A CRITICAL STUDY OF CORPORATE GOVERNANCE WITH REFERENCE TO STAKEHOLDER PROTECTION UNDER COMPANY LAW

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DECLARATION

I, hereby declare that the dissertation entitled **"CRITICAL STUDY OF CORPORATE GOVERNANCE WITH REFERENCE TO STAKEHOLDER RIGHT'S PROTECTION UNDER COMPANY LAW"** is the outcome of my own work conducted under the supervision of Ms. Trishla Singh (Associate Professor) at Babu Banarsi Das University, Lucknow. I declare that the content of this dissertation is an original work prepared after careful research and due acknowledgement has been made in the text to all other material used and that the same has not been submitted in any university or college or any other programme for any other purpose.

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CERTIFICATE

This is to certify that the research work entitled "**CRITICAL STUDY OF CORPORATE GOVERNANCE WITH REFERNCE TO STAKEHOLDER RIGHT'S PROTECTION UNDER COMPANY LAW"** is the work done by a student of Babu Banarsi Das University, Lucknow , under my guidance and supervision for the partial fulfillment of the requirement for the **Degree of (LLM)** in **Babu Banarsi Das University Lucknow, Uttar Pradesh**. According to the best of my knowledge, he/she has fulfilled all the necessary requirements prescribed under the University Guideline with regard to the submission of this dissertation.

I wish him/her success in life.

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A project gains a lot of relevance as it on time activity serving a definite object. Practical experience in undertaking a project teaches many things which would otherwise elude observations.

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ABBREVIATIONS

AIR - All India Reporter

CA - Court of appeal

Ch. - Chancery.

Comp L .J. - Company Law Journal

D.B. - Divisional Bench

L.T - Law Times Reports

M.L.R. - Madras Law Review

P.C - Privy Council

S.C. - Supreme Court

S.C.L. - SEBI Corporate Law Magazine

SCC - Supreme Court Cases

TLR - Time Law Reports

ILR - Indian law Report

US - United State

SOX - Sarbanes Oxley Act

SEBI - Securities & Exchange Board of India

CII - Confederation of Indian Industries

FDI - Foreign Direct Investment

FII - Foreign Institutional Investment

MCA - Ministry of Corporate Affairs

SS - Sub Section

SFIO - Serious Fraud Investigation Office

PWC - Price Waterhouse Coopers

USL - United Spirits Ltd.

UB - United Breweries

DRS - Director's Responsibility Statement

CII - Chamber of Indian Industries

TABLE OF CASES

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ABSTRACT

Corporate governance is a process, relation and mechanism set up for the corporations and firms based on certain guidelines and principles by which a company is controlled and directed. The

principles provided in the system ensure that the company is governed in a way that it is able to set and achieve its goals and objectives in the context of the social, regulatory and market environment, and is able to maximize profits and also benefit those whose interest is involved in it, in the long run. The division and distribution of rights and responsibilities among different participants in the corporation (such as the board of directors, managers, shareholders, creditors, auditors, regulators, and other stakeholders) and inclusion of the rules and procedures for making decisions in corporate affairs are identified with the help of Corporate Governance mechanism and guidelines. The need to make corporate governance in India transparent was felt after the high profile corporate governance failure scams like the stock market scam, the UTI scam, Ketan Parikh scam, Satyam scam, which were severely criticized by the shareholders. Thus, Corporate Governance is not just company administration but more than that and includes monitoring the actions, policies, practices, and decisions of corporations, their agents, and affected stakeholders thereby ensuring fair, efficient and transparent functioning of the corporate management system. By this dissertation the authors intend to examine the concept of corporate governance in India with regard to the provisions of corporate governance under the Companies Act 2013. The dissertation will highlight the importance and need of corporate governance in India. We will also discuss the important case laws which contributed immensely in the emergence of corporate governance in India.

CHAPTER-1

INTRODUCTION

[1]CHAPTER-1

INTRODUCTION

The concept of corporate governance gained wide popularity in 1990s to improve the effectiveness of corporate enterprises. Attention on role of corporate governance in economic

[1] du Plessis, Varottil, & Veldman, 2018

development came as a consequence of adopting market-based approaches in defining economic policies.

It attempts to remove corporate failures and dis-satisfaction of the stakeholders. In the era of globalisation, corporate governance plays an important role. Since reliance on private sector increased, it led to greater concern on how corporations operate and control and how suppliers of funds get fair return on their investments.

Corporate governance aims to achieve balance between all the interests present in corporations: management, shareholders and other stakeholders. The corporate governance framework ensures that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance and ownership.

It ensures that corporate managers run their businesses successfully and take care of long-term interests of their stakeholders. It improves capital efficiency of companies and attempts to deploy their wealth in productive areas of the economy.

Corporate governance infers dealing with the business capably, promise to morals and sufficient and opportune divulgence on every single material issue in order to build general partner certainty which will thus prompt effective designation of capital and supported monetary development. Governance is tied in with running the organization, yet great governance is tied in with guaranteeing that is run reasonably and straight forwardly [1]. The Companies Act, 2013 was passed by the Rajya Sabha on eighth August 2013 clearing route for another organization law [2]and got the consent of the president on 29th August, 2013[2]. The Act, 2013 replaces the current [3]Companies Act, 1956 which was authorized 57 years prior. The new Act looks to introduce more straight forwardness and governance in the corporate bodies other than making the fundamental condition for development in the present worldwide structure[3]. It can possibly be a notable point of reference, as it expects to enhance corporate governance, disentangle directions,

[2] du Plessis et al., 2018; Hathi, 2013

[3] Jhunjhunwala & Deepa, 2013
[4] Sekar & FCA, 2014
[5] Luigi Zingales, 2008. "corporate governance," The New Palgrave Dictionary of Economics, 2nd Edition. Abstract.
[6] Sifuna, Anazett Pacy (2012). "Disclose or Abstain: The Prohibition of Insider Trading on Trial". Journal of International Banking Law and Regulation.

improves the premiums of minority financial specialists and out of the blue expresses the part of shriek blowers[4]. The Act supports great governance rehearses by putting the onus on free executives to get oversight the working of the Board and secure the enthusiasm of minority investor .The new Act is a noteworthy point of reference in the corporate governance circle in India and is probably going to have huge effect on the governance of organizations in the nation

Corporate governance defined as "the set of conditions that shapes the ex post bargaining over the quasi-rents generated by a firm."[5]

Corporate governance has also been more narrowly defined as "a system of law and sound approaches by which corporations are directed and controlled focusing on the internal and external corporate structures with the intention of monitoring the actions of management and directors and thereby, mitigating agency risks which may stem from the misdeeds of corporate officers."[6]

Corporate governance is the set of processes, customs, policies, laws, and institutions affecting the way a corporation (or company) is directed, administered or controlled. Corporate governance also includes the relationships among the many stakeholders involved and the goals for which the corporation is governed. In simpler terms it means the extent to which companies are run in an open & honest manner.

Corporate governance has three key constituents namely: the Shareholders, the Board of Directors & the Management. Other stakeholders include employees, customers, creditors, suppliers, regulators, and the community at large. The concept of corporate governance identifies[4]their roles & responsibilities as well as their rights in the context of the company. It emphasizes accountability, transparency & fairness in the management of a company by its Board, so as to achieve sustained prosperity for all the stakeholders. Corporate governance is a synonym for sound management, transparency & disclosure. Transparency refers to creation of an environment whereby decisions & actions of the corporate are made visible, accessible & understandable. Disclosure refers to the process of providing information as well as its timely dissemination.

[7] vijay et al., 2011

In **A Board Culture of Corporate Governance**, business author Gabrielle O'Donovan defines corporate governance as “An internal system encompassing policies, processes and people, which serves the needs of shareholders and other stakeholders, by directing and controlling management activities with good business savvy, objectivity, accountability and integrity”. Sound corporate governance is reliant on external marketplace commitment and legislation, plus a healthy board culture which safeguards policies and processes.
We may infer that Corporate governance is a process, relation and mechanism set up for the corporations and firms based on certain guidelines and principles by which a company is controlled and directed. The principles provided in the system ensure that the company is governed in a way that it is able to set and achieve its goals and objectives in the context of the social, regulatory and market environment, and is able to maximize profits and also benefit those whose interest is involved in it, in the long run. The division and distribution of rights and responsibilities among different participants in the corporation (such as the board of directors, managers, shareholders, creditors, auditors, regulators, and other stakeholders) and inclusion of the rules and procedures for making decisions in corporate affairs are identified with the help of Corporate Governance mechanism and guidelines.

Corporate Governance is the acknowledgment by administration of the unavoidable privileges of investors as the genuine proprietors of the partnership and of their own part as trustees for the benefit of the investors[7]. It is about pledge to values, about moral business lead and about making a qualification amongst individual and corporate finances in the administration of an

organization.[8] The framework of corporate governance consists of:

(1) Express or implied contracts between the stakeholders and the company for the distribution of rights, duties, rewards and liabilities, etc among different participants in the corporation.

(2) Procedure for proper control and supervision of information flow in the company, i.e., a proper mechanism of checks-and-balances, and

(3) Procedures for resolving and reconciling the conflicting interests and decisions of different participants in the corporation.

This mechanism ensures accountability of the Board of Directors to all stakeholders of the corporation i.e. managers, shareholders, suppliers, creditors, auditors, regulators, employees, customers and society in general; for giving the company a fair, clear and efficient administration. So it is not just mere company administration but a corporate management system. It is a code of conduct that must be followed for running and proper functioning of a corporate entity. In this dissertation the researcher has discussed about the Corporate Governance. The whole dissertation is divided into seven parts :-

Chapter- 2: Deals with the Meaning, Objectives, Importance, Theories, Needs, Benefits and Key components of good Corporate Governance.

Chapter-3: Deals with the Evolution of Corporate Governance in India.

Chapter-4: Deals with the Roles of Corporate Governance in Banks, Firms, Family Business.

Chapter-5: Deals with the Corporate Governance under the Companies Act, 2013.

Chapter-6: Deals with the Protection of Stakeholders Rights in Corporate Governance.

Chapter -7: Deals with the Conclusion and Suggestion related to the Corporate Governance.

5

[8] Report of N.R. Narayana Murthy Committee on Corporate Governance constituted by SEBI, 2003

RESEARCH PROBLEM

1. **Why corporate governance is important?**
2. **How many models of corporate governance?**
3. **Define the theories of corporate governance?**
4. **Discuss the evolution of corporate governance in India?**
5. **How corporate governance work under the Company Act, 2013?**
6. **Discuss the scams which related to corporate governance in India?**
7. **What are the types of stakeholders?**
8. **What are the protection of stakeholder rights under the Company Act, 2013 ?**

HYPOTHESIS

Corporate governance is a powerful tool for building trust and long- term relationship with stakeholders through company's thrust on honesty, care, transparency, integrity, accountability, fairness and disclosures.

Good corporate governance will achieve balance apparent conflicting interest of various stakeholders viz. promoters, shareholders, directors, employees, customers, bank society and government etc.

Corporate governance creates credible, competent, creative, committed and caring corporate citizen.

LITERATURE REVIEW

Good corporate governance practices help corporations and its stakeholders; to do so various audit committee mechanisms are required. Research on corporate governance with respect to the emerging market in much needed. Various benefits of following better corporate governance practices are noticed. A corporate governance framework needs to be developed by providing a broad overview of recent corporate governance research. All aspects of corporate governance are important from board structure to ownership structure. In about 26 developing and developed countries major corporate governance reforms took place. These reforms affected investor protection as well as impacted corporate investments. The role of audit committee and its main function is to protect the auditor from dismissal in case of unfavorable report. Independent audit committee members experience a significant increase in turnover rate after auditor dismissals. Corporate governance has become an important issue for China and India as they regularly interact with investors from developed countries. Various aspects of business ethics and its relation to corporate governance can be discussed in detail by understanding various issues related to corporate board of directors and the basis on which they should be analyzed. Ethics in corporate governance also plays an important role; operational dynamics of corporate governance are a necessary part of modern industrialization. An outline for matching the rules and practices of US corporate governance to different cultural methods should be provided.

RESEARCH METHODOLOGY

The research is an attempt of exploratory research, based on the secondary data sourced from journals, magazines, articles and media reports. Looking into requirements of the objectives of the study the research design employed for the study is of descriptive type. Keeping in view of the set objectives, this research design was adopted to have greater accuracy and in depth analysis of the research study. Available secondary data was extensively used for the study. The investigator procures the required data through secondary survey method. Different news articles, Books and Web were used which were enumerated and recorded.

