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Analyzing the Independence of Independent Directors in the backdrop of Corporate Scams in India.

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Abstract

Corporate fraud has negative effects on stakeholders, the stock, the company's workers, investors, and shareholders in addition to damaging the nation's reputation and economy. According to several legal definitions in India, "Fraud" encompasses deliberate fraudulent behavior that is at odds with corporate governance norms. The ease of doing business was given top priority by the legislative branch, which concentrated on more attractive laws to create business opportunities but forgot about the consequences of fraud that could happen and had no laws to prevent it. As a result, the world has seen exponential growth in Corporate Fraud in recent years. This paper discusses various corporate frauds in India and other countries like Satyam scam, IL&FS scam, etc.

After the discovery of several corporate scams, which underlined the urgent need for regulation in the corporate governance framework, corporate governance has gained attention in the Indian setting. As of now, there are still some flaws in the Indian model of corporate governance, including the promoter dominance structure, the exclusion of private companies from the framework for corporate governance, the board of directors' accountability, the degree of independence of independent directors, etc. As a result, it is now necessary to examine the assessment in the Indian Corporate Governance Framework as well as the problems and difficulties that are pertinent to the existing system.

Against this backdrop, this paper also tried to find out the ways through which these frauds can be prevented in the future and how the corporate Governance framework should be restructured to avoid these frauds in India.

Keywords- Corporate Governance, Corporate Fraud, Investor protection, corporate scams, Independent Directors.

Introduction

Corporate fraud now poses a serious threat to the economy as a whole and is an inevitable feature of life for the typical investor. Corporate fraud has negative effects on stakeholders, particularly small investors, as well as the nation's reputation and economy. However, comparable unfavorable impacts have recently been observed with present investors and serve as a barrier for future foreign investors, whose participation in a developing economy like India is crucial.

Corporations play a vital part in the growth of the any economy. Companies are the backbone of the Indian economy. In terms of the number of registered businesses and the amount of paid-up capital, India's corporate sector has increased steadily over the past 20 years or so. Several reform initiatives have been made by the national government to improve the corporate sector. Nevertheless, despite all these attempts, corporate fraud poses a severe threat to the future perspective and growth of corporates in our nation. The term "fraud" really refers to a deliberate deception intended to give the offender an unauthorized benefit or to deprive a victim of a right.

Fraud may have a terrible effect on the victims and leave them with long-lasting psychological and physical losses. Corporate fraud refers to unlawful, unethical, and dishonest behavior carried out by an organization or by an individual acting in their official capacity as an employee of the organization. Business fraud strategies are sometimes quite intricate and hard to spot. This can take many different forms, including professional crime, fraud, tax evasion, bribery, counterfeiting, forging, and ad hoc crimes. Corporate investors' trust may be shaken by corporate fraud. Investors may choose to invest elsewhere rather than in the securities market if their interests are not safeguarded.

The researcher has created this research paper on the subject of “Corporate Governance Framework in India Vis-à-vis Investor Protection" based on this socio-legal spectacle. The definition and significance of the phrase "corporate fraud" have been addressed by the researcher. I have talked about the types of corporate fraud committed in India, their scope, and recent developments. Finally, the author offers some recommendations to stop corporate fraud in India. The researcher also covered the connection between investor protection and corporate Governance Framework.

Meaning of Corporate Governance

"Corporate Governance" is a term used to describe a multitude of systems, rules, and procedures as well as the interaction between the board of a corporation and its shareholders, creditors, and other stakeholders. It is "the control of management in the best interests of the company, including accountability to shareholders who elect directors and auditors and vote on say on pay," according to one academic definition. In the end, how an organization is managed and whether it succeeds or fails is influenced by the rights and relationships among organizational stakeholders.[1]

[1] Niharica Verma & Shraddha Chirania, Corporate Governance: Comparative Analysis between India and USA, 20 Supremo Amicus 367 (2020).

Legally speaking, it may be described as something concerned with maintaining equilibrium between individual and communal aspirations as well as between economic and social purposes. The purpose of the corporate governance framework is to both promote resource efficiency and demand accountability for the good management of those resources.[2] The goal is to bring people, businesses, and society's interests as close to alignment as feasible. Stronger growth and more inclusive societies are supported by good corporate governance, which aids in creating the climate of trust, openness, and accountability needed to promote long-term investment, financial stability, and commercial integrity.[3]

Corporate governance started to take shape in the middle of the 1990s when economic liberalization and the deregulation of enterprises became realities in India. In India, the term "arthshastra" is frequently used to refer to corporate governance and has been used for many years. India used to have rulers and disciples instead of just CEOs, but the fundamentals have not changed; shareholders have taken their place.[4]

