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CORPORATE GOVERNANCE IN MODERN TIMES: CAN UTILIZATION OF TECHNOLOGY HELP ACHIEVE STRONGER CORPORATE GOVERNANCE

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I. ABSTRACT

Technology has now reached all spectrums of life and has become an important part. It makes work more efficient and easier, so people from all walks of life have utilized it. Similarly, to survive in modern times, corporations have incorporated technology not only for their day-to-day functioning but also for governance. The usage of technology and digitalization affects companies and corporations tremendously. It has changed the previous governance system and has now put a new structure in place which ought to improve the governance and provide much more transparency and accountability. This is being done to gain the trust of the public. The utilization of technology comes at a cost and must be properly administered and laid out to be efficient. Especially talking about India, we have noticed and suffered through many corporate scams and those have turned out to be fatal for the country's economy. Incorporating efficient technology to reduce corporate cyber risks remains a huge challenge, especially for a developing country like India. Even though bigger corporations have somehow been able to join hands with technology to ensure corporate governance, small corporations are still figuring out the same. The current paper discusses the various ways in which technology can provide better governance, the principles of corporate governance, that are transparency, accountability, efficiency, and expediency, the advantages as well as disadvantages of incorporating technology in corporate governance and provides a summary of what corporate governance is, how it came into existence in India and how it has evolved since then. Further, it provides examples of failed governance structures, the scams that came to light, and how one can learn from them and develop a better governance system.

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II. KEYWORDS:

Technology, Corporate Governance, Transparency, Efficiency

III. INTRODUCTION

The method through which corporations and companies are administered and governed is called 'corporate governance.' Governance involves keeping an eye on the corporation's agents, policies, procedures, and choices, as well as those of the stakeholders who may be impacted. Here, the boards of directors oversee the corporations and are directly in charge of managing the business, drawing up its strategy and blueprint, and communicating with its stockholders.[3] The shareholders are responsible for appointing the auditors and directors and ensuring that the governance structure in place is thoroughgoing. This in turn leads to the creation of a framework through which a corporate is efficiently operated. All of this is done to ensure that the corporation is operating ethically and economically viable. Further, corporate governance is required to develop a conscious working corporate environment that is transparent and candor. This benefits the companies and maximizes the shareholders' long-term value.

The infamous Harshad Mehta Scam of 1992 shattered the Indian economy. Mehta had overthrown the then-economic regulations which made the government realize the lacunae and loopholes of the laws that regulated our economy. Following the failures of several well-known multinational firms in 2001-2002 and the aftermath of the financial crisis in 2008, interest in the corporate governance procedures of contemporary corporations, particularly in connection to accountability, intensified.[4] India has liberalized its regulatory framework to align its corporate governance standards with those of developed nations. However, creating good governance and ensuring the outcomes of such governance processes continue to rank highly among stakeholders' goals even today. High-profile scandals that led to financial catastrophes motivated the most comprehensive corporate governance measures that will help

[3] C. S. V. Murthy, *Business Ethics and Corporate Governance,* 90, (2009).
[4] Nand L. Dhameja and Vijay Agarwal, *Corporate Governance Structure,* 53 IJIR 72, 72-85 (2017).

countries achieve economic viability. The extent to which certain stakeholders continue to abuse their position of authority continues to affect company decisions.[5]

IV. BRIEF HISTORY OF CORPORATE GOVERNANCE

With the formation of SEBI in 1992, the building blocks of corporate governance were put in place. SEBI oversaw supervising and standardizing stock trading. Initially, the confederation of Indian Industry (CII) in 1995, constituted a task force whose main function was to develop a corporate governance code that would be voluntary in nature. This code was released in April 1998 and was named "Desirable Corporate Governance – A Code."[6] In the next few years, about 25 top-rank companies willingly accepted and acted by the code. After this India witnessed the recommendation on corporate governance by the Kumar Mangalam Birla Committee, a committee created by SEBI. The committee's main goal was to produce a "Code" that would be appropriate for the Indian corporate environment while also considering corporate governance from the viewpoint of shareholders and investors.

