

CHAPTER-11

STRUCTURING CORPORATE GOVERNANCE IN INDIA: UNVEILING DEFINITIONS, MECHANISMS, AND CONTEMPORARY TRENDS

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ABSTRACT

The board of directors serves as the governing body of a company, entrusted with directing management, setting corporate strategy, and safeguarding stakeholder interests. Functional committees advise the board on specific areas of operation, ensuring effective corporate governance. Whistleblowers play a crucial role in exposing misconduct within organizations, protected by laws to prevent retaliation. Regulators enforce rules to uphold ethical business practices and safety standards. Institutional investors manage investments on behalf of clients and wield significant influence in the market. Corporate governance in India, overseen by SEBI and supported by organizations like NFCG, fosters ethical and transparent business practices. Professional codes of conduct evolve to address emerging trends such as ethical AI, inclusivity, and environmental sustainability. Internal and external mechanisms, including board composition, corporate codes of conduct, and regulatory oversight, ensure accountability and transparency in corporate operations.

Keywords: *Corporate Governance, Whistle Blowers, Regulatory Bodies, India, Regulators*

1. INTRODUCTION

i. Board of Directors

The governing body of a company is its board of directors, whose members are chosen by the company's shareholders to direct management, establish corporate strategy, and safeguard stakeholder and shareholder interests. A board will support initiatives and pursuits that optimize shareholders' return on investment. A board will set rules that enable an organization to recognize, assess, and manage risks related to finances, security, and law as well as to minimize real loss. They support the business in defining its long-term goals, major objectives, and direction. They do senior executives and upper management appointments and terminations. They decide on executive pay, among other things.

ii. Functional Committees of Board

Smaller groups of individuals who advise the board on particular areas of operations are called board committees. Board committees have defined reporting guidelines and responsibilities, making them a crucial component of corporate governance. Committees may be appointed by the board in accordance with its goals for the year. Then, these committees assist the board in accomplishing its goals. Regular reviews of the number of committees and their membership are necessary to ensure that no duties are duplicated. Board committees can be classified as either special or standing committees. A standing committee holds regular meetings. Special committees are formed to handle needs or problems for a finite amount of time. The executive

committee, audit committee, governance committee, and many others are a few examples.

iii. Whistleblowers

A whistleblower is a person who comes forward and divulges information about any misconduct that they believe is occurring throughout the entire company or in a particular department. A supplier, contractor, or employee who learns of any unlawful activity may come forward as a whistleblower. There are laws in place to prevent whistleblowers from being mistreated or losing their jobs. Many businesses have a distinct policy that outlines exactly how to report an incident of this kind. A whistleblower can initiate a criminal investigation against the business or any specific department by registering a complaint with higher authorities or filing a lawsuit. Whistleblowers can be classified as either internal or external. Internal whistleblowers are individuals who alert higher-ranking company officials, like the CEO or head of human resources, to wrongdoing, fraud, or indiscipline. Whistleblowers who report wrongdoings to entities outside their organization, like the media, higher-ranking government officials, or law enforcement, are known as external whistleblowers. For example, Lalit Mehta case where an activist exposed corruption in the National Rural Employment Guarantee Act (NREGA) scheme.

iv. Regulators

A regulator is an organization or body that establishes rules for how companies must conduct themselves within its borders. A regulator guards against dishonest business practices and upholds safety regulations. Protecting the public interest, keeping an eye on users' and the government's contractual obligations, as well as other legal and regulatory requirements, setting and enforcing technical, safety, and quality standards, and enforcing penalties for non-compliance are the duties of regulators within an organization. The RBI, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority of India, and other regulatory bodies are a few examples.

v. Institutional Investors

A business or organization that manages investments on behalf of customers or members is known as an institutional investor. Examples of institutional investors are endowments, mutual funds, and hedge funds. Compared to regular investors, institutional investors are thought to be more astute and frequently face less regulatory scrutiny. Institutional investors' large position purchases and sales can lead to supply

and demand imbalances, which can cause abrupt changes in the price of stocks, bonds, and other assets.