Company governance is significantly influenced by a variety of parties involved in an institution's management structure, including shareholders, employees, lenders, shareholders, and the administration. Corporate governance is believed to enhance a company's performance.[5] The primary goal of adopting strong corporate governance is to maximize stakeholders' and shareholders' long-term value. There exists a notable dichotomy between governance and management, with the significance of the former often being inadequately acknowledged. The operational management of these institutions is entrusted to the executive team and the subordinate managers who are accountable to them. Organizations engage in several activities to fulfill their objective, such as budget preparation, strategic execution, product and service delivery to clients and customers, and other necessary tasks.[6]

In contrast, governance pertains to the act of supervising and monitoring. The turnover of managers and executives is a transient phenomenon, whereas governance frameworks endure in a permanent manner. The individuals commonly referred to as independent directors, non-executive directors, governors, or trustees, depending on the specific institutional context, assume the crucial role of being the true caretakers of the organization. The primary responsibility of the individual is to maintain the organization's alignment with its objective, effectively manage the competing interests of its stakeholders, and strive for the overall welfare of all parties involved. They bear the final accountability. In the event of an organizational breakdown or malfunction, such as a human or financial scandal, corruption, or a violation of regulations or procedures that jeopardizes individuals' well-being, the responsibility to rectify the situation is with the independent directors. Additionally, it is incumbent upon them to take measures to prevent the occurrence of these failures.[7]

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[2] Ibid.
[3] Ibid.
[4] Ibid.
[5] Harshita Yadav, An Analysis of Recent Corporate Frauds in India and USA and Their Nexus with Corporate Governance, 5 INT'l J.L. MGMT. & HUMAN. 337 (2022).
[6] Gerry Brown Andrew Kakabadse Filipe Morais, The Independent Director in Society, 4, (Springer Nature Switzerland AG 2020).
[7] Id at 4.

When Satyam Computer Services Limited's regulatory failure and largest-ever corporate fraud in India were made public, concerns about effective corporate governance have risen sharply.[8]

DEFINITION OF THE TERM CORPORATE FRAUD

Corporate fraud refers to illegal actions carried out by a person or a business that is done dishonestly or unethically. This form of corporate fraud frequently serves to benefit the person or corporation doing it. Corporate fraud schemes go beyond the purported responsibilities of an employee and are distinguished by their economic impact on the company, other employees, and third parties. Any type of fraud committed by businesses or their top executives is referred to as corporate fraud. Some corporate frauds are given as follows[9]-

a. Misrepresenting assets or revenues in accounting and reporting;

b. "Cooking the books" for accounting;

c. Fraudulent transfers of business assets;

d. Illegal or fake business loans to the company and siphoned by a business leader;

e. False purchases and other fraudulent transactions;

f. Intentionally inaccurate financial reports;

g. Falsification of tax returns;

h. Bribery and corruption;

i. False employment credentials; and

j. Payroll fraud & Suspense accounting fraud etc.

Other types of corporate crimes include payroll fraud, procurement fraud, incorrect journal vouchers, suspense accounting fraud, fraudulent employment credentials, theft of money, property, or secret information, as well as bribery and corruption. Corporate scams can come in a variety of shapes and sizes from time to time and from case to case. There is not a single hypothesis that can account for all business scams. Corporate scams have a significant negative impact on the viability and efficient operation of corporate entities.[10]

[8] Supra note 5 at 4.
[9] Criminal lawyer group, https://www.criminallawyergroup.com/practice-areas/corporate-fraud/ (last visited march 15, 2023).
[10] Ibid.

SATYAM SCAM

Satyam Computer Services Ltd. Was established in 1987 in Hyderabad by two brothers named Rama Raju and Ramlinga Raju. Beginning with 20 people, the company provided IT and BPO services to a range of industries. The company's initial success quickly led to it being listed and choosing an IPO on the BSE in 1991. After this, Deere and Company became the company's first Fortune 500 client.[11] This also made it possible for the company to expand quickly and get to the top of its industry. After TCS, Wipro, and Infosys, Satyam quickly rose to become the fourth-largest IT software exporter in the sector.[12]

At its zenith, Satyam employed over 50,000 people and had operations in more than 60 nations. Now, Satyam was regarded as the best illustration of an Indian success tale. Its financials were flawless as well. In 2003, the company was valued at $1 billion. Soon after, in 2008, Satyam exceeded the $2 billion mark. The firm had a CAGR of 40%, operational profits of 21% on average, and a 300% gain in stock price throughout this time. Now, Satyam served as an example for other businesses. For being a "leader in Indian Corporate Governance and Accountability," MZ Consult was awarded the "Golden Peacock Award" for Corporate Accountability in 2008.

