and World Bank for recovery. (Reed A.M. 2002) these international bodies imposed LPG (Liberalisation, Privatisation and Globalisation) on Indian economy as a result government brought some policies changes like new norms for corporate disclosure and governance standards, opening of market for international trade, share prices were decided through market and Indian firms were allowed to get listed on international stock exchanges. All these changes lead toward development of financial market. So after 1991 India adopted “Anglo American Model” of corporate governance. Some features of this model are liquid capital market, existence of various market control mechanisms (hostile takeover, managerial labour market) and consideration of three theories (Democratic Theory, Agency Theory and Nexus of contract theory). According to Democratic theory main power lies with owners and BOD are selected not on the basis of their expertise but on the basis of their ability to represent interests of owners. (Som 2006) during this time various scams occurred. And after Harshad Mehta stock market scam, SEBI (Securities and Exchange Board of India) was established in 1992 to regulate and monitor stock trading and some other initiatives were also taken to improve corporate governance practices.

First step was taken by CII (Confederation of Indian Industries) which came with voluntary code of corporate governance in 1998. (Bhasa 2004) second major step was taken by SEBI by formulating “Kumar Manglam Birla Committee” in 1999. In 2000 SEBI had accepted its recommendations and incorporated them into clause 49 of listing agreement of stock exchange. Next initiative was taken by DCA (Department of Company Affair) under the ministry of finance and company affair which appoint “Naresh Chandra Committee” in 2002. Then again in 2003 “Narayana Murthy committee” was set up by SEBI to review clause 49. Based on recommendation of this committee clause 49 was revised. (Bose 2009) And after that "J.J. Irani committee" was formulated in 2004 to review companies act 1956 and its recommendations led to new companies bill 2008 which is still waiting to pass. After Satyam-Maytas Infra-Maytas properties scandal in 2008, CII setup a task force under Mr.Naresh Chandra in 2009 in order to improve corporate governance standards both in written and spirit form. And again in 2009 MCA (Ministry of Corporate Affair) issued a new set of "Corporate governance voluntary guidelines 2009"

3.1. Corporate governance reforms during last two decades

(Afsharipour 2010) in most of the countries corporate governance reforms arise as a result of major corporate scandals, whereas in India the process of corporate governance reforms was initiated by industry's leaders. As in 1991 India adopted LPG (Liberalisation, Privatisation, Globalisation) reforms and these reforms have shifted the way Indian companies raise capital and conduct business. Because of globalisation some Indian corporate got listed abroad and regulatory bodies were arguing that good corporate governance standards could help Indian companies' to access foreign capital. This was the scenario of mid 1990s.





3.1.1. CII Corporate Governance Task Force and CII Code, 1996

A national task force was setup with Mr. Rahul Bajaj, which presented the guidelines in 1997 at the national conference and annual session of CII. This draft then publicly debated in workshops and seminars. Some suggestions came from various parts of the country and after reviewing these suggestions task force has finalised the "Desirable CG: A code" in 1998. This code was influenced by corporate governance standards found outside the India, like OECD code, Anglo American model and Cadbury committee recommendation etc. And focused on making boards as well as audit committee more independent and powerful by introducing provision like, at least 30% of board members should be independent director, audit committee should have at least three Non-executive directors, audit committee should have full access to financial data of the company. This code also emphasized on improving effectiveness of board by introducing provision like, no single person can hold directorships in more than ten listed companies, directors should attend at least 50% of meetings to get reappointed, companies should pay mix of "commissions" and "stock options" as an incentive to motivate directors, hence increases the overall effectiveness of board. And in last, to control management they recommended that companies should submit "Compliance Certificate" signed by CEO and CFO. This code was voluntary in nature, so adopted by a few companies. Hence, it was concluded that "Under Indian conditions a statutory rather than a voluntary code would be more meaningful."