The committee separated the suggestions into mandatory and non-mandatory categories. The recommendations that can only be defined as necessary for corporate governance and that can be enforced by amending the listing agreement are categorized as mandatory. Others are categorized as non-mandatory if they are either desired or may require changing the law.

V. MANDATORY RECOMMENDATIONS:

The listed companies with paid-up share capital of at least three crores are subject to the required recommendations. The recommendations are as follows:

1. The ideal board of director composition should consists both non-executive and executive directors.
2. Three independent directors, including one with an understanding of finance and accounting, should make up the audit committee.

[5] D. P. K. Das, *A Study on Corporate Governance and Business Ethics-Indian Scenario*, 5 ASRJ 547 (2018).
[6] Corporate Governance Recommendations for Voluntary Adoption, (1988).

3. Setup of a compensation committee is necessary.
4. An industry structure, opportunities, threats, risks, outlook, and internal control system management discussion and analysis report should be prepared for external assessment.
5. Shareholders should be informed of any information about their investments.
6. To review capital budgets, quarterly results, operational plans, and committee meeting minutes, the Board shall meet at least four times per year, with a maximum gap of four months between sessions.
7. In all companies, a director may serve on no more than 10 committees and may chair no more than 5 committees.

VI. NON-MANDATORY RECOMMENDATIONS:

The committee recommended various things:

1. Chairman's role
2. Board committee for compensation
3. Shareholders' entitlement to semi-annual financial performance.
4. Postal ballot for important issues like amending a memorandum.
5. Sale of the entire or a significant portion of the project
6. Corporate reorganization
7. A further issue of capital
8. Launching new enterprises

SEBI duly recognized these recommendations in 1999. It is now incorporated in Clause 49 of the listing agreement of every Indian Stock Exchange.

During this time frame, it felt necessary to have an extensive re-evaluation of the present Companies Act. The Companies Act, of 1956, had now become voluminous and failed to address the current situation and problems. In the years 1993, 1997, and

2003 there were attempts to redraft the companies' law, but it was inefficacious[7]. This changed with the enactment of the Companies Act, 2013 which brought in paramount changes and helped develop corporate governance like never before. This Companies Act, 2013 now replaced the previous act and it pursued to better the standards of corporate governance, simplify the regulations and aggrandize the interests of minority shareholders.[8]

VII. CORPORATE GOVERNANCE IN MODERN TIMES

With the advancements in science and technology and the competitive nature of the corporate world, more and more companies are now relying on technology for their day-to-day functioning. Technological tools have been incorporated into organizations as it is much more efficient and cost-effective. Similarly, in cases of corporate governance, the introduction of technology proves beneficial. With the use of technology, there has been an overhaul and significant transformation has been observed. For instance, public involvement has improved, and now with proper technology in place, corporates have increased information, transparency, and accountability[9].

It also offers a higher level of protection against cyber threats and attacks. This high-speed shift in technology affects corporate functioning and continues to generate value. It not only brings a change and transformation in the innovation of products but the digital upgradation further advances ss company's settings and procedural systems. The utilization of technology provides many more opportunities for organizations. For instance, Investment activities and extraterritorial business dealings tend to get more efficient as digitalization helps in faster channelization of documents and material with the stakeholders and shareholders[10].

[7] LEXPEEPSavailable athttps://lexpeeps.in/history-of-corporate-governance-in-india/, (last visited June 11, 2023).
[8] N. Sanan and S. Yadav, *Corporate governance reforms and financial disclosures: A case of Indian companies*, 10 IUPJCG 62, 62-81 (2011).
[9] J Kiranmai & R.K. Mishra, *Recent Advances in Corporate Governance: A Global View* (2022).
[10] 8th International Conference on Management and Economics, Digital Transformation and Corporate Governance in India: A Conceptual Analysis, https://www.researchgate.net/publication/339326554_Digital_Transformation_and_Corporate_Governance_in_India_A_Conceptual_Analysis (2019).

