Chapter 8

Summary of Findings and Suggestions

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The present chapter has been divided into three sections. Section one sums up findings and inferences. Section two outlines some suggestions to improve corporate governance practices and the last section focuses on limitations and further scope of study.

8.1 Summary of Findings

Following is the summary of major findings and inferences:

8.1.1 Corporate Governance Objective, Strategy, Policy, Ethics and Disclosure

'Creation of corporate value' was the guiding objective of the corporate governance in case of companies in private sector while 'maximisation of shareholder wealth' was the objective of public sector companies. There was no revealed preference in case of joint sector companies. 'Share price and growth of the company' was the operating parameter irrespective of the sector. 'Return on total corporate resources' was the preferred strategy of corporate governance by the public and private sector companies whereas the joint sector preferred 'return on investment'. In public and private sector companies the first choice for investment policy was 'long term based fundamental analysis' whereas joint sector had inclination towards 'government policy' while deciding the investment policy. 'Transparency' and 'fairness' were underlying tenets of ethical values of corporates seemingly due to the legal requirement by SEBI. Recommendations on disclosure by CII (1997) suffered lack of force and effect being the voluntary code, however, the strong impact of listing agreement could be traced only on those companies in which it was mandatory in phase I in the FY2000-01.

8.1.2 Board Size

(a) In the period of four years, the minimum board size remained unchanged, i.e., 5 whereas the maximum board size varied from year to year in the range of 18 to 21. In surveyed sample of companies, the average board size, i.e., 10 did not change significantly from year to year despite the fact that on an average one out of two company changed their board size from year to year.

(b) This study accepts the hypothesis that there is no significant difference in the average board size of public and private sector companies from year to year. Relation between board size and aggregate performance of company could not be established, however, board size was found significantly related with individual financial variables (viz., sales, profit after tax, non-business income, reserves and market capitalization) in private sector and public sector companies. Moreover, board size was also found to be significantly related with paid up share capital in public sector companies only. However, the magnitude of correlations were low and moderate in private and public companies respectively. Further, the study indicates that the board size of the company was influenced negatively by directors' holding and positively by financial institution holdings and these effects were found to be significant.

8.1.3 Board Composition

It is evident from the study that the average board size of 10 was comprised of ED and NED (including IND) in the ratio of 3: 7 and that insider and outsider were in the ratio of 5: 5. Out of total NEDs majority were insiders. Post-insertion of Cl. 49 changed the board composition significantly by introducing more INDs by off-setting the overall proportion of NEDs, and that the Cl. 49 could not influence significantly the overall proportion of EDs. Results of the study indicate that higher proportion of financial institutional holdings tend to reduce the proportion of insiders significantly. The pattern of study revealed that the proportion of ED in the board significantly influence the performance of the company whereas proportion of neither NED nor IND individually influence the performance of the company.

8.1.4 Demographics and Cognitive of Directors

(a) In India, an average age of director was 57 years both in private sector and public sector companies. Majority of EDs were less than 55 years and majority of INDs were greater than 60 years of age. The youngest and the oldest director were of age of 23 years and 93 years respectively in the surveyed companies.

(b) The empirical results support that the higher age of NEDs lead to higher attendance at the AGM and higher age of INDs leads to higher attendance at the board meetings. These results were found to be significant statistically. However, age was not found to be significantly influencing attendance at AGM, board and board committee meetings for EDs, board and board committee meetings for NEDs, and AGM and board committee meeting for INDs.

(c) Though 1/4th of board members were found to be serving for a period of more than ten years, 1/3rd board members changed every three years and half of the board changed in every five year period. Sectoral differences indicates frequent turnover of directors in public sector companies than private and joint sector companies. The results of study highlight that 1 out of 4 INDs have been serving on the same board for more than 10 years. It is evident from the empirical data that EDs were replaced more frequently than the NEDs and INDs. Though the requirement of appointment of additional and alternate directors is to fill the gap instantly, some of directors had been serving on the same board in a capacity of additional director for more than 5 years and that some directors had been serving on the same board in a capacity of alternate director for more than 10 years.