The board of Satyam chose to acquire Mr. Raju's real estate firm Maytas in the latter part of 2008. The decision was reversed within a day because the shareholders did not like it, which affected the stock price. The World Bank banned Satyam from conducting business with any of the banks' direct contacts on December 23rd for an eight-year term. This was one of the harshest sanctions the World Bank had ever levied on an Indian outsourcing firm. The World Bank had claimed that Satyam had misused perks given to the workers of the banks and had neglected to keep records to justify fees made to its subcontractors.

On January 7th, 2009, the markets got Mr. Raju's resignation and, along with it, a confession that he had altered accounts totaling Rs. 7000 crores while investors were still dealing with the failed acquisition of Maytas and the World Bank's accusations. Clients and investors anywhere in the world expressed disbelief. This is simply not possible! We would have to go back to 1999 to comprehend the con. Mr. Raju has started exaggerating the quarterly earnings to exceed the forecasts of the analysts. For instance, the October 17, 2009 figures overestimated quarterly earnings by 97% and revenues by 75%. Along with the company's worldwide internal audit chief, Raju had carried out this action.[13]

Mr. Raju used his computer to fabricate several bank statements, adding money that did not exist to the balance sheet. The company's worldwide director of internal audit produced fictitious invoices and client identities to boost sales. In turn, this would provide the business simple access to financing, and the perception of its success caused the share price to rise. Moreover, the money that the business had raised from American

[11] Lexforti, https://lexforti.com/legal-news/satyam-computers/, (last visited march 16, 2023).
[12] Id. At 5.
[13] Id.

markets was never even recorded on the financial sheets. But Raju thought this was insufficient, so he continued to make records for fictitious workers and would withdraw wages on their behalf.[14]

IL & FS Scam

The Reserve Bank of India has designated Infrastructure Leasing & Financial Services Ltd (IL&FS) as a systemically significant Core Investment Firm. Its business is to lend money to its group companies' businesses (and hold an investment in such companies). There are several group firms under the IL&FS umbrella that operate in a variety of industries, including energy, transportation, finance, etc. The Central Bank of India, HDFC Ltd, and the Unit Trust of India initially pushed IL&FS.[15]

The road arm of IL&FS was having trouble paying bond repayments as of July 2018. Also, at the beginning of September 2018, one of the IL&FS Group's businesses was unable to pay back a short-term loan of Rs. 1,000 crores obtained from the Small Industries Development Bank of India (SIDBI). Also, certain group firms missed payments on a variety of short- and long-term deposits, inter-corporate deposits, and commercial papers.[16]

The Central Government applied to Sections 241 and 242 of the Companies Act, 2013, before the NCLT, Mumbai Bench as a result of IL&FS's ongoing failure to make debt payments and the impending risk of a financial market ripple impact. Because the former Board had severely mismanaged public funds, it demanded the immediate suspension of the IL&FS Board of Directors and the nomination of specific new directors. Moreover, it was claimed that the company's operations were being run against the public good.[17]

The NCLT approved the interim request to suspend the prevailing Board of Directors and replace it with the six people suggested by the Center using an order dated October 1, 2018, invoking its authority under Sections 242, 242, and 246 r/w 339 of the Companies Act. The NCLT further prohibited the suspended Board members from selling their personal belongings. The new Board of Directors is led by Mr. Uday Kotak. The responsibility of IL&FS and its group businesses' orderly dissolution has been given to the new Board.[18]

The Disciplinary Directorate of the Institute of Chartered Accountants of India (ICAI) suo motu sought to consider the performance of the statutory auditors of the said companies in light of the detrimental effects that the IL&FS Group has had on the financial markets as a whole and the numerous allegations regarding the financial statements of the said companies. According to an investigation of the statutory auditors of the IL&FS Group Businesses, the ICAI discovered significant errors, flaws, and manipulations on the financial statements by the abovementioned auditors.[19]

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[14] Id.
[15] Moneylife, https://www.moneylife.in/article/ilfs-scam-full-reports-of-sfio-and-mca-uploaded/55865.html, (last visited march 18, 2023).
[16] Id.
[17] Id.
[18] Id.
[19] Id.

