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A Disquisition on the Concept of Corporate Governance

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Corporate governance is an integral component of a company's day-to-day operations. A strong and successful corporate governance structure contributes to the development of a firm culture of honesty, excellent performance, and long-term commercial viability. In essence, it serves to improve the responsibility of the company's employees and teams, who are striving to eliminate problems before they occur. The article defines Corporate Governance and discusses the potential issues that leaders of organisations may encounter, as well as the actions that these leaders may take to uphold the code during a pandemic. The article will look at corporate administration from the standpoint of India. It will investigate the challenges that a growing economy like India must face. The purpose of this article is to explore the role of SEBI, through clause 49 of the listing agreement, in requiring firms to comply with corporate governance requirements in India.

The Corporate Governance legislation is nothing more than a collection of laws designed to regulate the behaviour of a company and the persons that hold managerial positions i.e. board members. In a hypothetical perfect world, corporate governance laws can be converged across nations, regardless of cultural variations. The purpose of this article is for the author to investigate the idea of corporate governance in India in relation to the provisions of corporate governance under the Company Act of 2013. The paper will emphasize the significance and necessity of corporate governance in India.

Keywords: *corporate, governance, director, practices.*

INTRODUCTION

Accounting, consulting, economics, ethics, finance, law, and management are just a few of the disciplines covered by corporate governance.[1] Corporate governance is a critical component in increasing investor trust, fostering competitiveness, and eventually driving economic growth. Corporate governance is the collection of procedures, conventions, policies, laws, and institutions that influence how a business is directed, administered, and regulated. It also covers the connections between the various parties involved, as well as the aims that the organisation is controlled by. It is one of the most effective tools and mechanisms for business entities to use in order to liberate themselves from the system of unfair trade and practises. When a business has good corporate governance, it communicates to the market that the organisation is well-managed and that management's interests are aligned with those of external stakeholders. As a result, it gives the firm a significant competitive edge.

Corporate governance is primarily composed of two components: a long-term partnership that must deal with checks and balances, manager incentives, and communication between management and investors. The second component is a transactional relationship with issues of disclosure and authority. To put it another way, 'excellent corporate governance' is just 'good business.'

IMPORTANCE OF CORPORATE GOVERNANCE

In an open financial market, investors can select from a wide range of investment instruments. This decision-making process is most likely influenced by the existence of a corporate governance framework. Businesses that are more open and transparent, and therefore well-governed, are more likely to raise capital effectively in this situation since investors will have the information and confidence to lend cash directly to such companies. Furthermore, well-governed firms are more likely to receive capital at a lower cost than companies with weak corporate governance procedures, because investors will need a lower "risk premium" for investing in well-governed companies.

[1] Shaomin Li and Anil Nair, 'Asian Corporate Governance or Corporate Governance in Asia?' (2009) 17 Corporate Governance: An International Review

It is empirically proved that good corporate governance is essential for good businesses which is the need of every organisation. In the case of *B.S.N. Joshi and Sons Ltd. vs Nair Coal Services Ltd* [2] According to the Supreme Court, in situations involving large sums of money, a public sector organisation may accept offers that are economically beneficial to it for the sake of good corporate governance. Good company governance promotes fairness and openness while discouraging fraud. It safeguards shareholders' rights while also safeguarding an organization's long-term strategic aims and objectives.

The significance of effective corporate governance in the modern state and society is discussed further below: [3]

1. Careful Management: Corporate governance guarantees the cautious administration of a company on the grounds that there are different imperative factors, for example, shareholders, directors, and so forth. There are two perspectives in regards to the amplification of monetary interest. The first point of view is the Anglo-American point of view, which concentrates on the advancement of the owner's economic interests. The non-Anglo-American viewpoint, on the other hand, is concerned with the social welfare of society. Rather than defending the self-interest of the board of directors or shareholders, care must be taken to preserve various goals. [4] Such actions thus result in clear management, Corporate governance promises the cautious administration of a company on the grounds that there are different imperative factors, for example, shareholders, directors, and so forth.

2. Stability of Stock Prices: Stock price stability is an essential element for investors in predicting a company's or organization's future performance. Corporate governance has a significant influence on stock market efficiency. Steadiness is just conceivable with the assistance of good corporate administration. Speculators are constantly pulled in towards great administration organizations in light of the fact that such organizations embrace straightforward corporate administration arrangements and have better budgetary

[2] *BSN Joshi and Sons Ltd v Nair Coal Services Ltd* (2011) 11 SCC 548
[3] Frederick D Lipman and L Keith Lipman, *Corporate Governance Best Practices: Strategies for Public, Private, and Not-For-Profit Organizations* (1st edn, Wiley 2006)
[4] Richard A Brealey and others, *Principles of Corporate Finance* (McGraw-Hill Education 2020)

responsibility and higher overall revenues. There is an overall exertion to enhance the corporate administration and guarantee more prominent investor responsibility and corporate straightforwardness. [5]

3. Training of Directors: It is intense for the associations to locate the ideal individual for the activity, and prepare them once they chose. At the point when the Directors lead the choice of such individuals, they confront diverse encounters, skills, and capabilities. It is in this way vital to prepare the directors with the goal that they hold fast to the great Corporate governance rehearses. Directors have a noteworthy part in the basic leadership process and therefore the achievement or disappointment of an association is to a great extent subordinate upon them. On the off chance that the Directors are inept, indiscreet, or childish then the odds of achievement are dim. Skillful, faithful, watchful, and legit directors are basic for accomplishing the long haul goal of the association. Subsequently, appropriate administration, checking, and preparing of directors is vital. Corporate governance empowers the genuine and straightforward checking of each action. It additionally helps the preparation and improvement of directors with the goal that they can perform well in the basic leadership process.

