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ROLE OF INDEPENDENT DIRECTORS IN MAINTAINING CORPORATE GOVERNANCE - CRITICAL EVALUATION

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ABSTRACT

Recent scandals have damaged India's business image among international investors, despite the independent director's role in promoting corporate governance. Satyam and Enron instances have stressed the necessity for independent directors. Clause 49 of the SEBI listing agreement, Birla report, CII suggestion, Narayan Murthy Committee, and J.J. Irani Committee reports didn't help. Tata and other examples illustrate that the independent director is operating in a promoter's line and has failed to prevent undue enrichment by management and promoters. This article found a disconnect between IDs' actual function and their intended purpose.

Independent directors should vote and participate in corporate matters impartially since they have no stake in the firm. The Independent director may be removed by a majority shareholder vote. Independent directors may oppose one-sided initiatives to defend minority shareholders' interests. In Corporate Governance, Independent Directors are crucial to defending minority shareholders' interests.

This article examines the Indian corporate governance instrument of the independent director. Due to the independent director's independence from management, this analysis is significant.

KEYWORDS

Independent director, corporate governance, Companies act, Board of directors.

INTRODUCTION

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The concept of the independent director, which emerged in the United States in the middle of the twentieth century and was popularized by the United Kingdom in the 1990s, has been consistently and almost uncritically endorsed, from the Desirable Corporate Governance Code in 199 to Chapter 11 of the Companies Act in 2013.

Independent directors have a "key role" in India's corporate governance mosaic, as announced by the **Kumar Mangalam Birla Committee Report**, which was previously articulated in the 1998 CII Report. The notion of the independent director has received such ardent and consistent support that it is now recognized as the cornerstone of corporate governance in India.

Independent directors are the basis of modern corporate governance. It is the axis and origin of the entire structure of corporate governance. It is believed that increasing the number of independent board members has a deterring effect on fraudulent behaviour. The meaning of Independent Director is found in section 149(6) of the 2013 Companies Act. Hence, it cannot be maintained that the director is "independent" due to the absence of ties. To be deemed an independent director, an individual must demonstrate loyalty, objectivity, and other managerial qualities.

They are committed to preventing mismanagement, inequality, the loss of the organization's legal foundation, and surveillance footage. Also, they have been called the company's pioneer in attaining and sustaining balance. However, is it the extent of a director's responsibilities? Considering that every coin has two sides, does the coin of independent directors lack a second facet? Yet, it has failed to perform the stated role of the system and has become a burden for the firm.

LITERATURE REVIEW

Lawrence and Stapledon: The Independent Director must be objective and look out for the company's best interests while maintaining a neutral perspective. The Liberalisation

Privatisation and Globalisation of 1991 let India's independent directors emerge. Independent directors enhance Corporate Governance.

Bhatnagar and Bhatnagar: Independent directors may also promote company governance best practices and preserve boardroom decorum outside of the transactional setting. This extra monitoring gives public shareholders confidence that the board and firm are not being operated carelessly and simply for the controlling shareholder's benefit.

Anginer, Demirguc-Kunt, Huizinga, and Ma (2018)² : Investigated how corporate governance affects stakeholders including workers, creditors, debtors, shareholders, and the firm itself in terms of cost of capital, wages, after-tax earnings, operational hazards, financing policies, and more. The financials are most significant to stakeholders, making independent directors' roles even more crucial. If adequate governance and procedures are not applied, elites may corrupt the whole organization.

Bhat & Kumar (2008)³: They investigated and highlighted solid corporate governance in Indian companies like ICICI and HDFC, but the Satyam catastrophe opened it all up. Weak corporate governance has plagued Indian businesses and eroded investor trust, and it is now obvious that important Technology, media, and entertainment scripts are being shamelessly manipulated on the stock markets.

Range & Lublin, 2009⁴: In research on **Satyam, Kriplani (2009)⁵** found that inadequate governance might lead to calamity, which India has seen recently. Since 2003, Mumbai brokerage First Global believes that scandals and inadequate governance had cost

² Anginer, D., Demirguc-Kunt, A., Huizinga, H. and Ma, K., 2018. Corporate governance of banks and financial stability. *Journal of Financial Economics*, 130(2), pp.327-346.

³ Kaur, G. and Mishra, R., 2010. Corporate Governance Failure in India: A Study of Academicians Perception. *IUP Journal of Corporate Governance*.

⁴ Range, J. and Lublin, J., 2009. S-Spotlight on India's corporate governance'. *Wall Street Journal-Eastern Edition*, 253(6).