CHAPTER-2

CORPORATE GOVERNANCE

CHAPTER-2

CORPORATE GOVERNANCE

Corporate Governance varies widely. The concept of "governance" is not new. It is as old as human civilization. Simply put "governance" means: the process of decision-making and the process by which decisions are implemented (or not implemented). Governance can be used in several contexts such as corporate governance, international governance, national governance and local governance. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society.

2.1 DEFINITION OF CORPORATE GOVERNANCE

- "Corporate governance is a field in economics that investigates how to secure/motivate efficient management of corporations by the use of incentive mechanisms, such as contracts, organizational designs and legislation. This is often limited to the question of improving financial performance, for example, how the corporate owners can secure/motivate that the corporate managers will deliver a competitive rate of return".[9]
- "Corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment".[10]
- "Corporate governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures [6] for making decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives are set, and the means of attaining those [7]

[9] www.encycogov.com, Mathiesen 2002.
[10] The Journal of Finance, Shleifer and Vishny [1997].

[11] 1992, page 15
[12] Article in Financial Times [1997].

objectives and monitoring performance"-**OECD April 1999.**

OECD's definition is consistent with the one presented by Cadbury[11].

- "Corporate governance - which can be defined narrowly as the relationship of a company to its shareholders or, more broadly, as its relationship to society".[12]

2.2 OBJECTIVES OF CORPORATE GOVERNANCE

Corporate governance has the following objectives:

1. To align corporate goals with goals of its stakeholders (society, shareholders etc.).
2. To strengthen corporate functioning and discourage mismanagement.
3. To achieve corporate goals by making investment in profitable outlets.
4. To specify responsibility of the board of directors and managers to ensure good corporate performance.

2.3 KEY COMPONENTS OF GOOD CORPORATE GOVERNANCE

Good governance is conclusively the indicator of personal beliefs and values that configure the organizational beliefs, values and actions of its Board. The Board, which is a main functionary is primary responsible to ensure the value creation for its stakeholders. In the absence of clarity on designated role and powers of the Board, it weakens the accountability mechanism that subsequently, threatens the achievement of organizational goals. Therefore, the key requirement of good governance is the clarity on part of identification of powers, responsibilities, roles and accountability of top position holders, including the Board, the Chairman of the Board and the CEO. In such cases, role of the Board should be clearly documented in a Board Charter, which can be followed throughout. To elaborate the above discussion, following are the essential elements of good corporate governance:

- A well-structured Audit Committee setup is required to work as liaison with the management, internal and statutory auditors. Importance of such is to review the adequacy of internal control and compliance with significant policies and procedures, reporting to the Board on the key issues.

- Accountability towards the stakeholders with an objective to serve the stakeholders through strong and sustained communication processes at a regular interval.
- Clear documentation of company's objectives as a part of long-term corporate strategy including an annual business plan together with achievable and measurable performance targets.
- Effective whistle blower policy is another element, whereby the employees may report to the top management about any suspected frauds, unethical behavior or violation of company's code of conduct. Appropriate mechanism should be in place for adequate safeguard to such employees.
- Emphasis on healthy management environment, which includes appropriate ethical framework, clear objectives, establishing due processes, clear enunciation of responsibility and accountability, sound business planning, establishing performance evaluation measures.
- Fair and unambiguous legislation and regulations.
- Fairness to all stakeholders.
- Focus on social, regulatory and environmental concerns
- Identification and analyzing risk is an important element of corporate functioning and governance, which should be appropriately taken into consideration as remedial measures. This can be well settled by formulating a mechanism of periodic reviews of internal and external risks.
- To be specific on norms of ethical practices and code of conduct that is required to be communicated to all the stakeholders.
- Transparency and independence in the functioning of the Board, where Board should provide effective leadership for achieving sustained prosperity for all stakeholders, which can be possible by providing independent judgment in achieving the company's objectives.

2.4 WHY IS CORPORATE GOVERNANCE IMPORTANT?

Corporate governance is important for the following reasons:

1. It shapes the growth and future of capital markets of the economy.

2. It helps in raising funds from capital markets. Sound governance practices contribute to investors' confidence in corporations to attract long-term capital.
3. It links company's management with its financial reporting system.
4. It enables management to take innovative decisions for effective functioning of the enterprise within the legal framework of accountability. The effectiveness of legal and regulatory framework is indispensable to assess the impact of corporate governance on overall economic performance.
5. Good corporate governance enhances the structures through which objectives of the corporations are set, means of attaining such objectives are determined and performance is monitored.
6. It supports investors by making corporate accounting practices transparent. Corporate enterprises disclose financial reporting structures.
7. It provides adequate and timely disclosure reporting requirements, code of conduct etc. Companies present material price sensitive information to outsiders and ensure that till this information is made public, insiders abstain from dealing in corporate securities. It thus, avoids insider-trading.
8. It improves efficiency and effectiveness of the enterprise and adds to wealth of the economy. Corporate governance is, thus, an instrument of economic growth.
9. It improves international image of the corporate sector and enables home companies to raise global capital.

2.5 BENEFITS OF CORPORATE GOVERNANCE

1. Good corporate governance ensures corporate success and economic growth.
2. Strong corporate governance maintains investors' confidence, as a result of which, company can raise capital efficiently and effectively.
3. It lowers the capital cost.
4. There is a positive impact on the share price.
5. It provides proper inducement to the owners as well as managers to achieve objectives that are in interests of the shareholders and the organization.
6. Good corporate governance also minimizes wastages, corruption, risks and mismanagement.

7. It helps in brand formation and development.
8. It ensures organization in managed in a manner that fits the best interests of all.

2.6 NEEDS OF CORPORATE GOVERNANCE

Corporate governance is needed for the following reasons:

a) **Separation of ownership from management:**

A company is run by managers. Corporate governance ensures that managers work in the best interests of corporate owners (shareholders).

b) **Global capital:**

In the globalized world, global capital flows in markets which are well- regulated with high standards of efficiency and transparency. Good corporate governance gains credibility and trust of global market players.

c) **Investor protection:**

Investors are educated and enlightened of their rights. They want their rights to be protected by companies in which they have invested money. Corporate governance is an important tool for protecting investors' interest by improving efficiency of corporate enterprises.

d) **Foreign investments:**

Significant foreign institutional investment is taking place in India. The investors expect companies to adopt globally accepted practices of corporate governance and well-developed capital markets. Demanding international standards of corporate governance and greater professionalism in management of Indian corporates substantiates the need for good corporate governance.

e) **Financial reporting and accountability:**

Good corporate governance ensures sound, transparent and credible financial reporting and accountability to investors and lenders so that funds can be raised from capital markets.

f) **Banks and financial institutions:**

Banks and financial institutions give financial assistance to companies. They are interested in financial soundness of companies which can be provided through good corporate governance.

g) Globalisation of economy:

Globalisation and integration of India with the world economy demands that Indian industries conform to the standards of international rules. Corporate governance helps in doing this.

2.7 SCOPE OF CORPORATE GOVERNANCE

- If the corporate governance of the company is proper it will ultimately lead to better economic growth and more success rate.
- Better corporate governance helps in getting the confidence of the investor which will ultimately help the company in raising and acquiring the capital fast and effectively.
- It also lowers the cost of the capital that is required for investment.
- It also helps in increasing the share price of the company.
- Proper corporate governance help in attaining the efficiency and also minimizes mismanagement, risk, and corruption.
- It plays in building up the goodwill of the corporation.
- It helps in managing and running the operations in the organization according to the interest of all of its stakeholders.

2.8 MODELS OF CORPORATE GOVERNANCE

This dissertation throws light upon the seven important models of corporate governance. The models are:

1. Canadian Model:

Canada has a history of French and British colonisation. The industries inherited those cultures. The cultural background in these industries affected subsequent developments. The country has large influence of French merchantism. In 19th century the Canadian industries were controlled by rich families. Since last five decades wealthy Canadian families sold their stocks during stock boom periods. Canada now resembles United States in industry structure.

Since last four decades there is change in industries in Canada in the areas:

a. Family owned companies are on the increase

b. Use of new technologies

c. More entrepreneurial activities
d. Early entrance in initiating corporate governance
e. Diffuse ownership from earlier colonial masters.

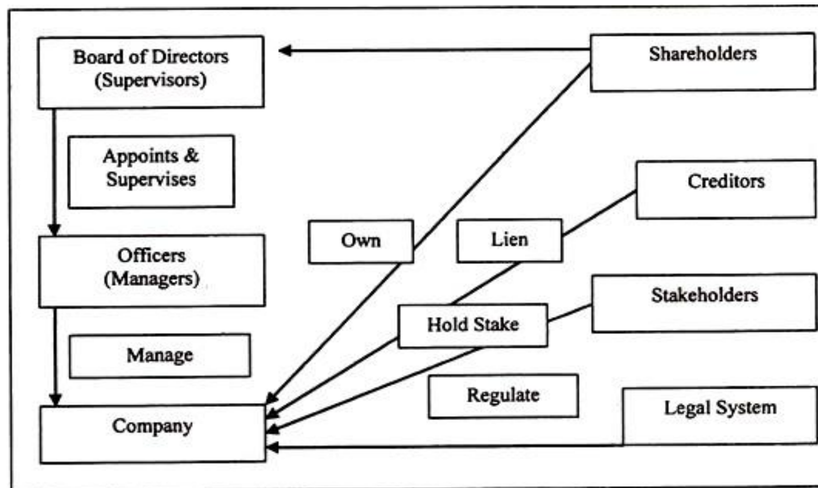
2. **UK and American Model:**

Sarbanes Oxley Act:

In July 2002, the U.S. Congress passed the Sarbanes Oxley Act (SOX), particularly designed to make US corporations more transparent and accountable to their stakeholders. The Act seeks to re-establish investor confidence by providing good corporate governance practice to prevent corporate scams and frauds in business corporations, to improve accuracy and transparency in financial reporting, accounting service of listed companies, enhance corporate responsibility and independent auditing. The applicability of the Act is not confined only to publicly owned US companies, but also extends to other units registered with the Securities Exchange Commission. However, there is a common thread running between them, i.e., that governance matters. Unless corporate governance is integrated with strategic planning and shareholders are willing to bear the additional required expenses, effective governance cannot be achieved.

The above events encouraged the development of the present situation where different aspects of the Sarbanes Oxley Act are discusses, and its effects, limitations and internal control after the act were passed and what lies beyond its compliance. Also discussed are the varied applications of the act in areas such as IT, the fee structure of the Big Four Accounting Firms, the mid-size accounting firms, supply chain management and insurance.

The Anglo-American Model of industry structure and corporate governance is detailed in Fig. 2.1:



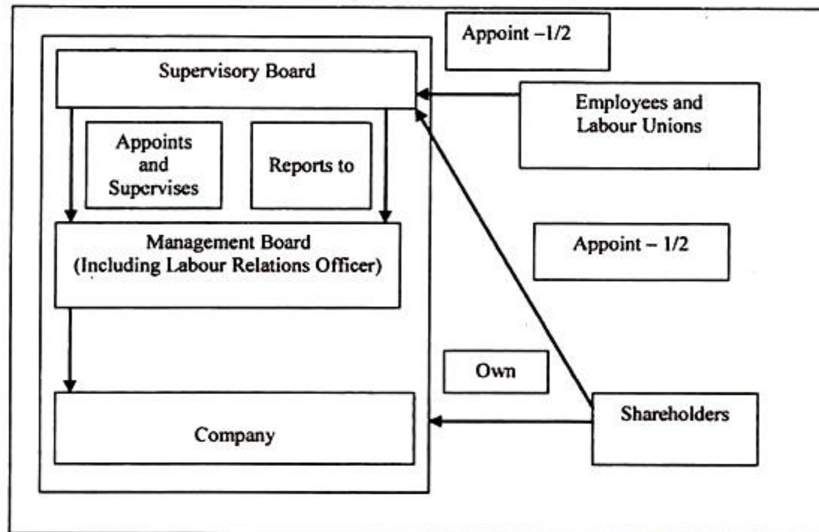
3. **German Model:**

Germany is known for industrialisation since beginning of 19th century. Germany exports sophisticated machinery in a large way since last five decades. The industries are financed by wealthy German families, small shareholders, banks and foreign investors. The large private bankers who invested in industry had a bigger say in running those industries and hence performance was not up to the mark.

Germany is considering proper steps towards corporate governance since second half of 19th century. The company law in Germany of 1870 created dual board structure to care of small investors and the public. The company law in 1884 made information and openness as the key theme. The law also mandated minimum attendance at the first shareholders meeting of any company.

World War I saw considerable changes in industries in Germany by dismantling the rich. As on date Germany has large number of family controlled companies. The smaller companies are controlled by banks. The proxy voting by small investors was introduced in Germany in year 1884.

