Depending on Independent: Requires Fresh Look

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Abstract

This paper makes an attempt to check the origin of the idea of Independent Director at the corporate boards and also looks in to the role of such individuals. Further, it attempts to check the effectiveness of independent directors at working and decision making process of the company with the question under consideration, Do system of independent directors benefits to all the shareholders?

Key Words: Corporate Governance, Independent Director, Stakeholders, Performance Evaluation

Introduction

In corporate business firm wide spread people invest their savings and hard earned money. These resources are further invested, managed and control by the agents appointed by the shareholders at the board. The utilisation of resources and return on investment depends on the performance of the board. As the owners and boards are separate from each other problem of different attitudes and goals in literature popularly known as "agency problem" arises frequently. Research out come of the J E Core and others published in 1999 suggests that firms with weaker governance structure have greater agency problems allow managers to extract greater private benefits; and perform worse. Thus the ownership and management separation demands good governance on other hand executive remuneration and particularly CEO's remuneration. Though, remunerations are decided by the board with approval of share holders at general body meeting where majority shareholders control the majority voting rights and plays vital role in such appointments and remuneration fixation. Here also transparent and fair governance is seen as the solution of the problem. The third facet demanding good governance is the issues related to environment gaining attention world wide. In present time as a result of awareness campaign and debates on global warming and green earth launched by number of NGOs and State agencies, another most important issue demanding good governance is social responsibility. The issues related to social awareness and ecology are creating awareness among the shareholders, investors, employees and customers and this awareness demands good governance. Thus not only investors return but social factors are also playing vital role in catching attention of world over the good governance issues.

Investors, shareholders expect fairness and transparency in the action of board and management, with the responsible and accountable behaviour in the management of their resources with socio-economic perspectives. These views are discussed in literature and reflected the same in the views of Viviers and others in the paper entitled "The risk-adjusted performance of responsible investment funds in South Africa". They presented it as, Increasing calls from a new generation of investors to integrate environmental, social and corporate governance (ESG) considerations into investment analysis and ownership practices (Viviers, Bosch, Smit and Buijs, 2008). Empirical research has revealed that over 84 percent of global institutional investors will pay a premium for the shares of a well-governed company over one with a comparable financial record yet considered poorly governed. (Why is Corporate Governance Important?)

In literature the general set of customs, regulations, habits, and laws that determine to what end a firm should be run is defined as the governance norms. In case of corporate business world such norms are identified as corporate governance norms. The market price of the shares and thereby the value of the firm also depends on one of the important factor identified as the good governance. Another important issue demanding good governance is meeting the requirement of funds and pursuing the investors. Here corporate governance is not only the factor affecting and solving these problems but still it is one of the important factor affecting the long term profitability and survival of the firm. This is reflected in the views of Andrei el, the most advanced market economies seemingly appears to have solved the problem of corporate governance, in that they have assured the flows of enormous amounts of capital to firm, and actual repatriation of profits to the providers of finance. (Andrei and Robert, 1996). Hence with the world economic crisis, the need for sound corporate governance was re-insisted during the global financial crisis in the second half of the first decade of the twenty-first century. The global financial crisis had an adverse impact on the economies and financial markets of countries worldwide. (Reinhart & Rogoff, 2008). As in the case of the Asian market crisis in 1998, most firms also reported weaker financial performance. (Lee & Yeh, 2004)

Good governance attached with the fair and transparent corporate accounting and reporting practices. Poor response from the investors during the economic and financial problems which originated in the USA and rapidly spreaded to the developing countries, was identified as the reason for the serious and long term economic crisis. Policy makers have learned that systematic failure of investor protection mechanisms, combined with weak capital market regulation in systems that rely heavily on "crony capitalism," can lead to failures of confidence that spread from individual firms to entire nations. Insufficient financial disclosure and capital market regulation, lack of minority shareholder protections, and failure of board and controlling shareholder accountability all supported lending and investing practices based on relationships rather than on a prudent analysis of risk and reward. (Ira M. Millstein (1998), Alan Greenspan (1999)) Thus, poor governance was identified as the reason for prolong of economic crisis. As the global slow down was the result of the sub prime crisis, Good governance was identified as the one of the solution as well as preventive measures for the future. James Wolfensohn (1999), noted that "The governance of the corporation is now as important to the world economy as the government of countries."

