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# Development of Corporate Governance Framework in India and Examining the Issues and Challenges in the Existing Framework

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NIKITA CHATTERJEE<sup>1</sup>

## ABSTRACT

*Various corporate scams in the corporation in different jurisdictions like the Enron debacle in the American jurisdiction, Bank of Credit and Commerce International & Maxwell Communications Corporation in United Kingdom's jurisdiction and Satyam scam in the Indian jurisdiction gave birth to the concept of corporate governance to strengthen the trust of the investors and to create an atmosphere of accountability for the controllers of the corporation. This paper seeks to examine the evolution in the Corporate Governance Framework of India and identify and address the significant challenges & suggest any changes to the legislative provision keeping current developments in mind to strengthen the trust upon Indian corporations in the age of technology and dynamic global environment.*

**Keyword:** Corporate governance, Satyam scam, Board of Directors, Company act, 2013.

## I. INTRODUCTION

Corporate governance has no uniform definition. Various scholars and committee members have interpreted the meaning of corporate governance in their way. The Cadbury committee has defined corporate governance as a 'system by which companies are directed and controlled.'<sup>2</sup> The SEBI Committee defines corporate governance as the 'acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and their role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct and about making a distinction between personal & corporate funds in the management of a company.'<sup>3</sup> In India, the Confederation of Indian Industry (CII) defined corporate governance as 'corporate governance deals with laws, procedures, practices and

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<sup>1</sup> Author is a LLM student at O.P Jindal Global University, India.

<sup>2</sup> Adrian Cadbury, 'Cadbury Committee Report on the Financial Aspects of Corporate Governance' (Gee publishing Ltd 1992)

<sup>3</sup> Report of the SEBI Committee on Corporate Governance February 8, 2003

implicit rules that determine a company's ability to make informed managerial decisions via its claimants—in particular, its shareholders, creditors, customers, the State and employees. There is a global consensus about the objective of 'good corporate governance: maximising long-term shareholder value.'<sup>4</sup> Since the corporate scams have been unearthed, corporate governance has become an integral part of the company, especially publicly listed companies, but the special emphasis is upon the separation of ownership and control.<sup>5</sup> The corporate governance framework is essential for every country as good corporate positively affect the firm performance.<sup>6</sup> Therefore shareholders and investors prefer to invest in a company having a good record of corporate governance compliance.

### **(A) Need for the study**

Corporate governance has been an emerging topic in the Indian context since the unearthing of multiple corporate frauds, which highlighted the dire need for regulation in the corporate governance framework. To date, the Indian model of corporate governance is not entirely flawless and still surrounded by multiple minor flaws such as promoter dominance structure; private companies are not being included in corporate governance framework, accountability of the board of directors, degree of independence of independent directors, etc. Hence, the need has arisen to study the evaluation in the Corporate governance Framework of India and study the issues and challenges as it is relevant to the current set-up.

### **(B) Objectives of the study**

- To study the development and existing legislative framework of corporate governance in India
- To identify the underlying issues and challenges in the corporate governance regime of India
- To suggest a feasible solution to the underlying issues and challenges.

### **(C) Methodology**

The source of information has been collected from the secondary sources, assembled from existing publicly available open recourses such as books, journal articles, important committee reports, government websites and newspaper articles. The nature of the research paper is

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<sup>4</sup> Confederation of Indian Industry

<sup>5</sup> Ayuso, Silvia and Argandoña, Antonio, 'Responsible Corporate Governance: Towards a Stakeholder Board of Directors?' (2009). IESE Business School Working Paper No. 701 < <https://ssrn.com/abstract=1349090> > accessed 10 November 2021.

<sup>6</sup> Iwu-Egwuonwu, Dr. Ronald Chibuike and Iwu-Egwuonwu, Dr. Ronald Chibuike, 'Does Corporate Governance Enhance Firm Performance?: An Empirical Literature Evidence'(2010).< <https://ssrn.com/abstract=1653921> > accessed 10 November 2021

descriptive.