The German Model of industry and corporate governance is shown in Fig. 2.2:



4. **Italian Model:**

The Italian business was also controlled by family holdings. The business groups and the families were powerful by mid of 20th century. Slowly the stock market gained importance during the second half of the 20th century. The Italian government did not intervene in the company management or their working.

When the Italian all the investment banks collapsed in 1931 the Fascist government in Italy took over the industrial shares and imposed a legal separation of investment from commercial banking. The Second World War brought a change from the government side to have a direct role in the economy, helping the weak companies and using corporate governance to improve these companies. This helped the economic growth of Italy particularly in capital intensive industries.

Since World War II the industrial policy was introduced. The policy had no need for investor protection. It led the investors to buy a government bonds and not invest in company shares. The growth of Italian industry came from the small specialised industries which remained unlisted in stock markets. The small firms were controlled by families. The corporate governance was in the hands of bureaucrats or wealthy families. The corporate governance activities and confidence in stock markets started developing since last two decades. The Italian investors are aware of the importance of the corporate governance and protection of the rights.

5. **France Model:**

The French financial system traditionally was regulated by the religion. The controlling methods, borrowing and lending with the state constituting the main borrower. Religion had prohibited the interest to some extent. The lending was based on mainly mortgages of real estates. In early 19th century the French public took to hoarding gold and silver. Coins composed measure part of money transactions in that period. The French industry was conservative in its outlook. The business used the retained earnings of one company to build other areas of business and companies.

The business was controlled by wealthy families who funded these business groups. The control of the company continued from generation to generation. Stage wise the corporate government was introduced in France along with economic development activities. This led to wealthy families controlling corporate sector to come under the watchful guidance of the state.

6. **Japanese Model:**

Japan was a deeply conservative country were the hereditary caste system was important. Business families where at the bottom of the period i.e., beneath priests, warriors, peasants and craftsmen. Due to lack of funds at the lowest level of the pyramid led to the stagnation of the business.

The large population of the country needed goods and services and the importance was given to prominent mercantile families like Mitsui and Sumitomo. The World War II brought a sea change in the business, commerce and industry and opened the Japanese markets to the American traders. The young Japanese started taking higher education in Europe and America and learnt foreign technology, business management.

These led to building of new culture in industry, commerce and economic outlook in Japan. The government also started establishing stated owned companies. These companies ended up in losses and huge debts. To come out of the problem the government made mass privatization of most of these companies. Many of these were sold to Mitsui and Sumitomo families.

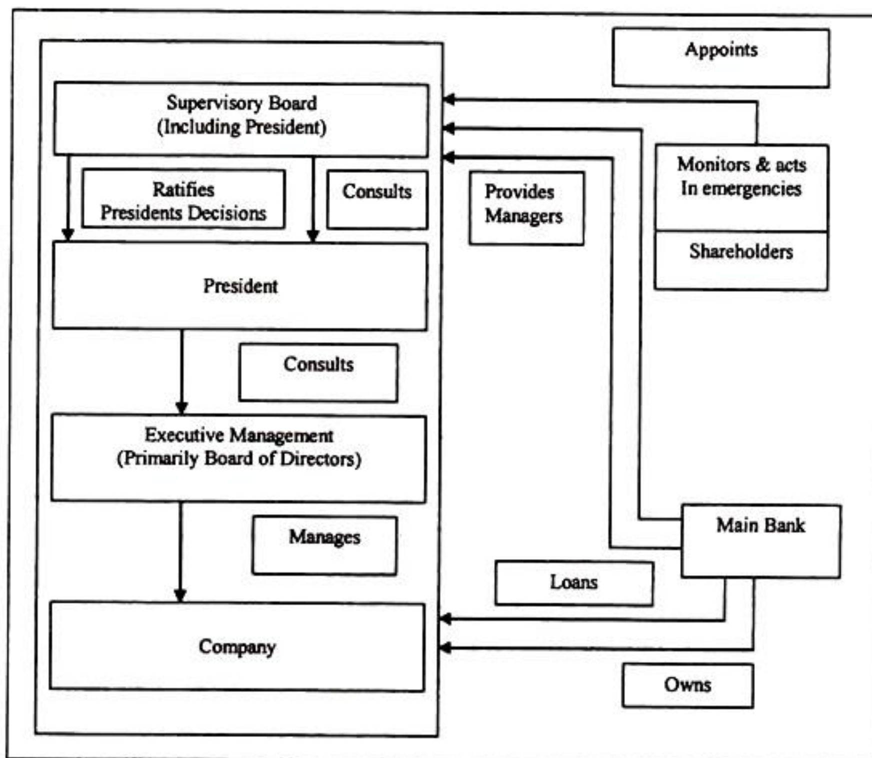
In the mean while Mitsubishi gained prominence. The three companies groups were called Zaibatsu "meaning controlled by pyramids of listed corporations". The growth of Japanese industry is a mix of private and state capitalism. Meanwhile large companies developed in the auto area like Nissan and Suzuki. The Suzuki company was owned by

the Suzuki family. The depression period of 1930's brought economic stagnation and eroded the appreciation of the Japanese public for the family companies. The family companies always kept their family rights ahead of their shareholders and public interest. The private company resorted to short-term gains and did not care for long-term investments or projects of long gestation.

The large companies in Japan also had their own banks. In 1945's the American occupied and took charge of the Japanese economy that changed the face of Japanese industry and economy. By the beginning of 1950's the Japanese large companies were free standing and widely held similar to United Kingdom and United States.

The companies which were poorly governed were the targets for takeover by the large companies. The banks controlled the large groups of industry which are called as Keiretsu. The Keiretsu system is in place even today. The large companies also influence government in a big way. The corporate governance has evolved in Japan since last 2 decades.

The Japanese Model of Industry and Corporate governance is shown Fig. 2.3:



7. **Indian Model:**

East India Co. (EIC) in its trade had malpractices. Current practice since 400 years since industrialisation in companies. Environmental and world commercial are classic cases. Family owned cos. India has long history of commercial activities 2500 years old.

(a) The Managing Agency system 1850-1955

(b) The Promoter System 1956-1991

(c) The Anglo American System 1992 onwards

The Securities and Exchange Board of India (SEBI):

Established SEBI Act in Jan. 1992 gave statutory powers and introduced had 2 issues.

(a) Investor protection and

(b) Market Development.

SEBI is part of department of Company Affairs Govt. of India.

SEBI has moved from control regime to prudential regulation.

It is empowered to regulate working of stock exchanges and its players including all listed us. SEBI is playing a key role in corporate governance in India.

These developments in U.K. had significant influence on India. Confederation of Indian Industries (CII) appointed a National Task Force headed by Rahul Bajaj, who submitted a 'Desirable Corporate Governance in India – a Code' in April 1998 containing 17 recommendations.

Thereafter Securities and Exchange Board of India (SEBI) appointed a Committee under the Chairmanship of Kumar Mangalam Birla. This committee submitted its report on 7 May 1999, Containing 19 Mandatory and 6 non-mandatory recommendations. SEBI implemented the report by requiring the Stock Exchanges to introduce a separate clause 49 in the Listing Agreements.

In April 2002 Ganguly Committee report was made for improving corporate governance in Banks and Financial Institutions. The Central Government (Ministry of Finance and Company Affairs) appointed a Committee under the Chairmanship of Mr. Naresh Chandra on Corporate Audit and Governance. This committee submitted its report on 23 December 2002.

Finally SEBI appointed another committee on Corporate Governance under the Chairmanship of N.R. Narayan Murthy. The committee submitted its report to SEBI on 8

Feb. 2003. SEBI thereafter revised clause 49 of the Listing Agreement, which has come into force with effect from 01 January 2006.

Some of the recommendations of these various committees were given legal recognition by amending the Companies Act in 1999, 2000 and twice in 2002. With a view to gear company law for competition with business in developed countries, the Central Government (Ministry of Company Affairs) appointed an expert committee under the Chairmanship of Dr. Jamshed J. Irani in December 2004.

The Committee submitted its report to the Central Government on 31 May 2005. The Central Government had announced that the company law would be extensively revised based on Dr. Irani's Committee Report.

Corporate world is awaiting the changes to be made in company law. Parliament on 15 May 2006 had approved the Companies (Amendment) Bill, 2006 which envisages implementation of a comprehensive e-governance system through the well-known MCA-21 project.

Corporate governance has once again become the focus of media/public attention in India following the debacles of Enron, Xerox and WorldCom abroad, and Tata Finance/Ferguson, Satyam, telecom scams by few companies and black money laundering, employed by few at home.

With the opening of the markets post liberalisation in early 1990's and as India get integrated into world economy, the Indian companies can no longer afford to ignore better corporate practices which are essential to enhance efficiency to survive international competition.

The question that comes to the minds of Indian investors now is, whether our institutions and procedures are strong enough to ensure that such incidents will not happen again, or has the Indian corporate sector matured enough to practice effective self-regulation?

These developments tempt us to re-evaluate the effectiveness of corporate governance structures and systems in India.

Economic liberalisation and globalisation have brought about a manifold increase in the foreign direct investment (FDI) and foreign institutional investment (FII) into India.

More and more Indian companies are getting themselves listed on stock exchanges abroad. Indian companies are also tapping world financial markets for low cost funds with ADR/GDR issues.

Companies now have to deal with newer and more demanding Indian and global shareholders and stakeholder groups who seek greater disclosure, more transparent explanation for major decisions, and, above all, a better return for their stake. There is, thus, an increased need for Indian boards to ensure that the corporations are run in the best interests of these highly demanding international stakeholders.

Initiatives by some Indian companies and the CII have brought corporate governance to a regulatory form with the introduction of Clause-49 in the Listing Agreement of companies with the stock exchanges from January 2000. The first to comply with the requirements of Clause-49 were the Group-A companies, which were required to report compliance by March 31, 2001.

However, the code draws heavily from the UK's Cadbury committee, which is based on the assumption of a dispersed share ownership – more common in the UK – than the concentrated and family-dominated pattern of share ownership in India. In addition in regard to corporate governance the Indian corporate have also overhauled themselves.

2.9 THEORIES OF CORPORATE GOVERNANCE

The following theories elucidate the basis of corporate governance:

a. Agency Theory
b. Shareholder Theory
c. Stake Holder Theory
d. Stewardship Theory

A. Agency Theory:

According to this theory, managers act as 'Agents' of the corporation. The owners or directors set the central objectives of the corporation. Managers are responsible for carrying out these objectives in day-to-day work of the company. Corporate Governance is control of management through designing the structures and processes.

In agency theory, the owners are the principals. But principals may not have knowledge or skill for getting the objectives executed. The principal authorises the mangers to act as 'Agents' and a contract between principal and agent is made. Under the contract of agency, the agent should act in good faith. He should protect the interest of the principal and should remain faithful to the goals.

In modern corporations, the shareholdings are widely spread. The management (the agent) directly or indirectly selected by the shareholders (the Principals), pursue the objectives set out by the shareholders. The main thrust of the Agency Theory is that the actions of the management differ from those required by the shareholders to maximize their return. The principals who are widely scattered may not be able to counter this in the absence of proper systems in place as regards timely disclosures, monitoring and oversight. Corporate Governance puts in place such systems of oversight.

B. <u>Stockholder/shareholder Theory:</u>

According to this theory, it is the corporation which is considered as the property of shareholders/ stockholders. They can dispose of this property, as they like. They want to get maximum return from this property.

The owners seek a return on their investment and that is why they invest in a corporation. But this narrow role has been expanded into overseeing the operations of the corporations and its mangers to ensure that the corporation is in compliance with ethical and legal standards set by the government. So the directors are responsible for any damage or harm done to their property i.e., the corporation. The role of managers is to maximize the wealth of the shareholders. They, therefore should exercise due diligence, care and avoid conflict of interest and should not violate the confidence reposed in them. The agents must be faithful to shareholders.

C. <u>Stakeholder Theory:</u>

According to this theory, the company is seen as an input-output model and all the interest groups which include creditors, employees, customers, suppliers, local-community and the government are to be considered. From their point of view, a corporation exists for them and not the shareholders alone. The different stakeholders also have a self interest. The interest of these different stakeholders is at times conflicting. The managers and the corporation are responsible to mediate between these different stakeholders interest. The stake holders have solidarity with each other. This theory assumes that stakeholders are capable and willing to negotiate and bargain with one another. This results in long term self interest.

The role of shareholders is reduced in the corporation. But they should also work to make their interest compatible with the other stake holders. This requires integrity and managers play an important role here. They are faithful agents but of all stakeholders, not just stockholders.

