GOLDEN OPPORTUNITIES UNDER CORPORATE GOVERNANCE

By

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Introduction:

Like in any family there are unwritten rules for good bonding between members, the corporate governance is all about a system of direction, feedback and control using regulations and ethical guidelines meeting the societal expectations.

The word governance is derived from the word ‘gubernate’, which means to steer. Thus, Corporate governance would mean to steer an organization in the desired direction. The Corporate Governance inculcates the mechanism to control and operate the governance of corporation in such a way that is motivated with the overall growth of institution by bringing transperancy & helding every person/member accountable for their respective actions.

It is myth that the corporate governance is good management of company, certainly it is not, as it applies to every form of organization whether a Limited Liability Partnership, Family Trust, Partnership, Cooperatives, Charitable Organization etc.

It should be understood that there is wide reach for the application of corporate governance, and recognizing the significance of corporate governance many companies are turning to professional service which in turn creating professional opportunities that were undiscovered until now. There services may be in the form of advisory that includes making the organization more institutional, meaning they help make these policies comprehensive and standardized throughout organizations.

Examples of these services include restructuring the senior management, creating support services to improve internal controls, creating an authority matrix, and succession planning.

We are all aware of the concept and role of Independent Director who is non-executive director helping the company to improve upon its corporate credibility and governance standards.

The author believes that the Corporate governance is much more may be one crore times than just becoming Independent Director. Therefore it brings goldmine of professional opportunities (few of them listed below) and one should not missed out.

List of services in the world of corporate governance:

1. Independent Director - industry segment wise -mutual funds/ NBFC / Co-operative societies / insurance co's / PSUs / banks / pension funds etc.
2. Risk Management
3. Internal control
4. Board Members Training
5. Board Performance Evaluation
6. Making Governance Framework
7. Setting up ethical framework at different level
8. Evaluation of board & board members

9. Vigil Mechanism
10. Compliance of the Prevention of Corruption Act ,1988
11. Minority Shareholders Rights Protection - their representative on board and advisor to their forum
12. Advisor to Audit Committee / Chairman / Members
13. Sustainability / Integrated Reporting Advisor
14. Advisor to Regulators for Governance Framework
15. Advisor to Institutional Investors - Stewardship Code
16. UN 17 SUSTAINABLE DEVELOPMENT GOALS SDGS TO BE ACHIEVED BY 2030
17. Legal Compliance Audit
18. CSR Project Management / Policy / law Compliances
19. Governance Ratings / Evaluation / Bench Markings
20. Business Sustainability Audit
21. Corporate Governance Audit
22. Performance Evaluation Audit
23. Internal Control Effectiveness Audit
24. Sustainability Audit
25. CSR Audit
26. Economic Offences Compliance Audit
27. Sector specialization like Insurance, banking, pension funds etc.
28. Project as world leader 1 in corporate governance

A brief view at International and India perspective over corporate governance:

International perspective:

The modern development of corporate governance started with the publication of the **Cadbury Committee report in 1992**. Following serious financial scandals and collapses (e.g. BCCI and Mirror Group) and a percieved general lack of confidence in the financial reporting of many UK companies, the financial reporting council, the london stock exchange and the accountancy profession established the committee on the Financial Aspect of corporate governance, May 1991 chaired by Sir Adraian Cadbury and came out with its landmark report in december 1992 that recommended the code of best practice with which the boards of all listed companies should comply. The report recognises the role as below:

i. Role of Board of Directors
ii. Role of Non-Executive Directors
iii. Executive Director and their remuneration
iv. Financial Reporting and Financial Control

This was followed by the Richard Greenbury Committee Report (1995) chaired by Sir Richard Greenbury- (31 July 1936 – 27 September 2017)- chief executive & chairman of Marks and Spencer Group plc (1998 to 1999), commonly known for Directors Remuneration concept. The guidelines were volunatry in nature as it was speculated that the self regulation would suffice to correct things. The report provided for the

i. The Remuneration Committee
ii. Disclosure and Approval Provisions
iii. Remuneration Policy
iv. Service contract and compensation

Then came the **Hampel Committee on Corporate Governance (1998)** under the leadership of Chairman Sir Ronald Hampel who was a chairman and managing director of Imperial Chemical Industry. The committee was formed in November 1995 by Financia Reporting Council, London Stock Exchange, Confederation of British Industry https://www.cbi.org.uk/ and Institute of Directors https://www.iod.com/.