2. CORPORATE GOVERNANCE IN INDIA

Corporate Governance serves as a compass for businesses, directing them towards ethical, accountable, and transparent practices. It is a complex idea that, in the Indian context, creates the foundation for a thriving business ecosystem. In the roaring economies of the world, corporate governance protects not only the management but also the interests of stakeholders and promotes India's economic growth. The confidence of a company's shareholders is significantly higher when it has sound corporate governance in place. In the roaring economies of the world, corporate governance protects not only the management but also the interests of stakeholders and promotes India's economic growth. The confidence of a company's shareholders is significantly higher when it has sound corporate governance in place. By virtue of Clause 49, SEBI oversees and controls the corporate governance of listed companies in India. This clause is included in the listing agreements that stock exchanges have with companies, and listed companies are required to abide by its terms. Through its numerous appointed committees and forums, including the non-profit trust National Foundation for Corporate Governance (NFCG), MCA promotes the sharing of ideas and experiences between corporate executives, regulators, policy makers, law enforcement agencies, and non-governmental organizations.

Professional codes of conduct trends are evolving guidelines and expectations that reflect the changing dynamics of various industries and professions. These trends can include:

- i. Ethical AI and technology use:** With the increasing reliance on technology, there's a growing focus on responsible and ethical use of AI, data, and emerging technologies.
- ii. Inclusivity and diversity:** Encouraging diversity, equity, and inclusion within workplaces, with codes of conduct promoting fairness and respect for all individuals.
- iii. Environmental sustainability:** Codes may incorporate principles that support sustainability and environmentally responsible practices, especially in industries with significant environmental impacts.

- iv. **Remote work and digital etiquette:** Adapting to the rise of remote work by addressing issues related to virtual professionalism, work-life balance, and cybersecurity.
- v. **Mental health and well-being:** Acknowledging the importance of mental health, work-life balance, and creating supportive work environments.

Trends of professional code of conduct refer to the evolving principles and expectations that guide the behavior and ethics of individuals within various industries and professions. These trends reflect the changing dynamics of work environments and societal values.

Some current trends include:

- i. **Ethical Technology Use:** Focusing on responsible use of AI, data, and emerging technologies in a manner that upholds ethical standards.
- ii. **Inclusivity and Diversity:** Promoting diversity, equity, and inclusion in workplaces, emphasizing respect and fairness for all individuals.
- iii. **Environmental Sustainability:** Incorporating principles that encourage sustainable and environmentally responsible practices, particularly in industries with notable environmental impacts.
- iv. **Remote Work and Digital Etiquette:** Adapting to the rise of remote work by addressing issues related to professionalism, work-life balance, and cybersecurity in virtual environments.
- v. **Mental Health and Well-Being:** Recognizing the significance of mental health, work-life balance, and fostering supportive work environments.
- vi. **Personal Branding and Online Presence:** Providing guidance on how professionals present themselves online and use social media to align with the values of their profession and maintain a positive personal brand. These trends shape the ethical and professional behaviour of individuals and organizations, helping them adapt to the evolving demands and expectations of their respective fields.
- vii. **Transparency and Accountability:** Highlighting transparency in decision-making, disclosure of conflicts of interest, and ensuring accountability for actions, both at individual and organizational levels.

- viii. **Social Responsibility:** Encouraging professionals and organizations to engage in socially responsible practices, philanthropy, and community involvement, reflecting a commitment to broader society.
- ix. **Corporate Governance** is the action or manner of governing corporates. It is the combination of rules, processes, or laws by which businesses are operated, regulated or controlled. The three pillars of it are:
- a. Transparency of operations
 - b. Accountability towards shareholder
 - c. Fairness in dealings corporate

Corporate governance can be achieved by internal and external mechanisms. Internal corporate governance mechanism is under control of the firm. One of the most important mechanisms is the establishment of internal controls. Internal control refers to policies, procedures, and processes.

Importance of Internal corporate governance mechanism - It accounts for operational efficiency, financial transparency, legal and regulatory compliance, general ethical practices. It helps improve financial performance. It results in effective control within the company. It safeguards the interests of shareholders. It creates a system of checks and balances thereby creating accountability and preventing errors and unethical practices. It makes sure business meets all its requirements, is compliant to law and policies set, obtain relevant information relating to targets and project outcome, decides future steps, has a deviation settlement mechanism and is responsible for overall management of organization. Its goals are safeguarding assets, minimizing errors, promoting efficiency, and minimizing risks. It includes board of directors, functional committees, code of conduct and whistle blowers.