D. <u>Stewardship Theory:</u>

The word 'steward' means a person who manages another's property or estate. Here, the word is used in the sense of guardian in relation to a corporation, this theory is value based. The managers and employees are to safeguard the resources of corporation and its property and interest when the owner is absent. They are like a caretaker. They have to take utmost care of the corporation. They should not use the property for their selfish ends. This theory thus makes use of the social approach to human nature. The managers should manage the corporation as if it is their own corporation. They are not agents as such but occupy a position of stewards. The managers are motivated by the principal's objective and the behavior pattern is collective, pro-organizational and trustworthy. Thus, under this theory, first of all values as standards are identified and formulated. Second step is to develop training programmes that help to achieve excellence. Thirdly, moral support is important to fill any gaps in values.

CHAPTER-3

EVOLUTION OF CORPORATE GOVERNANCE IN INDIA

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Corporate administration is to a huge degree, a lot of components through which outcast financial specialists shield themselves from confiscation by insiders[13]. The theme of corporate governance has attained prominence particularly since the 1980s and all the more so after the code of corporate administration issued by the Cadbury advisory group. The well-known Cadbury Committee characterised "corporate governance" in its report[14] as "the framework by which organisations are coordinated and controlled".

In accordance with the Cadbury Council, the Kumar Mangalam Birla Committee additionally issued a code of corporate administration for organisations in India. As part of the corporate culture prevalent worldwide, directors are in charge of the administration of their organisations. The investors' job in administration is to choose the director and the administrators and to fulfill themselves that a fitting administration structure is set up.[15]

I. **Evolution of Legal Framework of Corporate Governance in India**

Prior to Independence and Four Decades into Independence

Indian associations/corporate entities were bound by colonial guidelines and a large portion of the principles and guidelines took into account the impulses and likes of the British employers. The Companies Act was enacted in 1866 and was amended in 1882, 1913 and 1932. Partnership Act was enacted in 1932. These enactments had a managing

organisation model as a focus as people/business firms went into a legitimate contract with business entities to manage the latter. This period was an era of misuse/abuse of resources and shunning of obligations by managing specialists because of scattered and unprofessional proprietorship.

Soon after independence, there was interest among industrialists for production of a lot of essential items for which the Government directed and dictated fair prices. This was the point at which the Tariff Commission and the Bureau of Industrial Costs and Prices were set up by the Government. Industries (Development and Regulation) Act and Companies [8]Act were introduced into the legal system in 1950s. 1960s was a time of setting up of heavy industries in addition to the routine affairs. The period between 1970s to mid-1980s was a time of cost, volume and profit examination, as a vital piece of the cost accounting activities.

Coming of Age

India has been distinctly looked upon by the associations/organisations worldwide with the objective of making inroads into untapped new markets. Dynamic firms in India made an endeavour to put the frameworks of good corporate administration in place from the word go, whether or not any regulations were in place. However, the scenario was not too encouraging, being too promoter-centric and good governance norms given a go by for the sake of convenience or comfort of the promoters.

Realising the need for governing the corporates more effectively and professionally to make them globally competitive, there have been a number of discourses and occasions prompting the advancement of corporate governance. The fundamental code for corporate administration was proposed by the CII[16]. The definition proposed by CII was—corporate governance manages laws, methods, practices and understood principles that decide an organisation's capacity to take administrative choices—specifically its investors, banks, clients, the State and the representatives.

II. Reformation in Corporate Governance

The First Phase of India's Corporate Governance Reforms: 1996-2008

The primary or the first phase of India's corporate governance reforms were focussed at making Audit Committees and Boards more independent, focussed and powerful

[16] Chamber of Indian Industries in 1998

supervisor of management and also of aiding shareholders, including institutional and foreign shareholders/investors, in supervising management. These reform efforts were challenged through a number of different paths with both the Ministry of Corporate Affairs (MCA) and the Securities and Exchange Board of India (SEBI) playing important roles.

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(a) **CII—1996**

In 1996, CII taking up the first institutional initiative in the Indian industry took a special step on corporate governance. The aim was to promote and develop a code for companies, be in the public sectors or private sectors, financial institutions or banks, all the corporate entities. The steps taken by CII addressed public concerns regarding the security of the interest and concern of investors, especially the small investors; the promotion and encouragement of transparency within industry and business, the necessity to proceed towards international standards of disclosure of information by corporate bodies, and through all of this to build a high level of people's confidence in business and industry. The final draft of this Code was introduced in April 1998[17].

(b) **Report of the Committee (Kumar Mangalam Birla) on Corporate Governance**

Noted industrialist, Mr Kumar Mangalam Birla was appointed by SEBI—as Chairman to provide a comprehensive vista of the concern related to insider trading to secure the rights of several investors. The suggestions insisted on the listed companies for initial and continuing disclosures in a phased manner within specified dates, through the listing agreement. The companies were made to disclose separately in their annual reports, a report on corporate governance delineating the steps they have taken to comply with the recommendations of the Committee. The objective was to enable the shareholders to know, where the companies, in which they have invested, stand with respect to specific initiatives taken to ensure robust corporate governance.

(c) **Clause 49**

[17] Smita Jain, Corporate Governance—National and International Scenario, 33rd National Convention of Company Secretaries, p. A-71.

The Committee also realised the importance of auditing body and made many specific suggestions related to the constitution and function of Board Audit Committees. At that time, SEBI reviewed it's listing contract to include the recommendations. These rules and regulations were listed in Clause 49, a new section of the listing agreement which came into force in phases of 2000 and 2003.

(d) **Report of the Advisory Group on Corporate Governance: Standing Committee on International Financial Standards and Code—March 2001**

The advisory group tried to compare the potion of corporate governance in India vis-à-vis the international best standards and advised to improve corporate governance standards in India.

(e) **Report of the Consultative Group of Directors of Banks—April 2001**

The corporate governance of directors of banks and financial institutions was constituted by Reserve Bank to review the supervisory role of boards of banks and financial institutions and to get feedback on the activities of the boards vis-à-vis compliance, transparency, disclosures, audit committees, etc. and provide suggestions for making the role of Board of Directors more effective with a perspective to mitigate or reduce the risks.

(f) **Report of the Committee on Corporate Audit and Governance Committee—December 2002**

The Committee took the charge of the task to analyse, and suggest changes in different areas like—the statutory auditor and company relationship, procedure for appointment of Auditors and determination of audit fee, restrictions if required on non-auditory fee, measures to ensure that management and companies put forth a true and fair statement of financial affairs of the company.

(g) **SEBI Report on Corporate Governance (N.R. Narayan Murthy)—February 2003**

So as to improve the governance standards, SEBI constituted a committee to study the role of independent directors, related parties, risk management, directorship and director compensation, codes of conduct and financial disclosures.

(h) **(Naresh Chandra Committee II) Report of the Committee on Regulation of Private Companies and Partnerships**

As large number of private sector companies were coming into the picture there was a need to revisit the law again. In order to build upon this framework, the Government constituted a committee in January 2003, to ensure a scientific and rational regulatory environment. The main focus of this report was on (a) the Companies Act, 1956; and (b) the Partnership Act, 1932. The final report was submitted on 23-7-2003.

(i) **Clause 49 Amendment—Murthy Committee**

In 2004, SEBI further brought about changes in Clause 49 in accordance with the Murthy Committee's recommendations. However, implementation of these changes was postponed till 1-1-2006 because of lack of preparedness and industry resistance [10]to accept such wide-ranging reforms. While there were many changes to Clause 49 as a result of the Murthy Report, governance requirements with respect to corporate boards, audit committees, shareholder disclosure, and CEO/CFO certification of internal controls constituted the largest transformation of the governance and disclosure standards of Indian companies[18].

<u>Second Stage of Corporate Governance—After Satyam Scam</u>

India's corporate community experienced a significant shock in January 2009 with damaging revelations about board failure and colossal fraud in the financials of Satyam. The Satyam scandal also served as a catalyst for the Indian Government to rethink the corporate governance, disclosure, accountability and enforcement mechanisms in place. Industry response shortly after news of the scandal broke, the CII began examining the corporate governance issues arising out of the Satyam scandal. Other industry groups also formed corporate governance and Ethics Committees to study the impact and lessons of the scandal. In late 2009, a CII task force put forth corporate governance reform recommendations.

In its report the CII emphasised the unique nature of the Satyam scandal, noting that—Satyam is a one-off incident. The overwhelming majority of corporate India is well run, well regulated and does business in a sound and legal manner. In addition to the CII, the National Association of Software and Services Companies (Nasscom,

[18] SEBI, Recommendations of the Narayan Murthy Committee on the Revised Cl. 49–Corporate Governance–Press Release, 2003.

[19] Moneycontrol.com, What Changed in the Legal Landscape Post Satyam Scam, 2018.

self-described as—the premier trade body and the Chamber of Commerce of the IT-BPO industries in India) also formed a Corporate Governance and Ethics Committee, chaired by N.R. Narayana Murthy, one of the founders of Infosys and a leading figure in Indian corporate governance reforms. The Committee issued its recommendations in mid-2010[19].

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III. <u>Legal Framework on Corporate Governance</u>[20]

The Companies Act, 2013— consists of law provisions concerning the constitution of the board, board processes, board meetings, independent directors, audit committees, general meetings, party transactions, disclosure requirements in the financial statements and etc.

SEBI Guidelines—SEBI is a governing authority having jurisdiction and power over listed companies and which issues regulations, rules and guidelines to companies to ensure the protection of investors.

Standard Listing Agreement of Stock Exchange.—is for those companies whose shares are listed on the stock exchanges.

Accounting Standards Issued by the Institute of Chartered Accountants of India (ICAI)— ICAI is an independent body, which issues accounting standards providing guidelines for disclosures of financial information. In the new Companies Act, 2013 Section 129 provides that the financial statements would give a fair view of the state of affairs of the companies, following the accounting standards given under Section 133 of the Companies Act, 2013. It is further given that the things contained in such financial statements should be in compliance with the accounting standards.

Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI)—ICSI is an independent body, which has secretarial standards in terms of the provisions of the new Companies Act. ICSI has issued secretarial standards on “Meetings of the Board of Directors”(SS-1) and secretarial standards on “General Meetings” (SS-2). Given secretarial standards have come into force from 1-7-2015. Companies Act, 2013, Section 118(10) provides that every company (other than one person company) shall

[19] Corporate Governance Framework in India, Mondaq, Vaish Associates, 2016.

observe secretarial standards specified as such by the ICSI with respect to general and Board meetings.

IV. Landmark Cases of failure of Corporate Governance

Satyam Case

Satyam Computer Services scandal was a corporate scandal affecting India-based company Satyam Computer Services in 2009, in which Chairman Ramalinga Raju admitted that the company's accounts had been manipulated. The Satyam scandal was a [12]Rs 7000 crore corporate scandal in which accounts had been manipulated. On 7-1-2009, Ramalinga Raju sent an e-mail to SEBI, wherein he confessed to falsify the cash and bank balances of the company. Weeks before the scam began to unravel with his popular statement that he was riding a tiger and did not know how to get down without being killed. Raju had said in an interview that Satyam, the fourth largest IT company, had a cash balance of Rs 4000 crore and could leverage it further to raise another Rs 15,000-20,000 crore.

Ramalinga Raju was convicted with 10 other members on 9-4-2015. Ramalinga Raju and three others were given six months jail term by Serious Fraud Investigation Office (SFIO) on 8-12-2014[21]. Even auditors Price Waterhouse Coopers (PWC) had to face a hard time.

Ricoh Case

The saga at Ricoh India demonstrates that the radiance of good governance that is automatically ascribed to MNCs is not ensured the result. In spite of administrative interference after the Satyam scam and legislative amendments to tighten the governance framework[22]. The Ricoh scene was almost a replica of the Satyam episode in terms of accounting fraud and resultant fraud of stock prices interestingly without any promoter being in the saddle. Just a few corrupt managers were sufficient to obliterate the system with the usual failure of the main regulating institutions such as the auditors, credit rating agencies, independent directors of repute, committees of directors including the powerful audit committees manned by independent directors, etc.

ICICI Bank Scam Case

[21] FE Online, Financial Express,2018.

[22] Companies Act, 2013, SEBI (Listing Obligations and Disclosure Requirements) Regulations, etc.

It was the role of the Board in hurriedly giving a clean chit to its CEO without the results of an independent investigation released in the public domain in an apparent case of alleged nepotism, and its refusal to take any questions on the matter.

Kingfisher Airlines and United Spirits Case

Mainly regarding illegal internal corporate funding to parties, falsifying accounts. It was entirely evident that assets had been transferred from United Spirits Ltd. (USL) to subsidise Kingfisher, that United Breweries (UB) Holdings was utilised as a channel for raising loans and giving them to his group, that intercorporate credits were given to related groups without the Board's approval, accounts were inappropriately expressed, reviews were stage overseen, etc. during the period Mr Vijay Mallya was responsible for USL.