It was noticed that the state of the aforementioned firms as a result of poor management reflects on its statutory auditors. The statutory auditors of the aforementioned firms have been found prima facie guilty of professional misconduct by the ICAI.[20]

PNB

PNB was the first significant financial fraud in the nation to be disclosed, involving a huge sum of about Rs. 15000 crores. Mehul Choksi and Nirav Modi defrauded people (through Gitanjali Gems, a listed company owned by him). Both were engaged in the importation and exportation of polished diamonds. Both have developed retail diamond business networks over time, both in India and in well-known worldwide locations. Nirav excelled in public relations and theatrics. Nobody questioned his financial source at the time. Only after a few years did this massive scam come to light, shocking the country like never before.[21]

With the help of a few junior-level banking staff, he was establishing large-amount LCs with no underlying transactions (basically, fake money) and robbing PNB and other institutions. He took advantage of the simple IT system flaw that prevents LCs from being opened with the underlying transactions. Unlike what was required of all banks, LCs opened were not reported in the RTGS system. So, until the deception was discovered, the existence of such LCs remained unknown.[22]

The amounts involved are roughly Rs. 16000 crores (including dues of Mehul Choksi). Again, several warning signs were there in this case but were disregarded by bank management and authorities, who might have discovered the fraud far sooner. The board was presented with periodic inspection reports from the RBI noting this problem, but nothing was done about it. The RBI also repeatedly issued red alerts to all banks, ordering them to fix these system flaws (mainly RTGC and non-reconciliation). Yet, these were also ignored.[23]

Nirav and Mehul were able to leave India by plane, but India is presently making a strong effort in foreign courts to get them returned.

Recent Allegation of Hindenburg Report

The Hindenburg Research assessment on the Adani Group, which was published in January 2023, is a critical examination of the financial and operational procedures used by the Indian company. The article has ignited a contentious discussion over one of India's leading corporations' business practices and raises significant concerns about the morality and legality of Adani Group's operations.[24]

The Hindenburg investigation asserts that Adani Group inflated its revenues and understated its debt using aggressive and unusual accounting techniques. According to the research,[25] the firm has accrued significant

[20] Id. at 7.
[21] CA Naresh Kataria, Corporate Frauds in India – Part I, Lawstreetindia, (May 04,2021, 8:20 PM), http://www.lawstreetindia.com/experts/column?sid=488.
[22] Id.
[23] Id.
[24] Hindenburg research, https://hindenburgresearch.com/adani/, (last visited march 24, 2023).
[25] Id.

income from joint ventures and subsidiaries that are not included in its consolidated financial statements and thus presents an inaccurate image of the company's financial condition and profitability. The Hindenburg investigation accuses the Adani Group of insider trading and tax fraud in addition to these financial issues. According to the article, these charges are supported by documents gathered from the Indian government and regulatory bodies.[26]

Role of Corporate Governance

A company's economic performance is influenced by its adherence to corporate governance principles as well as its productivity, inventiveness, and customer-focused culture. In developed economies, putting corporate governance concepts into practice enhances a company's financial position and accelerates systematization.[27] Additionally, a lack of honesty and insufficient accountability undermines the efficacy of corporate governance procedures. Due to massive corporate frauds and worldwide financial crises, proper corporate governance is important, and the government assures the long-term development and health of firms.[28]

The goal of corporate governance is to make it simpler to manage and regulate economic processes. Its guiding principles include working impartially, being transparent, and making more disclosures to safeguard the interests of many stakeholders. Corporate governance is intended to facilitate wise judgments, which will improve a company's performance.[29]

Early on, compliance with good governance practices was purely voluntary and not truly a requirement set down in the law. Yet, as a result of business failures brought on by unethical top-level management practices, these nations frequently have implemented mandatory rules and norms to improve corporate governance structure.[30] The Cadbury Committee report in the United Kingdom (UK) in 1992 and the Sarbanes Oxley (SOX) Act in the United States (US) in 2002 are seen as important advancements in corporate governance regulations, with comparable codes of good governance being enacted across the rest of the globe. Governmental laws become a type of formal, prescriptive framework for consistency within a country.

CORPORATE GOVERNANCE FRAMEWORK IN INDIA

The basic structure of corporate governance in India is as follows-[31]

- The Companies Act of 2013 comprises regulations that regulate the make-up of the board, board meetings, board procedures, general meetings, independent directors, audit committees, related party transactions, financial statement reporting obligations, and other issues.
- Rules established by SEBI: "The Securities and Exchange Board of India (SEBI)" is a regulating body that oversees listed firms and sets rules and regulations to protect investors.

