CORPORATE GOVERNANCE

Definition of corporate governance :-

In simple sense corporate governance is fairness, Transparency and accountability.

As per Kumar Mangalam Birla committee Report, it is the system by which companies are directed and controlled.

Companies must be directed with a sense of responsibility that they should satisfy not only the shareholders but also all the stakeholders.

First Phase of corporate Governance (1996-2008):-

1. It started with SEBI guidelines and CII code (Confederation of Indian Industry) of voluntary governance.
2. There were reforms in finance ministry and company ministry to make it more transparent for which department of company affairs was converted into a separate independent ministry.

CII code of 1998:-

1. In 1996, CII took a special intiative when it developed a desirable code for good governance.
2. The code was applicable for all member companies.
3. Final draft of this code was implemented in April, 1998.

Kumar Mangalam Birla committee of (1999-2000):-

1. SEBI appointed Kumar Mangalam Birla as chairman of a committee to study issues of various stakeholders.

2. Focus of Kumar Mangalam Birla was on insider Trading but his report covered all areas of corporate governance.

3. He suggested that Board of directors should be more and more ~~and~~ responsible and shareholders should get all the rights as far as possible.

Task force on corporate Excellence :- (Nov. 2000)

1. Department of company affairs prepared a report on achieving corporate governance through Excellence.

2. Depending upon the size and capabilities of company task force recommended various measures to adopt good governance.

Clause-49 (2000, 2003 and 2009)

1. SEBI revised listing agreement to include new requirements and all this addition was done in clause-49

2. It was an additional paragraph added to the listing agreement which created compliance burden on large companies

RBI Report (March 2001)

1. RBI studied role of world Bank, asian development Bank and organisation for economic co-operation and development and suggested governance for Indian financial system.

2. RBI gave its Report with a central idea of adopting corporate governance through international standards.

RBI Report (April 2001):-

1. RBI established a consultative group of directors of all banks and financial institutions to review the responsibility of Board of directors of Banks in maintaining 100% transperancy and 0 tolerance for money laundering.

2. This group recommended various measures by which role of Board of directors was made more effective with risk Management policy.

Nareshchandra committee (Dec. 2002):-

1. Department of company affairs established a committee to study company law under the chairmanship of Mr. Naresh chandra.
2. This committee analyse various areas under company law such as auditors, Related party transactions, managerial remuneration and financial statements.

Narayan Murti Report [Feb 2003]

1. SEBI established a committee to study a role of Independent Directors.
2. This committee established various core groups to study different matters such as related party disclosures, Independent directors and directors compensation.

3. Each such group reported to committee and committee reported

to SEBI.

Naresh chandra committee (PART-2) :-

1. Central Govt established a committee to review and revise law relating to partnership and company in Jan 2003.

2. This committee recommended following 3 things in July 2003 :-
(a) Repeal of companies Act, 1956.
(b) Minor changes in Partnership Act, 1932
(c) Introduction of New form of Business i.e. LLP (2008)

Major Amendments in clause-49 :-

1. when chairman of company is executive, atleast half directors should be independent.

2. when chairman of company is non-executive, 1/3rd directors should be independent.

3. Audit committee should have minimum 3 directors out of which majority should be independent.

4. There must be complete disclosures in financial statements
5. CEO and CFO should give a written certificate that they are responsible for internal control.

6. Annual Report must carry a separate section on corporate governance

SEBI Actions after SATYAM:-

1. Appointment of CFO by audit committee and not by Board of Directors
2. Rotation of audit partners in every 5 years.
3. Adoption of IFRS.
4. half yearly disclosure of financial statements
5. Increasing list of documents to be submitted to stock exchange.

MCA Actions after SATYAM:-

1. Appointment of Independent Directors was made compulsory.
2. Responsibilities of Board of directors, audit committee and auditors were clearly defined.
3. Protection to whistle blowers.
4. Formal appointment letter to directors.
5. Separation of the designation of chairman and CEO.
6. Establishment of nomination and Remuneration committee.
7. No. of directorship
8. Managerial Remuneration.
9. Training of directors
10. Performance Evaluation of directors.
11. Rotation of statutory auditors.

IT Governance :-

Most of the companies have witnessed IT penetration and these companies have adopted ERP in their office Procedures. ERP can reduce manual control which will decrease human errors. It will also decrease biased nature and level of corruption. for example :- Electronic Bidding and electronic verification of Records.