It further provides opportunities that never existed before and makes the daily communications between the organizations and the shareholders hassle-free thus saving loads of time which can now be utilized doing something more worthwhile.

Incorporating new technology in organizations remarkably cuts the transaction costs which were required in making a collective accord. It transforms difficult and burdensome decision-making into a swift and easy process. It is not true that utilizing technology in corporate governance only has benefits. It also brings certain problems as well. For example, due to the inclusion of technology, the ratio of a company's executive to non-executive can significantly change. Although this might prove beneficial in the long run as it will eliminate the middle managers and cause major changes in the companies' organization charts, in the present, it will change the current corporate governance model. Due to this a lot of time must be spent changing and redesigning the position and roles of directors, shareholders, and managers individually. The utilization of technology can also lead to cyber-attacks. To protect from these activities corporations must always have updated and appropriate software and protections. Installation of firewalls and antivirus which would block and protect from malware, ransomware, and viruses would increase the cost and time of organizations. Even after having all these done an organization is still vulnerable to loss of data[11]. If the data is lost and there is no backup available, then it can disrupt the functioning and can bring the organization to a complete halt.

Thus, the utilization of technology in corporate governance must be done keeping in mind the risks and its efficient nature. It also depends upon the type of corporation whether such utilization would help the company or prove to be lethal.

VIII. DOES TECHNOLOGY HELP ALL KINDS OF CORPORATIONS IN GOVERNANCE?

Technology has come a long way in terms of its applicability in corporate governance. Corporate governance over and increases a company's efficiency. Artificial intelligence (AI) is being used in an increasing number of applications, including

[11] *Id.*, note 7, at 4.

evolutionary computing, intelligent agents, fuzzy systems, probabilistic reasoning models, and artificial neural networks.

But the question that may arise is whether technology will help every corporation to develop its governance. Many researchers have revealed through their papers that large-scale corporations can easily implement technological schemes to enhance corporate governance but in small-cap companies, the technical setup is much less organized and not up to the margins. This is what is called the 'Corporate Governance Gap.'[12]

If we go by recent studies, for example, implementing corporate governance best practices remains difficult for listed Indonesian companies, particularly those outside the banking sector, according to recent research by the Indonesian Institute for Corporate Directorship. The interests of shareholders are protected, and the roles of stakeholders and board directors are made explicit, among other best practices. Meeting these international criteria might increase Indonesian businesses' competitiveness and investment appeal. To assist with the process, IFC introduced a brand-new, five-year Corporate Governance Program in Indonesia. The program's objectives include advising businesses, institutional investors, and banks on how to put best possesses into practice, collaborating with governmental agencies to strengthen the regulatory framework governing corporate governance, and boosting the ability of educational institutions to offer corporate governance training.[13]

Similarly in many countries, including India, several companies have faced challenges in incorporating effective corporate governance due to the absence of appropriate laws in the country. Thus, not only small industries but bigger corporations fail to govern their respective companies which often leads to a great economic crisis.

IX. ACHIEVING EFFICIENT CORPORATE GOVERNANCE THROUGH TECHNOLOGY:

[12] *Id.*, note 9, at 4.
[13] INTERNATIONAL FINANCE CORPORATIONavailable athttps://www.ifc.org (last visited June 11, 2023).

Information technology has opened markets to a greater extent than ever before, but it has also given rise to difficult issues with satisfying the rising demands of a diverse range of consumers, functioning at scale, and adhering to rules in numerous countries. Additionally, it has increased the risk of cyber threats, online fraud, and abuse. As a result, a fresh, agile perspective on governance frameworks is required.[14]

Technology can be of several uses including security purposes, enhancing accountability, and achieving efficiency.

