

CORPORATE GOVERNANCE IN INDIA

*Shreya Srivastava**

Ever since India's biggest-ever corporate fraud and governance failure unearthed at Satyam Computer Services Limited, the concerns about good Corporate Governance have increased phenomenally.

Internationally, there has been a great deal of debate going on for quite some time. The famous Cadbury Committee defined "Corporate Governance" in its Report (Financial Aspects of Corporate Governance, published in 1992) as *"the system by which companies are directed and controlled"*.

The Organisation for Economic Cooperation and Development (OECD), which, in 1999, published its *Principles of Corporate Governance* gives a very comprehensive definition of corporate governance, as under:

"a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and shareholders, and should facilitate effective monitoring, thereby encouraging firms to use resources more efficiently."

Generally, Corporate Governance refers to practices by which organisations are controlled, directed and governed. The fundamental concern of Corporate Governance is to ensure the conditions whereby organisation's directors and managers act in the interest of the organisation and its stakeholders and to ensure the means by which managers are held accountable to capital providers for the use of assets. To achieve the objectives of ensuring fair corporate governance, the Government of India has put in place a statutory framework.

Objectives of Corporate Governance

Good governance is integral to the very existence of a company. It inspires and strengthens investor's confidence by ensuring company's commitment to higher growth and profits. It seeks to achieve following objectives:

*Teaching and Research Associate, Gujarat National Law University

- (i) A properly structured Board capable of taking independent and objective decisions is in place at the helm of affairs;
- (ii) The Board is balanced as regards the representation of adequate number of non-executive and independent directors who will take care of the interests and well-being of all the stakeholders;
- (iii) The Board adopts transparent procedures and practices and arrives at decisions on the strength of adequate information;
- (iv) The Board has an effective machinery to subserve the concerns of stakeholders;
- (v) The Board keeps the shareholders informed of relevant developments impacting the company;
- (vi) The Board effectively and regularly monitors the functioning of the management team; and
- (vii) The Board remains in effective control of the affairs of the company at all times.

The overall endeavor of the Board should be to take the organization forward, maximize long-term values and shareholders' wealth.

The following are the essential elements of good corporate governance:

- Transparency in Board's processes and independence in the functioning of Boards. The Board should provide effective leadership to the company and management for achieving sustained prosperity for all stakeholders. It should provide independent judgment for achieving company's objectives.
- Accountability to stakeholders with a view to serve the stakeholders and account to them at regular intervals for actions taken, through strong and sustained communication processes.
- Fairness to all stakeholders.
- Social, regulatory and environmental concerns
- Clear and unambiguous legislation and regulations are fundamentals to effective corporate governance.
- A healthy management environment that includes setting up of clear objectives and appropriate ethical framework, establishing due processes, clear enunciation of responsibility and accountability, sound business planning, establishing clear boundaries for acceptable behavior, establishing performance evaluation measures.

- Explicitly prescribed norms of ethical practices and code of conduct are communicated to all the stakeholders, which should be clearly understood and followed by each member of the organization.
- The objectives of the company must be clearly documented in a long-term corporate strategy including an annual business plan together with achievable and measurable performance targets and milestones.
- A well composed Audit Committee to work as liaison with the management, internal and statutory auditors, reviewing the adequacy of internal control and compliance with significant policies and procedures, reporting to the Board on the key issues.
- Risk is an important element of corporate functioning and governance, which should be clearly identified, analyzed for taking appropriate remedial measures. For this purpose the Board should formulate a mechanism for periodic reviews of internal and external risks.
- A clear Whistle Blower Policy whereby the employees may without fear report to the management about unethical behaviour, actual or suspected frauds or violation of company's code of conduct. There should be some mechanism for adequate safeguard to employees against victimization that serves as whistleblowers.

Legal and Regulatory Framework Governing Corporate Governance in India

- The Companies Act, 2013: Companies in India, whether listed or unlisted, are governed by the Companies Act. The Act is administered by the Department of Companies Act (DCA). Among other things, the Act deals with rules and procedures regarding incorporation of a company; prospectus and allotment of ordinary and preference shares and debentures; management and administration of a company; annual returns; frequency and conduct of shareholders' meetings and proceedings; maintenance of accounts; board of directors, prevention of mismanagement and oppression of minority shareholder rights; and the power of investigation by the government, including powers of the CLB.
- The Securities Contracts (Regulation) Act, 1956: It covers all types of tradable government paper, shares, stocks, bonds, debentures, and other forms of marketable securities issued by companies. The SCRA defines the parameters of conduct of stock exchanges as well as its powers.

- The Securities and Exchange Board of India (SEBI) Act, 1992: This established the independent capital market regulatory authority, SEBI, with the objective to protect the interests of investors in securities, and promote and regulate the securities market.
- The Depositories Act, 1996: This established share and securities depositories, and created the legal framework for dematerialization of securities.
- Listing Agreement with stock exchanges: These define the rules, processes, and disclosures that companies must follow to remain as listed entities. A key element of this is Clause 49, which states the corporate governance practices that listed companies must follow

National Foundation of Corporate Governance

Recently the Ministry of Company Affairs has set up National Foundation for Corporate Governance (NFCG) in association with Confederation of Indian Industry (CII), Institute of Company Secretaries of India (ICSI) and Institute of Chartered Accountants of India (ICAI). The NFCG would focus on the following areas:

- Creating awareness on the importance of implementing good corporate governance practices both at the level of individual corporations and for the economy as a whole. The foundation would provide a platform for quality discussions and debates amongst academicians, policy makers, professionals and corporate leaders through workshops, conferences, meetings and seminars.
- Encouraging research capability in the area of corporate governance in the country and providing key inputs for developing laws and regulations, which meet the twin objectives of maximizing wealth creation and fair distribution of this wealth.
- Working with the regulatory authorities at multiple levels to improve implementation and enforcement of various laws related to corporate governance.
- Working In close co-ordination with the private sector, work to instill a commitment to corporate governance reforms and facilitate the development of a corporate governance culture.
- Cultivating international linkages and maintaining the evolution towards convergence with international standards and practices for accounting, audit and non-financial disclosure.

- Setting up of 'National Centers for Corporate Governance' across the country, which would provide quality training to Directors as well as produce quality research and aim to receive global recognition.