A CRITICAL ANALYSIS OF LEGAL REFORMS OF CORPORATE GOVERNANCE IN INDIA

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Abstract - *Corporate Governance in India has witnessed rapid changes in the past decade. If this positive trend continues, India stands to achieve top-tier corporate governance standards, essential for sustaining its impressive growth rates. This paper examines the development of corporate governance standards in India. It commences with the talk about the pre-existing managerial system before independence and changes post-independence, reforms brought about after 1991 economic reforms, recommendation of various committees, clause 49 the listing agreement, Satyam scandal, reforms after Satyam scam with special focus on critical examination of company act of 2013. The methodology adopted for writing this research article is of doctrinal in nature.*
KEYWORDS*: Corporate governance, corporate governance committees, SEBI, Clause 49, Company act 1956, Company Act 2013*

INTRODUCTION

The 20th-century Indian economy experienced a glittering era driven by privatization, globalization, and liberalization. Corporate Governance's establishment in India and globally arose from capitalization, the evolving corporate culture, and the emphasis on business ethics, aligning India with the global economy for product, capital, and economic sustainability.

Corporate Governance stands as a vital element directly influencing a business's profitability, growth, and endurance. It encompasses an organization's culture, policies, core values, and ethical standards embraced by the people steering the business. It denotes the system and structure of control where managers and the Board of Directors shoulder responsibility for all stakeholders, both internal and external. Essentially, Corporate Governance encapsulates an organization's governing mechanisms and processes.

An entity governed by various participants—board members, shareholders, auditors, managers—requires governance principles and structures to guide decision-making in corporate matters. It establishes rules for decision-making to prevent conflicts of interest between shareholders, management, and other stakeholders. This process shapes an organization's objectives within the social, regulatory, and market contexts, overseeing legal compliance, ongoing practices, actions, and decisions.

The correlation between Corporate Governance and the performance of a company has been extensively studied in industrialized nations and is currently a topic of conversation in emerging economies such as India. Recent corporate failures and scams underscore deficiencies in governance structures, prompting the need to enhance governance practices, rules, and ethical standards.

Entities with weaker governance encounter more agency problems, granting managers greater private benefits. Such issues highlight that directors might not exercise the same prudence with others' funds as they would with their own. Consequently, Corporate Governance's primary aim is to assure shareholders that managers are aligned with their interests. This connection emphasizes the strong tie between an organization's success and shareholder contentment.

India's notable economic growth, averaging over 8% in recent years, and substantial rise in the stock market highlight the country's economic ascent. But maintaining this success will largely depend on how corporate governance develops in India.

UNFOLDING OF CORPORATE GOVERANCE

Prior to gaining its independence in 1947, India used the Managing Agency System. This system was biased toward agencies rendering shareholders powerless and They found it nearly impossible to get rid of the managing agencies. The controlling agencies' hegemony was brought about by a deficient credit system, an unorganized capital and money market, and the lack of stock exchanges. There was absence of awareness among the shareholders and The company's financial problems and exorbitant remuneration for managing agencies stemmed fro m their misuse of authority. Instead of having a professional degree or area of specialty, family ties were used to hold further executive roles.

Post independence Indian government followed a model of mixed economy where both the government and the private sectors were involved in running of economy

The COMPANY ACT WAS PASSED IN 1956 which terminated the management agency structure that was in place. and It also aimed to safeguard shareholders' rights by capping the number of directorships an individual might have, imposing salary ceilings on directors, and outlining procedures for director dismissal. It acquired the firm under the board of directors' supervision. there is also mention of provision for proper standard of accounting and audition for financial disclosure by company in their annual balance sheets.

The nationalization of numerous commercial banks, coupled with onerous licensing regulations and the ensuing red tape, created an ideal environment for the industrial family to flourish and gain influence over the majority of businesses, even publicly traded corporations. The power was abused by these few rich families to influence bureaucrats to grants them licenses and financial institutions to give them credit.