3.1.2. Birla Committee (SEBI Appointed) and Enactment of Clause 49, 1999

Although progressive firms in India have voluntarily adopted CII code, but there were many more, whose practices were a matter of concern. Because some of them were not paying adequate attention to the shareholder's service and in some companies' management have raised capital from the market at high valuations and have performed much worse than past. Beside this Indian capital market was in development stage so it would be better to inject international corporate governance standards at this stage. Keeping all these things into mind SEBI appointed the committee on corporate governance in 1999 under the chairmanship of Shri Kumar Mangalam Birla. Birla committees categorize recommendations into mandatory and non-mandatory. Committee focused on improving functioning of board and management by introducing some provision like clear definition of the concept of Independent director, at least one member of audit committee should have financial and accounting knowledge, chairman of audit committee should be Independent director and Company Secretary (CS) should act as secretary respectively. Birla committee also focused on empowerment of audit committee by introducing provisions like audit committee should have power to investigate any activity, can seek information from employees and can obtain legal and other professional advice. Birla committee also emphasized on increasing disclosure to shareholder by making it necessary for management to add "Management Discussion and Analysis (MD&A)" report and "Director's report" as a part of annual report. To protect shareholder, Birla committee suggested that management should formulate "Shareholder Grievance Committee", should recruit "Shareholder transfer agent/officer" and attach "Detailed Compliance report" with director's report. Beside this some suggestions like, half yearly declaration of financial performance, formulation of "Remuneration Committee" and recruitment of Non-executive director as a board chairman were kept under the purview of Non mandatory recommendations.

Than in 2000, SEBI incorporated all these recommendations in clause 49, a new section of listing agreement, which took effect from 2000 to 2003. First of all the reforms applied on newly listed and large corporations, then to smaller one and subsequently on majority of listed companies.

3.1.3. Naresh Chandra Committee (MCA Appointed), 2002

SEBI's corporate governance reforms are only applicable to listed companies. So MCA formed Chandra Committee, chaired by Naresh Chandra in 2002 to review the Companies Act and to introduce corporate governance provisions for all Indian companies. Report of this committee is mainly focused on, compulsory rotations of Audit partners, gave a list of non-audit services that an auditor cannot perform and discussion about major reasons for disqualifying auditors from assignments. These recommendations did not enacted into legislative provisions but some of them were incorporated in Murthy committee report as proposed provisions for amendment of clause 49.

3.1.4. Narayana Murthy Committee (SEBI Appointed) and Amendment in Clause 49, 2002

Because of Enron scandal and enactment of the Sarbanes-Oxley Act in the USA, SEBI, decided to evaluate the adequacy of existing clause 49. In order to check status of compliance of clause 49, the data submitted by Mumbai Stock Exchange in 2002 was analyzed.

Board of Director	Audit committee	Shareholder's Grievance Committee	Remuneration committee	Board Procedures	Management	Shareholders	Report on Corporate Governance	Total
999	981	1005	677	575	774	998	786	1026

Applicable to 1848 companies (Submitted by Mumbai Stock Exchange)

From this table it is concluded that compliance level of the requirement of Board of Director, shareholder's Grievance Committee, Audit Committee and Shareholders is very high. Whereas compliance level of requirements related to Board procedures, management and Report on corporate governance are comparatively low. If we talk about requirements related to Remuneration committee which is non-mandatory, then it is also low. SEBI observed that, although the compliance with the requirements of clause 49 is satisfactory, but analysis of annual reports and corporate governance reports discloses that their quality is not uniform. This raises the question whether compliance is in form or in substance. So it is concluded that there is some scope of further improvement in exiting clause 49 and for that SEBI, setup a committee under the chairmanship of Mr. Narayana Murthy in 2003. This step of SEBI was highly criticized because SEBI focused to reform the listing agreement rather than amendment of the companies act. But let us focus on committee's recommendations.