4. Association of Stakeholders: Each association has different partners, for example, Directors, representatives, investors, clients, providers, and so forth. The partners are critical for the profitability and effectiveness of the association. In this manner, they merit legitimate consideration from the associations. Governing rules Corporate governance and demonstrates the arrangement of governing rules in the association. The three critical orders of governing rules are self-trained, advertise teach, and administrative teach. The administration of an association including the directorate is in a solid position to abuse the assets of the Organization for their self-intrigue. They can change high rewards and a numeration is for their work. Because of the absence of governing rules, the correct directors of the association can go out on a limb. Money related emergency is the Consequence of high hazard and flighty loaning by a portion of the world's greatest Moneylenders. Corporate governance is an

[5] Jill Solomon, *Corporate Governance and Accountability* (John Wiley & Sons 2010)

imperative apparatus to check and screen the hazard level of an association. On the off chance that the administration is in isolate going for the broke task then every one of the partners could be educated with the assistance of Corporate governance. Along these lines administration will endeavour to go out on a limb inside the points of confinement since data will be accessible to the partners.

5. Market Reputation: Numerous associations spend an immense measure of cash to fabricate notoriety in the market since it is basic for the long haul achievement of the association. Generosity and notoriety can be enhanced through different strategies, for example, advertising, corporate social duty, solid association with the partners, and so on. Corporate governance likewise builds up the generosity of the organization over a period. With the assistance of good Corporate governance, associations assemble solid client relationships, which prompts the improvement of brand unwaveringness. Those associations, which have great Corporate governance, appreciate great market notoriety. Without Corporate governance, the generosity of an association is in question in light of the fact that any scam movement will ruin the picture of the organization.

INTERNAL GOVERNANCE

Debt holders, shareholders, and the board of directors all have a role in determining internal governance for any business. To comprehend external governance, we must first understand how businesses implement the governance code, as well as the competition that the firm must confront and the regulatory environment. According to the scope of this study, it exclusively examines internal governance. The board of directors is the most important and inseparable component of any corporation since they make the firm's decisions.

- **Board of Directors** – The proprietor and shareholders are linked through the board of directors. They serve as a connection between corporate office administrators and a large group of a corporation's controllers located all over the world. They owe a fiduciary obligation to their shareholders since they were elected to the board of directors. The board consists of both internal and external directors. Internal directors, sometimes known as executive directors, are generally senior members of the firm who are intimately familiar with the company and its performance. While external directors, also known as non-executive directors, are not employees of the firm, they are specialists in their field that is essential to the organisation.[6]

The most crucial tasks of every director are the duties of care and devotion. According to the American Law Institute, one of the tasks is to choose, estimate, and fix the benefits of senior executives; another task is to look at the business and its future responsibilities to society; they also approve corporate plans for the future and the financial objectives that the corporation must achieve; and finally, they look at whether the corporation is making the required investments. [7]

- **Board Size and Composition** – There is no widely accepted figure for the ideal size of a board of directors. Even if the firm has a small or large board, both offer advantages and disadvantages. The connection between board size, board usefulness, and company performance is complex. According to a survey conducted by the Corporate Library, the typical board size ranges from 3 to 31 members. Except for the regulation of a minimum of two members in private limited businesses and three members in public limited corporations, there is no obligatory number of directors in India.
- **Board Profile and Diversity** – Board profile refers to the board member's area of competence, whereas board diversity refers to the member's socio-cultural background. There are several studies that demonstrate the importance of both a flexible profile and diversity. The board's actions have an impact on the corporation's day-to-day operations. People that have the same mindset prefer to encourage one another. This can occasionally lead to the firm heading in the wrong way. Diversity on the board is

[6] N Balasubramanian and Rejie George, 'Corporate Governance and The Indian Institutional Context: Emerging Mechanisms and Challenges' (2012) 24 IIMB Management Review
[7] Madan Lal Bhasin, 'Audit Committee Mechanism to Improve Corporate Governance: Evidence from a Developing Country' (*SSRN* 2015) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2676489> accessed 05 August 2021

required for the corporation's long-term success. Currently, the United States falls behind Europe and Asian countries in terms of board diversity. [8]

APPLICABLE THEORIES WITH REGARD TO ORGANIZATIONAL EFFECTIVENESS

1. Agency Theory: It talks about how the owners/directors set the objectives for the managers, where the owners are the principals and the managers are the agents. Managers are responsible for carrying out the day-to-day objectives of the company. This is very important for the overall success of a company. As if both the parties that is the owners and managers won't understand their roles then it will result in the failure of the organization. The agents are expected to safeguard the interests of the principals.

2. Shareholder Theory: According to this theory, it's the corporation that is taken into account because of the property of shareholders/ stockholders. But in the interest of the corporation, the legal and ethical standards set by the government are to be followed. So in case of any violation, the directors of the company will be held liable. This ensures OE as this shows the principle of authority and responsibility present which is one of the most important reasons for an organization to flourish.

3. Stewardship Theory: Makes the use of social approach to human nature and says that it is the responsibility of the managers to take care of the organization in case of the absenteeism of the shareholders. In this situation, they should consider the organization as their own and should not act as the agents. This balance of responsibility between the shareholders and managers makes sure the success of the organization.

FRAMEWORK OF CORPORATE GOVERNANCE

[8] Shelley Dubois, 'Why the US Lags Europe (and others) on Board Diversity' (*Fortune*, 2013) <https://fortune.com/2013/01/04/why-the-u-s-lags-europe-and-others-on-board-diversity/> accessed 05 August 2021

(A) Organizational Framework: In India, the Ministry of Corporate Affairs (MCA), the Confederation of Indian Industry (CII), and the Securities and Exchange Board of India (SEBI) provide the organisational framework for corporate governance efforts.

