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A COMPRATIVE LEGAL STUDY OF CORPORATE GOVERNANCE AND PUBLIC GOVERNANCE

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ABSTRACT

The present study aims to review systematically the state of the art of corporate governance in India. The study uses a sample of 161 published research papers extracted from 101 journals and 17 publishers' databases. The results indicated that 151 studies investigated the board of directors' issues, 90 studies analyzed ownership structure, 64 studies discussed audit committee attributes, and 11 articles studied audit quality. The results provided that among corporate governance issues, board and audit committee independence, foreign and institutional ownership have the highest and majority focus of research in India. In terms of the relationship of corporate governance with other areas, the results exhibited that financial performance has a major concern in prior research. The results also indicated that there is a lack of studies that have samples after 2015. Further, the results observed that there are numerous conceptual repetitive studies and the majority of the studies followed either descriptive statistics or basic regression analysis. The current study provides an insight for academicians, policymakers (e.g., Securities and Exchange Board of India and Ministry of Corporate Affairs—Government of India) research organizations and funding agencies of what has been done and what is left to be done. The study makes a novel contribution to the strand literature of corporate governance in India. It highlights the substantial knowledge gaps in this field and provides a potential agenda for academicians, research organizations, and funding agencies for future research.

Keywords: Corporate governance India Corporate governance board characteristics audit committee attributes

A conceptual history of governance

A general concept of governance as a pattern of rule or as the activity of ruling has a long lineage in the English language. Nonetheless, much of the current interest in governance derives from its specific use in relation to changes in the state since the late 20th century. These changes date from neoliberal reforms of the public sector in the 1980s. Those advocating neoliberal policies often draw on rational choice theory. Rational choice theory extends a type of social explanation found in microeconomics. Typically, rational choice theorists attempt to explain social outcomes by reference to micro-level analyses of individual behaviour, and they model individual behaviour on the assumption that people choose the course of action that is most in accord with their preferences. Rational choice theorists influence neoliberal attitudes to governance in large part by way of a critique of the concept of public interest. Their insistence that individuals, including politicians and civil servants, act in their own interest undermines the idea that policy makers act benevolently to promote a public interest. Indeed, their reduction of social facts to the actions of individuals casts doubt on the idea of a public interest beyond the aggregate interests of individuals. More specifically, rational choice theorists provide neoliberals with a critique of bureaucratic government. Often, they combine the claim that individuals act according to their preferences with an assumption that these preferences are typically to maximize one's wealth or power. Hence, they argue that bureaucrats act to optimize their power and career prospects by increasing the size of their fiefdoms even when doing so is unnecessary. This argument implies that bureaucracies have an inbuilt tendency to grow even when there is no good reason for them so to do.

PUBLIC INTEREST STATEMENT

Corporate governance has been gaining momentum and considerable attention from regulators, policy makers and academicians in India especially, in the past two decades due to economic growth and business failure. During this period, different studies have been conducted to assess different areas of corporate governance in India however, there are a large number of repetitive and conceptual studies. The present study has significant implications for government and private research funding agencies, stock markets, policy-makers, and academicians in India. The present study provides a clear picture of the status of corporate governance in India that will enable funding research agencies and academicians to direct their future research towards un highlighted areas ignored by prior studies. This study brings reflective insights related to corporate governance mechanisms. It warns regulators and policy makers to revise the existing regulations of corporate governance and increase the disclosure and compliance levels in these regulations.[1]

INTRODUCTION

Different studies have explored corporate governance reforms in India states that there is a growing dialogue on how corporate governance should evolve to cope with the increasingly dynamic and global nature of the capital market. Khanna and Palepu indicate that the globalization of product and talent markets has affected corporate governance of firms in the Indian software industry. Further, Gupta and Shallu report that the major challenge to the corporate governance in India is the power of the dominant shareholders that can exercise influence over the political system of the country. India has a weak monitoring system with a multiplicity of regulators. Recent corporate frauds are sufficient to justify this phenomenon.