There is a high trend toward corporate boards using technology as much as they can with the pressures on today's organizations. Like how "electronic management systems" have become regular instruments for operations and manufacturing, "electronic board portals" are quickly becoming indispensable instruments for board of directors.[15]

Regarding security concerns, transferring a few of the storage and communication mechanics to third-party technical partners is a very good idea. Board technology service suppliers work only for the boards and companies in order to improve and increase the efficiency and effectiveness of the operations so that board members and managers can concentrate on the most urgent requirements of the company. Because security is the focus of what board portal service providers and agency management systems accomplish, their electronic products and programs are sturdy. They have the technological know-how, the resources, and time required to preserve the systems with top of the class safety and security features.[16]

Additionally, technological advancements enable board members to securely conduct business via their 'mobile' devices from any location and at any point of time. Technological service providers can create encryption, user authentications, passwords, and secure workflows more quickly and easily than most organizations.

[14] Smriti Subramanian, *How to Embed Corporate Governance in Modern Organisations* (Jan 13, 2022, BUSINESS TODAY). Available at: https://www.businesstoday.in/opinion/columns/story/how-to-embed-corporate-governance-in-modern-organisations-319035-2022-01-13 (last visited June 12, 2023).
[15] DILIGENT, https://www.diligent.com (last visited June 12, 2023).
[16] Supra 3.

Rigid security measures guard manager-to-manager conversations, safeguard papers and other data that are stored, and eventually reduce the likelihood of a data leak.[17]

X. NEED FOR BETTER CORPORATE GOVERNANCE: INDIAN PERSPECTIVE

The corporate governance system has a significant impact on India's current economic situation. India effectively started its shift to a liberal and welcoming economy in 1991. Since then, the size of its stock market has had an astonishing upward trend, increasing the number of listed companies correspondingly.[18] India must put more emphasis on transparency and "Shareholder value maximization" if it hopes to draw in additional nations for foreign direct investments.[19]

One method by which shunned financial experts defend themselves from insider theft is through corporate management (La Porta et al. 2000).

India was trailing behind even though corporate governance practices might well be traced back to 1961 worldwide. It was not until 1991 that corporate governance formed an international context and liberalization happened. The "Securities and Exchange Board of India" overhaul marked the year's most significant undertaking (SEBI). SEBI's primary objective was to regulate and standardize trading of stocks, but it further progressed into making numerous corporate governance regulations and laws. The next significant alteration was the formation of a 1996 report by the Confederation of Indian Industry (CII), which created a set of regulations for Indian businesses to a corporate governance action. "The Securities and Exchange Board of India's" two committees, "Narayan Murthy," and "Kumar Mangalam Birla," then began setting the framework for formalizing the best corporate governance principles. Clause 49 was added to the listing agreement for businesses listed on the Indian stock exchange based on recommendations from these committees. But because of scandals like WorldCom, Satyam, Enron, and others, clause 49 must be changed to consider

[17] *Id.*, note 3, C. S. V. Murthy at 3.
[18] *Id.*, note 7, L. Som, at 4.
[19] R. Ramakrishnan. (2007). *Inter-relationship between business ethics and corporate governance among Indian companies.* [Online]. Available: http://ssrn.com/abstract=1751657 (last visited June 12, 2023).

and resolve the issues that led to these businesses' demise and the subsequent collapse of their respective nations' economies.[20]

Clause 49- The listing agreement of the Indian Stock Exchange included Clause 49 which included all the necessary rules and regulations, and specifies the minimum number of board members, independent directors, code of conduct, audit committee rules, etc.

XI. LANDMARK CASES ON THE FAILURE OF CORPORATE GOVERNANCE

Without standing unitedly against corruption, it will not be possible to return to a fair and honest corporate culture. The perfect corporate governance system does not exist. When large firms like YES Bank, DHFL, Kingfisher Airlines, Jet Airways, and IL&FS fell, investors learned this lesson the hard way. Although the GST and the insolvency law have received criticism, it is also possible that corporate governance violations and a disregard for the law are to blame.[21]

The need for capital restructuring arises during business takeovers and mergers, a time when corruption is a major concern. Without an independent director, there is a risk that board members will not fully adhere to the law. The driving force behind the acquisition of the company may be a board member with a vested interest in the transaction. The aim of the entire exercise—maximizing value for the shareholders—would be defeated by such a move, and the profit would accrue to the individual who made it. There have been instances of businesses falsifying accounting records to show profits that have not yet been deposited into customer accounts. This is misleading for auditors and other parties who are reviewing the organization's financial records.[22]