EXISTING PROVISION OF CLAUSE 49	**PROPOSED AMENDMENT**	**RATIONALE FOR AMENDMENT**
AUDIT COMMITTEE RELATED PROVISION		
At least one member having financial and accounting knowledge.	All member should be financial literate and at least one member should be financial expert	As major responsibility of audit committee is to review all financial reports of a company, this provision will improve overall effectiveness of the committee.
Majority members should be independent directors.	At least 66% director should be independent.	This provision will bring uniformity in annual reports and also ease the evaluation process of annual reports.
Minimum annual meeting should be three	Minimum annual meeting should be four	This will enhance effectiveness of performance of audit committee.
It is the responsibility of Auditor to justify departures from accounting standards.	Management should justify departures from accounting standards. Auditor's duty is to express a qualification in case he disagrees with explanation.	This provision makes management more responsible and empowers the external auditor.
BOARD OF DIRECTOR RELATED PROVISION		
Management should demonstrate "Risk Management Report" to audit committee and compliance officer should certified this report	Management should place this report in front of entire board and board should formally approve this report.	It is not practicable to put this responsibility of review only on audit committee. It must be reviewed by entire board for accurate analysis.
Nominee Director is considered as Independent director.	Nominee director should not be considered as independent director. If an institution wishes to appoint a director, such appointment should be made by shareholders and such director shall have same responsibility & liability as any other directors have.	Because nominee director claim that they are answerable only to the institutions they represent. Hence they are not objective while taking decisions so this will degrade the quality of decisions.
Promoters or promoters of promoter company or their close relative considered as non-executive director.	Promoters or promoters of the promoter company or their close relative should not be considered as non-executive director.	Because all these are not non-executive in true sense.
No provision which speaks about the relation amongst independent director.	Companies should disclose, if there is any relation amongst independent director.	Because SEBI found that there are ID who are known to each other. So such practices are only technically compliance and do not uphold the spirit of the clause.
No provision speaks about the time gap for the appointment of an ID in case there is a removal/resignation of an existing one.	This time gap should not be more than ninety days.	This provision will make things more disciplined.
Directors remuneration should be decided by board	Companies should obtain prior approval of shareholder for payment of sitting fees of director	This will create a feel of liability in directors toward shareholder.
Definition of ID as set up in the code of the (ICGN) International Corporate Governance Network may be referred to.	Redefine ID concept :- He should not be related to promoters or person occupying management positions at board level/ at one level below the board. He has not been an executive of the company in the preceding three years. He should not be partner nor was partner during the preceding three years. He can hold less than 2% of voting rights. He should not be a material supplier or service provider or customers or lesser	Because definition of ID should be clear. This will empower the board and will increase its independence.

	or lessee of the company.	
DISCLOSURE RELATED PROVISION		
SEBI should define the term "Related Party Transaction".	Company should consider the definition of RPT given by ICAI (Institute of Chartered accountants)	This will standardised the term RPT. So things will become more transparent.
Companies raising funds through an IPO should disclose application of these funds.	Beside this companies should prepare a statement of funds utilised for purpose other than those stated in offer document.	This will increase transparency.
"Security Analysts" should analyse a company and disclose this report.	Beside this security analyst should disclose his employer's relationship with company, if any exist.	Because integrity and credibility of reports issued by Security Analyst could be compromised because of external pressure which can misguide the investor.
Whistle blower can approach audit committee without informing the board.	Whistle blower can approach audit committee without informing the supervisor	This will protect whistle blower from all unfair practices.
The requirement relating to NED/ID and audit committee should be extended to subsidiaries of listing companies.	At least one ID of parent company should be director, audit committee of parent should review financial statements and parent company board should review minutes of meeting of a subsidiary.	This will specify the role and responsibility of board of parent company toward its subsidiary.