The term corporate governance was initially identified as the systematic efforts of the firm attached with the moral values and transparent behaviour of the board to enhance the investors' confidence. Number of definitions is given by different people in different ways. Monetary Authority Of Singapore defines corporate governance in it's Staff Paper No.29, as "Corporate Governance is about putting in place the structure, processes and mechanisms by which business and affairs of the company or firm are directed and managed, in order to enhance long term shareholder value through accountability of managers and enhancing firm performance" (Pei Sai Fan)

Thus, the success of corporate sector demands stakeholders' reliance, confidence and healthy investment environment. Corporate Governance is identified as the one of the most important pillar for gaining healthy investment environment with investors' faith and confidence. Success of corporate governance mechanism is again result of the transparent, unbiased and openness in the management and control of the business. It also covers the way in which board members and management use their power and organisational resources and thereby influence investors' interest. Having voice of outsider at the board is stronghold of the corporate governance practices. This voice is identified as the independent director. The independent directors are the custodians of stakeholders; guardians of their interest in a company (CA. Ashish Makhija). Number of reports and research findings has identified independent directors as key to success of corporate governance practice. Phillip in his paper entitled "The Non-Executive

(Outside) Director: Key to Board Independence", identified the presence of independent directors on board as one of the hallmarks of corporate governance. If one of the most important roles that a director should play on the board is that of monitoring management performance, then an independent, non-executive director is best positioned to play this role because of his arm's length relationship with the chief executive officer (CEO) (Phillip 2000). The importance of such independent directors or out side voice at the board was identified much earlier in the USA and New York Stock Exchange emended it's listing agreement in 1973 where they put condition of having audit committee of such outside directors. In the year 1992, report of the committee on The Financial Aspects of Corporate Governance headed by Sir Adrian Cadbury was the first initiative in the field of the corporate governance in the current debate. This committee identified independent directors at the board as the solution to governance related problems of the corporate business. The committee report states that, "Non-executive directors should bring an independent judgement to bear on issues of strategy, performance, resources, including key appointments, and standards of conduct. We recommend that the calibre and number of non-executive directors on a board should be such that their views will carry significant weight in the board's decisions. To meet our recommendations on the composition of sub-committees of the board, all boards will require a minimum of three non-executive directors, one of whom may be the chairman of the company provided he or she is not also its executive head". This report was the first document to identify importance of non-executive directors in the governance of the corporate body due to separation of owners and management with the conflict of interests. The committee suggested appointment of non executive director on board for the specific period on the basis of merits following recommendation of nomination committee.

This report identified corporate governance as the basic requirement for efficient corporate business structure which works as a driving force for the country's economy as a whole. It also identified control and management of the company as the key to healthy and efficient corporate business. Thus giving importance to the board and management it suggested Structure of the board based on the independence of the directors in the form of non executive directors. The report also suggested some committees like, Audit Committee, Nomination Committee, and Remuneration Committee having majority non executive directors as members, to improve the effectiveness of board. The substance the report was on Non Executive directors.

Following UK, worldwide efforts have been made to systematise the governance norms and provide protective and healthy environment to the stakeholders and investors to increase productive investments. Number of companies put in efforts to regularise the governance norms. Almost all the countries having or expecting good economic growth, following UK in terms of corporate governance norms framing process, gave priority to control and management by amending clauses of listing agreement.