Following are a few examples of how corporate governance failed in big corporations:

- **The 'Satyam Scandal':**

[20] N. Sanan and S. Yadav, *Corporate governance reforms and financial disclosures: A case of Indian companies,*10 IUPJCG 62, 62-81 (2011).
[21] Kasmin Fernandes, *Biggest Corporate Governance Failures in India*, THE ICSR JOURNAL (2021).
[22] 23. *Id.*

Satyam Computer Services Ltd. Was founded by the Raju brothers – Rama Raju, and Ramalinga Raju in 1987 in Hyderabad. In 1991, the company went public on the Bombay Stock Exchange. When the brothers intended to merge with the business known as Matyas, conflict erupted. The Raju brothers were in difficulties as a result of the legal issues that emerged from the combination of the two businesses. They engaged in such an enormous deception to augment their fictitious income. The promoters and founders of the Satyam enterprises, the Raju brothers, took advantage of the situation and sold their assets for a lot more money. They achieved this by editing the books and money statements to reflect it in their favour. Accounting ERP systems are used by most businesses. However, the Satyam brothers made use of their advantages and invented for themselves a new ERP system to meet their accounting needs. Therefore, for the brothers, inserting false invoices and fictitious bank statements was child's play. The fictitious bank statements which were projected held much more money in comparison to real ones. The PWC, who served as the Satyam companies' auditors, utterly failed to perform their job. The brothers chose to invest money in Matyas at that point. The business was required to respond to many inquiries. The brothers decided to reveal the truth after failing to come up with another way out. Raju in one of his confession letters wrote "Knowing how to get off a tiger without getting eaten, was like riding a tiger". The Satyam brothers along with the auditors were sentenced to jail time and were charged a huge sum as a mulct. This in turn resulted in the addition of many new regulations under the Companies Act of 2013. The companies are now required to change their auditors every 10 years.[23]

- **Nirav Modi Scam:**

In February 2018, the Punjab National Bank (PNB), one of the largest lenders in the public sector in the country, was involved in a case of transaction fraud involving Rs. 11,400 crores. The bank had found and reported some "fraudulent and illegal activities" totaling $1771.69 million at one of its Mumbai branches to the Bombay Stock Exchange (approx.). The CBI then received two complaints from PNB alleging

[23] Deb P Sammaddar, *Satyam Scam: Know about India's Biggest Accounting Fraud*, Fin. Blog. (April 9, 2020) *available at* https://insider.finology.in/investing/satyam-scam (last visited June 12, 2023).

fraudulent transactions against jeweler retailer and billionaire Nirav Modi adding around Rs. 11,400 crores. In addition, PNB had already charged Nirav Modi with additional fraud of Rs. 280 crores. Two different criminal investigations are being handled by Modi. Substantial fraud is involved in the Central Bureau of Investigation.