The managing agency system was replaced by the promoter system the word promoter meaning. someone who engages in business-forming or promotion activities Companies were often promoted by the few industrial families with access of majority of finance In companies they promoted they usually retained larger stakes and voting rights thereby becoming the controlling shareholders. thus, in context of India the term 'promotor' usually takes meaning of controlling shareholders. Though the new act mandated the management of company by board of directors but board members tended to be promoters' friends and family

In order to reverse this, financial organisations with comparatively greater shareholdings were granted the authority to leave nominees. in board of directors but this did not proved to be much helpful because nominee directors were still in minority position. there was indulgence of nominees in misappropriation of funds, inter-corporate investments, loans and funds divergence all of which led to slow growth rate of country and was stepping step to economic crisis of 1991

The LPG reforms of 1990 marked a landmark moment in corporate governance of India. these reforms were marked by drastic change of policy involving deregulation, end of licence raj, opening up of Indian economy to foreign investment and capital. All these changes post liberalisation attracted multinational companies and foreign investors to Indian market Indian companies were expanding in size by means of listing aboard and involving in mergers, acquisitions and joint ventures at home and aboard. the need of capital pushed corporate governance reforms in India and for obvious reasons were pushed forward by industries

A voluntary corporate governance reforms was issued by confederation of Indian industry called Desirable Corporate Governance: Code, it was publicly released in April 1998 and drawn heavily from Anglo-Saxon model of corporate governance. Some of the key recommendations were –

- ❖ The roles of non-executive directors on the board and in committees need to be clearly defined. there should be emphasis on their higher involvement in board affairs and other key decisions
- ❖ Suggested cap on directorship by a single person in not more than 10 listed companies at the same time
- ❖ In listed companies, the establishment of an audit committee was deemed necessary if the paid capital or turnover exceeded Rs. 20 crores.

❖ Suggested that the audit committee be composed of three people at the very least, ideally from the company's non-executive directors.

❖ Suggested that independent and non-executive directors make up at least 30% of listed businesses with turnovers above Rs 100 crore; When the managing director and chairman are the same person, this ratio increases to 50%

Although the CII code was voluntary, it was a huge step toward improving corporate governance, though it did not significantly alter current procedures. it was welcomed with full pop and show and was embraced by a small number of forward-thinking businesses. it was "felt that under Indian conditions a statutory rather than a voluntary code would be far more purposive and meaningful, at least in respect of essential features of corporate governance."

The second significant effort was led by SEBI, which established a committee led by KUMAR MANGALAM BIRLA in early 1991. When considering board proposals, the committee specifically focused on independent directors, making recommendations related to the board's independence and representation. It also acknowledged the value of audit committees and made numerous recommendations on how board audit committees should be set up and run. In relation to disclosure and transparency problems, particularly with regard to information to be revealed to shareholders, the committee also offered a number of suggestions. It recommended constitution of grievance committee to address the complaints of shareholders and declared that a section on management discussion and analysis should be included in the company's annual report to shareholders. and Companies ought to provide shareholders with specific information, such analyst presentations and quarterly reports.

The key recommendations were ratified and accepted by SEBI and incorporated in clause 49 in early 2000. Department of company affairs under MCA constituted **Naresh Chandra Committee** in august 2002 to examine various corporate governance issues. Its main suggestions relied on independent auditing, board supervision of management, and financial and non-financial disclosures. It provided a number of recommendations on a number of issues, including the requirement for audit partners to be rotated voluntarily and the criteria for barring auditors from taking on projects that do not involve audits.

Next committee was **Narayan Murty Committee** It was established by SEBI, with Mr. N.R. Narayan Murthy serving as chairman. Reviewing clause 49 and making recommendations for ways to raise corporate governance standards was the goal. There was seen inconsistency with clause 49 under the backdrop of corporate governance lapses in USA and certain measures were recommended the main suggestions being on risk management, directorships and director compensation, independent directors, audit reports, audit committees, codes of conduct, and financial disclosures.

Committee's areas of focus included the structure and role of corporate boards; it strengthened the definition of director independence in the then-current clause 49, specifically addressing the role of insiders on Indian boards; nominee directors, who were debarred from the definition of independent directors but were nonetheless subject to the same duties and liabilities as other directors; and the role and responsibilities of audit committees, suggesting that members with a background in finance be appointed to audit committees. Although SEBI initially implemented clause 49 in 2000 in response to recommendation of Birla committee but it attained its present state after reforms suggested by Narayan Murthy committee.

CLAUSE 49 in its present state is called 'corporate governance '. It contains 8 sections include the board of directors, audit committee, directors' compensation, board procedures, management, shareholders, and reports on compliance and corporate governance, in that order. Main components include-