At the end of 2003, SEBI accepted Murthy's recommendations and asked stock exchanges to revise existing clause 49 of listing agreement. This leads to protests from industry; as a result committee revised earlier recommendations and also put them on SEBI website for public suggestions. The various suggestions received along with SEBI's views were placed before the PMAC (Primary Market Advisory Committee) in 2006. Then finally at the end of 2006 SEBI announced revised clause 49 which have to be implemented till 2007.

3.1.5. Companies (Amendment) Bill, 2003

This bill introduced in the Rajya Sabha in 2003 is an amalgamation of recommendation made by Joint Parliamentary Committee (JPC), Naresh Chandra Committee (NCC) and Joshi Committee Report (JPR) with or without modifications. This bill includes provision related to amendment in the Companies Act 1956. All recommendation focused on issues like empowerment of board, increases the purview of responsibility of auditor, strictness in norms regarding disqualification of director, norms to increase the effectiveness of board meeting, norms for job specification of board and committee for best performance, norms for enhancement of independence of audit committee, norms for increasing transparency and reducing the role of government and norms for sustainable development of a company. This bill is under consideration.

3.1.6. J.J. Irani Committee (MCA Appointed), 2004

While seeing national and international scenario, MCA has taken up an exercise for a revision of the Companies Act 1956 by drawing a concept paper on company law and exposed it on electronic media for public opinions and suggestions. MCA felt that this concept paper and suggestions should be put to merit evaluation by an independent expert committee, so MCA appointed Irani committee under the chairmanship of J.J. Irani in 2004. This committee asserted that for better governance, best approach is to construct a single framework of corporate governance applying to all companies. Firstly committee focused on "Management and Board Governance" through recommendation related to formulation of "Remuneration committee" and "Stakeholder's relationship committee" and by setting a provision according to which if a director became fail to attend board meeting for one year continuously then this leads to vacation of office. Another issue of concern was "Related Party Transaction (RPT)"; committee recommended that RPT should be either regulated through a "Government Approval based Regime" or through a "Shareholder approval and disclosure based regime". Third area of discussion was "Minority interests" and provision related to it are, minority can approach CLB/NCLT and can appoint "Minority Director/ID", can use Postal Ballot to express their view and can also do "Class/Representative Action Suit". Another issue of discussion was "Investor education and protection", where committee suggested that there should be following mechanisms through which investor can be protected like use of Credit Rating Facility, "Investor Grievance Redressal", consumer courts, capital market ombudsman and financial literacy through IEPF (Investor Education and Protection Fund) etc. The committee also emphasised to expand the system of classification for companies. Many of committee's recommendation were enacted into proposed amendments to the companies act. Recommendation changes were applicable to all Indian firms not just on listing firms.

3.1.7. Companies Bill (2008-2009) and Satyam Scandal

As the companies bill 2003 was not incorporated successfully. So government again made an attempt to amend "Companies Act 1956" on the basis of recommendation of Irani committee. A new "Companies Bill 2008" was introduced in Indian parliament and again failed to become law.

(Afsharipour 2011) then at the end of 2008, a meeting was convened by Satyam's board to discuss the proposal of acquisition of Maytal Infra Limited and Maytas properties limited. Although Independent Director of the board questioned this "Related Party Transaction" because according to them promoter and his family owned 30% shares of Maytas Company as a result this transaction is drainage of money from Satyam to Maytas. Beside this objection promoter (Raju) proceed with the proposed acquisition. The market reacted badly to the news. As a result stock price of Satyam collapsed. Hence promoter was compelled to withdraw this proposal. After few months, in January 2009, Satyam's promoter and chairman of board, Ramalinga Raju, confessed that he has falsified the financial statements. As a result of this mews, Satyam's stock price dropped another 70%. In April 2009, Tech Mahindra acquired Satyam through global bidding.