Board of directors plays a vital role in corporate governance. It is the governing body of a company, elected by shareholders in the case of public company. They typically meet periodically to make strategic decisions on behalf of the company, set corporate policies and rules, ensure company's long-term success, risk mitigation, risk oversight and management, oversee management, appointment and evaluation of executives, frame governance policies and practices, financial oversight and reporting, shareholder engagement and communication, forming board committees, advising CEO and TMT (top management team), responsible for organization's performance, elects CEO of the company by casting their votes, etc.

3. BOARD COMPOSITION

- i. Chairman is elected among the board of directors. He leads the board, and his role is to present policy and look after the overall performance.
- ii. The Chief Executive Officer (CEO) is elected from among executive directors. He works under direct control of the board of directors. His role is to ensure an adequate internal control system, manage overall operations and keep the board informed of major happenings.
- iii. Executive directors are paid a salary. They are responsible for day-to-day operations such as hiring, entering contracts, etc.
- iv. Non-Executive directors are not employees. They get a sitting fee. Non-executive directors may be independent or non-independent.
- v. Secretary is the link between the board of directors, company's shareholders, and other regulatory agencies.

4. CORPORATE SOCIAL RESPONSIBILITY (CSR) COMMITTEE

It frames CSR policy of the committee. Human Resource committee - It oversees matters related to human capital, talent management, organizational development, monitors employee engagement and ensures alignment of HR practices with company's goals. Corporate Code of Conduct (CCC) - It is a codified set of ethical standards to which a corporation aims to adhere. It is commonly generated by corporations themselves. It varies extensively in design and objective. It outlines expected behavior for all employees within an organization. It establishes the company's values, promotes integrity, ensures compliance with legal and regulatory requirements. It covers areas such as conflicts of interest, fair competition, protection of confidential information and appropriate use of company resources. Whistle blower any individual who provides the right information to the right people International development organization defines whistle growing mechanism as a mechanism of reporting by present or past employees of any illegal irregular illegitimate Endurance or any other ethical practice being followed by the employee it'll reveals and the draws attention of an authority of annual doing misconduct unethical practice being followed it is crucial for creating the safe and transparent work in environment it brings into the limelight and the activity to minimize organizations exposure to damage time reporting boost employees morale enhances goodwill of organization it may bring potential reputational damage. External corporate governance mechanism is controlled by those outside the business organization. It serves the objectives of entities such as regulators, government, trade unions and

financial institutions. It refers to mechanisms that exist outside of a company's internal operations. It acts as external checks and balances on companies. It ensures businesses operate in a transparent, ethical, responsible manner. It aims to protect the interest of stakeholders and maintain public trust in the corporate sector. Regulators are regulatory authorities such as central banks and government bodies that enforce laws and regulations related to corporate governance. They established and enforced rules to ensure compliance, oversee market activities and protect investors' interest, for example- RBI, SEBI in India. A gate keeper refers to the intermediaries that include professionals and entities that provide critical services to companies such as auditors, lawyer, law firms and consultants. They have the power to influence corporate governance through active engagement with companies, voting at shareholder meetings, and advocating for improvements in governance practices. They have the motive to influence the decision-making process of the company or to sell it for profit. They are also known as activist investors. They acquire significant stakes in underperforming companies to drive changes in corporate governance. They may seek board seats or propose shareholder resolutions to effect changes that they believe will enhance shareholder value. Corporate Raider is an investor who buys many shares in the corporation whose assets appear to be undervalued. The buying of many shares gives significant voting rights to the corporate raider. It helps push changes in the company's leadership and management. For example- American Carl Icahn developed reputation as a corporate reader in the 1980s but by the late 1990s he became well-known as an activist investor.

5. CONCLUSION

Corporate governance is indispensable for fostering ethical, accountable, and transparent business practices. The board of directors, functional committees, whistleblowers, regulators, institutional investors, and professional codes of conduct collectively contribute to effective governance. In India, regulatory bodies like SEBI and initiatives like NFCG promote corporate governance standards, enhancing investor confidence and facilitating economic growth. Internal mechanisms like corporate codes of conduct and external oversight from regulators ensure compliance with ethical standards and legal requirements. As professional codes of conduct evolve to address emerging trends, businesses must adapt to maintain integrity and trust. Ultimately, robust corporate governance is essential for sustaining long-term success, protecting stakeholder interests, and promoting a thriving business ecosystem.

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