COMPONENTS	CLAUSE 49 OF LISTING AGREEMENT
INDEPENDENCE OF DIRECTORS	CRITERIA- 33% of independent directors if the chairman is not an executive and 50% of independent directors otherwise DEFINITION – does not share any material pecuniary relationship with company, no relation with board or one level below it and doesn't share any relation with company for past 3 years • Nominee directors were considered independent
BOARD REQUIREMENTS AND LIMITATIONS	• Meeting to be held 4 times in a year • A director can be part of only 10 committees and can be chairman of 5 committees • Requirement of code of conduct
AUDIT COMMITTEE	COMPOSITION – • There should be a minimum of 3 directors out of which 2 should be independent • They all should be financially literate • At least one of them should have accounting or financial management experience ROLE AND POWERS – • Should held minimum of 4 meetings per year not exceeding a four-month interval between two meetings • It reviews statutory and internal auditors, obtain legal or professional advice from outside and reviews whistleblower program
DISCLOSURES	• Transactions of related party • Management of risk • Proceeds from offerings • Accounting treatments and departures • remuneration for directors, including nonexecutives, and obtaining consent from shareholders • information on compliance during the previous three years. • Reports on corporate governance, which reveal whether or not requirements are required to be adopted.
CERTIFICATES	CEO AND CFO • Financial statements • Effectiveness of internal controls • Notify the audit committee of any noteworthy modifications to the aforementioned • Auditor or company secretary

	• Adherence to corporate governance principles
SUBSIDIARY COMPANIES	Significant transactions should be reported to the Holding Company Board along with the minutes of the subsidiary board. At least one independent director of the Holding Company should serve as a director on the board of a material non-listed Indian subsidiary.
OTHERS	RECOMMENDATIONS • Whistleblower policy is optional • Losses incurred by an Independent Director are considered "independent" if they have worked for the company for nine years. • Training members of the board • Assess the performance of the nonexecutive board.

Besides SEBI's corporate governance reforms exclusively aimed at listed firms, Early in the new millennium, the MCA moved to amend Companies Act with the goal of enacting stricter corporate administration guidelines that would apply to all Indian enterprises. To this day, the MCA has assigned two different committees the responsibility of evaluating the Companies Act's corporate governance standards. The MCA established the Chandra Committee in August 2002, with former Cabinet secretary Shri Naresh Chandra serving as its chairman. Although the majority of this committee's report focused on auditing and disclosure issues, its main goal was to do a thorough investigation of corporate audits and independent directors. The committee issued multiple recommendations covering areas like the reasons why auditors should not be assigned, the kinds of non-audit services they shouldn't provide, and the support for mandatory audit partner rotation.

The MCA convened Irani Committee in December 2004, which was chaired by Tata Sons, Ltd. director J.J. Irani. This group was entrusted with reviewing the Companies Act with the goal of combining globally acknowledged finest corporate governance norms with the unique needs of India's developing economy. Numerous recommendations proposed by the committee were included in suggested alteration to the Companies Act The planned changes were intended to apply to all Indian companies, not only those that were listed on stock markets, and many Indian enterprises would now have a new corporate governance structure. The Indian Companies Act will now include the new idea of a "independent director" for the first time thanks to the proposed bill. In addition, businesses that have a minimum share capital requirement would have to form a board of directors that includes at least one-third independent directors.

It acknowledged the importance of accommodating the needs of specialized or smaller companies by proposing exemptions. This aimed to alleviate the compliance burdens for smaller businesses compared to larger, more established corporations. To achieve this, the committee recommended expanding the categorisation of companies beyond private or public, because they found existing binary system too limiting to address the diverse requirements of companies varying in size and resources. Their objective was to guarantee sufficient regulatory standards for big listed corporations seeking access to public financing while broadening categories and exemptions to customize compliance costs to particular demands.

Notable differences emerged between clause 49 and recommendations of Irani committee, particularly concerning the board of directors and the role of independent directors. The proposed amendments to the Companies Act take these distinctions into account. On August 5, 2009, the Companies Bill, 2009 was presented to the Lok Sabha. Similar to its initial presentation in 2008. However, its passage was deferred, and further amendments are anticipated following the extensive

review of the 2009 bill by the Standing Committee on Finance of Parliament in August 2010. It was indicated by report that the Ministry of Corporate Affairs (MCA) acknowledged the need to incorporate specific elements from the 2009 Voluntary Guidelines into a modified bill. These include separating the responsibilities of chairman and chief executive, outlining the qualifications and terms of office for independent directors, evaluating the board, appointing auditors, and rotating audit partners and companies.

After the explosive revelation of the massive accounting scandal involving Satyam Computer Services in January 2009, India's corporate sector faced significant turmoil. The government swiftly intervened, leading to the arrests of insiders and auditors, along with investigations conducted by regulatory bodies such as the MCA and SEBI. Additionally, the company's board members were replaced by government-appointed officials.

Satyam's collapse stemmed from multiple systemic shortcomings, including inadequate auditing processes, insufficient board oversight, and a leader intent on perpetrating fraudulent activities. This scandal, often compared to the "Enron moment," triggered a critical reassessment of India's corporate governance by industry leaders, regulators, politicians, and foreign investors. As a result, India fell from third to seventh place in Asia in the CLSA Corporate Governance Watch 2010 rankings. The CLSA research brought to light India's deficiency in addressing important local governance matters, such as regulating the audit profession, closely examining related-party transactions, and holding promoters accountable.