#### **(D) Literature review**

The authors Silvia Ayuso and Antonio Argandoña studied the stakeholders approached in the organisation of composition of the board and argued in favour of stakeholders present in the board. Dr Ronald Chibuike Iwu-Egwuonwu studied the empirical evidence of whether corporate governance increases firm performance. The authors find no significant effect in the United States, whereas Asia shows a positive relationship. Dhammika Dharmapala & Vikramaditya S. Khanna, in their paper, tried to study the impact of clause 49 in the listing agreement and found a significant increase in the valuation of the firm, but the increase was not evenly distributed because the clause was only applicable to listed entities. Binay Kumar Pathak in his paper, critically studied the Narayan Murthy committee recommendation. Umakanth Varottil Studied the governments' reaction post-Satyam scandal and studied the effectiveness of voluntary corporate governance guidelines to address the issues in the existing framework. Collins G. Ntim further studied the corporate governance structure between the shareholders and stakeholders model.

## **II. HISTORY AND THE TRAIL OF DEVELOPMENT OF CORPORATE GOVERNANCE IN INDIA**

Corporate governance has penetrated the Indian corporate system post-1991. When the government had adopted the LPG policy for the economic revival of the country.<sup>7</sup> This was followed by multiple amendments to the multiple acts, including the companies act. Further, after the Harshad Mehta scam, SEBI Act<sup>8</sup> was notified in January 1992 to regulate the securities market with an aim to secure the right of the shareholder. The act gave immense power to SEBI to regulate the capital market along with key corporate governance aspects of the company, including rigorous disclosure requirements and increased compliance for the board of directors of the company.<sup>9</sup> The evolution of the Indian corporate governance framework could be divided into three phases:

1. Independence to 1990s
2. The phase of reform: 1990 to 2008

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<sup>7</sup> Sanket V. Ravan, 'Impact of LPG on Indian Economy' (2014) 1 (4) Prime International Research Journal <[https://www.researchgate.net/publication/299623274\\_Impact\\_of\\_LPG\\_on\\_Indian\\_Economy](https://www.researchgate.net/publication/299623274_Impact_of_LPG_on_Indian_Economy)> accessed on 10 November 2021

<sup>8</sup> The Securities and Exchange Board of India Act, 1992

<sup>9</sup> Mitra., *Securities Fraud in India: SEBI as an Investigator and Enforcer*. (Legaleraonline.com 2015) <<https://www.legaleraonline.com/articles/securities-fraud-in-indiasebi-as-an-investigator-and-enforcer>> Accessed 10 November 2021

### 3. Post Satyam scandal phase

#### (A) Phase 1

Before independence, the Indian corporation followed colonial laws, which included the set of legislation that are to date followed in India, such as the partnership act of 1932, the negotiation instrument act of 1881, etc. Further, the companies act which was enacted in 1866, had undergone multiple amendments. At that time, the concept of corporate governance was not born as the internal structure of the corporation was filled with corruption and inefficiency of management, with little to no safety provision for the investors and shareholders.<sup>10</sup> After the independence, the Indian government had focused on closing the economy with extensive licensing raj.<sup>11</sup> Thus, the economic problem reached its summit due to the closed economic policy. Later, structural reforms were introduced due to the balance of payment crisis.<sup>12</sup>

#### (B) Phase 2

India started opening its economy post-1991, and the period between the 1990s to 2008 had brought a set of legislation, including the initiation of multiple committees intending to address multiple challenges, especially in the domain of corporate governance. This phase focused more upon the independence and monitoring of the board of directors and audit committee.<sup>13</sup> Following committees were established for the evolution of the Indian corporate governance framework.

#### 1. The desirable corporate governance code by CII

The need for corporate governance was realised by the policymakers, which had prompted the Chamber of Indian Industries (CII) in 1998 to propose a voluntary code for corporate governance named 'Desirable Corporate Governance'<sup>14</sup>, which was the first initiative in the domain of corporate governance in India. The code suggested best practices to be followed by the Indian corporation, which had listed required disclosure such as the requirement of corporate governance compliance certified by stock exchanges, restriction upon acceptance of inter-corporate loan and deposits if the corporation has made default, provision of average

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<sup>10</sup> Bhumesh Verma and Himani Singh, 'Evolution of Corporate Governance in India' (SCC Blog, 7 April, 2021) <<https://www.sconline.com/blog/post/2019/11/13/evolution-of-corporate-governance-in-india/&gt;> accessed 10 November 2021

<sup>11</sup> Ibid

<sup>12</sup> 'The Reserve Bank Of India: 1981–1997' (*Rbidocs.rbi.org.in*, 2021) <[https://rbidocs.rbi.org.in/rdocs/content/PDFs/Chapter11\\_04122018.pdf](https://rbidocs.rbi.org.in/rdocs/content/PDFs/Chapter11_04122018.pdf)> accessed 10 November 2021.