Different studies have been conducted in the field of corporate governance either used a systematic review (e.g., Ahmad &Omar, Azila - gbettor et al., Daiser et al., Dinh & Calabrò,

[1]Available at www.tandfonline.com accessed on Jan 20, 2022

E-Vahdati et al., Nomran & Haron, Schiehll & Martins, or meta-analysis (e.g., García-meca& Sánchez-ballesta, Lagasio & Cucari, Mutlu et al.. Snyder differentiated among systematic review, Semi-systematic, and Integrative approaches of literature reviews. He indicates that systematic review aims to Synthesize and compare evidence, has specific research questions and systematic strategy, samples and evaluates quantitative articles, and contributes by informing policy and practice. The purpose of a "systematic review is to identify all empirical evidence that fits the pre-specified inclusion criteria to answer a particular research question or hypothesis" Ahmad and Omar indicate that there is a difference between meta-analysis and systematic review where meta-analysis may utilize different econometric and statistical procedures for analyzing and synthesizing the data and findings; systematic review does not use such tools. In this regard, (García-meca & Sánchez-ballesta, Lagasio & Cucari, Lin & Hwang, conducted a meta-analysis for corporate governance mechanisms using different statistical analysis such as effect size and subgroups analysis. Further, Mutlu et al. used meta-analytical regression analysis (MARA) and Hedges meta-analysis (HOMA) to estimate the meta-analytic mean association between firm performance and corporate governance mechanisms. From the other hand, some other studies used systematic review in corporate governance based on frequencies for published studies, studies by journals and publishers, applied statistical tools, methods, time frame, topic and area wise studies, primary and secondary research studies, and summary of the main findings (Ahmad & Omar, Azila-gbettor et al., Cucari, Daiser et al., Nomran & Haron, Schiehll & Martins, Following prior studies that used systematic review for corporate governance, we conducted a systematic review for corporate governance research in India that published between the years 2000 and 2020 subject to quality assessment which will be described later in this manuscript.

The current study aims to provide an overview of the state of the ar and the existing research on corporate governance in India. We highlight how corporate governance studies in India are fragmented across a range of disciplinary fields. To the best of our knowledge, the current study is the first comprehensive review of corporate governance research in India that offers a navigation window into the existing research and methods related to corporate governance studies in India. We follow the methodology of Tranfield et al. in conducting a systematic review. We also follow Ahmad and Omar and Li et al. who conducted a systematic review for corporate governance research. Our review offers multiple opportunities and benefits to researchers and practitioners by highlighting the importance of corporate governance research in India making a novel contribution to the strand literature of corporate governance in India. Building from this foundation, this review then discusses future research possibilities.

Corporate governance is how a corporation is structured, regulated, managed, and operated. It essentially balances the interests of a company's many stakeholders, such as management, shareholders, suppliers, financiers, customers, government and the community. It provides the framework for attaining a company's objectives and encompasses every sphere of management, from action plans and internal controls to performance measurement and corporate disclosure. Andrei Shleifer and Robert Vishny discuss the linkage between corporate governance and economic interests of the participants in the corporation (Shleifer and Vishny, 1997). Broadly speaking, the term encompasses external factors (such as legal and regulatory, economic, cultural and societal, political, corruption, ownership structure and accounting system) and internal factors (such as competent, diverse and independent board of directors, independence of auditors and empowerment of shareholders). However, most of the research centers on internal factors[2]

Definition of corporate governance

"Corporate Governance may be defined as a set of systems, processes and principles which ensure that a company is governed in the best interest of all stakeholders.

It is the system by which companies are directed and controlled. It is about promoting corporate fairness, transparency and accountability. In other words, 'good corporate governance' is simply 'good businesses.

Report of SEBI committee (India) on Corporate Governance defines corporate governance as "the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders.

Corporate governance is the system of rules, practices, and processes by which a company is directed and controlled. Corporate governance essentially involves balancing the interests of a company's many stakeholders, which can include shareholders, senior management, customers, suppliers, lenders, the government, and the community. As such, corporate governance encompasses practically every sphere of management, from action plans and internal controls to performance measurement and corporate disclosure.[3]

Corporate Governance refers to the way in which companies are governed and to what purpose. It identifies who has power and accountability, and who makes decisions. It is, in essence, a toolkit that enables management and the board to deal more effectively with the challenges of running a company. Corporate governance ensures that businesses have appropriate decision-making processes and controls in place so that the interests of all stakeholders (shareholders, employees, suppliers, customers and the community) are balanced.

Governance at a corporate level includes the processes through which a company's objectives are set and pursued in the context of the social, regulatory and market environment. It is concerned with practices and procedures for trying to make sure that a company is run in such a way that it achieves its objectives, while ensuring that stakeholders can have confidence that their trust in that company is well founded.