AFTERMATH OF SATYAM SCANDAL

Following the Satyam scam, Indian corporate groups pushed for changes and a review of the country's corporate governance laws once more, echoing their involvement in the initial phase of governance reforms. Soon after news of the scandal emerged, the Confederation of Indian Industry (CII) initiated an assessment of the underlying corporate governance issues. By late 2009, the CII's task force released recommendations specifically aimed at reforming corporate governance practices.

In the preface of the Task Force Report, Mr. Venu Srinivasan, President of CII, highlighted the distinct nature of the Satyam scandal, emphasizing its uniqueness due to the magnitude of wrongdoing involved. He emphasized that "Satyam is an isolated incident - particularly considering the enormity of the misconduct. The vast majority of corporate entities in India are well-managed, regulated, and conduct their business in a responsible and lawful manner."

Beyond the CII's efforts, several other corporate bodies actively contributed to the discourse on corporate governance. A significant player in Indian corporate governance and a co-founder of Infosys, Mr. N. R. Narayana Murthy, is the chair of the Corporate Governance and Ethics Committee, which was established by the National Association of Software and Services Companies (NASSCOM). The Committee's proposals, which mostly addressed internal stakeholders within businesses, were released in the middle of 2010. It emphasized suggestions concerning the role of the audit committee and the implementation of a whistleblower policy, while addressing ways to enhance shareholder rights. Additionally, during this period, the Institute of Company Secretaries of India (ICSI) proposed a series of corporate governance recommendations.

The SEBI committee on disclosure and accounting standards issued a discussion paper with proposals as follows;

- The audit committee will appoint the CFO following an evaluation of the candidate's credentials, background, and experience.
- Audit partners to be rotated every 5 years
- Voluntarily adoption of international financial reporting standards
- On half yearly basis interim disclosure of balance sheets
- Simplifying the deadlines for legal entities to provide the different financial statements stipulated in the listing agreement.

Early in 2010, SEBI updated the Listing Agreement, including clauses addressing the CFO's appointment by audit committee and going over other matters related to financial reporting. It's

important to note that the clause 49 was not altered to include suggestions like rotating audit partners. In response to recommendations by industrial sector, particularly the suggestions from the CII, the Ministry of Corporate Affairs (MCA) unveiled a comprehensive collection of voluntary guidelines for corporate governance in late 2009.

Covering a multitude of corporate governance issues, the Voluntary Guidelines tackle various facets within the domain of corporate governance which includes-

- The board of directors' independent operation; the audit committee's and the auditors' and secretariat's respective roles and responsibilities;
- Putting in place mechanisms to support and defend whistleblower encouragement and protection

Key provisions highlighted in the guidelines encompass:

1. Formalizing the issuance of appointment letters to directors.
2. Establishing a clear separation between the roles of chairman and CEO.
3. Establishing a nominating committee in charge of choosing directors
4. Setting limitations on the quantity of directorships an individual can hold.
5. Guidelines governing directors' term of office and compensation.
6. Mandatory training requirements for directors.
7. Assessment of directors' performance.
8. Additional guidelines concerning statutory auditors.

R. Bandyopadhyay, the Corporate Affairs Secretary, stressed the recommendations' voluntary character and the Ministry's intention to refrain from enacting rigid, mandatory laws. However, the Ministry indicated that these guidelines represent an initial step, leaving open the possibility of potential progression toward mandatory regulations. Notably, several optional elements—like separating the chairman and CEO positions—have been suggested to be included in the Companies Bill revisions that are now being considered by Sansad.

Satyam scam prompted Ministry of Corporate Affairs (MCA) to expedite its efforts in revising India's company law. The corporate affairs minister assured that the impending law would introduce stricter provisions to deal with frauds involving companies, their directors, and auditors, promising its prompt enactment. Eventually, three years after the Satyam episode, both houses of the government approved the Companies Bill, 2012, presenting a simplified legislative framework with significant reforms.

The Companies Bill of 2012 introduced numerous changes to India's corporate law, many of which have already been incorporated into the companies Act of 2013. While widely praised as both "simple" and "modern" by the media and industry, the term "modern" in this context doesn't simply imply a Western approach adopted by lawmakers. Unlike previous reforms, this Act doesn't blindly adopt global standards but instead draws inspiration from American and global trends, ensuring that its provisions are practical and suitable for India's business landscape. The Satyam scandal significantly contributed to the increased awareness of the importance of corporate governance guidelines, especially in protecting minority shareholders' interests.