The corporate governance mechanism mainly depends on board structure with voice of independence from the representatives not in having material interest in the firm and independent from the group of major shareholders or the promoters. Corporate governance mechanism also provides for the administrative help in management by the different committees like, audit committee, nomination committee, and remuneration committee etc. by giving importance to the transparent discloser system. The structure of corporate governance mechanism is highly depending on the outside directors in the name of non executive directors and/or independent directors at the board. These outside directors are expected to play crucial role by balancing the interests of different stakeholders and they are expected to act fearlessly with keeping in mind the equitable interest of all the stake holders. The independent directors are identified as the professional person with integrity and participate in board discussion with objectivity. The Independent Directors Association jointly with the Russian Institute of Directors in partnership with some Russian and US government bodies developed independent director code 2003, where what is expected from independent director is identified as the characteristics as, 'The motto of the Independent Director is "Integrity and Professionalism". Independence, objectivity and an irreproachable business reputation are the distinguishing characteristics of an Independent Director'. Even after identifying and implementing corporate governance mechanism with intentions to have unbiased decisions at the board taking care of business interest first with the main objective of balancing majority and minority shareholders interest, question arises is, whether this system is rewarding to the business growth or not?.

Number of empirical survey based research carried out in UK and USA followed by other nationals like Australia, China etc considering the question related to effectiveness of corporate governance in general and independent directors at the board in particular on the long term growth of the firm. The results are divided; some research outcomes are favouring the independent directors arguing for more outside directors at the board and vice-versa. Choi et al. (2007) report that the effects of independent outside directors on firm performance are strongly positive whereas in another study focusing their study on board compensation and firm performance: the role of "independent" board members carried out by Fernandes and ECGI (2005) They find that non-executive board members are not very successful in aligning shareholders' and managers' interests. Bhagat and Black (2001) in a study predicated on "The non-correlation between board independence and long-term firm performance" still found no convincing evidence that greater board independence positively correlates with greater firm financial performance or faster growth. In the early 1990s several event studies of board level decisions also find that the presence of more independent outside directors benefited shareholders (John B, 2009). This means, the outcome of applying corporate governance mechanism is not in line and rises finger on it. The reason may be the lack of uniformity in its application. Corporate governance practices differ nation to nation and even among the firms. This variation reflects existence of not only distinct societal values, but also different ownership structures, business circumstances and competitive conditions. In some countries, company can diverge from the corporate governance guidelines and this freedom they enjoy with the rider of disclosure note explaining for doing so. Thus, even after considering Cadbury committee guidelines as a guiding book by number of countries, it is not followed in totality by any country. Still to gain the investors confidence and ensure economic development with growth of corporate business with increasing production, developed and developing country impose on listed company to compulsory adopt the corporate governance guidelines and norms.

Even the term "independent" does not have commonly accepted meaning. Its definition differs from country to country which itself indicates that there is a lack of lucidity in the identity of an independent director. Table in annexure indicates that not having employee is the basic criterion for the identification of the director as the independent director. Here Indian norms specify that person who is not an employee of an organisation in last 3 years can be considered as independent director but USA and UK make this test for five years where as in Japan person shall not be in employment at the time of appointment is the test of independence. Another criterion of test for independence is of having material business relation with the firm. This criterion is not adopted by the USA and to some extent by Japan. Only Indian norms are giving importance to pecuniary relationships with the company, directors, top managers or promoters. In India, the definition of independence is also linked to the remuneration of directors: Independent directors are those who do not derive the majority of their current income from the company and are therefore not beholden to it for their own financial well-being. (Speech by N. Murthy, CEO, Infosys India, at the Asian Institute of Management, March 2001.)

Thus the criterion of identifying some one as independent director differs from country to country. This point again creates different perceptions of different stakeholders for the independent directors' role in an organisational setup. At the same time, even with different meaning and definition of independent director, appointment procedure followed by different countries is more or less same. Independent directors are appointed at the annual general body on the recommendation of the nomination committee.