(d) In 2 out of 10 surveyed companies female directors on boards constituted 2.3% of total directors. Majority of female directors were on the boards on the basis of their professional credentials and others had familial relations with one or more board member/s. It is evident from the study that there were no female directors observed in joint sector, negligible in public sector and very few in private sector companies.

(e) In 1 out of 2 private sector companies, relatives of Chairman/ CEO were on the board. Also that 1 out of 2 NEDs were on the board due to their business relationships with the company.

8.1.5 Nominations and Appointment of Directors

(a) Process of identification, nomination and appointment of directors differed in each sector. Though public sector has well laid down procedure for the same through PESB, private sector companies identify executive directors from within the company on the basis of their performance and potential and/ or due to the familial relationships with the promoter/ promoter group. Nomination and appointment process of directors, in private sector, is under the control of CMD/ Promoters/ MD and other board members play only consultants role, if any. 'Professional expertise' and 'business experience' were most preferred factors while nominating directors on the board. 'prestige and honour' was the dominant reason for joining the board followed by 'contributing their knowledge, experience and expertise to the business'. Promoter group/ collaborators/ FIs and government (promoter of public sector companies) were being represented on the board as shareholder categories. That 1 out of 5 companies has representation of category of shareholders having shares above nominal value of Rs. 20,000/- upto 5% and/or 5-20% of shareholding, 1 out of 3 companies has representation of category of shareholders with 20-51% shares and/ or more than 51% category.

(b) The age of superannuation of ED in private sector companies ranged from 58 to 75 years and in some private sector companies it did not exist. In public sector companies the age of superannuation of EDs was 60 years whereas in joint sector it was either 58 years or 60 years. Reappointment of the ED after retirement was possible in 1/3rd companies with duration of reappointment varying from 2-5 years at a time. Age of superannuation for NED did not exist in majority of companies and in some companies it existed in the range of 60 to 75 years. Renomination of the NED existed only in few private sector companies with duration of reappointment of 3 years only. Renomination of ED/ NED did not exist in public and joint sector.

8.1.6 Chairman of the Board and CEO Duality

(a) The results reported in the study indicate that the type of chairman and CEO duality did not depend upon the category of largest shareholder. However, in majority of private sector companies chairmen were NED while in most of the public sector companies CEO duality existed. In most of the private sector companies chairmen were selected by the board of directors whereas in the public sector it was the Administrative Ministry of the Government that nominated the chairman of the company. There was no specific pattern evident in joint sector. Further, CEO duality existed in 1/3rd of total surveyed companies. Though the term of the office of the chairman was fixed, they were eligible for renomination in almost all companies

(b) The empirical results of this study revealed that CEO duality/ non-duality was not found to be associated with the performance of the company whereas the probability of best performance of the company was found to be more in case of executive chairman (though not CEO duality) than the non-executive chairman. However, companies preferred CEO duality for maintaining unity of command and removal of conflicts of roles while non-duality was favoured for professionalism, independence, size and higher complexities of business.

8.1.7 Shareholding Pattern and Control

Overall shareholding pattern in India exhibits that on an average promoter/ director held highest shareholding followed by public shareholding and FI shareholding trailing at 3rd position. Atleast 1 out of 2 companies the single largest shareholder had more than 50% of total equity of the sample company but had no significant relationship with the performance of the company. This study revealed that the shareholding pattern has significant impact on the board structure, i.e., board size and board composition.

8.1.8 Nominee Directors

Though financial institutions' equity stake accounted for 15.4% of share capital but they were represented by 6% of total directors on the boards of sample companies. In surveyed companies two-thirds of total nominee directors were reported as NED and balance were reported as IND. Maximum length of service of a nominee director was observed above 10 years on the same board. Financial institutions' nominees were reported that FI had major influence on 'use of funds' and less influence on other issues (such as management performance, strategy, appointment of new directors, standard of conduct, management of conflict, etc.). The empirical data of the study indicates that FI-nominees were not very regular in attending the AGM and had moderate attendance records in board meetings and board committee meetings.