The **Confederation of Indian Industry (CII)**, "India's top business group," released India's first corporate governance code in 1998. However, because the Code's adoption was optional, few businesses adopted it. Soon after, **SEBI** formed the Kumar Mangalam Birla Committee to draught a corporate governance code. In 2000, **SEBI** adopted the Kumar Mangalam Birla Committee's recommendations and included **Clause 49** into the Stock Exchange Listing Agreement. **Clause 49** specifies the standards for corporate governance in exchange-traded businesses. **SEBI** has subsequently adopted the N.R. Narayan Murthy Committee's recommendations and the most recent modifications to **Clause 49** became legislation on January 1, 2006 (SEBI, vide circular SEBI/CFD/DIL/CG/1/2006/13/1 dated 13th January 2006). The major elements of **Clause 49**, as added in the Stock Exchange Listing Agreement by **SEBI** are as follows:

1. Board of Directors;
2. Compliance Certification
3. Shareholders;
4. Board Procedure
5. Audit Committee;
6. Remuneration of Directors;
7. Management;
8. Report on Corporate Governance

"In 2002, the **Ministry of Corporate Affairs (MCA)** established the Naresh Chandra Committee on Corporate Audit and Governance to investigate different corporate governance concerns. It provided suggestions in two areas of corporate governance: financial and non-financial disclosures, as well as independent audits and board supervision of management. The **Ministry of Corporate Affairs (MCA)** also established a non-profit trust, the National Foundation for Corporate Governance (NFCG), in collaboration with the CII, ICAI, and ICSI, to provide a forum for deliberation on matters concerning good corporate governance." To raise awareness among business executives about the significance of strong corporate governance practises and to enable the sharing of experiences and ideas among corporate leaders, policymakers, regulators, law enforcement agencies, and non-governmental groups. The foundation was established with the goal of:

- "Foster a culture for promoting good governance, voluntary compliance and facilitate effective participation of different stakeholders;
- Create a framework of best practices, structure, processes, and ethics; and **3.** Make a significant difference to Indian corporate sector by raising the standard of corporate governance in India towards achieving stability and growth."

LEGAL FRAMEWORK OF CORPORATE GOVERNANCE

Legal Framework: An efficient legal framework is required for the company's proper and sustainable growth. In a rapidly changing national and global business environment, it has become necessary that regulation of corporate entities is in tune with the emerging economic trends, encourage good corporate governance and enable protection of the interests of the investors and other stakeholders. The legal framework for corporate governance consists of the Company Laws and the SEBI Laws.

Company Laws: The Ministry of Corporate Affairs (MCA) is the primary regulatory and promotion authority in the Indian corporate sector for efficient, transparent, and responsible corporate governance. The important legislations governed by MCA for regulating the entire corporate structure and for dealing with various aspects of governance in companies are the Companies Act, 1956 and the Companies Bill, 2004. These laws have been introduced and amended, from time to time, to bring more transparency and accountability in the provisions of corporate governance. That is, corporate laws have been simplified so that they are amenable to clear interpretation and provide a framework that would facilitate faster economic growth.

The **Companies Act, 1956 – "**It is the central legislation in India that allows the Central Government to control the creation, funding, operation, and dissolution of businesses. The Companies Act, 1956 has elaborate provisions relating to the Governance of Companies, which deals with the management and administration of companies. It contains special provisions with respect to the accounts and audit, director's remuneration, other financial and non-financial disclosures, corporate democracy, prevention of mismanagement, etc. The main two sections of this Act related to corporate governance are Section 292A and Section 211."

- **Section 292A:** The idea of corporate governance is given formal legitimacy with the addition of Section 292A to the Companies Act of 1956, which was amended by the Companies (Amendment) Act of 2000. The new Section 292A required a public company with a paid-up capital of Rs. 5 crores or more to have an audit committee comprised of at least three directors. Nonexecutive directors must account for two-thirds of the total number of directors.
- **Section 211:** According to this Section, every profit and loss account and balance sheet of the company must comply with the Accounting Standards issued by the Institute of Chartered Accountants of India as prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards, and the Statutory auditors of every company must report whether the Accounting Standards have been met. The Securities Exchange Board of India (SEBI) has introduced a new paragraph to the Listing Agreement requiring listed businesses to adhere to all Accounting Standards issued by the ICAI from time to time.

The new Companies Act, 2013 has helped India to enhance its corporate governance with the goal that it is ready to adapt to the International norms of Corporate Governance and would give a sound professional workplace with better benchmarks and guidelines for overseeing or controlling the companies. The different new arrangements presented by the Act are:

1. Independent Director: The Companies Act, 2013 has endorsed the absolute quality of Independent Directors under section 149 (4) read with Rule 4 of the Companies (Appointment and Qualifications of Directors), Rules, 2014. The aforementioned

directions are just to be trailed by recorded public companies. The stipulation expresses that something like 33% of the all-out number of chiefs and public organizations having turnover of 100 crores rupees or more no less than 2 executives and public companies having paid up capital of 10 crores rupees or more no less than 2 executives.

2. Audit Committee An Audit Committees of the Companies Act has considered both public and private companies within its ambit to constitute audit committees. The audit committee's constitution has also changed as compared to Clause 49 of Listing Agreements. As indicated by the Companies Act it ought to incorporate three autonomous Directors on the board alongside the director who is fit for perusing and understanding money related decisions.