As the home of good governance, the Institute believes that good governance is important as it provides the infrastructure to improve the quality of the decisions made by those who manage businesses. Good quality, ethical decision-making builds sustainable businesses and enables them to create long-term value more effectively.

[2]Ibid.

[3]Available at www.investopedia.com accessed on Feb 27, 2024

Governance, patterns of rule or practices of governing. The study of governance generally approaches power as distinct from or exceeding the centralized authority of the modern state. The term *governance* can be used specifically to describe changes in the nature and role of the state following the public-sector reforms of the 1980s and '90s. Typically, these reforms are said to have led to a shift from a hierarchic bureaucracy toward a greater use of markets, quasi-markets, and networks, especially in the delivery of public services. The effects of the reforms were intensified by global changes, including an increase in transnational economic activity and the rise of regional institutions such as the European Union (EU). So understood, *governance* expresses a widespread belief that the state increasingly depends on other organizations to secure its intentions, deliver its policies, and establish a pattern of rule. By analogy, *governance* also can be used to describe any pattern of rule that arises either when the state is dependent upon others or when the state plays little or no role. For example, the term *international governance* often refers to the pattern of rule found at the global level where the United Nations (UN) is too weak to resemble the kind of state that can impose its will on its territory. Likewise, the term *corporate governance* refers to patterns of rule within businesses—that is, to the systems, institutions, and norms by which corporations are directed and controlled. So understood, *governance* expresses a growing awareness of the ways in which diffuse forms of power and authority can secure order even in the absence of state activity. More generally still, *governance* can be used to refer to all patterns of rule, including the kind of hierarchic state that is often thought to have existed before the public-sector reforms of the 1980s and '90s. This general use of *governance* enables theorists to explore abstract analyses of the construction of social orders, social coordination, or social practices irrespective of their specific content. They can divorce such abstract analyses from specific questions about, say, the state, the international system, or the corporation. However, this general usage creates the need for a more specific term, such as *new governance,* to refer to the changes in the state since the 1980s.Whether one focuses on the new governance, weak states, or patterns of rule in general, the concept of governance raises issues about public policy and democracy. The increased role of non-state actors in the delivery of public services has led to a concern to improve the ability of the state to oversee these other actors. The state has become more interested in various strategies for creating and managing networks and partnerships. It has set up all kinds of arrangements for auditing and regulating other organizations. In the eyes of many observers, there has been an audit explosion. In addition, the increased role of nonelected actors in policy making suggests a need to think about the extent of their democratic accountability and about the mechanisms by which it is enforced. Similarly, accounts of growing transnational and international constraints on states suggest that a need to rethink the nature of social inclusion and social justice. Political institutions from the World Bank to the EU now use terms such as *good governance* to convey their aspirations for a better world.[4]

Public Governance

This chapter argues that we need to understand the changing forms of public governance, organization and leadership and that such an understanding calls for the scrutiny and

[4] Adams, B, Edward Elgar and His world, Princeton university press (2011)

comparison of competing and co-existing public governance paradigms. The chapter discusses the rise of public administration policy that aims to transform and adjust the way the public sector is functioning, and delivers its outputs and outcomes. It defines the concept of public governance paradigms and provides a brief overview of the governance paradigms that are discussed in the subsequent chapters. Most importantly, the chapter introduces and explains the public governance diamonds that facilitate systematic comparison of different governance paradigms. Our increasingly globalized world economy is marked by increasing emphasis on systemic competition, and the development of the public sector has become an important parameter in this competition. Public sector reforms are further stimulated by new technological opportunities and new demands from citizens and private stakeholders. At the same time, both public administration research and public service organizations are becoming more evidence-based. The search for both 'best practices' and 'next practices' is accelerated by the development of public innovation units and by the growth of think tanks and other research-based organizations at the interface between academia and public policy, and the result is a more rapid selection process for what works in public governance and management (Margetts and Dunleavy 2013: 2). As such, we get more and different responses to the problems encountered in the existing approaches to managing the public sector. While the response to the alleged problems of public bureaucracy in the 1980s and 1990s was the introduction of market mechanisms and new forms of managerialism, the last two or three decades have seen the emergence of a host of competing understandings of what constitutes good public governance and management. While previous public sector reforms were narrow and technical, the new understandings of public governance give rise to profound changes and are subject to political contestation and public debate. A systematic way of analysing how public sector reforms aim to respond to emerging governance problems is urgently needed. In particular, we need to better understand the similarities and differences between the different underlying logics that inform public sector reforms. As hinted above, public governance paradigms are defined as a relatively coherent and comprehensive set of norms and ideas about how to govern, [5]organize and lead the public sector. The normative and ideational components of a governance regime may have different origins, but these are re-articulated and form part of a relative unified discourse. The eclectic, but relatively coherent governance paradigms tend to offer a critical diagnosis of the past and promise to provide solutions to the most pressing problems and challenges confronting the public sector in the future. The new solutions frequently recycle old ideas and practices, thereby contributing to the reinvention of the past. The old ideas are connected to new ones, however, giving rise to new practices with new functionalities. Public governance paradigms tend to be structured around a few core beliefs and assumptions that inform a larger set of loosely connected ideas and recommendations about how to govern and be governed, how to structure and organize the public sector, how it relates to wider society, and how leaders, managers and employees interact in the delivery of solutions and services to citizens and private stakeholders. As such, they provide an instance of 'third-order governance' that creates the normative, ideational and institutional conditions for the structure and processes of the overall system of public

