GLOBALLY COMPETITIVE CORPORATE GOVERNANCE: SOLUTIONS FOR INDIAN CORPORATE SUSTAINABILITY
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HOW TO CITE THIS ARTICLE:

ABSTRACT: Corporate governance literally means administration of an organization, which may be a small, medium or large company, controlled by private, family, and public or government investors. Initially the corporate entities aimed only at earning maximum profits, dominating the markets and generating good returns for shareholders with no consideration for the welfare other stakeholders, like employees, customers, creditors, suppliers, local communities, society at large, and the Government. Even among the shareholders, the major, controlling or promoter entities exercised disproportionate powers and exploited the diffuse, minority or voiceless others. Such a business environment has resulted in corporate scandals, bankruptcies, loss of jobs, loss to investors, burden on governments and taxpayers, loss of investor confidence and a polluted environment with national and global repercussions. Since the early 1900's lots of studies have targeted this problem of corporate governance and arrived at norms for good corporate governance. The corporate sector should be made to enforce these norms by adopting a combination of advisory and regulatory means to be decided upon globally, nationally, industry-wise and organization-wise. There are no fit-for-all solutions for all the countries and cultures. The days of whimsical, irresponsible, dictatorial styles of corporate decision making are over and directors, managers and auditors are accountable for corruption, fraud or criminal negligence. The present paper attempts an extensive study literature on corporate governance with a focus on special features of Indian businesses and attempts to arrive at India-specific solutions to enable Indian economy face the global business challenges and mature into a 'developed economy'.

KEYWORDS: Corporate Governance, Stakeholders, Advisory Approach, Regulatory Approach.

INTRODUCTION:
OVERVIEW OF CORPORATE GOVERNANCE:
Definitions of Corporate Governance: "Corporate Governance (C. G.) Is the system by which companies are directed and controlled.” (King Commission Report, 1994).
"C. G. is concerned with holding the balance between economic and social goals and between individual and communal goals. The governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations and society.” (Sir Adrian Cadbury, UK, in his Commission Report on Corporate Governance, 1992).

"Governance and leadership are the yin and the yang of successful organizations. If you have leadership without governance you risk tyranny, fraud and personal fiefdoms. If you have governance without leadership you risk atrophy, bureaucracy and indifference.” (Mark Goyder, Director of Tomorrow’s Company).

"C. G. is the way the directors and managers control a company and make decisions, especially those with an important effect on shareholders.”(Oxford Business English Dictionary, 2005).
"C. G. refers to the system by which corporations are directed and controlled. The governance structure specifies the distribution of rights and responsibilities among different participants in the corporation and specifies the rules and procedures for making decisions in corporate affairs. Governance provides the guidance for corporations to set and pursue their objectives, while reflecting the context of the social, regulatory and market environment. Governance is a mechanism for monitoring the actions, policies and decisions of corporations. Governance involves the alignment of interests among the stakeholders.” (Wikipedia, 2013).

**Historical Evolution of Corporate Governance:** Though the concept of governance is nearly as old as the hills, the term ‘corporate governance’ has assumed prominence in the late 1900’s and early 2000’s in response to several corporate scandals and disasters in that period. The drivers and causes of globalization and corporatization[1] since 1960's to 2000’s are:

- New technologies and technical innovations.
- Bigger & faster transport systems.
- Better availability of fuel/energy/resources.
- Population growth and shifting demographics-the beginning of the mass-market consumer society.
- Sophisticated marketing systems/methods.
- Liberation of finance, money supply and relaxed credit controls.
- Government strategies ‘free market economy’ - the view that market forces must determine how the markets work.
- A step-change in female liberation and equality - producing more workers and consumers.
- Emerging big new international markets.
- Dramatic improvements in corporate systems/efficiencies.
- Information/knowledge-management, the internet and social networking (an extremely relevant factor in the 2000's).

**Collapse of Corporations**[1]: The bigger the corporate, the greater is the impact of its collapse. By 1970s potential for corporate disasters on a wider and more serious scale than ever before has developed and it increased in scale and probability. The corporations, by their very nature, are averse to self-regulation and do not show as much enthusiasm as they show towards 1. Expansion of market share, 2. Marketing, advertizing and personnel relations, 3. Cost control and 4. Creative accounting or tax avoidance. Some of the root causes for such state of affairs are:

- Executive recklessness, fraud, negligence and incompetence.
- A lack of transparency combined with conspiracy.
- Immense scale of impact/harm to investors, economic stability, society & environment.

**Some Prominent International Scandals**[1]:

- U.S. Wall Street Crash, 1929, which prompted the ‘Great Depression’ of 1930’s.
- Guinness Share Price Manipulation Fraud.
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- B. P. Deep water Horizon Oilrig Explosion & disastrous Oil Spill in Mexican Gulf in 2010.
- Exxon Valdez Tanker Oil spill off Alaska in 1989.
- Bhopal Gas Leak Disaster at U. S. Union Carbide Joint Venture Plant in India in 1984.

Prominent Scandals in India[2]:
- UTI Scam.
- Ketan Parekh Scam.
- Harshad Mehta Scam.
- Satyam Fraud Scam.