The shareholders and investors look at the independent directors as the person at the board primarily to protect their interests of the minority shareholders but as appointment takes place at the annual general meeting of the shareholders, where majority shareholders or promoters are always remains in controlling position and not the minority shareholders. Hence, due to having influence in appointing, majority shareholders look at independent director as their silent supporters. This confusing perception and appointing practices, creates many questions on role of independent directors. In response to the series of events of corporate collapses of huge and high profile corporate business houses, the questions on appointment and role of independent directors aggravated with creating furious environment against the global corporate world in last two decades. The sequential collapses started from USA based energy giant - The Enron, and the telecom behemoth WorldCom followed by several other corporate like Parmalat in Italy to the multinational newspaper group Hollinger Inc., Adelphia, Commerce Bank XL Holidays, UTI - 64 etc. Initially business word took these events as the accidents but continuous news of other corporate scandals make investors to feel that, what is known to the world is only a tip on the iceberg and it shaken investors' faith in the capital markets and from corporate world. Such happenings questioned the corporate governance mechanism having special focus on having independent directors at the board, their role at the boars and in the overall control and management of the firm.

The rally of corporate scandals followed by corporate houses from different corner of the world drew attention of the business world towards the unethical and illegal practices followed by business leaders making board and playing important role in the decision making and controlling the business. Investors also felt that board members are missing their role Number of research work carried out in different corners of the world endorsed these views. Collier (2005) expressed, "Central to the scores of corporate disasters in recent years has been the failure of the monitoring function of boards, the entity that holds management accountable". Thus, the reason for such misshapenness identified "corporate miss governances" or failure of corporate governance and mainly failure of independent directors at the board room and issue of corporate governance started getting more and more importance all over the world. At the 9th International Anti-Corruption Conference at Durban, South Africa the paper entitled "Corporate Governance: What It Is and Why It Matters" presented by Holly J. Gregory and Marsha E. Simms identified corporate governance as the "[t]he governance of the corporation is now as important in the world economy as the government of countries."

In the debate of corporate governance issue, two aspects always remain at the summit. First, the board composition and second is, executive V/S outside directors at the board. Some people do not support idea of outside directors with an argument that, inside directors are more familiar with the firm's operating environment, ethical norms, activities hence they can act as effective force of control and monitoring to top management. On the other hand, outside directors may act as "professional referees" to ensure that competition among insiders stimulates actions consistent with shareholder value maximization (Fama 1980). Independent directors are considered as professional referees as idea of having independent director is not only opposed to that of executive directors, it also opposed to that of any director with any sort of special interest in the company, whether as a shareholder, a supplier or a customer. Thus, an independent director is an individual who has no direct or indirect interest of any kind in the company or in any of its affiliates, and is thus able to provide a completely impartial contribution to boardroom debate. Therefore, the challenge for independent directors is, in the light of diverse interests of different shareholders, to find the right balance and ensure that the important decisions taken by a company's board and management are equitably aligned to these sometimes competing interests. And to do so without fear or favour. (Kwok 2007). "But it is also critical that the directors possess the right personalities to act independently. Independence consists of the feeling of freedom to express personal views in the boardroom and the freedom from undue influence by the top management team or the controlling shareholder" (Phan 2000). Thus independent directors need both a clear understanding of formal governance structures and policies, and in-depth knowledge of the business they are responsible for steering and guiding. This is particularly important with the changes in the accounting, regulatory and business environment that companies operate in. Thus, independent directors are viewed as partners of management and as outside guardians whose job is to make sure that management stays focused on delivering shareholder value. His role in decision making is expected to be independent of those who have controlling stake in a company and be in the overall interest of the company and its stakeholders.

An independent director expected to behave bravely and to ask the relevant questions pertaining to the management and problem under consideration or discussion. He must also challenge CEO or Chairmen with positive and constructive attitude, where ever it is required. He must be ready to say "no" when appropriate. This does not happens in some cases as, many independent directors are themselves full-time executives having lots of responsibilities at another organisation or may sit on the number of boards. They may not have time to keep up with the workings of the business and to fully digest the information of the board meetings, papers related to decision making and check the external forces and broader industry trends influencing business as a whole or decision in particular. Such facts force us to think on the argument of people saying, corporate misshapenness reflects the failure of independent directors at the board room. This moves focus of corporate business world to think about the role of independent directors on boards with specific emphasis on their contribution in terms of overall performance of the business, because the success idea of corporate governance approach depends on independent directors' performance. Here circumstances raises specific question, Are independent directors do their duty in right spirit? This situation takes place because idea of including independent director at the board is immerged in response to the lot many questions and problems related "to control the misuse of power, decision making process and status by the majority shareholders".