In the process of attempting to safeguard small investors, effectively regulate businesses, and stop fraud, politicians appeared to err on the side of caution, favouring overregulation over under regulation. it's important to acknowledge that the Indian market is not yet sufficiently developed for a system that relies solely on information disclosure. In the future, competent and intelligent players in the Indian market might flourish as a result of the Act's strict standards, particularly with regard to auditors and independent directors.

The following provisions of Company Act has been critically examined and interpreted;

1. **DIRECTORS** - The Companies Act, 1956 lacked any specific mention of independent directors, limiting the requirement to listed companies despite Clause 49 outlining the need for a certain number of independent directors based on company size and defining their independence. Conversely, the Act introduces and defines the term "independent directors" for the first time. However, the effectiveness of independent directors, as observed in the Satyam fraud case, has been put into question. Independent directors often show irregular attendance at board meetings and,

when present, may refrain from freely expressing dissent. To address this, the Act imposes more rigorous demands on independent directors compared to Clause 49. It establishes a mandatory code delineating the role, responsibilities, and professional conduct of independent directors. Moreover, it limits independent directors' terms of office to a maximum of ten years to alleviate concerns regarding their extended association, which could hinder their ability to challenge matters in boards predominantly comprising directors connected to the promoter group.

Furthermore, the Act attempts to clarify the extent of liability for independent directors. It specifies their liability solely for acts of omission or commission that occurred within the company's knowledge, via board processes, and with their consent, connivance, or lack of diligence.

Despite these positive strides, apprehensions persist that independent director, due to the influence wielded by the promoter group through voting rights, may still remain influenced by the promoter group's decisions. Nevertheless, prior to the Act's enforcement, some instances existed where independent directors voiced opposition against decisions conflicting with minority shareholders' interests. With a decreasing pool of willing individuals to serve as independent directors, the hope lies in companies fostering an environment conducive to expressing dissent, thereby retaining skilled independent directors.

The newly enacted law explicitly defines the duties of directors, stressing the adoption of a stakeholder approach in decision-making. It requires directors to consider not only the interests of shareholders but also those of the community, employees, and the environment when making decisions. This clear directive represents a departure from the traditional shareholder-centric model of Anglo-Saxon corporate law to the stakeholder-centric model found in certain continental economies like Germany. However, India's implementation of the stakeholder approach differs as it maintains a unitary board structure accountable to shareholders or members, unlike Germany's two-tier board structure that accommodates the stakeholder approach. Additionally, the recent Act lacks explicit procedural rights for stakeholders, which impedes the enforcement of duties to be fulfilled by directors.

Furthermore, it states that specific companies appoint at least a woman director to their boards. Post the Act's implementation, there's anecdotal evidence suggesting that some companies are meeting this requirement by appointing women from the promoter group. As per the findings of Prime Database's research on director appointments, the promoter group accounted for 25% of the 78 appointments that were made between the implementation of the new act and the Listing Agreement revisions until June 30, 2014.

2. **RELATED PARTIES TRANSACTION** The newly introduced law necessitates that companies must seek approval for specific related party transactions that exceed predetermined thresholds from the board, audit committee, and shareholders (via ordinary resolution). It establishes a "majority of a minority" endorsement strategy for such transactions by requiring all associated parties to abstain from voting on these resolutions. These ceilings, which define "qualifying related party transactions" that need approval from shareholders, depend on a portion of the business's revenue or net worth. Consequently, micro enterprises will likely face more frequent obligations to adhere to these regulations compared to larger enterprises with substantial financial standings.

Additionally, the provisions, as currently outlined, encompass both public and private companies. There seems to be a compelling argument for excluding private companies from these regulations due to the inherent unity of ownership and control prevalent within this business model. The configuration of certain companies inherently diminishes the risk associated with the promoter group diverting corporate assets through such transactions. Consequently, there's a reduced likelihood of this scenario in these specific types of companies.

Additionally, there appears to be a discrepancy between the Act and Clause 49 in relation to Related Party Transactions. Under the Act, non-interested shareholders are required to pre-approve Related Party transactions above specific monetary thresholds through an ordinary resolution. This means that the Act doesn't prevent related parties who lack interest from voting in such cases. In contrast, the Listing Agreement mandates that significant Related Party Transactions necessitate shareholder

pre-approval through a special resolution. However, unlike the Act, the Listing Agreement, following clarifications by the Ministry of Corporate Affairs, prohibits all related parties from voting. Aligning Clause 49 with the Act could prevent the unfair disenfranchisement of shareholders from participating in voting on corporate events. Achieving this alignment might involve employing more precise and targeted language.