<sup>13</sup> Dhammika Dharmapala & Vikramaditya S. Khanna, 'Corporate Governance, Enforcement, and Firm Value: Evidence from India' (Univ. of Mich. Law Sch., Olin Working Paper No. 08-005, 2007) <<http://ssrn.com/abstract=1105732>> accessed 10 November 2021

<sup>14</sup> The Confederation of Indian Industry, *Desirable Corporate Governance: A Code* (1998).

monthly share price with the provision of greater details to the stock exchange. The code was considered being a stepping stone into the corporate governance framework of India, but the code was adopted by a few corporations. Therefore, which failed to bring a drastic change in the corporate governance norm inside the Indian corporations.<sup>15</sup>

## 2. Kumar Mangalam Birla Committee Report and Clause 49

The SEBI, after the CII code, had appointed a committee popularly known as the 'Birla committee'. The Birla committee submitted its report in 1999. The primary aim was to improve the structural aspect of the board of directors along with introducing mandatory compliance to safeguard the interest of the shareholders. Clause 49<sup>16</sup> in the listing agreement resulted from the Birla committees' recommendation. The clause is divided into mandatory and non-mandatory compliances. Further, the clause covers a vast range of corporate governance matters, including a recommendation for the audit committees.<sup>17</sup> The disclosure of information was emphasised upon, the clause mandate having a section of Management Discussion and Analysis (MD&A) and a section dedicated to corporate governance in the annual statement.

A few of the mandatory recommendations of the committee include:

- The board is required to meet a minimum of 4 times a year:
- Inclusion of non-executive directors into the board of directors:
- Establishment of the audit committee with a minimum of 3 members having a non-executive director as a chairperson, which was required to meet a year thrice;
- Disclosures related to consolidated account statement, related party transaction, environmental, corporate social responsibility:
- Formation of Investor Grievances Committee, etc.<sup>18</sup>

## 3. Naresh Chandra Committee Report

The committee was set up in August 2002 with an objective to study the relationship between the audit committee and the company by the Department of company affairs (DCA). The committee additionally evaluated the role of the independent director. Further, the committee

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<sup>15</sup> 'Corporate Governance In India – Practices, Framework | Deloitte India' (*Deloitte India*, 2021) <<https://www2.deloitte.com/in/en/pages/risk/articles/governance-101.html>> accessed 10 November 2021.

<sup>16</sup> The Securities and Exchange Board of India, *Report of the Kumar Mangalam Birla Committee on Corporate Governance* (1999) < Winnovative HTML to PDF Converter for .NET - [www.winnovative-software.com](http://www.winnovative-software.com) (sebi.gov.in)> accessed 10 November 2021

<sup>17</sup> Ibid 13.4, 14.7.

<sup>18</sup> 'SEBI | Corporate Governance In Listed Companies - Clause 49 Of The Listing Agreement' (*Sebi.gov.in*, 2021) <[https://www.sebi.gov.in/legal/circulars/aug-2003/corporate-governance-in-listed-companies-clause-49-of-the-listing-agreement\\_15948.html](https://www.sebi.gov.in/legal/circulars/aug-2003/corporate-governance-in-listed-companies-clause-49-of-the-listing-agreement_15948.html)> accessed 10 November 2021.

suggested amendments to improve the role of the audit committee.<sup>19</sup>

#### 4. Narayana Murthy Committee

Learning from the experience of the Enron scam that led to adopting safety measures by the United States by implementing the Sarbanes-Oxley Act. The Indian government felt the need to review the existing corporate governance structure in India. Thus, SEBI felt the need to review the existing clause 49. The committee studied the data of compliance by the listed entity and further suggested changes to the existing clause. The recommendation was more stringent than earlier, as it focused more upon the board structural aspect and improving the independence of an independent director.<sup>20</sup> The recommendation excluded the nominee director from the definition of independent directors but kept the responsibility on par with other directors.<sup>21</sup> Further, it emphasised the presence of financially literate members inside the audit committee with the provision of on-the-job training for the board members.<sup>22</sup> The risk management was prioritised with greater access to the audit committee and fair treatment to the whistleblower. The stringent changes in clause 49 were implemented on 1<sup>st</sup> January 2006.<sup>23</sup>