After this incident, on August 5, 2009 the "Companies Bill" again in same form as it was in "Companies Bill 2008" introduced in Lok Sabha. Experts were shocked because even after this latest Satyam scandal, bill did not undergo any changes. If we talk about major provisions of the Companies bill 2009, then we found that these provisions were related to the function and independence of Audit Committee and Board, related to the selection criteria, power and duties of Auditor and also focused on appointment and qualification of directors, meeting of board. This bill is also under consideration and fails to become law.

3.1.8. CII (Confederation of Indian Industry) Task Force on Corporate Governance 2009

Satyam episode has prompted a relook at our existing corporate governance norms. With this in mind, the CII setup a task force under Mr.Naresh Chandra in 2009. CII concluded that Satyam is a one-off incident and majority of Indian corporate is well running. Beside this, report suggested certain voluntary recommendations for industry to adopt. Task force felt that there must be a formal system of appointment of NED/ID and also suggested that companies should be given the option of giving fixed contractual remuneration to these directors. And to empower the independent director task force suggested ID should be free to meet each other at scheduled "Executive Session" without management. Audit partner should be rotated after every six years. Government and SEBI must concur in the corporate governance standards.

3.1.9. Corporate Governance Voluntary Guidelines by MCA (Ministry of Corporate Affair) 2009

MCA provided a set of voluntary guidelines of corporate governance in 2009 after Satyam scandal. And these guidelines following "Comply-or-Explain" approach, in which companies either have to adopt these guidelines or have given explanation for non-compliance. MCA thought that such explanation will motivate companies for compliance. Major guidelines are, companies should issue formal letter of appointment to NED/ID and should formulate "Nomination Committee" and "Remuneration Committee", board should formulate a policy for specifying attributes of independent director, timely information and timely training should be provided to directors, board should disclose "Risk management framework", board should do annual evaluation of company's system of internal controls, for every agenda at board meetings there should be attached an "Impact analysis on minority shareholders", every company should obtain "Certificate of Independence" from auditor which ensure its independence and arm's length relationship with client company, audit partner to be rotated once every three year and audit firm to be rotated once every five year.

3.1.10. Nasscom-Corporate Governance Recommendation 2010

National association of software and services companies is a chamber of commerce of IT-BPO sector in India. NASSCOM also formulate a "Corporate Governance and Ethics Committee" under the chairmanship of N.R. Narayana Murthy, which issued its recommendations in 2010. This committee focused on stakeholders of the company and gave recommendations related to audit committee and whistle blower policy.

3.1.11. Listing Agreement Amendment 2010

In 2009, SEBI made several announcements regarding disclosure & accounting reforms and published a discussion paper for getting public opinions. On the basis of these public suggestions, SEBI instituted amendment in listing agreement in 2010 and added some new provisions like CFO (Chief Financial Officer) appointment by the audit committee and other financial disclosure related matter.

3.2. Present scenario of corporate governance structure in India

(Gibson 2003) corporate governance practices in Emerging Economies including India require some improvement and major issue of concern is expropriation of minority shareholder by controlling shareholder. (Chen et. al 2010) that is why OECD practices are ineffective in emerging economies because they provide solution of agency problem between shareholder and management. (Reddy 2009) all emerging economies have some basic features like dominance of family controlled large corporations, significance of "State Owned Enterprise (SOE)", prominence of "Small and Medium Enterprise (SMEs)" and internationalisation. In every country governance is constituted by two institutions (Formal and Informal). (Mueller 2003) and if we talk about state role then key roles are, to ensure that there is no breach of contract, to correct market failure, to act as information provider to all stakeholders and to prepare some norms for investor protection etc. (Warneryd 2005) as we have noticed that some issues of corporate governance arise due to politics like manager may claim credit for good outcomes generated by subordinates or manager may hire low quality subordinate to take credit for good outcomes, so to minimize such practices both legal compliance mechanism as well as ethical compliance mechanism are required.