3. **EXECUTIVE REMUNERATION** - The latest legislation notably prohibits independent directors from receiving compensation in the form of stock options, opting instead for profit-based commissions alongside sitting fees. This shift in policy regarding stock options contradicts previous recommendations and practices. The Narayan Murthy Committee had supported the payment of stock options to independent directors, as had the previous version of clause 49.

The new regulation, which takes its cues from the Dodd-Frank Act, also requires the ratio of directing salary to median employee pay to be disclosed. This requirement aims to discourage excessive executive compensation and the misuse of corporate assets through public scrutiny. However, it's essential to note that in capitalist systems with concentrated promoter shareholding, horizontal agency costs are prevalent. These systems run the risk of promoters using related party transactions to transfer business assets to their controlled organizations. Conversely, in more developed capital markets with dispersed shareholding, collective action issues among shareholders hinder effective management oversight. Consequently, management may act self-servingly, causing harm to shareholders, known as "vertical" agency costs. Excessive compensation tends to be a more significant concern in well-developed capitalist systems.

4. **MERGERS AND ACQUISITIONS** -The new legislation introduces a provision allowing an Indian enterprise to incorporate into a foreign company, a provision that was previously absent. While Indian firms could acquire and merge with foreign entities, the reverse wasn't allowed. Furthermore, it facilitates the use of Indian Depository Receipts (IDRs) as a transaction currency in such mergers. This move offers various benefits, allowing Indian entrepreneurs the opportunity to exit their businesses and seek better value in a wider market. IDRs, safeguard Indian investors of the merged enterprise from currency risks. Additionally, IDRs don't dilute the shares of shareholders in the foreign surviving company, ensuring their shareholding remains unchanged before and after the transaction.

Moreover, the new legislation permits "short-form mergers". This makes it easier to comply with regulations for transactions involving all interests that are privately held. Last but not least, the statute raises the bar for disgruntled creditors or shareholders to contest a deal or compromise in front of the appropriate tribunal. It stipulates that in order to object to a transaction, members must own a minimum of 10% of the company's outstanding share capital, and creditors who own at least 5% of the outstanding debt may do the same. These increased withstanding power reduce the risk of holdouts obstructing transactions beneficial to all concerned shareholders by ensuring dissenting parties have a substantial stake in the matter.

5. **AUDITORS** - the Act's provisions faced strong criticism from the Indian auditing community. The Act aims to tighten regulations concerning auditors in response to major auditing frauds like Satyam. It gives the shareholders instead of the board the power to choose auditors[1]. Nonetheless, concerns loom over the effectiveness of this change in companies where the promoter group, frequently the majority shareholder, retains the authority to appoint the auditor. In ensuring auditors' independence, the Act mandates auditor rotation every five years for individuals and every ten years for audit_firms in most companies. This clause tries to keep auditors from getting too close to the promoter group, which could jeopardize their objectivity. The auditing community argues that this could make it more difficult for audit firms to comprehend the financial statements of listed companies As an alternative, the Act presents the non-compulsory option of retaining joint auditors, allowing one audit firm to maintain continuity while the other rotates.

To reinforce auditor independence, the Act prohibits auditors from rendering any services other than auditing to their client companies, aiming to prevent potential conflicts of interest and maintain the auditors' autonomy. Aligned with the goal of auditors acting as a safeguard against internal

[1] The Companies Act,2013 (Act 18 OF 2013), s.139

irregularities, the Act imposes an obligation on auditors. If they suspect or discover any fraudulent activities perpetrated by the company's officers or employees, they must report it to the central government. Failure to comply with this duty results in substantial monetary penalties, intended to encourage auditors to be more vigilant and proactive in averting accounting frauds, unlike the auditors in the Satyam case. Concerning accountability, the Act introduces the creation of the National Financial Reporting Authority (NFRA), responsible for setting accounting standards and overseeing auditor compliance across the nation.

Similar to the Public Company Accounting Oversight Board (PCAOB) established after the Enron scandal in the U.S., the NFRA possesses quasi-judicial powers to investigate and penalize auditors for misconduct. The consequences could be severe financial fines or the suspension of specific auditors or businesses from the profession. Previously, the Institute of Chartered Accountants in India (ICAI) was the sole entity overseeing auditors, having limited authority to suspend individuals but not firms. While concerns have been raised within the auditing community regarding potential over-regulation and the severity of prescribed penalties, the effectiveness of the NFRA in efficiently monitoring the profession remains uncertain and awaits evaluation over time.