[5] Dewan, S M.,2006, corporate governance in public sector enterprises, Pearson education India.

governance which in turn conditions the daily interactions and operations through which concrete solutions, regulations and services are produced and delivered. The third-order concept of public governance paradigms draws on Thomas Kuhn's famous idea of scientific revolutions that lead to the formation of new scientific paradigms that are gradually taken for granted by the scientists involved in 'normal science' (Kuhn 1962). Based on the spectacular transition from the old geocentric to the new heliocentric view of the universe, Kuhn perceives scientific paradigms as logically consistent theories that are tested rigorously in evidence-based ways. He also asserts that paradigmatic change will tend to be rare, exceptional and triggered by the continuous problematization of its basic assumptions. Public governance paradigms give direction and meaning to specific governance reforms and the daily efforts to optimize the role and functioning of public administration in order to deliver solutions and services of high quality with the available means. However, we should not forget that the initial formulation of the governance paradigms is inspired by new developments in actual forms of public governance and administration. Thus, Weber (1947) got the idea for his famous bureaucracy model by studying the successful operation of the German postal system. Hood (1991) observed some new empirical reform tendencies in the public sectors in Australia, New Zealand and the UK, drew a ring around and named them 'New Public Management'. Pollitt and Bouckaert (2004) saw that some countries were not buying the whole NPM package, aiming instead to preserve classical Weberian values while making the public sector more efficient and user-friendly. This observation led them to coin the notion of the Neo-Weberian State. In much the same way, Dunleavy and his collaborators (2006a, b) and Osborne (2006, 2010) identified new trends in public governance that aimed to solve some of the problems created by NPM and denoted these trends Digital Era Governance and New Public Governance, respectively.[6]

Public governance and corporate governance are much alike. In both instances there is question of bodies that have a certain function together and in association with each other. We all know that there is a government and a parliament that supervises the government. Both these bodies have formal powers that are exercised by people of flesh and blood. And there are also civil servants. They are the people who are encumbered with the implementation. It is exactly the same within a corporation: the management (the board) performs the work and at larger corporations a board of supervisor's directors exercises supervision. This also regards people of flesh and blood representing the legal person. Hence, all similarities. Yet public governance and corporate governance are not entirely the same.

Conclusion

This paper conjointly illustrates that there's a parallel development of governance arrangements in each the non-public and also the public sector. Those parallels recommend that governance problems have so became Associate in Nursing intrinsic a part of smart management of each the general public and personal entities. Adopting a similar basic smart company governance standard, the general public sector and also the non-public sector developed (in parallels) every own distinctive governance model, practices and mechanisms

[6] Plessis, K.B.,2004, yuwawei, comparative corporate governance.

that suit every individual organisation's circumstances. Our study demonstrates that firms in countries with stronger political institutions implement more governance provisions, suggesting a positive association between the strength of political institutions and the demand for corporate governance. This result arises because strong political institutions constrain government expropriation. Consistent with this idea, we find that the effect of political institutions on corporate governance is mediated via government expropriation. Overall, our study. The adopting of fine governance and basic standards across the board also will facilitate the general public sector and also the non-public sector to find out from one another the most effective practices in every sector and facilitate to enhance governance within the future. This text by analysing and demonstrating the varied company governance models within the non-public and also the public sector increased our understanding regarding governance across the board. This sort of fine and general understanding can support analysers to explore any into each the non-public and public sector governance research.

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