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# **ROLE OF CONFEDERATION OF INDIAN INDUSTRY IN DEVELOPMENT OF CORPORATE GOVERNANCE**

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## **ABSTRACT**

Corporate Governance refers to the rules, regulations and guidelines that help us in ensuring that the principles of transparency, integrity, honesty and ethics being followed by the corporates to protect the interest of its stakeholders. It was in the advent of liberalization and globalization policy, 1991 that the need for corporate governance was felt. The Confederation of Indian Industry played a major role in institutionalizing the concept of the corporate governance in India. It was in 1996 that CII took the first initiative to introduce a code with the help of a Task Force headed by Mr. Rahul Bajaj, keeping in mind the interest of the shareholders and the small investors. In 1998, CII finalized its draft code "Desirable Corporate Governance Code" which lays down certain voluntary guidelines that Indian Corporations need to follow to ensure transparency and efficiency in their working. This code marked the shift from German/Japanese model to Anglo-American Model in India. But this code being a voluntary guideline was adopted by a few. It was then in 2000 that SEBI came forward to ensure mandatory compliance with corporate governance principles with the help of Kumar Mangalam Committee, Naresh Chandra Committee (2002), Narayana Murthy Committee (2003). This paper focuses on the role that CII has played in the development of corporate governance in India and several active measures it has been taking over time to instill better governing activities in the working of the corporations. The paper endeavors to highlight the voluntary approach that CII adopts for proper compliance of corporate governance principles. The paper also explains the impact of good corporate governance principles on the growth of the industry.

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- **SCOPE OF STUDY: -**

This study covers the role that Confederation of Indian Industry played in bringing the concept of corporate governance in India. It also analyzes the Task Force Report and Voluntary Guidelines by the Department of Corporate Affairs, 2009 introduced as aftermath of Satyam Scandal and other crisis faced by the Indian economy.

- **RESEARCH QUESTIONS: -**

1. Why the Indian economy felt the need for corporate governance?
2. What role did CII played in bringing corporate governance in India?
3. What role CII has played in the implementation of corporate governance over the years?

- **OBJECTIVE OF RESEARCH: -**

1. To study the concept of corporate governance and its role in the growth of businesses.
2. To know the role that CII played in the evolution of corporate governance in India.
3. To understand the voluntary approach adopted by the CII towards the adoption of corporate governance.
4. To study the recommendations made by the Task Force of 2009 to tackle the increasing frauds in the security markets.
5. To study the impact of general policies of good governance by CII.

## **I. INTRODUCTION**

Corporate governance is a dynamic concept that has been evolving through years with the growth of the corporates. Good governance practices help the shareholders in efficiently allocating its resources to achieve higher yields. Sound corporate governance principles have proven to be a major source of attraction for foreign investments. Over years CII has been issuing several guidelines to meet the changing needs of market forces and development of related corporate governance principles. CII has played an active role in promoting transparency in the actions of the board and protecting the interest of its stakeholder. Corporate governance has become indispensable for the growth of corporations. In a survey conducted by McKinsey it was determined that the global institutional investors are prepared to pay a premium of up to 40 percent for shares in companies with superior corporate governance practices.

## **II. MEANING OF CORPORATE GOVERNANCE**

Corporate governance refers to the principles that a business organization needs to adopt to protect the interest of its stakeholders. It ensures accountability and transparency by the Board in the working of its businesses. It refers to the practices that make the board of directors accountable to its investors and keeps them informed of all the actions that would have an impact on the efficiency of the corporation and their interest. Integrity, honesty, fairness, accountability and trust are some of the most important elements of corporate governance.