Following are the provisions dealing with Audit Committee namely

- *"Section 177 of the Companies Act, 2013*
- *Rule6 and 7 of Companies (Meetings of Board and Powers) Rules 2014*
- *Rule 6 of Companies (Meetings of Board and its Powers) Rules, 2014 lays down the method of formation of audit committees by the Board of Directors of all listed companies. It shall be applicable on:*
  1. *All public companies with a paid-up capital of Rs.10 Crores or more;*
  2. *All public companies having turnover of Rs.100 Crores or more."*
- Internal Audit: It is now mandatory under the Companies act, 2013 to perform internal audits. This rule is relevant for specific types of companies as determined under Section 138 of the Companies Act, 2013.
- Serious Fraud Investigation Offence: As indicated by Section 211 (1) of the Companies Act, 2013, there will be an office set up namely Serious Fraud Investigation office this is done keeping in mind the end goal to explore fraudulent activities of companies. The Act lays down authority to the Serious Fraud Investigation office. It can look into matters of the company or in the public interest or on receipt of report or demand by any Department of State Government or Union Government.

- Corporate Social Responsibility (CSR): The significance of CSR can be appeared by good corporate citizenship. It is recommended that the company should add the development of society and the public at large as a feature of their corporate responsibility. The organizations ought to likewise use their assets economically and furthermore for sustainable growth. From 1 April 2014, the Ministry of Corporate Affairs notified through its official gazette section 135 and further schedule VII of the Companies Act of 2013 also, the rules of CST came into effect on the same date. The importance of CSR was stated by the Supreme Court in the landmark case of National Aluminium Co. Ltd. & Ors vs Ananta Kishore Rout & Ors. [9]

APPLICABILITY

Section 135 of the Companies Act indicates when CSR will relevant –

- Total assets of the organization to be Rs 500 crores or more;
- Turnover of the organization or company to be Rs 1000 crores or more;
- The net benefit of the organization or company is to be Rs 5 crores or more. The CSR rules clearly emphasize that these rules will not only be applicable to Indian companies but also to foreign companies who have their offices in India.

CSR COMMITTEE AND STRATEGY

It is mandatory for companies specified under section 135 of the Companies Act and Company (Corporate Responsibility) Rules, 2014 to ensure that at least 2 % of its average net profit is being utilised for CSR activities. The company additionally constitutes an advisory group known as the CSR committee which should oversee and manage the issue identified with CSR. This advisory group might likewise incorporate at least 3 directors from the Board of Directors list. The CSR committee should help the Board by giving different proposals and furthermore give an arrangement which might be attempted (CSR Policy) by the organization. This arrangement will prescribe the measure of consumption to be spent on specific exercises to request to connect with the societal development idea. The board of trustees should likewise

[9] *National Aluminium Co Ltd & Ors v Ananta Kishore Rout & Ors* (2014) 6 SCC 756

screen all the exercises which are embraced by the organization. The Board might consider the proposals made by the CSR Committee and by examining these suggestions, it soundcard the CSR Policy of the organization.

The current CSR arrangement depends on the idea of the "Comply or explain" approach. This has been done to drive enormous corporate firms to step up with regards to their obligation to get required towards their CSR exercises. Organizations that are not following these guidelines must state with respect to why they disregarded these tenets and must give such data in their yearly report as under Section 92 of the Companies Act, 2013 as a feature of the "Comply or explain" approach for considerable corporate firms.

The Companies Bill 2004 was enacted in order to provide a comprehensive overhaul of business law. It included key elements related to corporate governance, such as auditor independence, auditors' interaction with the company's management, and independent directors, all with the goal of improving corporate governance standards. It is susceptible to more company flexibility and self-regulation, improved financial and non-financial disclosures, and more efficient law enforcement, among other things. The primary goals of this modification to the Companies Act of 1956 were to improve the auditing process and the board of directors. It mainly aimed at: -

- "laying down the process of appointment and qualification of auditors,
- prohibiting non-audit services by the auditors;
- prescribing compulsory rotation, at least of the Audit Partner
- requiring certification of annual audited accounts by both CEO and CFO; etc. For reforming the boards, the bill included that remuneration of non-executive directors can be fixed only by shareholders and must be disclosed. A limit on the amount which can be paid would also be laid down.
- It is also envisaged that the directors should be imparted suitable training. However, among others, an independent director should not have a substantial pecuniary interest in the company's shares."

SEBI Laws: "Improved corporate governance is the key objective of the regulatory framework in the securities market. Accordingly, the Securities and Exchange Board of India (SEBI) has made several efforts with a view to evaluate the adequacy of existing corporate governance practices in the country and further improve these practices. It is implementing and maintaining the standards of corporate governance through the use of its legal and regulatory framework, namely, The Securities Contracts (Regulation) Act, 1956, Securities and Exchange Board of India Act, 1992, and the Depositories Act, 1996."

WHISTLEBLOWER POLICY

The SEBI has formed a Committee on Corporate Governance, chaired by Shri N. R. Narayana Murthy, to strengthen corporate governance standards in India. Based on the committee findings, SEBI, in its circular dated August 26, 2003, made significant changes to Clause 49 of the Listing Agreement. The Whistle-blower Policy is one of the significant modifications. [10] The major goal of the Whistle-blower Policy is to uncover frauds and irregularities and to encourage workers to report them to the Audit Committee. The key aspects of the "Whistle-blower Policy" are as follows:

1. Personnel who see an unethical or inappropriate practise (that is not always a violation of the law) may approach the audit committee without first alerting their managers.
2. Companies must take steps to ensure that this right of access is informed to all employees via internal circulars, for example.
3. The company's employment and other personnel rules must include measures to protect "whistle-blowers" against unfair termination and other discriminatory employment practices.
4. The corporation should yearly confirm that it has not denied any staff access to the company's audit committee (in relation to situations involving suspected wrongdoing) and that it has protected "whistle-blowers" from unfair termination and other unfair or prejudiced employment practises.