#### (C) Phase 3: Post Satyam scandal phase

In early 2009, the Satyam scandal had shocked the nation. It showed the real standard of corporate governance in India, which acted as a significant driving factor for the Indian government to reconsider the corporate governance enforcement and disclosure mechanism.<sup>24</sup> The scandal led the CII to make a task force for improving the corporate governance, and later, the Corporate Governance and Ethics Committee was formed by NASSCOM<sup>25</sup> under the chairmanship of N. R. Narayana Murthy the recommendation was based upon safeguarding and enhancing the stakeholder, audit committee and whistle-blower policy. The government responded in 2009 by the issue of a discussion paper by SEBI Committee on Disclosure and

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<sup>19</sup> 'Business Ethics And Corporate Governance, Second Edition' (O'Reilly Online Learning, 2021) <<https://www.oreilly.com/library/view/business-ethics-and/9789332511255/xhtml/c15s21.xhtml>> accessed 10 November 2021.

<sup>20</sup> The Securities and Exchange Board of India, *Report of the SEBI Committee on Corporate Governance* (2003) <SEBI | The Report of Shri N R Narayana Murthy Committee on Corporate Governance [For Public Comments]> accessed 10 November 2021

<sup>21</sup> Ibid 3.8.1.1, 3.8.1.2.

<sup>22</sup> See (n17) 3.2.2.3

<sup>23</sup> Pathak Binay Kumar, 'Critical Look at the Narayana Murthy Recommendations on Higher Education' (2014) *Economic and Political Weekly* <<http://www.jstor.org/stable/24478990>> accessed 10 November 2021

<sup>24</sup> Prashant K Sahu Sapna Dogra & Aditi Phadnis, 'Satyam scam prompts Clause 49 review' *Business Standard* (New Delhi, 14 January 2009) <Satyam scam prompts Clause 49 review | Business Standard News (business-standard.com)> accessed 10 November 2021

<sup>25</sup> National Association of Software and Services Companies (the premier trade body and the chamber of commerce of the IT-BPO industries in India)

Accounting Standards<sup>26</sup>, which include the following proposal:

- The chief financial officer (CFO) was to be appointed by the audit committee while considering the requisite qualifications, the experience of the candidate;
- The rotation of audit partners and firms after every five years and provided for the appointment of the external auditor;
- voluntary adoption of International Financial Reporting Standards (IFRS);
- interim disclosure of balance sheets on a half-yearly basis;
- Listed companies have to submit their financial statement within specified deadlines as per the listing requirement.<sup>27</sup>

Later, the listing agreement was amended to inculcate a few proposals from the above-discussed paper, mainly related to the audit committee and other financial disclosures.<sup>28</sup> This was followed by voluntary guidelines upon corporate governance released by MCA.<sup>29</sup>

### III. LEGISLATIVE FRAMEWORK OF CORPORATE GOVERNANCE IN INDIA

#### (A) The companies act, 2013

The companies act 2013 got the presidential assent on 29<sup>th</sup> August 2013 and repealed the old act of 1956. The act has provided better compliance and progressive process in favour of management, stakeholders and the director of the company.<sup>30</sup> The company act 2013 plays a crucial role in the corporate governance regime of India. The following section provides for corporate governance structure.

**1. Board of Director:** Section 149 of the act<sup>31</sup> specify the minimum number of director on the board, which is 3 and 2 in public company and private company respectively and specifies the maximum number of director to be 15;

**2. Women Director:** Rule 3 of companies (appointment and qualification of Directors) Rules, 2014 and section 149(1) of the act provide for the appointment of a minimum of one

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<sup>26</sup> SEBI Committee on Disclosures and Accounting Standards, Discussion Paper on Proposals Relating to Amendments to the Listing Agreement (Sep. 2009), <[www.sebi.gov.in/commreport/amendproposal.pdf](http://www.sebi.gov.in/commreport/amendproposal.pdf)>accessed 10 November 2021