Corporate Governance in Family Business :-

1. Family business is one in which majority shareholding is with a family having Blood relations.

2. Atleast one family member is involved in management and administration of Business.

3. In india, Family Business range from small Kirana shops to large conglomerate
(multi business firm)

4. Their contribution to Indian Economy is Remarkable. but they are struggling with corporate governance.

Advantages of Family Business :-

1. Commitment, Passion and Dedication :-
It is because of belongingness we feel with own business that motivates us to work for longer hours.

2. Faster Decision Making :-
All the decisions and deliberations do not take much time because both ordinary resolution and Special Resolution

are inside family.

3. ~~Deepened~~ Industry Insight:-
It means experience and expertise of generations gone and generations to come provides value to the company.

4. Mutual Trust :-
It means long term family relationship can create harmony in Business as well.

Dis-advantages of Family Business:-

1. Staff Recruitment is a problem because good talent does not want to join HUF culture as they do not get any freedom.

2. Raising funds is difficult because it will result in dilusion of ownership. so such businesses prefer to go for debt.

3. Family conflicts create trouble for smooth operations of the organisation.

4. ownership and Management get consentrated in the same hand so fraud can take place easily.

How to manage family business :-

Family business can be run smoothly if it can handle following challenges of daily life:-

1. Manage diverse opinion of different family members.
2. creating succession plans between siblings and cousins.
3. Difficulties arising because of generation gap

4. Maintenance of Talented staff which may feel uncomfortable due to lack of professional environment.

5. Lack of trust for younger generation in the mind of older generation.

6. Regular flow of capital which seems impossible without dilusion of ownership.

How to bring Corporate governance in Family Business:-

1. Board of Directors should have independent directors so that they can work without bias.

2. CEO should not be appointed without performance evaluation and should not be blindly selected from family.

3. Forefathers should make succession plan during their life and must be explained to all for better implementation.

4. Internal control should be established and no one should be allowed to break it even if he holds supreme position in the family.

Family Constitution:-

1. It is living document which prescribes powers and duties of family members deputed in the business.

2. Such document can be modified from time to time depending

upon performance evaluation and building of trust.

3. It can dissolve all conflicts running in the business because of family clashes.

Future challenges for family Business :-

1. Innovation for competitive advantage :-
Family business will have to combine their experience with innovation so that they can beat Modern players in the market.

2. Talent Retention :-
Keeping the right person at the right place at the right time is a wise decision which should be taken by family business ontime.

3. Efficient, Automated and Natural Succession :-
Succession should take place automatically to a person in the family depending upon his involvement.

4. New Technology :-
Family business can-not be dependent only on their classic skills. They will have to do technological advancement.

5. Internationalisation challenge :-
Competition with foreign players need a different marketing strategy and their traditional work culture can-not help.

Corporate governance in Public Sector :-

Organisation for economic co-operation and development has issued certain guidelines for public sector enterprises or state owned enterprises.

1. Government should work only as owner and not the administrator.

2. They should work with principles of efficiency, transperancy and accountability as is expected from private sector.

3. Competition between public and private sector should be promoted so that they both work well.

4. Minority shareholders should be given equitable treatment.

5. They should work with full consciousness about maintaining relations with all stakeholders.

6. They should work with full disclosure as expected from private sector.

7. Board of directors should be expert in their fields and they should be held responsible for their actions.

Memorandum of understanding (MOU) :-

1. It is a document between public sector and private sector to work as per the Model of public private partnership (PPP)

2. In this model, ownership remains with public sector but general operational control is handed over to private hands.

3. MOU is approved by a high powered committee which is as follows:-
(a) Cabinet Secretary
(b) Finance Secretary
(c) Expenditure secretary.
(d) Secretary of Niti Aayog.
(e) Programme implementation secretary.
(f) Chairman of public enterprise selection Board.
(g) Chief economic advisor.
(h) Public Enterprises secretary.

4. Functions of this committee is to review the draft agreement, recommend necessary changes and to do yearly evaluation.

5. There is task force which ensures that MOU is implemented properly or not.

6. Task force consist of retired civil servants, executives of Public sectors, Management professionals and independent members.

7. High power committee and task force are ~~attested~~ assessted by a separate MOU division in the department of public enterprises.

8. This MOU division performs following functions:-
(a) provide technical and administrative support
(b) work as liasioning officer between partners of MOU.
(c) Develop information and data Base.

(d) Monitor progress of MOU.
(e) provide consultation to the MOU partners.
(f) Conduct training and research.