### **Definitions-**

By Cadbury Committee-

*“It is the system by which companies are directed and controlled.”<sup>1</sup>*

## **III. NEED OF CORPORATE GOVERNANCE**

After independence India followed a licensing policy. States made a move towards welfare state by undertaking the control on various corporations. There existed no concept of corporate governance as majority of the shareholders constituting the board consisted of the family member who then held the dominant position. Therefore, to combat growing corrupt activities and to meet the needs of the global market under the advent of liberalization and globalization in India, the concept of corporate governance was developed. Corporate governance acted as a major determinative factor in attracting foreign investments. To meet the needs of the growing market and to fulfill their desire of getting registered in foreign stock exchanges, Indian corporates started adopting the principles of corporate governance. It was in 1996 that CII came to the forefront to develop the principles of corporate governance and protect the interest of the stakeholders. Principles of accountability, transparency and integrity were promoted in carrying out the activities of the corporations and to meet the international standards.

Therefore the concept of corporate governance has undergone change over years to balance the growth of the corporations and the changing needs of the society, to prevent increasing frauds and scams, thereby protecting the interest of the various stakeholders.

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<sup>1</sup> Smita Jain, ‘Corporate Governance- National and International Scenario’, available at [https://www.icsi.edu/media/webmodules/programmes/33nc/33souvearticle-smitajain.pdf\(last](https://www.icsi.edu/media/webmodules/programmes/33nc/33souvearticle-smitajain.pdf(last) accessed 18 Nov2020).

## **IV. ROLE PLAYED BY CII OVER YEARS TO ENSURE CORPORATE GOVERNANCE**

### **A. DESIRABLE CODE OF CORPORATE GOVERNANCE (1998)-**

It was a comprehensive code laid down by CII as its first initiative to establish a correlation between shareholders, creditors, board of directors, FIs& capital markets.<sup>2</sup> It formulated 17 recommendations keeping in mind the best interest of the various stakeholders. The Code could be read under five heads-

- Board Of Directors-

A single efficient board is sufficient to ensure the desired corporate governance. In a listed company with a turnover of 100 Cr., where the board is headed by a Non-Executive Director; at least 30percent of the board should consist of professionally competent, independent and non-executive director and 50percent where the chairman and managing director of the board are same.<sup>3</sup> To ensure efficiency the number of directorships a person can hold is limited to 10.

Non-executive directors should hold knowledge of company laws and profit& loss accounts of the corporations. Commissions over sitting fees as rewards should be issued to directors to ensure better efficacy in their working. At least 50percent of the attendance was necessary for reappointment of directors. Key information must be placed before board and a due diligent audit committee should be established.

- Desirable disclosures-

- i. *Non-Financial Disclosures-*

Director's report of every listed company should contain details of his/her relatives as employees or board of directors and an annexure containing details of loan issued to him should be attached. A register disclosing interest of shareholders in any contract or arrangement of corporate should be maintained.

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<sup>2</sup> Smita Jain, 'Corporate Governance- National and International Scenario', available at [https://www.icsi.edu/media/webmodules/programmes/33nc/33souvearticle-smitajain.pdf\(last](https://www.icsi.edu/media/webmodules/programmes/33nc/33souvearticle-smitajain.pdf(last) accessed 18 Nov2020).

<sup>3</sup> Confederation of Indian Industry, Desirable Corporate Governance A Code, available at <http://www.nfcg.in/UserFiles/ciicode.pdf> (last accessed on 13 Nov2020).

ii. *Financial Disclosures-*

Key information such as share in total turnover, present market conditions and future prospects should be disclosed in director's report. Details of the remuneration & commission received by the director should also be attached. Statements showing the usage of funds raised through issuance of shares & debentures should be disclosed.

iii. A compliance certificate stating the responsibility of the management to ensure integrity should be signed by CEO&CFO.

- Capital market issues-

Widening the scope for takeovers & raising funds through issuance of shares and other securities by corporates.

- Creditors right-

Credit rating should be mentioned in prospectus and uniform disclosure norms for both foreign & domestic investors.

- FIs and Nominee Directors-

Withdrawal from the board of companies whose funding from FIs is less than 5percent. Since the code consists of voluntary guidelines very few companies adopted it. But some of its recommendations are evident in the guidelines laid down by Birla committee.