- **Tata v. Cyrus Mistry**

The bitter legal battle between the Mistry Group and the Tata Group over the management of Tata Sons & Company was finally decided by the Supreme Court. Cyrus Mistry in October 2016 was fired from the post of executive chairman of Tata Sons, and this led to an argument between the two factions. Later, he was dismissed from the board of directors of a few Tata Group companies by their general bodies. The Mistry Group, who was upset by these occurrences, initially petitioned before the National Company Law Tribunal (NCLT). The NCLT denied the request. However, after an appeal, the National Company Law Appellate Tribunal (NCLAT) mandated Mr. Mistry's reinstatement. The Supreme Court ultimately ruled in favor of the Tata Group in a decision that spanned more than 280 pages. The Apex Court held that "According to the Companies Act of 2013, the NCLT has the authority to provide relief to shareholders if the company's operations are harming or oppressing them. For the shareholders to receive relief, they must show that the oppression or prejudice is so severe that it would be just and equitable to dissolve the business. The NCLT will not have the authority to provide relief to the shareholders for oppression if the grounds do not meet the requirements for a winding-up order. In other words, the Mistry Group set out to prove that there were sufficient grounds to dissolve the venerable Tata Sons Company. At the very outset itself, it was inconceivable that the mere expulsion of Cyrus Mistry was grave enough ground to justify the winding up of the company itself, though there can be divergent views as to whether Mistry Group received fair treatment. The Court has found – and rightly so – that the mere removal of a director or executive chairman could not be termed as a ground for winding up a company. Naturally, no relief from oppression and poor management can be given if there were no reasons that would support winding up. Even though the removal of a director violates the law, relief cannot be given unless it can be proven to be oppressive or detrimental to the shareholders. Mr. Mistry was not 'representing' any shareholder on the Board, so firing him would not be considered a derogatory or oppressive action toward minority shareholders. The NCLT had ruled these problems in favour of the Tata Group, and the NCLAT did not overturn those findings, therefore the Court chose not to address these accusations." Additionally, the Mistry Group's request that they are permitted to leave Tata Sons was rejected by the Supreme Court.[24]

XII. TECHNOLOGY FOR CORPORATE GOVERNANCE- TWO SIDES OF THE SAME COIN:

There is no doubt that in this 21st century, technology has immensely changed every aspect of how business is to be governed. Business owners, regardless of how big or small, now profit significantly due to the various available internet capabilities. The usage of numerous software and hardware in business has resulted in easier delivery methods and created better support for sales. But that is just one side of the coin, on the other side lies the disadvantages.

The latest technologies continue to enable and propel more dispersed forms of corporate organization, which we refer to as "community-driven corporate organization and governance." Because of lack of authority that enforces and makes decisions, the systems of organizational governance have evolved in which authoritative decisions are reached by a community of users. Thus, Corporations need to adopt such technologies to remain effective and relevant.[25]

But also, with advancing technology, there lies the growing risk of security, for example, data stealing. Corporations nowadays have all their information stored in cloud storage which is accessible to the selective members of the company from any corner of the world. Therefore, it can lead to various nefarious activities that may threaten the company's security.

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[24] Varghese George Thekkelt, *Tata vs. Mistry: A case For Greater Protection of Minority Shareholders' Rights*, SCC BLOG (May 15, 2021) *available at-* https://www.scconline.com/blog/post/2021/05/15/tata-v-mistry-a-case-for-greater-protection-of-minority-shareholders-rights/ (last visited June 12, 2023).
[25] William H. Starbuck, *Why Corporate Governance Needs Serious and Creative Thought,* 28 AOM 15, 15-21 (2019).

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XIII. CONCLUSION

The current paper discusses the use of technology in corporate governance and how it has helped and improved the current structure in place. Digitalization overhauled the corporate system and has now replaced the previous governance system with much better structures due to which accountability, transparency, and public interaction have increased multiple times. The paper provides the starting phases of corporate governance and then continues to mention how drastically it has changed today. The changes did not come at once, rather it was a long and steady process. The failure of certain corporate governance and the rise of scams helped develop it better and implored a need for change. All of this resulted in the digitalization of corporate governance which was mainly used for increasing transparency. It is found that the utilization of technology does not always help all types of companies. In certain cases, digitalization instead of improving governance can cause it to slow down and the companies may struggle with it. This depends upon the size of the corporation and how well they are at dealing with the security and cyber risks which make digitalization vulnerable. The paper provides efficient ways to use technology and how companies can protect themselves by installing firewalls and teaming up with third-party security providers. This would prove beneficial as now the security has been outsourced and now the employees can work on it without any worry.

The digitalization era has increased competition. With businesses using technology in their day-to-day functioning and completing transactions faster than ever before the need for better corporate governance was required. It was the only way to develop the governance system, increase accountability, and check its functioning. And now as corporates are utilizing it there is a need to develop better laws on the usage and regulation of technology for corporate governance.