The system of independent directors on the board can deliver expected results if independent directors work on board with keen interest in the working of the board by absconding attitude of "why should I speak for others"? The independent director must constructively challenge and contribute to the strategic development decisions by adequate information, knowledge and skill pertaining to performance of the company. This is possible with character conscious, strong formal as well as informal systems and environment. Now questions arise are,

- Do independent directors perform as per expectation of the stakeholders and particularly interest of the minority shareholders?
- Do they behave independently with strong and constructive participation in the decision making as well as functioning of the business on regular basis?
- Do they satisfy the principles of openness, integrity and accountability?

The investors and other stakeholders, especially the minority shareholders, look at the independent directors as the device providing transparency in respect of the disclosures in the working of the company as well as providing balance towards resolving conflict areas. But still debate is on, considering the appointment procedure one question is always asked by behavioral scientists "are independent directors independent at the board meeting?" or "are independent directors fulfilling these expectations?" To verify, the further study is divided in to two parts. Part one discusses the results of the survey under taken by FICCI GT and KPMC with major respondents from the corporate world. Part two discusses the behaviour of the independent directors in the adverse time of the firm with the help of case of "Satyam".

The behaviour of independent directors at the board can meet the theoretical expectation if they are truly independent. "Independence is a state of mind and cannot be codified through a statute. A lot of promoters bring someone on the board that they have known for long. The chosen individual is either expected to add value or toe the line without constructive challenge. However, if the non-executive director chooses to engage in constructive challenge within the board room, that is real independence. In the long run, such constructive dissent is bound to result in more effective decision making." Thus, true independence comes from the commitment and competence and not by making laws and statues. This also requires policing and enhancing ethical behaviour of the directors. Independent directors may not be in a position to stop management fraud perpetrated at the highest level, but with high level of commitment and due diligence they should be able to identify signals that indicate that everything is not going right. To achieve this level of commitment, one is required to play his/her role actively by considering all the stakeholders' interest. To check the involvement and participation of the independent directors in the policy making decisions, annual planning as well as routine board meetings, the study considers two different surveys.

On of the survey carried out by the FICCI GT: India 101-500 CGR 2009 was designed to analyze corporate governance practices at 'mid-market' listed companies in India. The review methodology was based on a survey to gauge the nature and extent of corporate governance practices and approximately 500 companies across various sectors. Here one of the questions was asked to respondents, What level of involvement do the independent directors have in the annual planning and strategy development of your company? The majority of the respondents were of the opinion that involvement of independent directors is moderate. The responses are summarised as follows:

Table No. 1.1

Table showing Independent Directors Involvement in annual planning and strategy

Independent Directors Involvement in annual planning and strategy	Respondents agreement percentage (in %)
Moderate	59
Substantial	22
Minimal	13
Can't Say	06

Here the respondents were from the corporate world and majority respondents were of the opinion that independent directors' contribution to the annual planning and strategy is not substantial and about 19 % either denied much contribution of the independent directors or unable to gauge independent directors contribution in the same.

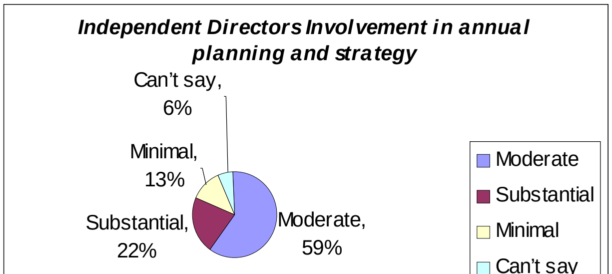

Chart 1.1 : Chart showing Independent Directors Involvement in annual planning and strategy

Another survey entitled "The State of Corporate Governance in India: 2008", carried out during November 2008 to January 2009, by KPMG in India's Audit Committee Institute. This survey was administered by selecting about 90 corporate personalities' as the respondents. The respondents were independent directors, CEOs, CFOs, and corporate tycoons. The survey was to address the issues related to corporate board's attitude towards minority shareholders interest and the role of independent directors. The one of the question was, Are concerns of minority shareholder groups adequately addressed by Indian boards? The respondents were from corporate world and knowing about boards functioning to the great extent. The response here were very eye opening.