(Estrin et. al 2010)in India "Business Groups" are the key informal institutions which act as "Substitutive" of formal institution. Concentrated ownership structure, cross holding, pyramiding, tunnelling and acquisition of voting rights more than ownership rights by shareholders, are the key features of modern corporate governance system in India. (Chakrabarti 2008) legal environment includes two aspects –the protection offered in laws (de-jure protection) and to what extent the laws are enforced in real life (de-facto protection). In legal environment managerial scope of self-interested behaviour was constraints through legal rules in which the third party like court assess managerial conduct. India has almost 25000 pending cases,termination of cases take 20 years , while writ petition can take between 8 to 20 years, this shows that problem lies in enforcement rather than in the nature laws-in-books . (Pande et. al) beside this realty some initiative were taken by legal system are, in 2010, security contract act was amended to set a limit of 25% as the minimum public shareholding for listing on Indian stock market, this work toward increasing the size of and deepening the capital market. (Varma 1997) and minority shareholder can approach the court to wide up the company and give him his share of the company. Under the section 397 and 398 of the Companies Act 1956, they can approach the "Company Law Board"; the tribunal may regulate company's affairs in future and can also order for buyback of share from minority shareholder. SEBI also prohibited preferential allotment at a price lower than the average market price during the last 6 months. Take over regulator made a rule that acquisition must make an open offer to the public for at least 20% of the issued share capital of the target company at a price not below what he paid of the controlling block. (Kumar et. al 2012) there is a mandatory provision under Clause 49 of Listing Agreement that all listed firms should have "Shareholder Grievance Committee" for resolving minority shareholder's complaints.

Another corporate governance issue is "Related Party Transaction" and there are also some legal provisions for this like, according to AS18 accounting standard companies have to disclose all such transactions. According to "Auditing and Assurance Standard 23" auditor should identify and disclose the Related Party Transaction in the financial statement. (Varma 1997) capital market is also playing a disciplining role because minority shareholder can vote in primary market by refusing to subscribe to any fresh issues by the company and they can sell their share in secondary market there by depressing the share price, management is discounted in capital market and capital market focus on micro decision not bound by broad rules and can exercise business judgement.

4. Conclusion

(Dalton et. al 2006) as we know, for participation, it is necessary for a student to attend a class, but being present there physically will not ensure that he/she is actually participating in discussion. Likewise, legal provisions (like No CEO duality, existence of board independence, efficient board size, level of director equity, independence of all board committees etc.) are prerequisite but insufficient conditions for board effectiveness. Then a question arise, how to improve corporate governance practices? Answer lies in process. Some suggestions are given to improve implementation of provisions. As we observe that independent directors are fully in compliance, but they are not independent in spirit. The reason being is the selection and appointment of independent director is in the hand of controlling shareholder. So directors are loyal towards them, not towards the organisation. So to make them independent in real sense, there should be legal provision for compulsory establishment of "Nomination committee". Another issue is while taking significant strategic decisions, Board behave like "Rubber stamp" and all decision are unanimous in nature this leads to "going with the flow". Reason for such behaviour is lack of information and lack of knowledge of all dimensions of decision. Why lack of knowledge? Ultimate reason is manager provides meeting material to directors, a few days or few hours, before the scheduled meeting. So there is insufficient time to go through all the details. So solution for such problem is, directors should receive all significant information regarding the issue which is going to be discussed in forthcoming meeting timely. Another solution is there should be "Constructive debate" both among themselves and between management and board, before taking any decision. As we know that the overall integrity of board depends upon the individual integrity of directors that constituent the board. So the query is how to measure this integrity while appointing a director? Answer is, before appointment, shareholders should take into consideration the past record of that person. And then the person who is having a neat and clean past, he should be appointed as director.

(Kumar et. al 2012) external auditor also have significant role as a supervisor. Problem lies with their accountability toward organisation. So to improve their performance some suggestion are given like, there should be rotation of external auditor after a fix span of time, auditor should be banned to give non-auditor services, there should be an "Auditor review board" and in last payment to auditor should be monitored timely.

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