8.1.9 Multiple Directorships and Board Committee Memberships

(a) A vast majority of directors had multiple directorships and only few directors did not have any directorships other than in their present company. The average directorship per director was 6 and that average directorship held by an IND was 7, NED was 6 and ED was 5. Chairmen had the highest average number of directorships i.e. 8 and few directors were found holding more number of directorships than the limit prescribed by law. There was no significant relationship existed between the multiple directorships of ED, NED, IND and their attendance record at AGM, board committee meetings. However, only in case of EDs, higher percentage of attendance at board meetings were observed when the director was holding more number of other directorships and it was found statistically significant.

(b) In 3 out of 10 directors did not have any board committee memberships in one or the other company. The average board committee membership including board committee chairmanship across all companies was 3 per director with INDs holding the maximum number of board committee memberships across all companies (i.e., 4) whereas EDs held 2 and NEDs held 3. In 1 out of 2 Chairman/MD/CEO/WTD of company had the membership of board committee in the same or the other company. The results of the study reveals that the number of board committee membership across all companies held by the director positively influenced attendance of NED and IND in the board meetings and attendance of ED at board committee meetings significantly. However, the number of board committee membership across all companies held by the ED, NED and IND did not significantly influence their attendance at AGM.

8.1.10 HRD Aspects of Corporate Governance

In majority of companies there did not exist formal orientation programme for new directors and the manual for board procedure was in existence in 1 out of 10 companies. In majority of companies executives were groomed for assuming the role of the director by imparting training 'in house' and 'outside seminar and conferences' and preferred subjects for training were 'business strategy' and 'leadership'. Duration of training ranged from one week to 15 days mostly while few companies did send their executives for long duration training programme.

8.1.11 CEO Succession

Most of the surveyed companies' boards had a clear definition of the type of CEO the company needed. However, in 1 out of 2 surveyed company continuous attention was paid to CEO succession and 1 out of 4 companies appointed more than one MD/ CEO or deputies of MD/ CEO on the same board. Approximately two-thirds of total companies had process of mentoring, identifying, moulding and nurturing talent for future CEO. However, majority of public and joint sector companies did not have any such system. In majority of companies potential candidates for the post of CEO were rotated to handle multiple functions in order to afford them hands on experience and also provided mechanism to have comprehensive picture of the company's top management team. However, institutionalized structure to train and assess immediate candidates for CEO was present only in 1/3rd of the surveyed companies. In 1/3rd of surveyed companies there existed system of mentoring the potential candidate of future CEO succession with as many as five mentors. The basis for identifying the future CEO were reported as seniority, potential of the candidate and the time left for the retirement of present CEO and it varied on the type of sector companies belonged to. Nearly half of the total companies benchmarked their CEO succession with other top companies of the same industry or with global companies.

8.1.12 Performance Evaluation of the Board and Its' Members

(a) Performance evaluation of the whole board was less common than the performance evaluation of the individual directors in the surveyed companies. In few companies the board did the self-appraisal and in private sector other appraisers were outside agencies, CMD, chairman of the company, parent company, promoter, remuneration and nomination committee. In some companies HR related committees appraised the performance of executive directors. Formal appraisal of NED/ INDs did not take place in majority of the companies and almost all companies reported their satisfaction with contribution from NED/IND in the governance of the companies.

8.1.13 Remuneration of Directors

(a) In 1/3rd of total surveyed companies the whole board decided remuneration of EDs. Decision by the remuneration committee about the remuneration of EDs was found in 4 out of 10 private sector companies. In majority of companies the board decided remuneration of NEDs. In 1 out of 5 companies remuneration committee or the other HR related committees decided the remuneration of NEDs. However, in public sector undertakings the government fixed the remuneration of EDs and NEDs. Majority of EDs received only salary and some EDs get commission alongwith the salary and that very few EDs received only commission. A vast majority of NEDs received sitting fees only, few NEDs received commission alongwith the sitting fees and very few of them received commission only. Percentage of IND was more than the percentage of NEDs who received commission alongwith the sitting fees. Decision to pay the commission depended on performance of the company followed by performance of the concerned director. Only in a few companies the prevailing industry norm, time devoted, efforts put and responsibility of the person were also considered while deciding commission to be paid to the directors. Majority of private sector companies gave commission to directors whereas the public sector companies did not pay the same to directors.