[10] 'SEBI's Corporate Governance Panel Moots Whistle-Blower Policy' (*Domain B*, 2003) <https://www.domain-b.com/investments/markets/sebi/20031216_policy.htm> accessed 05 August 2021

5. This affirmation must be included in the Board report on Corporate Governance, which must be written and presented together with the annual report.

Each model identifies the following constituent elements: key players in the corporate environment; share ownership pattern in the given country; board of directors composition, regulatory framework; disclosure requirements for publicly traded stock corporations; corporate actions requiring shareholder approval; and interaction among key players.

1. Shareholder Model - United States of America

The fundamental problem in Indian business domination is not a conflict between the organisation and the owner, as it is in the United States and the United Kingdom, but a conflict between the leading shareholders and the alternative shareholders. Three major groupings of Indian companies face the challenge of the leading saver. The first kind of community division unit (PSU) is one in which the government is the main (indeed, majority) shareholder and the general public owns just a small percentage of the company. The multinational company (MNC) is the second kind of international firm, in which the overseas parent is the main (and in most instances, majority) shareholder. Third, there are Indian trade conglomerates in which the promoters (together with their friends and family) hold a significant minority share, government-owned monetary institutions own a similar proportion, and the general public owns the remainder. It's important to keep in mind that the relationship between the business and its shareholders, as well as the relationship between family members within the shareholders, is mainly contractual.

2. Shareholder Model - United Kingdom

The United Kingdom, which established the Anglo-American model of corporate governance alongside the United States, is largely similar to the United States, but there are some variations. Tricker (2015) defines UK corporate governance as ‘principles-based,' which means that businesses must either notify that they have adhered to the governance requirements outlined in the codes or explain why they have not. This is why the corporate governance approach in the United Kingdom is characterised as the ‘comply or explain' paradigm.

According to Meier and Meier (2013), the 'comply or explain' technique provides for decisions on a variety of subjects, including the independence of outside directors. As a result, he stated that this system exemplifies the importance of relationships between the firm and its shareholders, rather than between the corporation and the regulators. The introduction of the Cadbury Report in 1992 established the United Kingdom as a pioneer in corporate governance, and the Cadbury Code established a framework for the self-control of boards in other nations. Tens of inquiries were conducted in the United Kingdom over the last decade to promote (Taylor, 2004):

- Tighter control of executive remuneration;
- A more active role for institutional shareholders;
- Fuller disclosure and financial reporting;
- A larger role for non-executive directors;
- Free control of accountants and auditors.

3. Stakeholder Model - Germany

The stakeholder model, particularly in Germany, is distinguished by a two-tiered board system (Bhasa, 2004). This system is made up of two separate boards that operate together. These are the supervisory board, which represents employees and shareholders, and the management board, which is made up of the company's executives. Employees play a larger role in the stakeholder model than they do in the shareholder model. In Germany, for example, employee engagement is facilitated through a legally required system of work counsel and collaboration. Most big businesses in Japan have corporate unions and joint commissions that have access to management. There is also a managerial idea that employees are an important corporate group among the stakeholders, and it is the responsibility of management to reconcile between shareholders, employees, and the rest of the stakeholders. (Jacoby, 2001).

The social democratic system in Germany prioritises employees since it ensures the security of their benefits in the event of a disagreement between them and the shareholders. As a result, the company's agency problems worsen since they are not under the control of market forces. (Park, 2012).

Germany, like the United States and the United Kingdom, took measures to strengthen its corporate governance structure. As a result, the Baums Report (2001) and the Cromme Code (2002-2003) were released. The Baums Reports resulted from the inability of German business law to react to the globalisation of financial markets. This research recommended 150 changes to German legislation in order to attract both international and domestic investors. The goal of the Cromme Code was to make the German system more transparent. It established important regulatory requirements for both administration and oversight of publicly traded German businesses, including globally and regionally recognised corporate governance norms. (Clarke, 2007).

4. Stakeholder Model - Japan

This approach is also known as the business network model, and typical shareholders include banks/financial institutions, significant family shareholders, and corporations with cross-shareholding. A supervisory board is comprised of a board of directors and a president who is jointly appointed by shareholders and banks/financial institutions. Corporations in Japan, on the other hand, approach corporate governance in a different way. Outside stakeholders' interests (banks, consumers, suppliers) are emphasized, and this is not done solely by boards of directors. Instead, these outside stakeholders have stock stakes in other businesses in which they generate economic shares that provide them with legal standing.

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The Japanese boards are rather complex. It is made up of a board of directors, representatives, and auditors. Nonetheless, Japanese businesses frequently create an informal, non-official board of director’s substructure. This creates a board of internal and outside directors, similar to the Anglo-American model (Weimer & Pape, 1999). The board of directors is generally chosen from outside the business in Western nations, and its duty is to control the management. In Japan, the board of directors is in charge of strategic management and decision-making, and it is made up of executives hired by the business. (Clarke, 2007).

CASE LAWS DEPICTING CORPORATE MISGOVERNANCE BY SOME MAJOR ORGANIZATIONS

1. Reebok India Suffers A Major Scam

Facts: Reebok India, claimed by Adidas AG, affirmed Rs. 870 crore extortion by its previous overseeing executive (MD) Subhinder Singh Prem and previous Chief Operating Officer (COO) Vishnu Bhagat, in a criminal objection documented in May 2012. In March 2013, Adidas, the parent organization, declared a 153 million Euros misfortune by virtue of the Reebok India scene. The two were blamed for criminal conspiracy also, deceitful works on including taking items by setting up "mystery stockrooms". There has been a grave disappointment of corporate administration too since the organization has additionally asserted that the previous authorities fudged accounts and enjoyed invented deals causing a multi-crore imprint to the organization. In its FIR, Reebok has said that it completed an internal examination after certain false exercises were seen – which again focuses on the significance of interior checks for misbehaviours and debasement. Supposedly, these people have been redirecting assets by making. phantom wholesalers over the nation and producing fashioned charges throughout the most recent five years.