There are innumerable scams and scandals involving private agencies, politicians, bureaucrats, ministers and NGO’s. Despite numerous legislative measures, the executive and judicial wings are reluctant and lethargic in dealing with fraudsters. As a result very few get caught and convicted. The problems of C.G. in India are quite different from those of the Western countries. The legal and administrative environment in India provides ample scope for corrupt business practices.

Components of Corporate Governance[1]:
- Policies and protocols.
- Leadership style and methods.
- Management structures and practices.
- Accounting and taxation.
- Organizational culture and habits.
- Systems and administration.
- Strategies and tactics; marketing and advertising.
- Buying; supply chain management.
- Manufacturing and distribution.
- Balance of purposes/aims/priorities against by-products/effects/consequences.
- The psychological contract.
- Decision-making and decision-making processes.
- Quality, safety& sustainability.
- Staff development, well-being and health.
- Equality, discrimination& human rights.
- Risk assessment of activities and decisions.
- Communications and public relations.
- Information and communications technology.
- Technology and innovation.
- Social and environmental responsibility.
- Finance, profit& remuneration.
- Shareholder relations and returns.
- Legality, probity, ethics and morality.
LEGISLATION & REGULATION ON CORPORATE GOVERNANCE:

The UK Initiatives: This history of Corporate Governance contains a very strong UK bias because the UK has to a great extent pioneered the development of Corporate Governance legislation, regulation and guidance, probably because it hosted some of the greatest corporate disasters of all time.

The Cadbury Committee: Prompted by several major scandals in early 1990’s in U. K. and concerned at the perceived low level of confidence in the financial reporting and the ability of auditors in providing expected level of safeguards, a committee was set up in May, 1991, by the Financial Reporting Council, the London Stock Exchange and the Accounting Profession to address the issue of “financial aspects of corporate governance” under the chairmanship of Sir Adrian Cadbury, of Cadbury Chocolate Corporation, with a long-standing reputation for ethical and astute corporate governance. The Cadbury Committee report was submitted in December, 1992, which provided the first substantial formal C.G. code. It can be described as a truly substantial landmark in the history of business and economic management.

The Follow-up to the Cadbury Committee Report were:
1. Greenbury Report (1995), sponsored by the U.K. Confederation of the British Industry, made recommendations on directors’ remuneration, the fixation of which was made transparent, appropriate and performance-linked.
3. U.K. Walker Review/Report was commissioned in 2009 by the UK Prime Minister following the financial crisis of 2007-2008 and collapse of Northern Rock Bank of UK and several other banks to review the financial vulnerability and risky behaviour of financial institutions. Its conclusions were obvious: 1. Lack of good C.G. in Banks, 2. Banking failure from individual recklessness, rather than systemic problems, and 3. Promotion of best C.G. practices is a better remedy than increased regulation.
4. The UK Corporate Governance Code (2010): It is called the Combined Code, as it combined all the previous codes and a few other related interim official committee reviews and reports.
5. UK Stewardship Code (2010) was introduced by UK Financial Reporting Council and it offers principles and recommendations to institutional investors holding voting rights in UK companies to exercise their powers better to ensure good C.G. in the companies.

The US Initiatives:

Dodd-Frank Wall Street Reform, 2010.

The European Union Role: The EU has delegated the regulatory function to individual countries.

Indian Initiatives:

- Confederation of Indian Industries in 1998 developed a voluntary code for CG to be adopted by the listed companies. Though it was welcome and adopted by some progressive companies, it was felt that under Indian conditions a statutory, rather than a voluntary code would be far more purposive and meaningful, at least in respect of essential features of CG.
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- Securities & Exchange Board of India (SEBI) accepted and ratified Birla Committee’s key recommendations to promote and raise the standards of good CG and incorporated them in Clause 49 of the Listing Agreement of the stock exchanges in 2000.
- Department of Company Affairs initiative: DCA has appointed the Naresh Chandra Committee to examine various CG issues and the recommendations on 2 aspects: 1.) Financial & Nonfinancial Disclosures and 2.) Independent Auditing & Board Oversight of Management.
- SEBI appointed Narayana Murthy Committee to review Clause 49 and suggest measures to improve CG standards.
- Ministry of Company Affairs (MCA) took up review and restructuring of the Companies Act, 1956 on the basis of an extensive consultative process and recommendations of the Expert Committee under Dr. J. J. Irani. The Companies Bill is yet to be introduced.

The Corporate Governance norms in India appear to have completed 2 full cycles of oscillation between voluntary and mandatory approaches.

P-4 MANAGEMENT MODEL AND CORPORATE GOVERNANCE: The aims of a good modern organization and of effective Corporate Governance are to reconcile the organizational purpose (Profit for shareholders, or cost-effective services delivery) with the needs and feelings of people (Staff, customers, suppliers, local communities and other stakeholders) with proper consideration for the planet (In terms of sustainability, environment, wildlife, natural resources, heritage, 'fair trade', other cultures and societies) and at all times acting with probity (love, integrity, compassion, honesty, and truth). This approach enables harmonization of potentially conflicting interests and ensures a sustainable, ethical and successful mix.