Sad but true. The list is getting longer by each passing month and newer corporate frauds are being detected at companies and banks which used to be torchbearers of good corporate governance.

CHAPTER-4

CORPORATE GOVERNANCE UNDER THE COMPANY ACT, 2013

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1. **COMPANIES ACT, 2013**

   The following are the important provisions under the Companies Act, 2013 (the new Act) and the Rules framed there under to further strengthen corporate governance:

1.1. Composition of the Board of Directors [Sections 149, 151]

1.1.1. Minimum number of directors:

Public company : 3

Private company : 2

One person company : 1

1.1.2. Maximum number of directors:

Every company shall have maximum 15 directors. A company can appoint more than 15 directors after passing a special resolution.

1.1.3. Director resident in India ≥ 182 days

Every company is required to have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

1.1.4. Independent Directors:

Every listed public company is required to have at least one-third of total number of directors as independent directors.

The following public companies are required have at least two directors as independent directors:

Paid-up share capital ≥ Rs.10 crores

Turnover ≥ Rs.100 crores

Outstanding loans, debentures and deposits > Rs.50 crore as at the last date of latest audited financial statements

In case a company ceases to fulfill any of the above three conditions for three consecutive years, it will not be required to comply with the provisions until such time it meets any of such conditions.

Any intermittent vacancy of an Independent Director is required to be filled up by the Board at the earliest but not later than immediate next board meeting or 3 months from the date of such vacancy, whichever is later[23]. [13]

Every company existing as on or before 1st April, 2014 to which this provision applies is required to comply with the requirements within one year, i.e. by 31st March, 2015.

[23] This provision is in conflict with provision VI (2) of Schedule IV given below at 1.5.4

Every independent director has to, at the first board meeting in which he participates as a director and thereafter at the first board meeting in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence.

1.1.5. <u>Woman Director</u> – One or more

- The following class of companies are required to appoint at least one woman director.
  Every listed company and
  Every other public company that meets the following criteria based on latest audited financial statements
  Paid–up share capital ≥ Rs.100 crores
  Turnover ≥ Rs.. 300 crores
- Companies to whom this provision applies, are required to comply as under:
  Every company existing as on or before 1st April 2014 within 1 year
  A company incorporated under Companies Act, 2013 within 6 months from the date of incorporation
- Any intermittent vacancy of a Woman Director is required to be filled up by the Board at the earliest but not later than immediate next board meeting or 3 months from the date of such vacancy, whichever is later.

1.1.6. <u>Small Shareholders' Director</u> – one or more

Every listed company may appoint a small share holders' director to be elected by the small share holders, i.e. share holders holding shares of nominal value of less [14]than Rs.20,000 upon receiving notice of not less than 1,000 small share holders or one-tenth of the total number of such share holders, whichever is lower or on a voluntary basis.

1.2. **<u>Director's Responsibility Statement (DRS) [Section 134(5)][24]:</u>**

[24] Company Act,2013

The Report of the Board of Directors is required to include a DRS on the following aspects: Applicable accounting standards have been followed in preparation of the annual accounts along with proper reasons/explanations for material departures. Accounting policies as selected are consistently applied and judgments and estimates are made in a reasonable and prudent manner to ensure true and fair view of the state of affairs at the end of financial year and of the profit or loss for that period.

Adequate accounting records are maintained in accordance with the provisions of the new Act safeguarding the assets of the company and for preventing and detecting frauds and other irregularities.

Annual accounts have been prepared on a Going Concern basis.

In the case of a listed company, the directors, have laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Proper systems have been devised to ensure compliance with the provisions of all applicable laws and that such systems are adequate and operating effectively.

1.3. **Additional Disclosures in the Report of the Board of Directors [Section 134(3)]:**

In case of a listed company and every other public company having paid-up share capital Rs.25 crores or more, calculated at the end of the preceding financial year, the Report of the Board of Directors is required to include, inter alia, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

1.4. **Duties of the Directors [Section 166]:**

The new Act has codified duties of the directors as given below:

- To act in accordance with the articles of the company
- To act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the share holders, the community and for the protection of environment
- To exercise duties with due and reasonable care, skill and diligence and to exercise independent judgment

- Not involve in a situation in which the director may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company
- Not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates
- Not assign director's office

1.5. **Independent Directors [Section 149]**

1.5.1 Qualifications:

- An independent director means a director other than a managing director or a whole-time director or a nominee director and
- Is a person of integrity and possesses relevant expertise and experience
- Is not a promoter of the company or its holding, subsidiary or associate company
- Is not related to promoters or directors in the company, its holding, subsidiary or associate company
- Has no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the 2 immediately preceding financial years or during the current financial year
- None of whose relatives has pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to 2% or more of its gross turnover or total income or Rs.50 lakhs or such higher amount as may be prescribed, whichever is lower, during the 2 immediately preceding financial years or during the current financial year;

Who, neither himself nor any of his relatives— [15]

- Holds the position of a KMP or is or has been employee of the company or its holding, subsidiary or associate company in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed;

[25] Company Act,2013

- Is or has been an employee or proprietor or a partner, in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed, of
- A firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
- Any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to 10% or more of the gross turnover of such firm
- Holds together with his relatives 2% or more of the total voting power of the company
- Is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company

- Who possesses appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

1.5.2 Remuneration:

An independent director is not entitled to any stock option and may receive remuneration by way of (sitting) fee provided under section 197(5)[25], reimbursement of expenses for participation in the Board and other meetings and profit related commission that be approved by the members.

1.5.3 Term:

An independent director can hold office for a term up to 5 consecutive years and is eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

No independent director can hold office for more than 2 consecutive terms. Such independent director is eligible for appointment after the expiration of 3 years of ceasing to become an independent director provided he is not,

during the said period of 3 years, appointed in or associated with the company in any other capacity, either directly or indirectly.

1.5.4 Code for Independent Directors:

The Schedule IV lays down a detailed code of conduct for Independent Directors covering the following aspects:

A. Guidelines of Professional Conduct:

The independent director is required to:

1. Uphold ethical standards of integrity and probity.
2. Act objectively and constructively while exercising his duties.
3. Exercise his responsibilities in a bona fide manner in the interest of the company.
4. Devote sufficient time and attention to his professional obligations for informed and balanced decision making.
5. Not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making.
6. Not abuse his position to the detriment of the company or its share holders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person.
7. Refrain from any action that would lead to loss of his independence.
8. Where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly.[16]
9. Assist the company in implementing the best corporate governance practices.

B. Roles and functions:

The independent director is required to:

[26] Key Management Plan.

1. Help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct.
2. Bring an objective view in the evaluation of the performance of board and management;
3. Scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance.
4. Satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible
5. Safeguard the interests of all stakeholders, particularly the minority share holders
6. Balance the conflicting interest of the stakeholders;
7. Determine appropriate levels of remuneration of executive directors, KMP and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, KMP[26] and senior management;
8. Moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest

C. Duties:

The independent director is required to:

1. Undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company.
2. Seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company.
3. Strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member.
4. Participate constructively and actively in the committees of the Board in which they are chairpersons or members.
5. Strive to attend the general meetings of the company.

6. Where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting.
7. Keep themselves well informed about the company and the external environment in which it operates.
8. Not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board.
9. Pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company.
10. Ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use.
11. Report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy.
12. Acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees.
13. Not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

D. Manner of appointment:

1. Appointment process of independent directors is required to be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively.
2. The appointment of independent director(s) of the company is to be approved at the meeting of the share holders.

3. The explanatory statement attached to the notice of the meeting for approving the appointment of independent director is required to include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made there under and that the proposed director is independent of the management.
4. The appointment of independent directors is required to be formalised through a letter of appointment, which shall set out:
    - **a.** The term of appointment
    - **b.** The expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks.
    - **c.** The fiduciary duties that come with such an appointment along with accompanying liabilities.
    - **d.** Provision for Directors and Officers (D and O) insurance, if any
    - **e.** The Code of Business Ethics that the company expects its directors and employees to follow
    - **f.** The list of actions that a director should not do while functioning as such in the company
    - **g.** The remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Board's and other meetings and profit related commission, if any
5. The terms and conditions of appointment of independent directors have to be open for inspection at the registered office of the company by any member during normal business hours.
6. The terms and conditions of appointment of independent directors is also to be posted on the company's website.

E. Reappointment:

The reappointment of independent director has to be on the basis of report of performance evaluation.

F. Resignation or removal:

1. The resignation or removal of an independent director has to be in the same manner as is provided in sections 168 and 169 of the Act..
2. An independent director who resigns or is removed from the Board of the company is required to be replaced by a new independent director within a period of not more than 180 days from the date of such resignation or removal.
3. Where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, the requirement of replacement by a new independent director does not apply.

G. <u>Separate meetings:</u>

1. The independent directors of the company are required to hold at least 1 meeting in a year, without the attendance of non-independent directors and members of management;
2. All the independent directors of the company have to strive to be present at such meeting;
3. The meeting is required to:
   - **a.** review the performance of non-independent directors and the Board as a whole.
   - **b.** review the performance of the Chairperson of the company, taking into account the views of executive directors and nonexecutive directors.
   - **c.** assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

H. <u>Evaluation Mechanism:</u>

- **a.** The performance evaluation of independent directors is required to be done by the entire Board of Directors, excluding the director being evaluated.

b. On the basis of the report of performance evaluation, the Board is required determine whether to extend or continue the term of appointment of the independent director.

1.6. Board Committees

Particulars	Audit Committee	Nomination and Remuneration Committee	Stakeholders Relationship Committee
Governing Section	Section 177	Section 178	Section 178
Entities required to form such committee	Every listed company, and public companies having: Paid-up share capital ≥ Rs.10 crores Turnover ≥ Rs.100 crores Outstanding loans, debentures and deposits > Rs.50 crores	A company which consist of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year	
Composition	Minimum 3 directors with independent directors forming a majority	3 or more non-executive directors out of which not <½ to be independent directors.	A Chairperson who shall be a non-executive director and such other members as may be decided by the Board
	Majority of members including the Chairperson are required to be persons with ability to read and understand, the financial statement	While the Chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee	

		but he cannot chair such Committee	
Terms of Reference	To be specified in writing by the Board (see Note 1 below)	See Note 2 below for the requirements	To resolve the grievances of security holders of the company
Authority	To investigate into any matter in relation to the items specified in terms of reference or referred to it by the board and for this purpose the Audit Committee to have power to obtain professional advice from external sources and have full access to information contained in the records of the company	—	—

2. **SEBI REGULATIONS – CLAUSE 49 OF THE LISTING AGREEMENT** [17]

The SEBI inserted Clause 49 in the Listing Agreement in January, 2000 to enforce compliance with Corporate Governance standards as amended in 2004, 2008, 2010 and recently amended in 2014[27]. The last amendment has been made to align these provisions[18] with the provisions of the Companies Act, 2013 and is applicable from 1st October, 2014. Further amendments were carried out vide[28] in order to address the concerns of the market participants and facilitate the listed companies to ensure compliance.

The highlights of provisions of Clause 49 are:

Applicability:

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[27] Circular No. CIR/ CFD/Policy Cell/2/2014 dated 17th April,2014.

[28] Circular No. CIR/ CFD/Policy Cell/7/2014 dated 15th September, 2014.

[29] Listing Agreement,2005.

The Clause 49 is applicable to all the companies whose equity shares are listed on a recognised stock exchange. However, compliance thereof is not mandatory for the time being, in respect of the following class of companies:

- **a.** Companies having paid-up equity share capital not exceeding Rs.10 crore and Net Worth not exceeding Rs.25 crore, as on the last day of the previous financial year. Where the provisions of Clause 49 become applicable to a company at a later date, such company is required to comply with the requirements of Clause 49 within 6 months from the date on which the provisions became applicable to the company.
- **b.** Companies whose equity share capital is listed exclusively on the SME and SME-ITP Platforms.
- **c.** The provisions of Clause 49(VI)(C)[29] pertaining to the Risk Management Committee are applicable to top 100 listed companies by market capitalization as at the end of the immediate previous financial year.
- **d.** For other listed entities which are not companies, but body corporate or are subject to regulations under other statutes (e.g. banks, financial institutions, insurance companies etc.), the Clause 49 applies to the extent that it does not violate their respective statutes and guidelines or directives issued by the relevant regulatory authorities. The Clause 49 is not applicable to Mutual Funds.

2.1 Board of Directors:

2.1.1 Composition of Board:

- **a.** Non-executive directors – not to be less than 50% of the total board
- **b.** Woman director - at least 1 – To be appointed on or before 31st March, 2015
- **c.** Independent directors
  - **i.** Chairman is a non-promoter, non-executive director – at least – of the Board to comprise independent directors
  - **ii.** Chairman is non-executive – but is a promoter of the company or is related to any promoter or person occupying management positions at the Board level or at one level below the Board – at least ½ of the Board of the company to consist of independent directors.

iii. If the company does not have a regular non-executive Chairman – at least ½ of the Board to comprise independent directors.