Judgement: Offices examining the asserted Rs 870 crore corporate misrepresentation in the activity of Reebok India have recognized a foundational "fumble" in the business arranging and running of the organization. The Income Tax office has claimed tax avoidance of Rs 140 crore for the situation. The IT department's first objective is to guarantee that the organization later doesn't guarantee any "terrible debt. While the IT division archives examined the records also, imports of the firm, the Serious Fraud Investigation. The office is examining the whole administration issues of the organization. Area 235 of the Companies Act. A legal review was directed by the German arm of Ernest and Young – which uncovered numerous adulterations of records and books. The reviewers were not held at risk.

2. Kingfisher Airlines misplace certify in the direction of soar:

The monetarily anxious Kingfisher Airlines lost its airborne authorization following a limit to renovate its balanced certify end. The Directorate universal of social Aviation (DGCA) has balanced Kingfisher Airline's license to fly plough additional orders' pursuant to Clause 15 (2) of Schedule XI of the Aircraft Rules, 1937, after the airline unsuccessful to transport a practical monetary as well as managerial restoration table. The in debt transporter was beached in October 2012 after repetitive sock by employees over honorary income. Kingfisher owes different free sector banks $1.4bn (£870m) in amount overdue plus has been nervously trying to lift funds after lenders say no to provide new loans. The airline at the present owes cash to employees, airfield, tax establishment plus its lenders plus might have to be settle.

3. Sahara notify to refund $3 billion to petite sponsor:

Unlisted company Sahara, one of India's leading big business grouping was structured by the utmost Court of India after a lengthened legal battle with investment sell control device SEBI to reimburse 174 billion rupees raised by "dubious" capital from 22 million petite sponsors. From 2008-11, they received 174 billion rupees through what is known as an optionally fully convertible debenture. The Sahara was also asked to pay 15 percent attention to the investors of the finance which has been unlawfully lifted from the community with no resorting to a good lawful process. The Supreme Court, whose arrange re-affirmed an earlier decision that the fundraising did not get together the system, prearranged two unlisted Sahara groups solid to repayment cash they had lifted with the attention within three months. The ruling stopped up a great deal browbeaten dodge of the business fundraising rule in India and underline a rising boldness by India's judiciary plus watchdog as commerce and financial markets get bigger at a quick speed in Asia's third-largest financial system.

4. Hero Motors finally drops honda

Hero Moto Corp crash Honda's emblem from all its replica at the finish of September 2012. The 26-day old combined business enterprise was broken in 2010 from side to side a division accord under which Hero Group bought out Honda's stake in the JV. Hero Moto Corp continues to pay a royalty to Honda for its skill in spite of the division. It is supposed that the novel corporation has now more potential for expansion as old restrictions such as no-export policy and bar on new skill growth under the JV accord are at the present lifted. After tear as of Honda plus unveiling its novel individuality, Hero Moto Corp has lastly fallen the Honda blot from all its crop in 2012.

5. Kumar Mangalam Birla Group Account plus Section 49

The moment main business supremacy plan in the state was assumed by SEBI. In early 1999, it set up a group under Kumar Mangalam Birla to endorse plus lift the principles of superior business supremacy. In early 2000, the SEBI board had conventional plus ratify the key recommendation of this group, and these are included in Clause 49 of the list Agreement of the store connections. This account sharp out that the subject of business supremacy engages as well shareholders, all preceding stakeholders. The committee's advice has seemed at business supremacy from the direction of sight of the stakeholders plus in exacting that of shareholders plus saver. The group account set up a deposit of advice.

6. 1,800 Crore Clean Rotten Adani Enterprise Ltd Store Following Online Rumour

This appalling occasion goes on to demonstrate the power of online relaxed average such as blogs in addition to its real life crash. Stock cost of a lot of corporations under the Adani Group takes a fall after a blogger position wrong report concerning Gautama Adani‟s arrest in link with a taken into the custody of the following head. The blog, run by a Vadodara based blogger mentioned "Believe it or not: Our Ahmadabad Bookie says: Mr. GAUTAM ADANI is been arrested? What will happen to ADANI STOCKS? Something related to Kidnapping of Congress Leader…We are Hearing (Rumours or Facts??) Let's see" The stock dipped 8.4% and closed at Rs195.

TATA-MISTRY CONTROVERSY AND ROLE OF CORPORATE GOVERNANCE IN A COMPANY

There have been occasions where independent directors have spoken out against alleged corporate governance flaws in their company, with disastrous consequences. One such instance is Nusli Wadia's involvement in the Tata-Mistry feud. Although the NCLT dismissed Cyrus Mistry's claims of tyranny and mismanagement, removing an independent director because his opinions vary from those of the majority shareholder raises serious questions about the concept of independent directors.