(b) In all the surveyed companies Rs. 2,000/- and Rs. 5,000/- was the sitting fees per meeting. Public sector banks and some private sector companies paid minimum sitting fees of Rs. 1,000/- for board meetings and Rs. 500/- for board committee meetings. Ratio of average remuneration of ED: NED: IND was 10: 1: 1.1. Ratio of average remuneration paid to the ED of private: joint: public was 10.7: 9.6: 1. However, ratio of maximum remuneration paid to ED of private: public: joint sector was 59.4: 10.94: 1; for NED it was 21.48: 1.75: 1 and for IND it was 12.42: 1: 4.79.

(c) Remuneration paid to the ED was found to be negatively related with his attendance at the board committee meeting significantly, however, it was not significantly related to his attendance at AGM and board meetings. Remuneration paid to NED and IND were not found significantly related with their attendance at the AGM, board meetings and board committee meetings. One fourth of total surveyed companies, specifically private sector companies only, gave the stock option to their directors. However, presence of stock option plan to directors was not associated with the performance of the company.

8.1.14 CEO Pay and Performance

The results of the study revealed that CEO pay was not found to be linked with the performance of the company irrespective of the sector. However, the CEO pay in public sector found to be negatively related with paid up share capital and positively related with the market capitalization whereas in private sector CEO pay was found positively related with sales and profit after tax and negatively with reserves. The analysis also revealed that status of CEO as a promoter or non-promoter significantly influenced, both, performance of the company and CEO pay. Majority of companies having promoter CEO were performing better than those companies having non-promoter CEOs and CEO pay was higher in case of promoter CEO than the non-promoter CEO. The ratio of average pay of promoter CEO and non-promoter CEO were found 2.73: 1. Further, the length of service of the CEO on the same board was found positively associated with the CEO pay but had no relationship with the performance of the company.

8.1.15 Board Committees

(a) Despite the mandatory requirement on board committee has been quite recent, pursuant to sec. 292-A of the Companies (Amendment) Act, 2000 and Cl. 49 of listing agreement of BSE (2000), the existence of board committees could be traced since the year 1955. The formation of board committees gained momentum since the CII report, 1997.

(b) In surveyed companies the average number of board committees per company was 4 and that the average number of board committees in public sector was more than the private sector and the joint sector companies. Shareholders' grievance committee had highest number of members and nomination/ recruitment committee had lowest number of members. The overall proportion of IND in the composition of board committee was more than ED and NED. Strength of INDs was more in the audit and the share transfer committees and the EDs were found dominating the nomination/recruitment and remuneration committees. The preferred frequency of board committee meetings ranged from 3 to 6 per annum. Share transfer committee and shareholders grievance committee meetings were held most frequently and the same was least in case of remuneration/ compensation and nomination/ recruitment committee. Almost all companies conformed to the mandatory requirements for the quorum of the board committee meetings.

8.1.16 Board Meetings

(a) Usually, in majority of cases CMD/MDs were involved in setting agenda items of board meetings alongwith company secretary. A vast majority of companies held their board meetings either at corporate office or registered office. PSUs had more propensities than the private sector companies to convene their board meetings at places other than the registered or corporate offices. Companies preferred to call mandatory four board meetings per annum with an overall average of 6 (i.e. Bi-monthly). The sectoral differences were evident in the frequency of holding board meetings. In case of public sector the board meetings were held monthly, in joint sector they were held bimonthly. While private sector companies held meetings quarterly. However, no significant relationship was found between the performance of the company and the frequency of board meetings held.

(b) With regard to attendance at meetings it was found that the leave of absence was not either sought or the chairman did not seek confirmation for participation in board meetings. Invariably, the chairman and CMD interacted with board members before holding the meeting, which led to the confirmation of decisions on agenda items and the meeting was "with usual homilies" and avoided dissent. This led to the shorter durations of board meetings. However, in some companies meeting of senior executives' before the board meeting sent the signals of preparation of executives for presentation and getting ready for the answers posed by the board members. The priority items at the board meetings were 'annual & quarterly accounts' and 'corporate performance'. Moreover, companies' boards sought outside advise on legal/ corporate laws.