⁵ Bhasin, M., 2013. Corporate accounting scandal at Satyam: A case study of India's enron. *European Journal of Business and Social Sciences*, 1(12), pp.25-47.

shareholders \$2 billion before Satyam. Although many Indian firms exposure to foreign norms, corporate ethics and accounting have always been weak.

VIEWING THE NEED FOR CORPORATE GOVERNANCE STRUCTURE FROM THE LENS OF INDEPENDENT DIRECTORS

The idea of governance has evolved as one of the most prominent solutions to the governance difficulties in a public organization, and the concept of identification has emerged simultaneously. It was expected that the Independent Directors would function independently and that, as independents, they would be able to serve the interests of all owners, including the minority shareholder. (The general running of any firm is contingent on the protection of the interests of all owners, including minority shareholders.)

Henceforth, the need for corporate governance can be viewed as follows -

- i.** Indian management varies significantly from American corporate structure, since 75% of large listed Indian enterprises are family-owned, for example. In the aforementioned firms, family members make the bulk of key decisions, while other board members and stakeholders only watch.
- ii.** Members of the board must be independent to represent the firm's general welfare; The restrictions prohibit the management from acting unfairly against any of the shareholders. Notwithstanding this, the main shareholder continued to pursue personal gain, even if it meant jeopardizing the company's overall interests.
- iii.** It was also anticipated that the falling reputation of Corporate Governance in India would discourage investors from investing in the nation. This situation is negative and directly contradicts the government's objective of attracting ever-increasing investment.
- iv.** Major commercial scandals aggravated the situation, and as a consequence, the government or regulatory bodies started to respond aggressively.

Core principles of corporate governance

i. Responsibility

It is permissible for the Board of Directors to represent the company. They are accountable for assuring appropriate administration of the business, supervising the firm's operations, and managing the company's affairs. The Board of Directors must act in the best interest of the firm while carrying out the aforementioned procedures. In addition to being a significant component of this strategy, the concept of accountability is also essential. Considering the company's adherence to its obligations, the Board of Directors is accountable to the shareholders.

ii. Transparency

Stakeholders have the right to be apprised of the company's activities, future objectives, and dangers associated with its business plan. The notion of transparency describes the organization's openness and desire to provide shareholders with clear and accurate information. If a firm is open with its stakeholders, it will have greater trust in its management practices and decisions.

ANALYSING THE RECOMMENDATION AND COMMITTEE'S REPORT

The J.J. Irani Committee, 2004 ('the Committee') recommended that the clause's criteria be extended to all "*large*" enterprises. The Committee confirms its conviction that corporate governance and independent directors are inextricably linked, and that a sufficient number of independent directors would promote corporate governance.

The Committee recommended a method that takes into consideration the variety of business types and rejects a "*one-size-fits-all*" mindset. Regarding nominal directors on the board who represent institutions, the Committee thinks clearly that these directors cannot be compared to independent directors since they only represent sectoral interests.

In addition, it examines circumstances in which independence may or may not exist. The 1999 Report⁶ on Corporate Governance said that the traditional practice of hand-selecting independent directors compromises their independence.

An issue that has not been fully resolved is how independent a director can be if he relies on the promoters for his job. The compensation paid to independent directors is another deficiency that has not been adequately accounted for. The Birla Committee believed that adequate remuneration packages must be granted to independent directors so that their positions become financially enticing to attract talent and guarantee their work ethics.

CONCLUSION

It seems to be an effort to conceptually maintain the status of IDs, but it fails to solve several contemporary practical concerns. Statistically, ID rights are far from being realized, and enforced responsibility may be misused with relative ease. Corporate democracy advocates for the voices of minorities; thus, these initiatives deserve a thorough re-examination. It is commendable that SEBI is acknowledging the existence of identifiers and striving to foresee their intricacies, but the recommendations must be classified using data techniques to prevent unleashing a Pandora's box of litigation.

With a projected schedule of January 2022, SEBI is examining, in this document, the establishment of new standards for qualifications and processes for examining resignations. The questions of responsibility, culpability, and application of laws must be defined, however, to guarantee that SEBI's report is not just window dressing.

The office of Independent Directors requires more than cosmetic adjustments; it requires a persistent model overhaul to transform the Role and Responsibility from the outdated and constrained conceptions of passivity and 'vigil officers' to those of proactive

⁶ Id. At. 3.

leadership. Due to the disproportionate obligation put on Independent Directors for their involvement in the corporation, their community is reluctant.

Henceforth, there must be a delicate balance between the Liability and role of the Independent Director, such that the law facilitates his easy performance of duties and does not make him anxious about his future.

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