6. **CLASS ACTION SUIT** - Following the significant accounting fraud at Satyam, numerous Indian shareholders faced financial losses without avenues for redress, unlike their American counterparts who could initiate class action suits against Satyam's management. To bridge this gap, this act instituted the concept of class action lawsuits in India, allowing shareholders to collectively file lawsuits against companies. If a minimal number of shareholders or depositors feel that the company's actions are hurting its interests, members, or depositors, they may take such action under this Act. Remarkably, upon filing a class action suit, shareholders can seek compensation or take action against various entities, including the company, its directors, the auditor (including the audit firm), or any involved experts, advisors, or consultants. This serves as a safeguard for minority interests, providing shareholders and depositors recourse against not only controlling shareholders or promoter groups but also against professionals like auditors, whose opinions the public relies upon. Despite positive reception in India, implementation challenges exist.

Class action suits, predominantly from American law, are typically organized by plaintiff law firms in the U.S., assembling litigants and filing suits. Additionally, United States' contingency system permits law firms to file lawsuits without having to pay any upfront fees. fetching a percentage of the settlement amount later. However, Indian regulations prohibit law firms from collecting contingency fees, posing hurdles for small investors to organize shareholders and fund suit costs. Nevertheless, this introduction ensures that, especially in cases akin to Satyam's scale, the resulting publicity can assist shareholders in collectively organizing for lawsuits. As more suits emerge, it's expected that law firms will adapt to meet this demand. Concerns have surfaced about excessive lawsuits impeding company operations, yet the substantial costs of filing lawsuits in India, coupled with the challenge of organizing requisite shareholders, suggest this is unlikely. Additionally, the Act includes provisions to dismiss suits lacking in good faith.

7. **TRIBUNAL** - Significant waiting period beset the Indian legal system, particularly in corporate disputes where prompt action could avert fraud or lessen damages. The principal judicial organizations for enforcing company law under the previous company legislation were the Company Law Boards (CLBs), or special cases brought directly in the high courts. Following that, appeals were taken up with higher courts and ultimately the Supreme Court.

However, the CLB cases were often delayed, leading to a plethora of decisions being sent to upper courts for appeal, creating a significant stockpile of cases that are still unresolved. An effort was made in 2003 to solve this problem by replacing the CLBs and assuming some of the high courts' authority in business law issues with the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal_(NCALT). However, this attempt faced challenges to its constitutional validity. Eventually, the Supreme Court laid out specific guidelines regarding the qualifications and experience required for tribunal members. The Act reintroduces this idea in accordance with the Supreme Court's guidelines. Although the NCLTs and NCLAT are yet to be

established, their implementation is expected to expedite case resolutions and make certain that the judges handling the cases are technically knowledgeable in company law.

8. **EXIT OPTION FOR MINORITY STAKEHOLDERS** - In India, where insider models predominate, minority shareholders find themselves particularly exposed. Beyond enforcing stricter rules for independent directors and auditors to safeguard the interests of the minority, the Act arms the minority with tools for empowerment. Alongside class action lawsuits addressing mismanagement and fraud, the Act offers an exit avenue for dissenting minority shareholders who disagree with specific company changes, like alterations in the memorandum or mergers/amalgamations. This exit provision mandates the controlling shareholders or promoter group to extend an exit opportunity to dissenting minority shareholders. This process is similar to a buyback scenario in which the promoter group on behalf of the company offers to buy back the shares held by the minority.

Although guidelines from SEBI for implementing this option are pending, the provision has sparked varied reactions. While seen as a positive step towards empowering the minority, concerns have arisen regarding the potential for a small minority to hinder significant business decisions, such as venturing into new business areas. Yet, such concerns might not hold weight, as the Act primarily aims to grant the minority shareholder the choice to exit in specific circumstances.

For instance, in the Satyam case, a proposed acquisition was first approved by the board unanimously but was later withdrawn as a result of criticism from American shareholders. In the absence of U.S. cross-listing, Indian shareholders would have had no recourse but to retain their shares even amid questionable transactions. If implemented effectively, the exit option could serve as a valuable recourse for minority shareholders facing similar situations in the future.

CONCLUSION

The core elements of the corporate governance framework in India are described in this article. Although India's legal system appears to provide some of the best levels of investor protection in the world, the actual situation is marked by sluggish development and notable cases of corruption. A considerable segment of India's Small and Medium-sized Enterprises (SMEs) operates through informal governance mechanisms based on relationships, hindering funding and maintaining higher capital costs. Even though India has one of the lowest percentages of non-performing assets, it has a strong banking system and ranks highly in terms of loan accessibility.