Table No. 1.2

Table showing how minority shareholders concerns are addressed at the board

Particulars	**Respondents reply**		
	Some times, but in the best personal interest rather than company	Some times, but in the best interest of the company rather than personal interest	More often than not
Responses in %	12%	25%	63 %

The result of this inquiry is alarming. Though theories as well as celebrities say that board and independent directors are to expect to act as watchdog in the best interest of the company and safeguard interest of all the shareholders. The views of Narayana N. R. Murthy, Founder of Infosys Technologies Limited are confirming to these ideas. He says, "Corporate governance is about owners and the managers operating as the trustees on behalf of every shareholder-large or small."

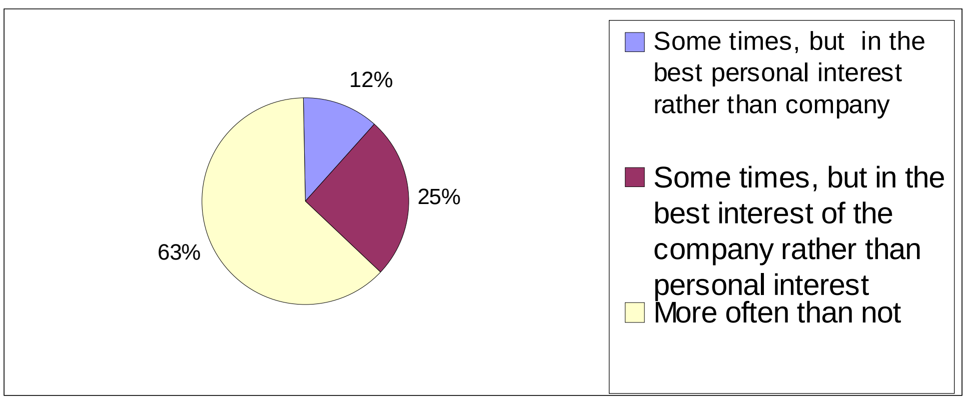

Chart 1.2

Chart showing Respondents view about taking care of minority shareholders' concern at board.

Now when respondents feel that concern of the minority shareholders are not taken care at the board meeting. Then further question arises is, what independent directors are doing there at the board? Hence one question was "Do independent directors merely contribute towards satisfying a regulatory requirement"?

Table No. 1.2

Table showing Independent Directors role at the board

Do independent directors merely contribute towards satisfying a regulatory requirement? (in %)		
YES	YES, however more empowerment would enhance performance significantly	No
25	64	11

Here majority of the respondents feel that independent directors do not adequately challenge the executive directors and management in the process of discharging their governance responsibilities. Independent directors are considered as the central pillar of the corporate governance mechanism. At all the committees, independent directors are given importance or they are at commanding position still if situation is not in favour of minority shareholders than this system requires different look. This is clear from the second option of the answer which is preferred by 64 % respondents which indicates that more empowerment as well as enhancement of independent directors performance are required and both can be achieved simultaneously, none can be achieved individually ignoring other.

Hence the next question selected to check and identify the factor influences the corporate governance standard at the firm level. The question was very specific, How do you rate the importance of following factors in improving corporate governance standards? To reply this question, respondents were provided five different situations, to enhance the corporate governance standards.

Table No. 1.3

Table showing respondents views on role of different factors in improving corporate governance standards.