The committee purported to assess the progress of implementation of Cadbury and Greenbury recommendations. Some of the important recommendations are as below:

1. Narrative statement of how the company has applied the broad principles of corporate governance.
2. Board should include balance of executive directors and non-executive directors.
3. The majority of non-executive directors should be independent
4. The board should present a balanced and understandable assessment of the company's position and prospects.
5. The external auditor should independently report to shareholders in accordance with statutory and professional requirements.
6. The auditors should have dual responsibility i.e. Public Reporting on the statutory financial statements to shareholders and private reporting to directors on operational matters.
7. The requirements on directors to include a going concern statement in the annual report should be retained.

The **combined code (1998)**, report released in june 1998 titled as "The Combined Code: Principles of Good Governance and Code of Best Practice – 1998. It appended to the listing rules of the London Stock Exchange and provide the requirement of disclosure by listed companies in two parts :

- 1st it required to report on how it has applied the principles of the combined code.
- 2nd the company would be required to confirm that it has complied with the code provisions and if not then has to provide explanation for non-compliances

In America also the **Blue Ribbon Committee** was set up by the the Securities and Exchange Commission (SEC) https://www.sec.gov/ , the New York Stock Exchange (NYSE) https://www.nyse.com/index and the National Association of Securities Dealers (NASD) https://www.nasdaq.com/glossary/n/national-association-of-securities-dealers. The committe published its report in 1999.

Recommendations in nutshell

- Audit committee members should be financially literate having accounting and financial management related knowledge.
- Audit committee should adopt a former written charter and should revenue and reassess it on annual basis.
- Audit committee should enjoy the full authority of carrying out discussion with the auditors.
- All reporting companies to include a letter from the audit committee in the company's annual report

The Internal Control: Guidance for Directors on the Combined Code (Turnbull Report) – 1999

This was applicable for the listed companies, the report famously known as the Turnbull Report prepared under the Chairmanship of Mr. Nigel Turbull The Rank Group Plc https://www.rank.com/en/index.html**.**

The recommendations put forth by the Turnbull report:

- Directors detail exactly what their internal control system consisted of

- Regularly review its effectiveness, issue annual statements on the mechanisms in place, and, if there is no internal audit system in place,

- to at least regularly review the need for one

The **Higgs report 2003 lead by** Derek *Higgs* (3 April 1944 – 28 April 2008) was commissioned by United Kingdom government to review role of Independent Directors and audit committees**.** The report recommendation released as Good Practice Suggestions from the Higgs Report.

Prime suggestion:

- at least half of a board (excluding the Chair) be comprised of non-executive directors;
- that those non-executives should meet at least once a year in isolation to discuss company performance (a move away from the clear preference for unitary board structures displayed elsewhere);
- that a senior independent director be nominated and made available for shareholders to express any concerns to; and
- that potential non-executive directors should satisfy themselves that they possess the knowledge, experience, skills and time to carry out their duties with due diligence.

Subsequently the **Walker Report (2009)** prepared by Sir David Walker (b. 31 December 1939) who was British banker and former chairman of Barclays. It was Commission by United King Prime Minister in February 2009.

The walker report titled a Review of Corporate Governance in United Kingdom Banks and Other Financial Industry Entities

Some Key suggestion in the report includes:

- greater dedicated non-executive directorial focus on risk management is required, supported by a dedicated Chief Risk Officer;
- active engagement remains a responsibility of shareholders and, in the case of mutual funds, a commitment to a Stewardship Code;

Indian perspective:

The corporate governance development in India starts with the task of the

Working group on the Company's Act, 1956 – (est August 1996). It lead by Dr K.R. Chandratre (then President of ICSI) along with 7 other member

Recommendations submitted by the working group in february 1997 contains two kind of financial & non fiancial disclosure

- **Financial disclosure :** Remuneration of the directors , group resources, foreign holding of the company , funding raised by issuing the shares and debentures of company and the ultimate end use of the such funding seperately
- **Non-financial disclosure-** relatives of directors disclose seperately in directors report , Details of loan and advances to the directors and The compliance certificate and secreterail requirement under the companies act

Later in 1998 the Confederation of Indian Industry which is India's largest industry and business association submitted a report tittled ““**Desirable Corporate Governance: A Code**”” prepared in 1997 and published in 1998.