<sup>27</sup> Ibid

<sup>28</sup> Umakanth Varottil, 'India's Corporate Governance Voluntary Guidelines 2009: Rhetoric or Reality?' (2010) 22(2) NLSIR <<https://ssrn.com/abstract=1634821>> accessed 10 November 2021

<sup>29</sup> Ministry of corporate affairs

<sup>30</sup> Shireen Sultana, 'Corporate Governance in India: Evolution, Legal Framework and Challenges for the Future' (2020) 25(8) IOSR Journal of Humanities And Social Science < DOI: 10.9790/0837-2508024555 >accessed 10 November 2021

<sup>31</sup> Company Act 2013



woman director to a specific class of company having a minimum paid-up share capital of ₹100 or having a turnover of ₹300 crores.<sup>32</sup>

**3. Resident Director:** Section 149(3) of the act provides for the compulsory appointment of a minimum of one resident director on the board of directors. The resident director has to stay a minimum of 182 days in India to be a qualified residential director.<sup>33</sup>

**4. Independent director:** Independent director plays a crucial role in the board of directors because of its unbiased nature and capability to exercise independent judgement, bridge the gap between shareholders and the board of directors and protect the right of minority shareholders. Section 149(6) of the act prescribes the qualification for appointment of an independent director; the act prescribes for the requirement of one-third independent director for the publicly listed company on the board.

**5. Serious Fraud Investigation Offence (SFIO):** section 211(1) of the act states for the appointment of the Serious Fraud Investigation Offence (SFIO) to inspect internal corporate fraud.

**6. Class action suit:** The class-action case provides enforcement rights to the minority shareholders under section 245.

**7. Related Party Transactions:** section 188 of the act provides for certain compliances and disclosure which need to be made if the parties are entering into related parties transactions. This provides greater transparency to the shareholders.

**8. Audit committee:** The audit committee holds a significant place in the corporate governance structure of the company. Section 177 of the act provides for the constitution of an audit committee with the composition of a minimum of three and a majority of independent directors. Further, it requires the presence of a financially literate individual in the committee.<sup>34</sup>

**9. Stakeholder Relationship Committee:** Section 178(6) provides for the safeguard of stakes holders of the company, i.e. the creditor's debenture holders, investors, shareholders, via establishing a stakeholder relationship committee with the aim to safeguard and resolve the conflicts and grievances of the stakeholders.

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<sup>32</sup> Aakansha Negi, *All about Women Directors under Companies Act, 2013* (Taxguru 5 June 2020) < All about Women Directors under Companies Act, 2013 (taxguru.in) > accessed 10 november 2021

<sup>33</sup> Taxguru LLP, 'Taxguru LLP, 'Audit Committee Under Section 177 Of Companies Act,2013' (TaxGuru, 2014) <<https://taxguru.in/company-law/audit-committee-section-177-companies-act2013.html>> accessed 10 November 2021.

<sup>34</sup> Types Of Director Under Companies Act 2013' (TaxGuru, 2015) <<https://taxguru.in/company-law/types-director-companies-act-2013.html>> accessed 10 November 2021.

## **(B) SEBI guidelines and (Listing Obligations and Disclosure Requirements) Regulations 2015**

Sebi issues guidelines for regulating the stock market and aims for the protection of investors and shareholders of public listed entities. The guidelines act as a recommendation for the corporate entity. Further, various regulations and acts by SEBI, such as SEBI's LODR, prescribe for the compulsory obligation under corporate governance to be followed by the listed entity such as provision for the independent audit committee, nomination and remuneration committee,<sup>35</sup> stakeholders relationship committee,<sup>36</sup> grievance redressal mechanism, preservation of records,<sup>37</sup> compliance officer,<sup>38</sup> vigil mechanism,<sup>39</sup> prior intimation<sup>40</sup>, etc.

## **IV. EXISTING ISSUES AND CHALLENGES**

### **(A) Family domination**

In Asia, especially in India, majority ownership patterns are family-oriented. The promoter holds the major portion of the corporation. The dominance of promoters leads to corporate governance issues due to increased internal issues and inefficiency due to a lack of checks and balances over the action of the Promoters. Therefore, provision is needed to address the family domination in the ownership structure of a corporation. In the Cyrus Mistry case, due to the conflict of interest between the management and promoter, the CEO of Infosys, Cyrus Mistry, was removed from his position.<sup>41</sup> Thus, this case demonstrates the existing issues that have been arisen due to family domination in the ownership structure, which resulted in the increased conflict between the promoter and the management.