(c) Most of the companies had the practice of ratification of minutes by the board members only by way of chairman signing the minutes on behalf of the whole board as stipulated in the law. Further, resolutions of board of directors were accepted during AGM in majority cases with negligible cases of rejection. However, no relationship could be found between the audit of corporate governance and the performance of the companies since the same was carried out for the mandatory requirements only.

8.1.17 Attendance Record of Directors

The attendance record of directors illustrates that two-thirds of directors attended the AGM, and the average attendance at board meetings was 72% and that of the board committee meetings was 72.8%. Significantly high difference in attendance of the EDs, NEDs and INDs indicates that EDs were more regular in attending AGM and board meetings and INDs were more regular in attending board committee meetings. Majority of EDs had 100% attendance at the board meetings, 1 out of 2 NEDs (including INDs) had attendance less than or equal to 50% and 1 out of 2 board committee members attended 100% board committee meetings. Few directors did not attend even a single board or board committee meetings and 1/3rd directors remained absent in the AGM. The study indicates that the 80% of board committee chairman attended the AGM and approximately two-thirds of them attended 100% board committee meetings.

8.1.18 Compliance of Cl. 49 of the Listing Agreement

Almost all companies have complied with requirements of proportion of NED on the board. Most of the public sector and more than 1/3rd private sector companies did not comply with the proportion of INDs on the board (on the basis of the type of chairman of the board). Formation of mandatory board committees was found in compliance with the requirement leave alone the type of directors. It was observed that the companies in majority cases try to adhere to legal requirements of the law.

8.2 Recommendations

1) A corporate governance model be developed taking into consideration the Indian modalities.
2) Impact of various mandatory amendments on corporate governance structure and processes be studied periodically before bringing in new amendments on the same points.
3) SEBI should prescribe the minimum board size for the listed companies taking into consideration the number of board committees to be formed.
4) The multiplicities of labels attached with the positions of directors, viz., Executive, Non-executive and Independent should be done away with and we must have only two

fold classification of directors, i.e., insiders and independent directors. For this, suitable amendments be made both in definitional section (i.e., section 2) as well as the clauses dealing with appointments of directors.

5) Concept of independent director should be well defined and possible areas of conflict of interest should be carefully evaluated before appointing a person as an independent director. No independent director should have more than two terms on the same board.

6) The appointment of independent directors should be by an independent agency. This can be done by having an institution of SEBI, which can help to develop the independent directors.

7) FIs should re-examine the role played by their nominees since they are not able to discharge their duties effectively. FIs may consider to fix a limit on number of directorships a person can held and also term limit(s) beyond which a person should not be nominated in a company.

8) Companies must have carefully designed succession planning system for identifying executive director and CEOs in case of private sector companies.

9) Future candidates for a CEO should be developed by the existing CEO by identifying talented people at an early stage within an organization.

10) The executive directors pay should be in consonance with the size of the business and his contribution to business performance for which suitable measures should be devised.

11) Nomination committee/ compensation committee/ board governance committee (corporate governance committee)/ board's HR committee should be active enough to do evaluation of board members and use this evaluation for remuneration, re-nomination, development and audit of the expected talent and available talent in the board.

12) Disclosures should be unified in terms of their contents and forms across industries. Compliance certificate on corporate governance should come from a practicing company secretary and not from the auditor.

13) Every company must develop its own code of internal governance in terms of manuals.

Limitation of the Study

Despite best of efforts, the study suffered from non-uniformity of sample. Though the sample was representative of the population, however, sample size of 3 companies of joint sector may not warrant generalized conclusions.

Future Scope for Study

Human resource aspects of corporate governance has remained a grey area therefore there is more scope of research on the subject based on behavioural theories especially human resource management and motivational theories. Apart from that following can be other specific areas of research.

- The time series analysis can be attempted after few years to check whether the change in board structure and process through mandatory requirements was effective in improving the corporate governance system.
- Board's effectiveness in strategic function.
- Impact of internal governance vis-à-vis external environment on firm's performance.
- Effectiveness of board committees.
- Corporate governance in family controlled organisations.
- Inside board meeting process and effectiveness.