## **B. SATYAM – A RELOOK TO INDIA'S CORPORATE GOVERNANCE POLICIES.**

India's corporate sector suffered a major setback in 2009 when chairman of The Satyam Computer Services, made a confession of the fraudulent activities that his firm was carrying out under the garb of investment projects. It unraveled the manipulations in the firm's balance sheet and other fraudulent transactions that led to plummeting of company's share value in the stock market affecting the interest of its stakeholders. Factors that led to 'Satyam' are as follows:-

- I. Lack of Independency of Directors;
- II. Failure on the part of auditors to keep a check on accounts;
- III. Related party transactions;
- IV. Lack of vigilance on the part of CEO& CFO; and
- V. Whistle blower policy.

### **C. TASK FORCE-2009**

It was the result of the aftermath of Satyam that India's corporate governance policies need to be revisited. Therefore to take protective measures to combat such situations in the future, a Task force under the guidance of Mr.Naresh Chandra was established by CII in 2009.

- Board of Directors-

A nomination committee should be constituted for the appointment of Independent directors and a letter of appointment to be issued to them containing details of their appointment, remuneration to be paid and duties they are liable to perform owing to their position. NED's should be given a choice to either hold a fixed remuneration or demand a share of profit for which a well-defined structure is mentioned in the recommendations.

- Power to hold executive sessions-

To ensure proper checks independent directors should be empowered to hold executive sessions without management being present there.

- Related Party Transactions-

Members of the audit committee should be provided with access to all related party contracts to know whether it affects the independency of the directors and make any further amendments if needed.

- Role of Auditors-

- i. Audit Committee comprising of the majority of NED's and independent directors should be constituted.
- ii. A cap of 10 percent of the revenue is placed on the auditor firm as the maximum revenue it can generate from a single client.
- iii. Rotation of the audit partner should take place every six year to prevent the development of rapport between the two.
- iv. Liability of the auditors is dependent on the fact that whether it is a firm or LLP.
- v. Auditors shall be appointed by the audit committee after referring to the requisite information available about the working of the firm.

- Whistle Blower Policy-

An efficient whistle blower policy of corporations can act as a check on the illegal functions being performed inside the firm.

- Risk Management-

An effective risk management and minimization strategy should be adopted by the firms and reviewed every six months by the board.

- Shareholder Activism:-

Institutional investors help in establishing a model code for voting rights. It plays an important role in assuring corporate governance and good management of the company.

- Role of Media-

Media is one of the most important stakeholder. An active media is indispensable for conducting analytical and investigative reporting and creating awareness on role of corporate governance.

- Board could now attend meetings through video conferencing and there should be a separate office for both CEO & CFO.
- Confiscation of shares of the person who commits fraud on the company.

#### **D. VOLUNTARY GUIDELINES BY THE MINISTRY OF CORPORATE AFFAIRS, 2009**

The Ministry of Corporate Affairs has laid down certain voluntary guidelines that companies should adopt as good governance practices. It laid down the recommendations for the appointment, working, and remuneration of the directors. A certificate of independence to be provided by the Independent directors and auditors. Training of the board to tackle the uncertainties and enabling quality decision making. Auditors are to be appointed by the audit committee on rotational basis to ensure their independence. Reports on unethical behavioral practices to be reported to institutional mechanism of whistle blowing and to ensure the protection of whistleblowers.

### **E. INTRODUCING ETHICAL BUSINESS PRACTICES IN CORPORATIONS THROUGH A MODEL CODE OF CONDUCT**

In 2011, CII introduced a model code of conduct concentrating on the ethical practices of the corporates that may lead to good governance. It ensures a safe and healthy environment without any discrimination on the basis of caste, marital status, gender, age, nationality or any other such ground. It aims at maintaining proper and accurate books of accounts and records. Every company shall take measures to combat corruption and bribery by setting up a proper control system and framing up anti –money laundering laws. Corporates shall strive to promote social welfare and sustainability in environment through its activities. This code is a voluntary guideline and highlights the importance of ethics in carrying out smooth operations of the corporations.

### **F. INTEGRITY AND TRANSPARENCY IN GOVERNANCE AND RESPONSIBLE CODE OF CONDUCT, 2020**

The code aims at establishing sustainable principles of corporate governance for balancing the changing needs of corporates and the interest of the stakeholders. Better corporate governance practices help in building trust of the stakeholders towards the company.