### **(B) Independent director**

Independent director plays a crucial role in the corporate governance of a corporation. As per the legislative requirement, the presence of an independent director is required in all the committees, including the company's board. But the issue arises when friends of the directors are appointed, which compromises the independent judgement of the independent director. Earlier, the appointment of independent directors was dependent upon the promoters' whims and interests, which resulted in the appointed independent director being unconsciously biased

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<sup>35</sup> SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, r 19

<sup>36</sup> SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, r 20

<sup>37</sup> SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, r 9

<sup>38</sup> SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, r 6

<sup>39</sup> SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, r 22

<sup>40</sup> SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, r 29

<sup>41</sup> Neo Stencil. 2021. Corporate Governance in India &bull; Neo Stencil<<https://neostencil.com/corporate-governance-issues-in-india>>Accessed 10 November 2021

towards the promoter's interest. This underlying issue has been corrected by SEBI notification dated 3 August 2021; the new rules are set to be applied from 1st January 2022, which prescribe for, 'The appointment, re-appointment and removal of independent directors in a Publicly listed company shall be done via special resolution of shareholders. Vote in favour must be at least thrice those against the resolution, for a decision to pass'.<sup>42</sup> Thus, the existing notification has tried to resolve the problem and ensures to provide strength to an independent director.

### **(C) Agency issue**

The agency problem arises because of the separation of ownership and management. Management (agents) are appointed by the shareholders to manage corporate affairs. Theoretically, the management is duty-bound to work for the benefit of shareholders, but in reality, the management decisions are in further of their interest. Therefore, the conflict between the shareholders and management raises the agency cost.<sup>43</sup> However, the existing legislative framework has failed to address the inherent issue, but the same could be resolved by restructuring the management compensation scheme with an incentive to perform within the interest of the owners.

### **(D) Shareholder and Stakeholder**

Corporate governance has two approaches, i.e. stakeholder and shareholder. The shareholder's approach is followed in US and UK and whereas the stakeholder approach has been followed in countries such as Germany and Japan.<sup>44</sup> The stakeholders include a large group of people interested in company affairs, which include creditors, debenture holders, employees, the community, etc. The Agency theory primarily focuses on furthering the interest of shareholders, and the interest of stakeholders are neglected. In recent years, the conflict between the two approaches has been on the rise because countries are shifting their approach towards the stakeholders.

### **(E) Minority Shareholders Vs Majority Shareholders**

Another set of conflicts between minority and majority shareholder prevails. The majority rule has been incorporated in the famous case of *Foss v Harbottle* which has set a precedent that

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<sup>42</sup> (SEBI) notification dated August 3, 2021

<sup>43</sup> Urvashi, 'Corporate Governance Issues Regarding Remuneration Of Executive Directors In India' (Legalservicesindia.com, 2021) <<http://www.legalservicesindia.com/article/2235/Corporate-Governance-Issues-Regarding-Remuneration-of-Executive-Directors-in-India.html>> accessed 10 November 2021.

<sup>44</sup> Collins G. Ntim, 'Defining Corporate Governance: Shareholder Versus Stakeholder Models' (2018) Global Encyclopedia of Public Administration, Public Policy and Governance", Springer, USA. <<https://ssrn.com/abstract=3096612>> access 10 november 2021

‘minority shareholders are bound by the action of majority shareholder’.<sup>45</sup> In India, the minority and majority shareholder conflict has been on the rise. The dominance of dominant shareholder act as a problem, and it is prevalent in Indian corporate structure such as Public sector enterprises where the government is dominant, MNC where foreign parent company possess the dominance and finally, the Indian entity, which is mostly family dominated. Section 241-246 of the act<sup>46</sup> do provide some safeguard to the minority shareholders through a class action, but the problem arises to meet the requirement of minimum numerical threshold to file a class action suit under section 244 of the act. Further power of waiver by NCLT is discretionary.