Corporate governance remains an uncompleted task in India. Enhancing governance standards has been a priority for Indian policymakers for the past two decades. Scandals have raised awareness, compelling the government to protect public interest and restore market confidence. Yet, the need for improved governance continues to intersect with economic growth, competitiveness, global capital flow, and financial market expansion. Laws have been strengthened, regulations tightened, compliance regimes enhanced, and penalties made more severe to deter corporate misconduct. There's a prevalent recognition of robust governance's importance in the current landscape. However, recent instances of corporate misbehaviour in headlines reaffirm experts' views that stringent regulations alone do not comprehensively resolve governance issues.

Numerous factors hinder effective corporate governance enforcement. Despite adopting global best practices, implementing them beyond their original context remains challenging. Extreme measures like capping subsidiary companies' conflict with ease of business and generate discontent in corporate circles. Intense competition has fragmented corporate law enforcement. Although criminal sanctions act as a strong deterrent, procedural delays due to the demanding burden of proof slow the court system. Additionally, the underdeveloped class-action regime and an overly stringent legal and regulatory framework could backfire in governance matters.

Despite these hurdles, momentum exists for ongoing reforms, building on substantial changes already made. These positive strides are set to assist Indian industries in securing financial gains, bolstering investor trust, and nurturing transparent practices to sustain and amplify newfound prosperity and growth.

REFERENCES

[1] Shireen Sultana, “Corporate governance in India: Evolution, legal framework and challenges for the future “25 *Journal of humanities and social science (2020)*

[2] Akshaya Kamalnath, Corporate Governance Reforms in India – Accommodating Local Culture Along with the Drive for Global Convergence Available at SSRN: https://ssrn.com/abstract=2382595 or http://dx.doi.org/10.2139/ssrn.2382595

[3] Dr Nayantara Padhi, Dr. Kamal Vagrecha, A Study on Corporate Governance Practices of Indian Financial Sector Companies (2017) (UNPUBLISHED PROJECT REPORT, Indira Gandhi National Open University)

[4] C. Udaya Kumar Raju; M. Subramanyam; Himachalam Dasaraju, ”Emergence of Corporate Governance in India”, 2 *International Journal Of Multidisciplinary Management Studies* ISSN 2249 8834 (2012)

[5] Afsharipour, Afra, A Brief Overview of Corporate Governance Reforms in India (April 2011). Conference Board Director Notes No. DN-020, UC Davis Legal Studies Research Paper No. 258, Available at:

[6] SSRN: https://ssrn.com/abstract=1729422 or http://dx.doi.org/10.2139/ssrn.1729422

[7] Chakrabarti, Rajesh and Kagade, Mandar, “Corporate Governance — Evolution and Challenges in the New Companies Act” (June 21, 2018). Available at SSRN: https://ssrn.com/abstract=3200708 or http://dx.doi.org/10.2139/ssrn.3200708

[8] Bharat’s Corporate Laws, 2016 (New Delhi: Bharat Law House Pvt. Ltd.)

[9] Bharat’s Manual of Stock and Exchange Bank of India (SEBI), 2016 (New Delhi: Bharat Law House Pvt. Ltd.)

[10] Wells, J.T. (2011) Corporate Crimes Handbook, Prevention and Detection (New Jersey: Wiley) and Tracy L. Coenen (2008), Essentials of Corporate Crime, (New York: Wiley).

[11] Alexander, C.A.and Cohen M.A. (1996), New Evidence on the Origins of Corporate Crime, (U.S. Department of Justice-Antitrust Division)

[12] Doogar, M. (2010), Accountancy Business and the Public Interest (2011), visar.csustan.edu/aaba/Seow2011.pdf

[13] Government of India, Ministry of Corporate Affairs (2011), Induction Material (New Delhi: MCA).

[14] Ministry of Corporate Affairs e-book, available at www.mca.gov.in, as on 13th September, 2015.

[15] Central Economic Intelligence Bureau, Indian Agencies Fighting Economic Crime available at www.pnbindia.in/new/En/content/chapter5.htm

[16] Securities and Exchange Board of India (Prohibition of Crimeulent and unfair Trade Practice Relating to Securities Market), Regulation, 2003

[17] Beccaonline http://www.beccaonline.org/images/understanding_CorporateCrime_Espionage.pdf

[18] Ramaiya, A. (2011), Ramaiya’s Guide to Companies Act (Nagpur: Lexis-Nexis Butterworth)

[19] Varuna Bhanrale, Ashish Kabra and Vyapak Desai, Nishith Desai & Associates, India: SEBI Commands increased authority, http://www.mondaq.com