- Integrity, ethics and governance-

Every corporation shall frame and upload its policies of governance on the official sites of the firm. Adherence shall be made to the principles of fairness, integrity and transparency in the working of the management. There shall be proper accountability mechanisms and mandatory training programs should be organized for the employees so that they get accustomed to the culture of the corporations.

- ESG (Environmental, Social and Governance) Principles and Anti- Competitive Practices-  
The corporate should strive towards becoming a responsible citizen and imbibe ESG Principles in its working. It should establish a preventive mechanism and take action against activities like inside trading, bribery and corruption.

- Role of the Board and Functions Performed by It-

The board plays both stewardship and supervisory role and creates a space for dissenting views in the board room. It provides the directors with important information required to carry out the

daily functions of management and meeting the changing needs. Proper training and governance programs should be conducted under the supervision of experts and global trainers to ensure better and efficient working of the employees. Group governance policies should be encouraged and focus should also be placed on related party transactions.

- Balancing the conflict of interest-

The board should balance the conflict of interest arising in the corporation to secure the trust of the shareholders. Directors and employees should disclose their conflict of interest to companies to avoid further repercussions and both pecuniary loss and loss of reputation.

- Gender Diversity and Independence of directors-

An Independent director should hold expertise in the area in which the firm operate and should guide it in achieving its requisite goals. The board should encourage gender diversity as it will help in bringing more value, expertise, efficiency in the working of the firm.

- Safe Harbours For Independent Director-

Independent directors should be held personally liable for the activities of the firm only if a prima facie case is established against them. Non serious offences should be preferably settled outside the court. Firm should frame laws to develop a mechanism other than prosecution to settle the disputes.

- Effective Risk Management Committee-

Each corporation should establish a risk management committee that will analyze the risks and uncertainties that a corporation may face in the future. Increased use of technology in the business operations has prone it to larger cyber risks. Therefore, the committee after analyzing the risks will present the board with its findings and the necessary measures that should be taken to combat it.

- Nomination/Remuneration Committee shall frame the succession plans for a corporation .It shall take into consideration the role of all the individual that play an active role in carrying out the activities of the company and should not be necessarily the Chairman and the Managing director of the firm. Confidentiality of succession plans should be maintained and it shall be reviewed under changing circumstances.

- Audit committee -

Audit committee plays an important role in ensuring transparency by providing clear and proper report of the financial and other transactions of the firm with the other related parties which helps in exercising scrutiny and preventing irregularities in its working. Management should work along the auditors to analytically understand various transactions and its relative impact on the company. Efficiency of the auditors can be maintained by appointing them on rotational basis. This also helps the committee in keeping a check on the working of the auditors.

- Whistle Blowing-

To maintain an environment of honesty, integrity and ethics; corporations should exercise proper vigilance on the activities of the firm. Proper whistle blower policies should be enacted and implemented in every firm but a check should also be maintained on the authenticity of the complaints received.

- Corporations shall extend its principles of corporate governance all its stakeholders, vendors and consumers to ensure accountability and transparency through disclosure of its actions.
- Active participation of the various shareholders in the activities of the firm gives them the right to receive proper information and question the decisions of the firm. Therefore, firm shall establish a regulatory mechanism to ensure that the concerns of stakeholders are heard and properly acted upon.
- Good governance policies can help the starts ups and MSMEs in attracting better investment opportunities. It helps them in building up a relationship of trust and transparency. Non-Executive members should be appointed on the board and their roles and responsibilities should be properly defined.

### **G. GUIDELINES FOR INDUSTRIES ON BUSINESS COURTESIES**

Though Business courtesies form an important of business transaction there exist high compliance risk of corruption, bribery and improper payments in the industry.<sup>4</sup> Therefore, CII has laid down

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<sup>4</sup> Confederation of Indian Industry, Guidelines on Integrity and Transparency In Governance and Responsible Code of conduct, available at

certain guidelines to be followed by the industries while offering such gifts in the course of their businesses. It defines a 'reasonability test' to be followed to ensure compliance with the guidelines. Anything related to monetary transactions cannot form part of business courtesies. An effective policy mechanism should be established to create awareness among the employees and monitoring business courtesies carried out by management in their daily interactions.