#### **(F) Corporate governance in the unlisted company**

Other minor issues of corporate governance include the non-coverage of an unlisted company. Corporate governance in a publicly listed company deals with regulatory compliance to safeguard the interest of shareholders and stakeholders. The stakeholder involves various people dealing with the company. Thus, corporate governance norms should be made mandatory for unlisted companies.<sup>47</sup>

#### **(G) Board composition and Director**

Whether the theoretical requirement of the composition of the board is being fulfilled in the board structure is a point of doubt. As per the company act 2013, the board is required to have a minimum of one woman director. However, the majority of the company still have not complied with the act, and the majority have appointed the women director from the known circle of promoters.<sup>48</sup>

Directors are not disallowed to serve at the board of different companies; this can reduce the performance efficiency of the board. Therefore, hinder the operational performance of the director, which also increases the risk of conflict of interest between the companies the director serves.<sup>49</sup>

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<sup>45</sup> Foss v Harbottle [1843] 67 ER 189

<sup>46</sup> The company act 2013

<sup>47</sup> Mritunjay Shekhar, 'Corporate Governance – Need For Unlisted Company' (*TaxGuru*, 2018) <<https://taxguru.in/company-law/corporate-governance-unlisted-company.html>> accessed 10 November 2021.

<sup>48</sup> See (n 40)

<sup>49</sup> Pradeep Kumar Gupta, 'CORPORATE GOVERNANCE IN INDIA: CONCEPT, COURSE OF ACTION AND COMPLIANCE'(2009) 3(1) AIMA Journal for Management and Research.< (PDF) CORPORATE GOVERNANCE IN INDIA: CONCEPT, COURSE OF ACTION AND COMPLIANCE (researchgate.net)> accessed 10 November 2021

## V. ROAD AHEAD

The Indian Government is continuously bringing circulars, notifications and amendments to various regulating provisions, such as the company's act 2013 and SEBI LODR, to improve the corporate governance norm. The room exists to improve the existing corporate governance. Some suggestions to resolve the existing issues and challenges are stated below are not exhaustive. These are as follows:

- Inclusion of shareholders in the company's annual general meeting.
- Cumulative voting should be introduced for the minority shareholder to protect them from the dominance of the majority shareholder.
- The director should undergo compulsory training on corporate governance to understand the corporate governance issue.
- Currently, several statutory bodies separately govern the corporate governance practices of a firm which make the corporate governance compliance process cumbersome. Thus, for ease of business Indian government should consolidate all corporate governance provisions and make a single code out of it.
- Adopting OECD suggestions such to safeguard the interest of minority shareholders OECD suggestion suggested for related parties transactions to be approved by a majority of minority shareholders, frequent disclosure of related parties transaction.<sup>50</sup>
- The companies with excellent corporate governance records should be given tax incentives and awarded by the government.
- A grading system should be introduced by the regulatory body, such as SEBI and MCA, and companies with poor corporate governance compliance should be rated poorly, and companies with good ratings should be recognised. This measure can adversely affect the market reputation of a company. Thus, affecting its share prices and will force the company to adhere to all corporate governance norms.

## VI. CONCLUSION

The present research paper has evaluated the issue and challenges in the corporate governance structure by studying the various stages of development of corporate governance framework lastly identified a few of the hundred issues present in the system. The focus on corporate governance has been increased in recent years due to emerging corporate fraud, which reminds us if the institution of independent directors had been strong, it could probably expose the

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<sup>50</sup> (Oecd.org, 2021) <<https://www.oecd.org/daf/ca/Improving-Corporate-Governance-India.pdf>> accessed 10 November 2021.

Satyam scandal way before. The solution in the existing corporate governance framework includes improving the independence of an independent director, bringing out more rigorous compliance requirements for the corporation, solving the minority shareholder dominance crisis and restructuring the board structure enhancing transparency and inculcating ethics further Dr Richard Leblanc, Harvard University Summer 2015 states, 'How a company is governed influences rights and relationships among organisational stakeholders, and ultimately how an organisation is managed, and whether it succeeds or fails. Companies do not fail: boards do'.<sup>51</sup>

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<sup>51</sup> James McRitchie, 'Corporate Governance Defined: Not So Easy' (*Corporate Governance*, 2021) <<https://www.corpgov.net/library/corporate-governance-defined/>> accessed 10 November 2021

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