The code recommended as below:

- **Required disclosures as per code:**
  - To provide details about issue of Global Depository Receipt
  - To provide details about the follow up of the Generally Accepted Accounting Principles with transparent accounting system.
  - Details of monthly averages of share prices at all stock exchanges where the companies listed for the reporting year.
  - Value added statement disclosing total income.
  - Cost of all inputs and all administrative expenses.
  - Details of debt performance interest cost, State of receivable and foreign exchange risks and exposure.

This was followd by the **Kumar Manglam Birla Committee Report (1999)** under the leadership of Kumar Manglam Birla- (born 14^{th} june 1967) chiarman of Aditya Birla Group- A billionaire industrialist.

The report contained **b**oth mandatory and voluntary recommendations such as holding minimum four board meetings a year, 50% of board should be non-executive, Audit committee chairman must be non-executive and in audit committee meetings three members form quorum.

It mandates disclosures such as

- consolidated accounts of subsidiary,
- segment reporting,
- related party transactions,

- Environmental and Social Reporting and formation of investors grievances committee.

Further the **Godbole Committee (2001)** was set up under the leadership of Madhav Godbole(b. August 15, 1936) - Former union Home Secretary (b/w 4th october 1991 – 23rd march 1993)

The committee was assigned task of good governance guidelines to government. It provide around 190 recommendations that includes

- compulsory retirement of Government officials and
- enacting a law on fiscal responsibility,
- budget management etc.
- review of subsidies

The **Naresh Chandra Committee (2002)** lead by Mr. Naresh Chandra (1 August 1934 – 9 July 2017) cabinet secretary of India (11 December 1990 – 31 July 1992) was appointed in 21st August 2002 by the Department of Company Affairs (DCA) under the ministry of Finance and Company Affairs.

The recommendations were:

- Certification by CEO and CFO
- Setting up of the internal control System
- Role, Remuneration and training of Independent Directors.

This was followed by the Dr. Ganguly Committee (2002) under chairmanship of Dr Ashok Shekar Ganguly (B. 28th July 1935) who is a noted industry expert & former chairman of Hindustan lever & Member of Rajya Sabha (till 2015)

The committee also known as the working group of directors of Banks and financial institutions it recommended the formation further committes in addition to nomination committee

1. The audit committee

2. The shareholders' redressal committee,

3. The supervisory committee and

4. The risk management committee

Subsequently the **N. R. Narayan Murthy Committee Report (2004)** set up by the Securities Exchange Board of India under the chairmanship of Mr. Narayan Murthy (born 20 August 1946). The committee submitted recommendation in February 2003 and provides for the following:

- Audit Committee, Audit Report, Audit qualifications, Related Party transactions, Risk Management, code of conduct, Nominee Director, Independent Directors, Compensation of Non-Executive Directors, Whistle Blower Policy, Subsidiary Companies, Evaluation of Board performance, Analyst reports and
- also consider points covered by Naresh Chandra Committee.

Clause 49 of the Listing Agreement

After liberalization serious efforts have been made towards overhauling the system with SEBI formulating the Clause 49 of the Listing Agreements dealing with corporate governance. Clause 49 of the Listing Agreement to the Indian stock exchange comes into effect from 31 December 2005.

It includes the following key requirements:

- Board Independence: Boards of directors of listedcompanies must have a minimum number of independent directors.
- Audit Committees: Listed companies must have audit committees of the board with a minimum of three directors, two-thirds of whom must be independent.

- Disclosure: Listed companies must periodically make various disclosures regarding financial and other matters to ensure transparency

The year 2004 additionally witness efforts of **Dr. J. J. Irani Committee (2004)** with chairman- Dr. Jamshed Jiji Irani (2 June 1936) – former TATA steel MD (retired in 2007). The expert committee set up on 2nd December 2004 later on the companies bill 2008 introduced and lapsed due to dissolution of loksabha, although it was presented in 2009. It recommended a single framework of governance provisions for all companies , tenure of Independent Director, related party transactions etc.