2.1.2 <u>Independent Directors:</u>

1. Independent director to mean a non-executive director, other than a nominee director of the company who satisfies prescribed criteria.
2. Restriction on serving as an independent director
   a. Any person serving as a whole time director in any listed company – not more than 3 listed companies
   b. Any other person – not more than 7 listed companies
3. Maximum tenure of Independent Directors is now linked to the provisions of the Companies Act, 2013.
4. A formal letter of appointment is required to be issued to the independent directors in the manner as provided in the Companies Act, 2013 and the terms and conditions of appointment to be disclosed on the websites of the company.
5. The performance of independent directors is required to be evaluated by the entire Board of Directors (excluding the director being evaluated) based on the evaluation criteria to be laid down by the Nomination Committee. The company is required to disclose the criteria for performance evaluation, as laid down by the Nomination Committee, in its Annual Report. The extension of the term of the independent director is required to be based on report of such performance evaluation.
6. Independent directors are required to hold at least 1 meeting in a year, without the attendance of non-independent directors and members of management to, inter alia, review and/or assess:
   a. Performance of non-independent directors and the Board as a whole
   b. Performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors
   c. Quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties

7. Various programmes are required to be provided to the independent directors to familiarise them with the company, their roles, rights, responsibilities in the company, nature of the industry in which the company operates, business model of the company, etc. and the details of such familiarisation programmes are required to be disclosed on the Company's website and a web link thereto is also required to be given in the Annual Report

2.1.3 Non-executive directors' compensation and disclosures:

1. All fees/compensation, if any paid to non-executive directors, including independent directors, are to be fixed by the Board of Directors with previous approval of share holders in general meeting.
2. The share holders' resolution to specify the limits for the maximum number of stock options that can be granted to non-executive directors, in any financial year and in aggregate.
3. Independent Directors are not entitled to any stock options.[19]
4. Prior approval of share holders in general meeting does not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of sitting fees without approval of the Central Government.

2.1.4 Other provisions as to Board and Committees:

1. The board to meet at least 4 times a year, with a maximum time gap of 120 days between any two meetings. The minimum information to be made available to the board is given in Annexure X to clause 49[30].
2. A director not to be a member in more than 10 committees or act as Chairman of more than 5 committees across all public companies in which he is a director – committee membership / chairmanship of private companies, section 8 companies and foreign companies excluded. Audit Committee and the Stakeholders' Relationship Committee alone to be considered for the purpose of this limit.

[30] clause 49 of Listing agreement, 2005.

3. Every director to inform the company about the committee positions he occupies in other companies and notify changes as and when they take place.
4. The Board to periodically review compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliances.
5. An independent director who resigns or is removed from the Board of the Company to be replaced by a new independent director at earliest but not later than the immediate next Board meeting or 3 months from the date of vacancy, whichever is later. However, where the company fulfils the requirement of independent directors in its Board even without filling the vacancy, the requirement of replacement by a new independent director does not apply.
6. The Board is required to satisfy itself that plans are in place for orderly succession for appointments to the Board and to senior management.

2.1.5 <u>Code of Conduct:</u>

1. The Board is required to lay down a code of conduct for all Board members and senior management of the company and post the same on the website of the company.
2. All Board members and senior management personnel are required to affirm compliance with the code on an annual basis. The Annual Report of the company to contain a declaration to this effect signed by the CEO.
3. The Code of Conduct is required to suitably incorporate the duties of independent directors as laid down in the Companies Act, 2013.
4. An independent director will be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently with respect of the provisions contained in the Listing Agreement.

2.1.6 <u>Whistle Blower Policy:</u>

1. The company is required to establish a vigil mechanism for directors and employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the company’s code of conduct or ethics policy.

2. This mechanism should also provide for adequate safeguards against victimisation of director(s)/ employee(s) who avail of the mechanism and also provide for direct access to the Chairman of the Audit Committee in exceptional cases.
3. The details of establishment of such mechanism are required to be disclosed by the company on its website and in the Board's report

2.2 Audit Committee:

2.2.1 Qualified and Independent Audit Committee:

1. Minimum 3 directors to be members with – being independent directors.
2. All members to be financially literate and at least 1 member having accounting or related financial management expertise.
3. The Chairman of the Audit Committee to be an independent director and to remain present at the AGM to answer share holders' queries.
4. The Audit Committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company.
5. The Company Secretary to act as the secretary to the committee.

2.2.2 Meeting of Audit Committee:

The Audit Committee to meet at least 4 times in a year with a gap of not more than 4 months between two meetings. The quorum is higher of 2 members or with minimum of 2 independent members present.

2.2.3 Powers of Audit Committee:

The powers of the Audit Committee to include:

a. To investigate any activity within its terms of reference
b. To seek information from any employee
c. To obtain outside legal or other professional advice
d. To secure attendance of outsiders with relevant expertise, if necessary

2.2.4 Role of Audit Committee:

A very elaborate role is prescribed for the Audit Committee in clause 49. The role of the Audit Committee to include the following:

a. Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.

b. Recommending to the Board, the appointment, remuneration and terms of appointment of the auditors of the company.

c. Approval of payment to statutory auditors for any other services rendered by the statutory auditors.

d. Reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference specified particulars.

e. Reviewing, with the management, the quarterly financial statements before submission to the board for approval.

f. Reviewing, with the management, the statement of uses/application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilised for purposes other than those stated in the offer document/prospectus/ notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take up steps in this matter.

g. Review and monitor the auditor's independence and performance, and effectiveness of audit process.

h. Approval or any subsequent modification of transactions of the company with related parties

i. Scrutiny of inter-corporate loans and investments.

j. Valuation of undertakings or assets of the company, wherever it is necessary.

k. Evaluation of internal financial controls and risk management systems.

l. Reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems.

m. Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the

official heading the department, reporting structure coverage and frequency of internal audit.

n. Discussion with internal auditors, any significant findings and follow-up thereon.

o. Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board.

p. Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern.

q. To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, share holders (in case of non-payment of declared dividends) and creditors.

r. To review the functioning of the Whistle Blower mechanism.

s. Approval of appointment of CFO (i.e., the whole-time Finance Director or any other person heading the finance function or discharging that function) after assessing the qualifications, experience and background, etc. of the candidate.

t. Carrying out any other function as is mentioned in the terms of reference of the Audit Committee.

2.2.5 <u>Review of information by Audit Committee:</u>

The Audit Committee to mandatorily review the following information:

a. Management discussion and analysis of financial condition and results of operations;

b. Statement of significant related party transactions (as defined by the Audit Committee), submitted by management;

c. Management letters/letters of internal control weaknesses issued by the statutory auditors;

d. Internal audit reports relating to internal control weaknesses; and

e. The appointment, removal and terms of remuneration of the Chief internal auditor.

2.3 Nomination and Remuneration Committee:

i. The Nomination and Remuneration Committee is required to be set up comprising at least 3 directors, all of whom shall be non-executive directors and at least ½ being independent including the Chairman.

ii. The role of the committee, inter alia, includes the following:

a. Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy relating to the remuneration of the directors, key managerial personnel and other employees;

b. Formulation of criteria for evaluation of Independent Directors and the Board;

c. Devising a policy on Board diversity;

d. Identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the Board their appointment and removal. The company shall disclose the remuneration policy and the evaluation criteria in its Annual Report.

iii. The Chairman of the Nomination and Remuneration Committee could be present at the Annual General Meeting, to answer the share holders' queries. However, it would be up to the Chairman to decide who should answer the queries.

2.4 Subsidiary Companies:

a. At least 1 independent director of the holding company is required to be director on the Board of a material non-listed Indian subsidiary company [unlisted subsidiary incorporated in India whose income or networth (paid-up capital and free reserves) > 20% consolidated income or networth respectively of the listed holding company and its subsidiaries in the immediately preceding accounting year].

b. The Audit Committee of the listed holding company is also required to review the financial statements, in particular, the investments made by the unlisted subsidiary company.

c. The minutes of the Board meetings of the unlisted subsidiary company and periodically, a statement of all significant transactions and arrangements [single

transaction or arrangement exceeding / likely to exceed 10% of total revenues / expenses / assets / liabilities as the case may be, of the material unlisted subsidiary for the immediately preceding accounting year] entered into by the unlisted subsidiary company are required to be placed at the Board meeting of the listed holding company.

d. The company is required to formulate a policy for determining 'material' subsidiaries and such policy shall be disclosed to Stock Exchanges and in the Annual Report. A subsidiary is considered as material if the investment of the company in the subsidiary exceeds 20% of its consolidated net worth as per the audited balance sheet of the previous financial year or if the subsidiary has generated 20% of the consolidated income of the company during the previous financial year.

e. No company can dispose of shares in its material subsidiary which would reduce its shareholding (either on its own or together with other subsidiaries) to less than 50% or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting.

f. Selling, disposing and leasing of assets amounting to more than 20% of the assets of the material subsidiary requires prior approval of share holders by way of special resolution.

Where a listed holding company has a listed subsidiary which is itself a holding company, the above provisions to be complied with by the listed subsidiary insofar as its subsidiaries are concerned.

2.5 Risk Management:

a. The company is required to lay down procedures to inform Board members about the risk assessment and minimization procedures.

b. The Board is responsible for framing, implementing and monitoring the risk management plan for the company.

c. The company through its Board is required to also constitute a Risk Management Committee and define the roles and responsibilities of the Risk Management

Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.

d. Majority of this committee to consist of the Board members.

e. Senior executives of the company may be the members of this committee; chairman of this committee to be a Board member.

2.6 <u>Related Party Transactions:</u>

a. An entity to be considered as related party it is a related party under section 2(76) of the Companies Act 2013 or a related party under applicable Accounting Standard.

b. The company is required to formulate a policy on materiality of related party transactions and also on dealing with Related Party Transactions. A transaction with a related party is considered material if the transaction/transactions to be entered into individually or taken together with previous transactions during a financial year, > 10% of the annual consolidated turnover of the company as per the last audited financial statements of the company.

c. All Related Party Transactions require prior approval of the Audit Committee. However Audit Committee may grant omnibus approval for Related Party Transactions proposed to be entered into by the Company subject to specified conditions.

d. All material Related Party Transactions require approval of the shareholders through special resolution and all the entities falling within the definition of related parties shall abstain from voting on such resolutions, whether the entity is a party to the particular transaction or not.

e. The provision mentioned at 3 and 4 above are not applicable to the following:

- Transaction entered into between 2 government companies;
- Transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the share holders at the general meeting for approval.

2.7 <u>Disclosures:</u>

The following disclosure requirements are specified:

a. Related Party Transactions (RPT)

- Details of all material RPT to be disclosed quarterly along with the compliance report on corporate governance
- Policy on dealing with RPT on its website and a web link thereto in the Annual Report

b. Disclosure of Accounting Treatment

c. Remuneration of Directors

d. Management
  - Management Discussion and Analysis report
  - Senior management to make disclosures to the board relating to all material financial and commercial transactions, where they have personal interest, that may have a potential conflict with the interest of the company at large (for example dealing in company shares, commercial dealings with bodies, which have shareholding of management and their relatives etc.)
  - Code of Conduct for the Board of Directors and the senior management to be disclosed on the website of the company.

e. Share holders
  - Brief resume of the Director and other specified particulars at the time of his appointment or reappointment of a director
  - Disclosure of relationships between directors inter se
  - Quarterly results and presentations to analysts to be put on company's website

f. Proceeds from public issues, rights issues, preferential issues, etc.

2.8 <u>CEO/CFO Certification:</u>

The CEO, i.e. the Managing Director or Manager (in their absence, a whole time director) appointed in terms of the Companies Act, 2013, and the CFO, i.e. the whole-time Finance Director or any other person heading the finance function discharging that function, to certify to the Board specified particulars.

2.9 <u>Report on Corporate Governance</u>

a. A separate section on Corporate Governance is to be included in the Annual Reports of company, with a detailed compliance report on Corporate Governance. Non-compliance of any mandatory requirement of this clause with reasons thereof and

the extent to which the non-mandatory requirements have been adopted to be specifically highlighted. The suggested list of items to be included in this report is given in Annexure XII and list of non-mandatory requirements is given in Annexure XIII to the listing agreement.

b. The companies are required to submit a quarterly compliance report to the stock exchanges within 15 days from the close of quarter as per the format given in Annexure XI. The report to be signed either by the Compliance Officer or the Chief Executive Officer of the company.