Factors Considered	Respondents responses(in %)
Significantly enhancing power of independent directors	20%
Considerable improvement in financial disclosers and Management Decisions and Analysis	24%
Strengthening rights of minority shareholders through statute	15%
Separation of position of chairman and CEO	17%
Drastically improving risk management and oversight processes	24%

From the above table it is clear that majority of the respondents were of the opinion that enhancing powers to the independent directors or strengthening rights of minority shareholders through statute will not help in enhancing the corporate governance system but Considerable improvement in financial disclosers and Management Decisions and Analysis and Drastically improving risk management and oversight processes.

The analysis of responses revels that independent directors are not involving themselves in the annual planning as well as independent directors very rarely address minority shareholders interest at the board. If we look at the outcome of both these question then it goes in favour of having fresh look at the corporate governance standards which is again proved by the responses that at present role of independent directors at the board is not up to the mark and requires enhancement. To check the practical implication of all these issues related to the independent directors at the board, we examine the case of "SATYAM".

Board of Satyam was also full of galaxy of academicians, business celebrities and professional as independent directors in response to full fill the listing agreement requirements and securing respectability to the boardroom. The board of the Satyam was including noted academics such as Harvard professor of Business Administration Krishna Palepu, Dean of the Indian School of Business in Hyderabad (ISB) M. Rammohan Rao, Mangalam Srinivasan, a management consultant and advisor to Harvard's Kennedy School of Government and Vinod Dham, called the "father of the Pentium chip" and now executive managing director of NEA Indo-US Ventures in Santa Clara, Calif as the non executive director or independent directors. The presence of such big personalities force investors to expect fare game and best protection of their interest.

But when scam sponsored by Chairman Mr. Raju aggravated the situation, Krishna Palepu resigned from the board on December 25, 2007. The trend is followed by another three independent directors -- Mangalam Srinivasan, Vinod Dham, and M. Rammohan Rao also resigned from the board on the same day. Any of the independent directors never gave dissenting note, never raised voice against what was happening or never played role of caretaker of minority shareholders or outside investors. This evidences of lack of commitment of Independent directors at the board. They failed to fulfill the stakeholders' expectations.

Independent directors system is always questioned at the time of any corporate scam or failure come in to light. Independent directors are considered as the people seating on the board who lack in the target of shareholder benefit maximization. Their role at the board meeting and supervision behaviours are limited by one or more of the factors like skill, knowledge, time, incentives, information, commitment and integrity. Thus, we can say that Independence never come with fulfilling certain statutory criterion but is a state of mind and behaviour. Majority shareholders and promoters always try to bring someone on the board that they consider good for them and whom they know well. The person so selected is either expected to help in improving performance or add value by supporting their ideas and policies or provide silent support by not to create any kind of opposition or with out raising voice at the board room in the name of constructive challenge. However, a brave and constructive idea with positive state of mind in the discussion at boardroom with readiness to put constructive dissent by kipping personal interest and relations aside is the true independence. The true independent behaviour of the majority board member provide long term sustainability with constant growth and value addition as a result of effective decision making at the board.

What happened in the Satyam's case is the regular phenomenon as far as the independent directors' role in crisis is concern. Independent directors are professional persons having membership of number of boards. They are qualified professionals and accepting such board membership as a day job. They prefer to be on the board of the well performing firm which adds to their reputation by sitting on boards of better performing firms. The directorship of well performing board provides benefits in terms of number of board memberships as well as earnings. The outcome of the different research studies also announces the same thing. Yermack (2004) and Ferris, Jagannathan, and Pritchard (2003) that directors who sit on the board of better performing firms are more likely to receive additional directorships in the future. The research out put of Rudiger and others in the article entitled, "The dark side of outside directors: Do they quit when they are most needed?" pronounces about the reasons for leaving of directors from the firm expected to give bad news in future as, A more direct test of the dark side hypothesis is that directors are more likely to quit when they expect the firm to perform poorly and to disclose bad news, so that they can at least partly and possibly totally escape the reputation loss. A positive relation between director departures and future adverse events is consistent with directors quitting the firm to protect themselves. (Rüdiger Fahlenbrach, Angie Low, and René M. Stulz, 2010). Thus, Outside directors considering their reputation or to work more in challenging situation quit from the board when the firm on whose board they sit is likely to experience a tough time either because of poor performance, expecting some man made calamity or miss-happening. This also adversely affects the firm's stock prices and reputation even before happening of such event. Therefore, the independent director system should not be expected to solve all problems in corporate governance system as it exists today.