The satyam computer services scandal occurred in 2009 triggered the much more stronger need of corporate governance footing. The satyam computer services which is an IT service company based in Hyderabad- chairman Byrraju Ramalinga Raju, scandaled due falsification of company's account. The same year the Ministry of Corporate Affairs published voluntary guidelines namely the Corporate Governance Voluntary Guidelines (2009) that includes Independence of the Board of Director, the responsibilities of the board, secretarial audits and mechanism to encourage and protect whistle blowing.

The introduction of new company act, namely the **companies Act, 2013** enacted in 2013 was responsible for the major structural shifts. Relevant provisions under the act are

- Schedule IV: code for Independent Director
- Chapter IX Accounts of Companies
- Section 135 – Corporate Social Responsibility,
- Section 149- Board of Director,
- Section 177- Audit Committee ,
- Section 178- Nomination and Remuneration Committee and Stakeholders Relationship Committee,

- Section 134- Financial statement, Board‘s report, etc,
- Section 138- Internal Audit,
- Section 447- Punishment for fraud

In 2015 **the Securities and Exchange Board of India (Listing Obligations and Disclosures Requirements Regulations),2015** were notified by SEBI on 2nd september 2015.

The regulation became effective after 90 days that is 1st december 2015. The Regulation 27 (2) specifies the formats for compliance Report on corporate governance for each quarter, at the end of the financial year and within six months from end of financial year. Additionally the secretarial Audit Report prepared under sec 204 of the companies Act 2013

Conclusion

All organizations have a purpose and want to be successful in attaining that purpose which why many are recognizing the importance of corporate governance and of having someone responsible for it within their organization.

Some important point for consideration:

- Identifying what and advising why certain corporate governance best practices should be adopted by the organization. This may be as a result of compliance with laws, regulations, standards and codes or because the practices make good operational sense for the organization.
- Implementing within the organization those best practices through the creation and maintenance of cultures and relationships. This usually requires the corporate secretary to answer the how do we implement question, which requires corporate secretaries to have emotionalintelligence skills as well as technical skills.

- Facilitating communication between board members, the board and management, the chairman and the chief executive officer, the company and its shareholders, and the company and its stakeholders

Professionals charged with ensuring good governance practices within an organisation, play an important role in enforcing and promoting high standards of ethical behaviour, integrity and compliance. In particular, the person has a significant impact on the level and quality of the organisation's corporate governance and governance culture and often has a pivotal role in assisting the board to achieve the entity's vision and strategy.

FEW LINKS:

1. THE SECURITIES AND EXCHANGE BOARD OF INDIA https://www.sebi.gov.in/
2. THE MINISTRY OF CORPORATE AFFAIRS https://www.mca.gov.in/
3. THE INSTITUTE OF COMPANY SECREATARIES OF INDIA https://www.icsi.edu/
4. THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA http://www.icai.org.in/
5. THE NATIONAL FOUNDATION FOR CORPORATE GOVERNANCE http://www.nfcgindia.org/
6. THE CORPORATE GOVERNANCE SECTION FROM THE BUISNESS PORTAL OF INDIA https://www.india.gov.in/
7. THE CENTER FOR CORPORATE GOVERNANCE www.ipeindia.org

8. THE INDIAN INSTITUTE OF CORPORATE AFFAIRS www.iica.nic.in
9. THE COMPETITION COMMISSION OF INDIA http://www.cci.gov.in/
10. THE CENTRAL VIGILANCE COMMISSION https://cvc.gov.in/
11. THE CONFEDERATION OF INDIAN INDUSTRY https://www.cii.in/
12. THE INSTITUTE OF INTERNAL AUDITORS OF INDIA http://www.iiaindia.org/
13. THE BOMBAY CHARTERED ACCOUNTANTS' SOCIETY https://www.bcasonline.org/
14. THE ASIAN CORPORATE GOVERNANCE ASSOICIATION https://www.acga-asia.org/
15. THE INFORMATION SYSTEM AUDIT AND CONTROL ASSOCIATION https://www.isaca.org/
16. www.thecorporategovernanceinstitute.com
17. THE EUROPEAN CORPORATE GOVERNANCE INSTITUTE www.ecgi.global
18. Banks www.bis.org
19. IOSCO www.iosco.org
20. THE ASIAN CENTRE FOR CORPORATE GOVERNANCE www.asiancentre.org
21. THE INSTITUTE OF DIRECTORS www.iod.com
22. IAIS www.iaisweb.org