2.10 <u>Compliance:</u>

The companies are required to obtain a certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance as stipulated and annex the certificate with the directors' report sent annually to all the share holders of the company and filed with the Stock Exchanges.

2.11 <u>Non-mandatory requirements:</u>

a. The non-mandatory requirements given in Annexure XII may be implemented as per the discretion of the company. However, the disclosures of the compliance with mandatory requirements and adoption (and compliance)/non-adoption of the non-mandatory requirements to be made in the section on corporate governance of the Annual Report.

b. The non-mandatory requirements as specified in Annexure XII to the listing agreement are:

- A non-executive Chairman may be entitled to maintain a Chairman's office at the company's expense and also allowed reimbursement of expenses incurred in performance of his duties.
- A half-yearly declaration of financial performance including summary of the significant events in last 6 months, may be sent to each household of share holders.
- Company may move towards a regime of unqualified financial statements.
- The company may appoint separate persons to the post of Chairman and Managing Director/CEO.
- The Internal auditor may report directly to the Audit Committee.

CHAPTER-5

PROTECTION OF STAKEHOLDER RIGHTS UNDER COMPANY ACT, 2013

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In business, a stakeholder is any individual, group, or party that has an interest in an organization and the outcomes of its actions. Common examples of stakeholders include employees, customers, shareholders, suppliers, communities, and governments. Different stakeholders have different interests, and companies often face trade-offs in trying to please all of them.

5.1 Types of Stakeholders

This guide will analyze the most common types of stakeholders and look at the unique needs that each of them typically has. The goal is to put yourself in the shoes of each type of stakeholder and see things from their point of view.

1) **Customers**

   Stake: Product/service quality and value

   Many would argue that businesses exist to serve their customers. Customers are actually stakeholders of a business, in that they are impacted by the quality of service/products and their value. For example, passengers traveling on an airplane literally have their lives in the company's hands when flying with the airline.

2) **Employees**

   Stake: Employment income and safety

   Employees have a direct stake in the company in that they earn an income to support themselves, along with other benefits (both monetary and non-monetary). Depending on the nature of the business, employees may also have a health and safety interest (for example, in the industries of transportation, mining, oil and gas, construction, etc.).

3) **Investors**

   Stake: Financial returns

   Investors include both shareholders and debtholders. Shareholders invest capital in the business and expect to earn a certain rate of return on that invested capital. Investors are commonly concerned with the concept of shareholder value. Lumped in with this group are all other providers of capital, such as lenders and potential acquirers. All shareholders are inherently stakeholders, but stakeholders are not inherently shareholders.

4) **Suppliers and Vendors**

   Stake: Revenues and safety

Suppliers and vendors sell goods and/or services to a business and rely on it for revenue generation and on-going income. In many industries, suppliers also have their health and safety on the line, as they may be directly involved in the company's operations.

5) **Communities**

Stake: Health, safety, economic development

Communities are major stakeholders in large businesses located in them. They are impacted by a wide range of things, including job creation, economic development, health, and safety. When a big company enters or exits a small community, there is an immediate and significant impact on employment, incomes, and spending in the area. With some industries, there is a potential health impact, too, as companies may alter the environment.

6) **Governments**

Stake: Taxes and GDP

Governments can also be considered a major stakeholder in a business, as they collect taxes from the company (corporate income taxes), as well as from all the people it employs (payroll taxes) and from other spending the company incurs (sales taxes). Governments benefit from the overall Gross Domestic Product (GDP) that companies contribute to.

Ranking/Prioritizing Stakeholders

Companies often struggle to prioritize stakeholders and their competing interests. Where stakeholders are aligned, the process is easy. However, in many cases, they do not have the same interests. For example, if the company is pressured by shareholders to cut costs, it may lay off employees or reduce their wages, which presents a difficult tradeoff.

Jack Ma, the CEO of Alibaba, has famously said that, in his company, they rank stakeholders in the following priority sequence:

- Customers
- Employees
- Investors

Many other CEOs tout shareholder primacy as their number one interest.

Much of the prioritization will be based on the stage a company is in. For example, if it's a startup or an early-stage business, then customers and employees are more likely to be the stakeholders considered foremost. If it's a mature, publicly-traded company, then shareholders are likely to be front and center.

At the end of the day, it's up to a company, the CEO, and the board of directors to determine the appropriate ranking of stakeholders when competing interests arise.

Stakeholder vs Shareholder

This is an important distinction to make. A stakeholder is anyone who has *any type of stake* in a business, while a shareholder is someone who owns *shares* (stock) in a business and thereby has an equity interest.

5.2 ROLE OF STAKEHOLDER IN A COMPANY

Stakeholders are individuals or groups that have an interest in the success and progression of a company. Internal stakeholders include silent partners, shareholders and investors. External stakeholder groups might include neighboring businesses, strategic partners or community bodies such as schools. The role of the stakeholder varies depending on the organization and the particular project being developed or decided upon.

5.2.1 INTERNAL AND EXTERNAL STAKEHOLDER IN A COMPANY

Every company has both internal and external stakeholders. The internal stakeholders are often easily defined, because they have a financial interest in the company. External stakeholders are not as easily defined – they are not involved in the operations or decisions of the company. While the external stakeholder has no direct financial stake in the company, they do have an interest in the success, failure and direction of a company. They are critical to the overall success of businesses growing in any community.

Internal Stakeholder Roles

Internal stakeholders usually have a financial interest in the organization. These include shareholders, the board of directors and investors. These stakeholders are said to have a vested interest in the success of the

company because of their financial investment. As such, they usually have more influence than external stakeholders.

One of the main roles internal stakeholders have is voting rights based on the number of shares owned or the percentage of the company owned. The board of directors usually votes for things like new acquisitions, liquidations, key position hiring, and oversight and budget items including distributed profits. Those with larger stakes in the company might meet with leaders, brainstorm development or marketing ideas, and identify new areas for market penetration.

External Stakeholder Roles

External stakeholders generally don't have "skin in the game," meaning they haven't invested any personal or organizational funds to the company. These stakeholders don't vote on company decisions. However, the external stakeholder is concerned with decisions a company makes and may meet with leadership or present information to the board of directors to review ideas, community concerns and other issues.

The roles of external stakeholders often reflect the community, government or environmental concerns. For example, an automotive manufacturer seeking to build a new plant might need to meet with the city council and the environmental protection agency representatives to review potential benefits and disadvantages to the community and environment. Ignoring external stakeholders could lead to stalling or blocking of projects. It is best to allow external stakeholders a voice in the process and brainstorm with them regarding solutions that work for the company and the community alike.

Businesses and the Community

Businesses and communities must work together because they need each other. Businesses provide jobs and economic growth. Communities provide the customer base that fuels sales. Internal and external stakeholders work with businesses to ensure profitability and sustainability, coordinating with communities. Business leaders should

look to stakeholders as valuable resources and not obstacles in moving the company forward.

It helps to involve external stakeholders early in any new project development. The earlier feedback is provided, the less time and money might be wasted on nonviable ideas. With stakeholder input, solutions or compromises can be made. For example, waiting to speak with the city council about a new commercial land development until you need building permits might result in unforeseen community backlash that ultimately stalls or stops the project. Business leaders can protect all interests with clear communication.

5.2.2 External Stakeholder

The external stakeholder maintains an interest in the success, failure or direction of a company because it directly impacts his own interests. A company with a large manufacturing plant in a city will have external stakeholders who want to see the plant stay in the community rather than move to another, because the plant may have a financial impact on other businesses, suppliers and the overall financial health of the town. For example, the mayor of the city is an external stakeholder seeking to maintain a positive relationship and create a conducive environment for the plant to stay.

External stakeholders may also seek to prevent a business from doing something in a community. Many local school districts across the country have stood against medical marijuana dispensaries being located near schools. The school district's stake isn't financial; it is a moral or ethical stake in the development and protection of its students and families. The school could work to set regulations about how close a dispensary can be and other rules and regulations that may hinder the ability of such a company to succeed in the area.

5.2.2.1 Needs of External Stakeholders

The external stakeholder is looking to protect his personal, financial and business interests. Not every external stakeholder has the same

type of stake or interest in any one particular business. The school district concerned about dispensaries has no financial concern. When the school district and its people lobby the city lawmakers and representatives, the politicians have a two-fold stake. They must meet their voters' needs and demands while fostering a business community for success. So the local representatives are external stakeholders in the company who may have conflicting interests based on their own stakeholders.

Other external stakeholder needs include local business development that stimulates a city economy with jobs, revenues and bigger industry. Businesses in competition with a company are external stakeholders seeking fairness in trade and pricing. This need is widely seen when a company like Walmart moves into a community and small businesses start to close because they cannot compete with the prices of Walmart.

5.2.2.2 Roles of External Stakeholders

The role of external stakeholders starts with voicing opinions on the direction a company is taking. External stakeholders will feel that a company is doing something positive or negative in relation to their own personal issues. That opinion serves an advisory role for companies. The external stakeholder has no control over whether the business follows the advice.

With that said, when it comes to external stakeholders clashing with a business direction or action, it could create a lot of issues for the company. If the local small businesses get together to oppose a new big-box store getting a permit to build a large center, there could be issues where city planning ends up opposing and preventing the opening. A real estate developer could run into permit problems if the residents don't want the company to build on a bird sanctuary or don't want high rise buildings next to their residential homes.

While external stakeholders have no direct control in a company, their indirect control has great impact on major business development decisions.

Issues With External Stakeholder

It is important that business leaders understand the impact of their company in the community. Consider external stakeholders as partners rather than adversaries. Managing external stakeholder input and expectations is important when a business is growing and needs the support of the surrounding power players.

One of the best ways to manage issues external stakeholders have with your business is to prepare ahead of time for them. Plan growth strategies and consult with external stakeholders while in the planning process to get input and develop strategies where everyone wins. While this doesn't prevent every adverse action coming from external stakeholders, it greatly mitigates aggressive adverse actions.

External stakeholders appreciate being part of the process; it gives the appearance of some level of control. You want the external stakeholders on your side whenever possible. Business is just easier that way. This is why a CEO's role is critical while the operations officer is managing day-to-day operations. The CEO must get buy-in among stakeholders, internal and external, to move the company strategically toward its next set of goals. Without external stakeholder buy-in, companies often face a long road to growth.

Company Culture and External Stakeholders

It is usually senior level management that people think about when dealing with external stakeholders. After all, it is generally the CEO who meets with city officials, other business leaders and key external stakeholder leaders. However, a company can do a lot with public relations with external stakeholders by having a positive company culture. When the employees are excited to go to work every day, people notice.

It is a social proof PR campaign that holds a lot of weight with external stakeholders. After all, the employees are most likely people who live in the community, send their kids to school, vote and pay property taxes. They are the influencers of many key external stakeholders. If they are happy and successful, the community expands.

Another way a large corporation can build positive relationships with external stakeholders is to run community campaigns in which employees are given time to volunteer for local

organizations supported by the company. This gets people out in the community building positive relationships from the ground up. A CEO is better served walking into meeting with an external stakeholder who is already excited about all the great things the company does in the community.

5.3 Protection of Stakeholders' Rights

5.3.1 Objectives:

- The objective of this section is to ensure NIC's shareholders are practicing their basic rights with a high level of integrity and equality which guarantees a professional dealing to all shareholders, and safeguard them from violation of their rights.
- Furthermore, safeguarding the Shareholders capital investment from misuse that could occur through the company's executives or board of directors.
- The Stakeholders rights/interests should also be recognized and safeguarded through the Kuwaiti laws such as the labour law, Companies law and its executive regulations, the contracts signed between the Company and the Stakeholders, and any other promises undertaken by the company towards the stakeholders.
- Stakeholder's contribution/interest to the company creates a very strategic and lucrative return that results in a competitive advantage and increases profitability, therefore Stakeholders rights should be recognized, safeguarded and encouraged.

5.3.2 Protection Of Shareholders' Equity

NIC should focus on certain rules and controls for the protection of shareholder's equity and treating the same equally as well as protection of minority interests in terms of the following:

- Protect the basic rights of shareholder in relation to the registration, assignment and transfer of ownership as well as the participation and voting in shareholders meetings and also participating in NIC's dividends and obtaining regular information about the company.
- Shareholders participate in the decisions mainly related to:
  - Amendments in NIC's Memorandum & Articles of Association;
  - Amendments to the capital through offering new shares or offering certain shares under staff share purchase option system or share repurchases; and

- Any extraordinary transactions such as the merger or sale of a substantial amount of NIC's assets or assigning any affiliated companies.
- Assure and ensure shareholders' effective participation in General Assembly meetings and keep them well informed of the voting procedures and rules. Shareholders should be notified of the date of the General Assembly and the agenda before a reasonable period from the time of meeting.