## **VI. IMPACT OF CORPORATE GOVERNANCE ON CORPORATIONS**

In 2019, a survey was conducted by CII and Grant Thornton to understand the impact of various corporate governance practices on the industries. It highlighted the role of corporate culture and technology in establishing better governance practices. 95percent of the respondents recognized the role of corporate governance in achieving optimum and efficient results over years of which 93percent recognized corporate culture as one of the important factor contributing to its growth.<sup>5</sup>71percent respondents voted for the need of better policies for independent directors, defining their liabilities for the activities of the firm. A major factor that was viewed as a challenge to corporate governance was lack of training and awareness programs provided to the employee.

## **VII. VOLUNTARY APPROACH**

CII follows a voluntary approach towards the corporate governance. It emphasizes the need for creating a harmonized regulatory environment whereby corporations do not merely offer a lip service but actually imbibe the principles in its working. Such flexibility helps them to modify the principles to meet the changing needs of the corporation to effectively carrying out its activities. CII believes that a knee jerk reaction in the form of regulations would limit the possibilities for corporates to meet the ever changing needs of the business environment. It emphasized that the need of the hour is effective enforcement of laws and not developing more rules. It highlights the need for modifying governance principles with the changing global practices of corporate governance.

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[https://www.cii.in/pdf/CII%20Guidelines%20on%20Integrity%20Transparency%20in%20Governance%20and%20Responsible%20Code%20of%20Conduct\\_Feb%202020\\_Final.pdf](https://www.cii.in/pdf/CII%20Guidelines%20on%20Integrity%20Transparency%20in%20Governance%20and%20Responsible%20Code%20of%20Conduct_Feb%202020_Final.pdf) (last accessed on 12 Nov2020).

<sup>5</sup> Grant Thornton and CII, 'Corporate governance practices review 2019', available at [https://www.granthornton.in/globalassets/1.-member-firms/india/assets/pdfs/gt\\_cii\\_report\\_corporate\\_governance\\_practices\\_review\\_2019.pdf](https://www.granthornton.in/globalassets/1.-member-firms/india/assets/pdfs/gt_cii_report_corporate_governance_practices_review_2019.pdf) (last accessed 16 Nov2020).

## VIII. CONCLUSION

Corporate governance has become quintessential for the efficient working of the corporations. Transparency, accountability, honesty and integrity in the working of the corporations help in building a relationship of trust between the board and its shareholders. The main idea behind introducing the concept of corporate governance in India was to protect the interest of its investors and over years CII is continuing to do the same. CII believes in adopting a voluntary approach towards corporate governance that helps in timely meeting the global standards of governance. The Desirable Corporate Governance Code, 1998 focused on the need of appointing non-executive directors to the board and disclosure of all financial and non-financial activities of the directors. CII has been making recommendations to take action against increasing fraudulent activities and ensuring transparency. In 2009 guidelines, it highlighted the role of an efficient audit committee, risk management and whistle blowing policies, nomination and remuneration committee to ensure better governance of the corporations. CII has developed a model code that requires the corporations to follow the ethical code of conduct and prohibits any kind of discrimination on the basis of gender, race, caste etc. The code describes the steps to be taken to protect the independency of the directors and the extent of their liability in case of commission of frauds and scams. With its recent guidelines on integrity and transparency in governance, CII has highlighted the role of media and increasing investor activism to keep a check on the board activities. It recommends proper training and awareness programs for efficient working of the corporations. CII has stressed on the need for adopting a responsible code of conduct by firms under which they incline towards adopting ESG (environmental, social and governance) principles in their working and avoiding practices like bribery and corruption. Therefore, today the role of corporate governance is not just limited to efficiently controlling its activities but is extended to maintain the interest of its various stakeholders by building a relationship of trust and transparency between them and committing to responsible corporate governance principles.

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