Recommendations

The idea of independent director came from the hard felt requirement of the constructive debate and constructive dissenting behaviour to safeguard the minority stakeholders of the firm. Constructive dissent and positive challenge always remains indescribable in any decision making process including board room. Since a single dissenting individual may find it difficult to be give positive results, he may be reluctant to raise voice and show concerns when the dominating Chairman, CEO or majority board tries to display unanimity to a particular decision, worldwide it is suggested as the requirement of listing agreement to have minimum two or three such outsider directors at board every a time. To have fruitful results of this statutory requirement, true independence must be ensured.

1. Regulatory and Monitoring Body

Numbers of times we find that well experienced qualified professionals having practical exposure of the field where business is operating are not available. This leads to appointment of available known persons by the promoters or majority shareholders. Another requirement of corporate governance mechanism is to have continuous evaluation and modifications in the norms considering vibrant and continuous changing business environment in present era of globalization. To have amicable solution of this problem, we recommend national level central agency monitored and controlled by SEBI or Ministry of Corporate Affairs. This agency shall prepare publish the list of professional persons who can be appointed as the independent director. This list may be prepared industry wise as well as common management professionals for all industries. This agency shall also put efforts to develop performance evaluation measures for the independent directors which must be insisted to follow at the time of appointment and reappointment of independent directors as case may be. This body shall also assign the job of arranging workshops and seminars regularly for the independent directors and also with the aim of continuous updation of the Corporate Governance norms keeping track with the changes in business environment and contemporary issues.

2. Appointment Procedure

Independent directors must be appointed from the list published by central agency as mention in the first recommendation of this paper. At present directors are appointed by the General Body of the shareholders at the annual general meeting on the recommendation of the nomination committee via board. This nomination committee is of the independent directors and even board is also having majority independent directors, therefore unbiased selection for the appointment as well as reappointment of independent director on the basis of positive performance evaluation is always remains at question. Therefore we recommend having nomination committee constituted by minority share holders other than the person who was not board members in last two years.

3. Orientation and Training

Independent directors are professional persons from the public, when they are appointed at the board; they must be given orientation about the firm, important historical events having long term impact, present business environment and situation, decision making process and cultural background of the firm etc.

4. Episodic Interaction

Independent directors must meet frequently on occasions other than board meetings. They must meet in the leadership of senior independent director and discuss the issues informally. This will improve cohesiveness among the independent directors.

5. Membership of several boards

Independent directors are professionally serving on board and they try to get on the as number of board as possible and statutorily permitted. Fama and Jensen [1983] and Lorsch and MacIver [1989] argue that the primary benefits from board membership for outside directors are prestige, reputation, learning opportunities, and networking. Thus they keep them self busy by serving on number of boards to enrich their bio-data, prestigious place in the society and earn higher remuneration. Such busy directors do not devote much time for the board meeting planning in advance, gathering internal as well as external information related to issue and business as a whole. This situation adversely affects the decision making process hence we recommend to restrict the number of boards when one individually can be appointed as independent director to Three or Four. Agreeing with this idea, Ferris at al (2003) cite reports by Council of International Investors (1998) and National Association of Corporate Directors (1996) that suggest that directors should not serve on more than two or three boards.

6. **Performance evaluation**
   Each company shall implement the performance evaluation mechanism involving outside professionals and shareholders who are not on board in last three years. This process must be kept separate the decision-maker or board members or management of the firm. Because the same body or group of individuals cannot reliably form judgment over the their own performance or project handled by themselves.

Finally, the issue of independent directors behaviour at the board is much of psychological study uniting with the social and cultural issues. Hence, further research is needed to conclusively determine how performance of independent directors can be improved which can best contribute to the best for business as whole as well as taker care of minority shareholders.

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