- Confirm the equal treatment of all shareholders.

5.3.3 <u>General Rights of Shareholders</u>

- Record the amount of the investors' shareholding in company's records.
- The shareholder has the right to have the share ownership registered or to transfer the ownership and rights through a power of attorney or a special authorization defined by the company for this matter.
- Receive the declared share of the dividends distributed.
- Receive a share in the company's assets in case of liquidation.
- Receive information and data relating to company's activities, its operational strategy and investment strategy on a periodic basis.
- Participate in the company's general assembly and vote on its decisions, unless the subject of vote is related to the shareholder's personal interest
- Elect Board of Directors members.
- Hold the Board of Directors or executive management accountable and sue them for responsibility in case if they fail to perform the tasks given to them.
- The company must treat all shareholders' holdings without discrimination. Each shareholder has voting rights equal to the number of shares registered in his name. In addition, the company should not withhold any of the above mentioned rights from any category of shareholders for any reason, or set in place any standards which might lead to discrimination among shareholders in practicing these rights, while not causing any damage to company's interest or non-compliance with the law and its bylaws and any of the instructions and regulatory controls issued under it.

5.3.4 <u>Maintenance of Shareholder Related Information</u>

For the purpose of continuous monitoring over all the matters related to shareholders data, the company should do the following:

- The company should establish a special register at the clearing agency to record in the following: shareholders' names, nationality, home country, and the number of shares they own.
- The company should allow shareholders to view the shareholders register.
- The data recorded in this register should be dealt with high level of confidentiality and security and that without violating the law and the bylaws and any of the instructions and regulatory controls issued under it. 7.2 NIC is always keen to have mechanisms that encourage Participation and voting in the General Assembly Meetings as per corporate Governance regulations, best practice, Companies law issued by MOCI and NIC's articles of association.

5.4 Stakeholder's rights

Stakeholders are those individuals, institutions and bodies connected to NIC (such as borrowers, creditors, investors, employees, and the society as a whole).

- NIC's policies and practices should: - Recognize the rights of stakeholders as established by the laws and regulations, and encourage cooperation between NIC and its stakeholders in supporting development, creating jobs for the national manpower, and the fostering of the financial soundness of these corporations;
- Realize that an important aspect of good governance is to ensure funds' inflows and that their interest lies in the long term into supporting wealth creation through joint cooperation and all stakeholders' participation;
- Encompass principles that provide necessary protection to stakeholders' rights, particularly the rights of investors, borrowers and shareholders, so as to guarantee the safeguard of its financial positions and to activate its role in serving the society and the economic development process; and
- Ensure the rights of stakeholders to obtain effective redress for violation of their rights.
- Where stakeholders participate in the corporate governance process, they should have access to relevant information, according to the nature of their participation.

5.4.1 Protection of stakeholder's rights

The rules and procedures which would ensure the protection and acknowledgement of stakeholders' right including the following:

- The protection rights of the Board of Directors members and related parties conform to the various stakeholders' parties, without any discrimination or preferential conditions.
- The procedures that will be followed in case any party fails to fulfill any of its commitments, as well as the procedures to be followed for paying compensation shall be noted within the contracts held between the company and stakeholders.
- A mechanism for compensating stakeholders in case of violation of their rights which are set by regulations and protected by contracts.
- A mechanism demonstrating how the company builds strong relationships with clients and vendors and maintains confidentiality with respect to their information.
- A mechanism for settling complaints or disputes which could arise between companies and stakeholders.
- The company should set in place policies and internal charters which include a clear mechanism for awarding different kinds of contracts and deals either through tenders or various purchase orders. The mechanism should be fully disclosed.
- Stakeholders do not get any preference through dealing in contracts and deals that are carried out under company's regular activities.

5.4.2 Participation of Stakeholders

- The company should set mechanisms and charters that would ensure maximum benefit is received from stakeholders' contributions and encourage stakeholders to participate in monitoring its activities.
- Periodically, provide stakeholders with access to reliable information and data which are relevant to their activities on a timely basis.
- Set appropriate mechanisms that would allow stakeholders to report to the company's Board of Directors on any improper practices which the company exposes them to while providing them with adequate protection.

CORPORATE GOVERNANCE CASES IN INDIA

Harshad Mehta Scam :

- He was known as the **'Big Bull'**. However, his bull run did not last too long. He triggered a rise in the **Bombay Stock Exchange** in the year 1992 by trading in shares at a premium across many segments.
- Taking advantages of the **loopholes** in the banking system, Harshad and his associates triggered a securities scam diverting funds to the tune of **Rs. 4000crore(Rs.40billion)** from the banks to stockbrokers between **April 1991 to May 1992.**
- Harshad Mehta worked with the **New India Assurance Company** before he moved ahead to try his luck in the stock markets. Mehta soon mastered the tricks of the trade and set out on dangerous game plan. Mehta has **siphoned off** huge sums of money from several banks and millions of investors were conned in the process. His scam was exposed, the markets crashed and he was arrested and **banned for life** from trading in the stock markets.
- He was later charged with **72 criminal offences.** A Special Court also sentenced **Sudhir Mehta**, Harshad Mehta's brother and six others, including four banks officials, to rigorous imprisonment (RI) ranging from **1 year to 10 years** on the charge of dumping **State Bank of India to the tune of Rs. 600 crore (Rs. 6 billion)** in connection with the securities scam that rocked the financial markets in **1992**. He died in **2002** with many litigations still pending against him.

Kehatn Parekh Scam :

- Kehtan Parekh followed Harshad Mehta's footsteps to swindle crores of rupees from banks. A chartered accountant he used to run a family business, **NH Securities.**
- Kehtan however had bigger plans in imnd. He targeted smaller exchanges like the **Allahabad Stock Exchange** and the **Calcutta Stock Exchange,** and brought shares in **fictitious names.**
- His deaking revolved around shares of ten companies like **Himachal Futuristic, Global Tele-Systems, SSI Ltd., DSQ Software, ZeeTelefilms, Silverline, Pentamedia Graphics and Satyam Computer (K-10 scrips).**

  Kehtan borrowed Rs.250 crore from Global Trust Bank to fuel his ambitions. Kehtan alongwith his associates managed to get Rs. 1,000 crore from the **Madhvpura Mercantile Co-operative Bank.**

According to **RBI regulations,** a broker is allowed a loan of **only Rs.15 crore(Rs.150 million).** There was evidence of price rigging in the scrips of **Global Trust Bank, Zee Telefilms, HFCL, Lupin Laboratories, Aftek Infosys and Padmini Polymer.**

Bhansali Scam :

- The **Bhanshali scam** resulted in a loss of over **Rs.1,200 crore (Rs.12 billion).**
- He first launched the finance company **CRB Capital Markets**, followed by **CRB Mutual Fund and CRB Share Custodial Services.** He ruled like a financial wizard **1992 to 1996** collecting money from the public through fixed deposits, bonds and debentures. The money was transferred to companies that never existed.
- **CRB Capital Markets** raised whopping **Rs.176 crore in three years.** In 1994 CRB Mutual Funds raised **Rs.230 crore and Rs. 180 crore** came via fixed deposites. Bhansali also succeded to raise about **Rs.900 crore** from the markets.
- However, his good days did not last long, after **1995** he received several jolts. Bhansali tried borrowing more money from the market. **This led to a financial crisis.**
  It became difficult for Bhansali to sustain himself. **The Reserve Bank of India (RBI)** refused banking status to **CRB** and he was in the dock. SBI was one of the banks to be hit by his huge defaults.

The UTI Scam :

- Former UTI chairman **P S Subramanyam** and two executive directors- **M M Kapur and s k Basu** – and a stockbroker **Rakesh G Mehta**, were arrested in connection with the **'UTI scam'.**
- UTI had purchased **40,000 shares** of **cyberspace** on **September 25, 2000** for about **Rs. 3.33 crore (Rs. 33.3 million)** from **Rakesh Mehta** when there were no buyers for the scrips. The market price was around **Rs.830.** the CBI said it was the conspiracy of these four people which resulted in the loss of **Rs. 32 crore (Rs. 320 million).**
- **Subramanyam, Kapur and Basu** had changed their stance on an investment advice of the equities research cell of **UTI.** The promoter of **Cyberspace Infosys, Arvind Johari** was arrested in connection with the case. The officials were paid **Rs. 50 lakh (Rs. 5 million)** by cyberspace to promote its shares.

  He also received **Rs. 1.18 crore (Rs. 11.8 billion)** from the company through a circuitous route for possible rigging the **Cyberspace counter.**

The Cobbler's Scam- SOHIN DAYA :

- **Sohin Daya,** son of a former Sheriff of Mumbai, was the main accused in the multi-crore shoes scam. **Daya of Dawood Shoes, Rafique Tejani of Metro Shoes, & Kishore Singnapurkar of Milano Shoes** were arrested for creating several **leather co-operative societies** which did not exist.
  They availed loans of crores of rupees **on behalf** of these **fictitious socities.**
- The scam was exposed in 1995. The accused created a fictitious cooperative society of cobblers to take advantage of government loans through various schemes.
  Officials of the **Maharashtra State Finance Corporation, Citibank, Bank of Oman, Dena Development Credit Bank, Saraswati Co-operative Bank, and Bank of Bahrain and Kuwati** were also charged sheeted.

SUGGESTIONS

1. Value based corporate culture: For any organization to run in effective way, it needs to have certain ethics, values. Long run business needs to have based corporate culture. It is a set of beliefs, ethics, principles which are inviolable

2. Holistic view: This holistic view is more or less godly, religious attitude which helps in running organization. It is not easier to adopt it, it needs special efforts and once adopted it leads to developing qualities of nobility, tolerance and empathy.

3. Compliance with laws: Those companies abide and comply with laws of Securities Exchange Board of India (SEBI), Foreign Exchange Regulation Act, Competition Act2002, Cyber Laws, Banking Laws etc.

4. Disclosure, transparency, and accountability: Disclosure, transparency and accountability are important aspect for good governance. Timely and accurate information should be disclosed on the matters like the financial position, performance etc. Due to tremendous competition in the market place the customers having choices don't shift to other corporate bodies.

5. Corporate Governance and Human Resource Management: For any corporate body, the employees and staff are just like family. For a company to be perfect the role of Human Resource Management becomes very vital, they both are directly linked. Every individual should be treated with individual respect, his achievements should be recognized. Each individual staff and employee should be given best opportunities to prove their worth and these can be done by Human Resource Department.

6. Innovation: Every Corporate body needs to take risk of innovation i.e. innovation in products, in services and it plays a pivotal role in corporate governance.

7. Necessity of Judicial Reform: There is necessity of judicial reform for a good economy and also in today's changing time of globalization and liberalization. It needs to speedily resolve disputes in cost effective manner.

8. Lessons from Corporate Failure: Every story has a moral to learn from, every failure has success to learn from, in the same way, corporate body have certain policies which if goes as a failure they need to learn from it. Failure can be both internal as well as external whatever it may be, in good governance, corporate bodies need to learn from their failures and need to move to the path of success.

9.Independent directors- selection criteria must be transparent, also process of appointment of BOD must be reconsidered.

10. It is important to focus on not just Quantity or profits but on the sustainability of business models.

11.Need for having supervising the functions of management and make them accountable and transparent to shareholders.

12.Codes of conduct and whistle blower policies must be framed in such a way as to be possible to put in to practice .

13 Regulators should enhance penalities as well as to fix liability in imposing substantial penalties for non-compliance,

CONCLUSION

The concept of corporate governance hinges on total transparency, integrity and accountability of the management and the board of directors. Be it finance, taxation, banking or legal framework each and every place requires good corporate governance. Corporate Governance is a means not an end, Corporate Excellence should be the end. Once, the good Corporate Governance is achieved and the Indian Corporate Body will shine to outshine the whole world. In the Indian context, the need for corporate overnance has been highlighted because of the scams occurring frequently since the emergence of the concept of liberalisation from 1991. We had the Harshad Mehta Scam, Ketan Parikh Scam, UTI Scam, Vansishing Company Scam, Bhansali Scam and so on. In the Indian corporate scene, there is a need to induct global standards so that at least while the scope for scams may still exist, it can be at least reduced to the minimum. Corporate governance and ethical behavior have a number of advantages. Firstly, they help to build good brand image for the company. Once there is a brand image, there is greater loyalty, once there is greater loyalty, there is greater commitment to the employees, and when there is a commitment to employees, the employees will become more creative. In the current competitive environment, creativity is vital to get a competitive edge. Corporate Governance in the Public Sector cannot be avoided and for this reason it must be embraced. But Corporate Governance should be embraced because it has much to offer to the Public Sector. Good Corporate Governance, Good Government and Good Business go hand in hand.

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