The relevance of Corporate Governance and the Tata-Mistry Controversy is as follows: -

- "Poor governance at public trusts: Mr. Mistry also complained about mismanagement at Tata Trusts, which controls 66 percent of Tata Sons, a Tata Group holding firm. Mismanagement at Tata trusts, he claimed, had jeopardised the Tata Group's corporate governance.
- A lack of succession planning inside the group, as seen by the former chairperson, Mr. Tata, having to take over as temporary chairman after Mr. Mistry resigned because the group was unable to select a replacement to take over the chairperson's responsibilities immediately.
- Cross-holdings across firms within a conglomerate pose challenges to efficient corporate governance, as do the board of directors acting as representatives of shareholders rather than as fiduciaries of the corporation.
- Majority-minority shareholder imbalance: Another major corporate governance issue that arose was the possibility of under-representation of minority shareholders' views

and interests, as well as the possibility of majority shareholders' opinion dominating the board of directors appointed (or nominated) by majority shareholders (i.e., Tata Trusts).

- Existence of a 'weak' board and instances of excessive interference by majority shareholders/promoter group: The ousted Cyrus Mistry stated that he was not given enough independence to carry out his operations during his tenure as Chairman and that the continued interference by the then 'Emeritus' Chairperson, Mr. Ratan Tata, reduced him to a 'lame duck' chairman."

PROBLEMS AND SOLUTIONS FACED DURING COVID-19:

1. **Risk Identification and its Assessment:** There should be frequent monitoring of the emerging risks during the pandemic with the executive management and come out with strategies for the minimisation of the consequences which may be caused by the pandemic to the business activities. The Board must consider a two-pronged approach to risk analysis. Firstly, the Board, with the management, should take into consideration the supply chain manufacturing operations, intermediary processes, pricing and costs, and the liquidity. Secondly, the legal impact of the disruption caused by the pandemic on the abovementioned processes should be dynamically examined and considered.

2. Meetings and Communication: The Board should be equipped with the instruments needed for a virtual meeting and in this digital age every member of the Board should be made aware of the importance of the use of technology. The Board must be in constant communication with the sectorial regulators and the government agencies for the timely procurement of their guidance for facilitating the company's business. The Board must also be fully engaged in communication by the major shareholders of the company to share their vision and strategies for the growth and running of the company.

3. Disclosures: In these unusual times, it is critical to make timely and calibrated disclosures since it aids in risk reduction and is also a more conservative approach that is required in a pandemic. Disclosure of the Board's efforts to minimise and address concerns would be appreciated and recognised by stakeholders. The Board must obtain timely legal advice for a complete commercial and legal risk analysis in order to distinguish actual hazards from prospective risks and devise a strategy for disclosing them under expert supervision. The Board should maintain a safeguard against restricted and selective disclosures.

4. Data Protection: Every company has sensitive data which can be fatal if it gets leaked in any way. Therefore, the company should implement certain policies and protocols for safeguarding the same. The company can maintain a list and allow access to only certain people for data sharing. There should be a restriction on the usage of social media for company communications and sharing of sensitive data. It is also recommended that in this tech-savvy world the employees are provided with adequate IT support and there are anti-viruses and VPNs used by them in their daily operators to reasonably ensure that there cannot be any cyber-attacks and data phishing. The shareholder's data should also be protected and should not be subjected to any leaks, since it may lead to heavy lawsuits to the company in the event of eminent data leaks as the shareholder's data also include their personal information, which they might not intend to share with the world at large.

5. Administration: The day-to-day administration must be kept in mind during these times since they will be the most affected and also the companies should make policies on how the administrative tasks will be completed going forward in these pandemic times. The Board must come up with new policies to enable the subordinates to complete their day to day tasks in an effective way and in a way by which by aren't overburdened.

WEAKNESSES OF CORPORATE GOVERNANCE

1. No Proper Structure: Corporate Governance has no one of a kind structure or plan and is to a great extent thought about vague. There is still nonattendance of care about its diverse issues, like, quality and repeat of budgetary and managerial presentation, consistence with the code of best practice, parts, and commitments of Board of Directories, speculators rights, etc. There have been various events of dissatisfaction and traps in the corporate region, like plot among associations and their accounting firms, the closeness of slight or unable inside audits, nonappearance of required aptitudes by bosses, nonattendance of genuine disclosures, opposition with rules, etc. In this way, both organizations and evaluators have gone under increasingly conspicuous investigation. Along these lines, it is vital to apply organizational practices effectively for the better advancement of an association. There are two kinds of systems that settle the contentions among various corporate case holders, particularly, the contentions among proprietors and administrators, and those among controlling shareholders and minority investors.

The primary kind comprises of different inward factors:

- The proprietorship structure
- Board of Directors
- Director remuneration
- Monetary divulgence

The second incorporates outside components with factors:

- Compelling takeover showcase
- Legitimate foundation
- Item market competition

2. No Government Support: Incredible organization models focusing on sensibility, straightforwardness, duty, and commitment are irreplaceable not only for the sound corporate area improvement, and furthermore extensive advancement of the economy. Late corporate shock has provoked open strain to change business practices and additional control. It is commonly believed that it will take something past power by the corporate part to restore open trust in our capital markets and certifiable their persistent centrality. It will in like manner make an incredible government move, as changed authoritative systems, improved assessing, and wandered up law approval.

3. Insider Trading: In any case, the term is normally used to denote a procedure in which an insider or a related assembling trades in light of material non-open information obtained while carrying out the insider's commitments at the association, or generally in breach of a trust or other relationship of trust and certainty, or where the non-open information was manhandled from the association. Such business insiders utilise this knowledge in order to obtain gains or prevent setbacks in the stock market.

Section 17 of the Securities Exchange Act of 1933 imposed a limited restriction on dealing with fraud in the auction of securities in the most severe way possible. The Act addresses insider trading directly in Section 16(b) and indirectly in Section 10. (b). Section 16(b) of the Securities Exchange Act of 1934 bans the purchase and auction of shares within a six-month period involving directors, executives, and stockholders holding more than 10% of the company's equity. The justification for combining this provision is that only major owners and individuals involved in the choosing and organisation of the firm will be allowed to include admittance to the worth susceptible in sequence plus therefore there should be a bar upon them to perform in securities.