![Fig. 1: P4 Management Model for CG](image)

Source: Alan Chapman/Business balls 2013

CORPORATE LEADERSHIP AND CORPORATE GOVERNANCE: Though this is not a scientific analysis, two sets of traits representing two personality types are required for these different functions.[1]
Qualities Typically found in Corporate Leaders | Qualities Required for Good Corporate Governance
---|---
Arrogance | Humility
Risk-prone and maverick | Risk-averse and careful
Directing and persuading | Empathy and caring
Drive and dominance | Diligence and caution
Creativity and pioneering | Reactivity and awareness
Dogmatic and focused | Adaptable and flexible
Speaks and instructs | Listens and interprets
Task/results-driven | Quality/integrity-driven
Narrow-minded | Open-minded
Win at all costs | Work together
Combative and adversarial | Co-operative and synergistic
Rule-maker/breaker | Rule-translator/follower
Speed and force | Patience and balance
Pragmatic | Moral compass

**Table 1: Skill-Sets & Personality types for Corporate Leader & Corporate Governor**

**Source:** Alan Chapman/Business balls 2013.

**BENEFITS OF GOOD CORPORATE GOVERNANCE**[^6]: A wide acceptance of the relevance and importance of a good C.G. for the industry and economy has encouraged organizations to put in place progressively and voluntarily systems of good practices. The perceived benefits of such voluntary adoption are:

1. Attracting and retaining the confidence of domestic and foreign investors, thereby ensuring a stable source of financing
2. Attracting and retaining the best human capital
3. Ensuring the confidence and cooperation of the different stakeholders by taking into consideration and safeguarding their interests
4. Adds considerable value to the operational performance of the company
5. Enhances the reputation of the company among all stakeholders, including the present and the prospective.

Though the presence of a good CG framework neither assures stability nor success, it is widely believed that it contributes to efficiency, growth and sustainability. There can be no single model of CG[^7] ideal for all and each organization has to work out its own model of CG.

**CORPORATE GOVERNANCE PROBLEMS IN INDIA**[^5,8,3]: The dominant problem in Western economies is to discipline the management and make them more accountable to the shareholders. In India the problem, since the inception of joint-stock companies, is the stranglehold of dominant or principal shareholder(s) who monopolize the majority of a company's resources to serve their needs.
The second problem is that much of the global focus in CG is on boards and their committees, independent directors and managing CEO succession. In the business culture of India boards are not as empowered as in the west and are subordinate to the shareholders and the will of the majority shareholder prevails.

The conflict between the majority and minority shareholders results in most CG abuses in India across the spectrum of Indian companies with a dominant shareholder- Public Sector Enterprises, Multinational Companies, or Private Sector family-owned companies and business groups. In some cases promoters may be in control over the resources of a company by virtue of their position and access to insider information, even though they are not majority shareholders.

In the dynamics of culture and CG, the other area of clash is related-party transactions, which may present a potential or actual conflict of interest by promoting the self-interests of families holding a majority stake to the detriment of minority shareholders.

In the board nominations, deliberations and effectiveness, the family group-think may prevail. In the Indian culture respect for elders and their views is paramount. This trait influences the selection of directors and boardroom dynamics.

THE MAJOR CHALLENGES TO INDIAN CORPORATE GOVERNANCE REFORMS\cite{5}:
- Power of dominant shareholders.
- Lack of incentives for companies in implementing CG reforms.
- Underdeveloped external monitoring systems.
- Shortage of real independent directors.
- Weak regulatory oversight, including multiplicity of regulators.

CONCLUSIONS:
- A good corporate governance record may not always assure maximization of profits. But sacrificing fair play and accountability for profits is disastrous for the company in the long run.
- The problem of CG abuses by the dominant shareholders can only be solved by forces outside the company, like regulators (The company law administration and security regulators) and the capital market. SEBI and NSE are exercising regulatory control over the markets. The key to better CG in India lies in a vibrant and more efficient capital market.
- A well-designed policy framework, which takes into account all the special concerns in India, is the need of the hour.
- India’s unique problems need home-grown solutions. There is a need for robust research into CG to develop a more robust theory on CG. Both the approaches, advisory and regulatory, are required to ensure high standards of CG in India. The relative weightage for the 2 approaches have to be worked out by field trials.

SUGGESTIONS:
- Urgent need for CG reforms for global competitiveness.
- Appropriate solutions for India-specific and organization-specific problems.
- Balanced application of advisory and regulatory approaches.
- Encouragement for ongoing research for specific solutions and appropriate course corrections as per the research findings.
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- Carrot & Stick Policy of incentives for good CG compliance and disincentives, fines and penalties for negligence.
- Regulatory reforms ensuring efficiency and eliminating duplicity and overlap.
- Ensuring better availability of real, independent and enlightened directors to ensure better implementation of CG reforms by better training facilities and creating forums and avenues for exchange of knowledge and experiences.

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Date of Submission: 09/06/2015.
Date of Peer Review: 15/06/2015.
Date of Acceptance: 19/06/2015.
Date of Publishing: 26/06/2015.