In the case of *Samir.C.Arora vs SEBI* [11] Mr. Arora was ordered by the S E B I not to acquire, trade, or deal in securities in any form, publicly or in some other way, for a term of five years. In addition, if Mr. Arora wanted to sell the securities he owned, he needed to get approval from SEBI first. Mr. Arora appealed SEBI's decision to the Securities Appellate Tribunal. The SAT overturned SEBI's judgement on the grounds that there was insufficient evidence to establish Mr. Arora's accusation of insider trading and expert misconduct.

This instance demonstrates that the SEBI lacks a systematic analytical device and a watchful move, allowing the perpetrators to escape the rule's supervision. In the majority of instances, SEBI failed to present evidence and corroborate its position in front of the court. In contrast to the equilibrium of likelihood necessary to demonstrate social liability, a case involving unlawful liability needs the statement to be demonstrated beyond reasonable doubts. As a result, there must be a thread naked examination, and all the dodge, if any, must be appropriately plugged in.

[11] *Samir C Arora v SEBI* (2002) 38 SCL 422

4. Basis of Indian Model: In the Indian shared area, the problem is that the dominating shareholder must be penalised while the alternative shareholders must be protective. Clearly, only forces weaker than the troupe itself may untangle the dilemma of shared power abuse by the dominating shareholder. In a situation where possession and executive have become far separated, the holder is unable to exert effective control over the company or the Board.

The fundamental problem in Indian business domination is not a conflict between the organisation and the owner, as it is in the United States and the United Kingdom, but a conflict between the leading shareholders and the alternative shareholders. Three major groupings of Indian companies face the challenge of the leading saver. The first kind of community division unit (PSU) is one in which the government is the main (indeed, majority) shareholder and the general public owns just a small percentage of the company. The multinational company (MNC) is the second kind of international firm, in which the overseas parent is the main (and in most instances, majority) shareholder. Third, there are Indian trade conglomerates in which the promoters (together with their friends and family) hold a significant minority share, government-owned monetary institutions own a similar proportion, and the general public owns the remainder. It's important to keep in mind that the relationship between the business and its shareholders, as well as the relationship between family members within the shareholders, is mainly contractual.

CONCLUSION

A firm with strong corporate governance has a considerably greater degree of confidence among its shareholders. Active and independent directors contribute to the company's good financial market outlook, favourably impacting share prices. Corporate Governance is an essential criterion for international institutional investors when deciding which companies to invest in. In India, corporate practises emphasise auditing and financial processes, which have legal, moral, and ethical implications for the company and its impact on shareholders. The Indian Companies Act of 2013 offered novel approaches to balance legislative and regulatory changes for business development and foreign investment while taking into account worldwide best practises.

As Indian organizations contend universally for admittance to corporate markets, many have found the capacity to standardise against top notch associations is fundamental. Be that as it may, as limitations have facilitated, Indian companies are developing on the world stage and finding that the old methods of working together are no more adequate in such a relentless worldwide climate. The Indian governance models had adopted heavily from the models in U.S. and U.K. Due to the differences in the Board composition and structure, some regulations regarding the independent directors are not as effective.

We saw how critical it is for a business to adopt excellent corporate governance procedures in this article. As a developing economy, India must do more to regulate corporate governance rules. Indian businesses still have the opportunity to make a better future for themselves. They must recognise and continue with corporate governance reform, and they must constantly remember that this better future will come with its own set of difficulties. The future of corporate governance is becoming clearer, as investors will be encouraged to act more like owners than traders in the future. The duties and responsibilities of independent directors will be more clearly defined. And the incentives that were supposed to go to others would go to the stockholders. In the long term, a market-oriented and shareholder-centered system will evolve into a stakeholder-oriented system that holds finance responsible for the public good. We can very well conclude that, "As legal rules are, to a significant degree, endogenous to the political economy context of the systems in which they operate and so are the corporate governance practices".

SUGGESTIONS

1. **Distribution of Fraud Prevention Policy**: Every one of the enterprises must distribute a Fraud counteractive action Policy so as to control corporate fakes. The Nonaccessibility of such an approach prompts the execution of corporate fakes in India. The making of Fraud anticipation arrangement ought to be made obligatory for every one of the organizations and it must be talked about appropriately by the governing body and distributed in the yearly report. The protest of distributing such a report is that the representatives and partners will know about such arrangements which oversee the

corporate cheats in that specific firm and is set up through an all-around organized instrument.

2. **Arrangements for Approval of Related Party Transactions by Specific Committee:** The Companies Act, 2013, presently does not require the endorsement of Central Government in relation to related gathering exchanges for those enterprises whose paid up capital is more than Rupees 1 crore. The Act likewise contains different tenets for related gathering exchanges. In these arrangements, the endorsement of investors is just required. As I would like to think an entirely unexpected board of trustees which will incorporate an autonomous chief and one minority shareholder will be comprised by every partnership for the endorsement of related party transactions. This will be liable to the endorsement of partners since these transactions are covered up by expanding obligation or credit note for giving better add up to outsiders.
3. **Removal of directors:** The Removal procedure should be evaluated by an independent committee and only permitted, if there are grounds for violation of the Code of Conduct, as provided for, under the Act. This would prevent biasness by the majority shareholders.
4. **Appointment procedure:** Dominating shareholders have no spur to permit proportional board representation, and therefore, statutory mandates may be required to have proportional representation of the minority shareholders. Two alternative approaches may be used to facilitate minority shareholder representation Cumulative voting by the Shareholders.