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[26] Id.
[27] Anjali Singh, Corporate Governance Regime in India: An Exigency for Reform, 5 INT'l J.L. MGMT. & HUMAN. 929 (2022).
[28] Id.
[29] Id.
[30] Id at 8.
[31] Anish Roy, Corporate Governance in Public Sector Undertakings, 17 Supremo Amicus 54 (2020).

- Stock Exchange Standard Listing Agreement: For corporations that shares are traded on stock exchanges. (LODR)
- The accounting regulations released by "The Institute of Chartered Accountants of India (ICAI)": The Institute (ICAI) is a self-governing organization that disseminates guidelines for financial data reporting and auditing. The accounting information must, among other things, represent an accurate assessment of the state of the operation of the firm or enterprises and adhere to the accounting standards outlined in Section 133 of the Companies Act 2013.
- Under the Companies Act, the ICSI, a self-governing organization, establishes secretarial standards.

Following the fiscal crisis of 1991, the Indian economy underwent liberalization and privatization. Indian enterprises required financing to develop and thrive. India's demand for foreign investment made corporate governance changes necessary. High capital market governance has since received a lot of attention from SEBI.[32] To enhance accountability and openness, SEBI often modifies its guiding principles, rules, and legislation. The Confederation of Indian Industry (CII) is an independent organization that collaborates with the government on policy issues. In 1999, SEBI adopted Article 4915 from the CII code of governance.[33] To promote greater uniformity, it has undergone frequent updates. India has made adjustments to increase societal, environmental, and business openness. 2011 saw India's government's "National Voluntary Guidelines on Social, Environmental, and Economic Responsibility of Business published by the Ministry of Corporate Affairs (Ministry of Corporate Affairs, 2011). "According to the requirements, listed companies must create a Corporate Responsibility Report to increase the caliber of disclosures (BRR).[34]

Where the problem lies?

On the observation of the above-mentioned scams, we can observe that lack of transparency in the decision-making and dominance of promoter is the main root cause responsible for such corporate scams. At present, two persons who have the responsibility to bring transparency are the independent directors and auditors but due to failure of these two persons in the corporate governance framework led to improper functioning and reporting. We are not discussing the role of auditors in this paper because this paper is focused on the role of independent directors, which we will discuss in further sections.

Role of Independent Directors

The 1992 Cadbury Report is generally regarded as the impetus for the Independent Director concept. It introduced both the concept of an Independent Director and a Non-Executive Director.[35] Following the Cadbury Report, the Non-executive Directors have been given two primary responsibilities: (i) evaluating

[32] Id.
[33] Id.
[34] Id. at 10.
[35] Gopal Ramasubramanian & Gajraj Singh, Independent Directors, Corpo Rate Governance and Company Performance - India, 4 Supremo Amicus 168 (2018).

the performance of the board and its directors, and (ii) resolving conflicts of interest by leading the decision-making process.[36]

The category of Independent Directors comprises a distinct subset of Non-Executive Directors. It is recommended that Independent Directors maintain a level of separation from any trade or other associations that may impede their ability to make impartial decisions, except their shareholdings and Director's compensation.[37] The Board of the Company is granted adequate discretion to determine whether the qualifications of an Independent Director have been satisfied in the evaluation of each Director.[38]

The Securities Exchange Board of India (SEBI) Guidelines' clause 49 was drafted per the Kumar Mangalam Birla Committee's recommendation to include independent directors in India.[39] Several further studies, including those from the Naresh Chandra Committee, Narayan Murthy Committee, and eventually the JJ Irani Committee, were released up to 2013, all of which recommended contradictory rules for independent directors that were ultimately addressed by the Companies Act of 2013.[40]

The Companies Act of 2013's Section 149(6) gives a thorough explanation of how an independent director should be chosen in a corporation as well as a code of conduct for independent directors. In addition to the Companies Act of 2013, the independent directors are governed by the SEBI Guidelines and the LODR Regulations (initially in 2015, most recent modification in 2022).

An independent director must meet several baseline conditions, according to the International Finance Corporation (IFC)[41], Only those who haven't worked for the corporation or any of its affiliated parties in the five years before the appointment date must be taken into consideration. Also, they should not be associated with any business that the firm uses as a consultant, advisor, important supplier, or customer. They shouldn't be associated with an NGO that receives a substantial amount of financing from the corporation, its linked organizations, or senior management, or have any personal service agreements with any of these parties.[42]
In general, IDs shouldn't hold executive positions in companies if any of the executives sit on the board of directors or are related to someone who is now employed as an executive officer by the firm or has been for the last five years.[43] Similar instructions for the appointment of IDs have been released by the Securities and Exchange Board (SEBI) in India. The norms adopted by SEBI, however, are less strict than those taken into account by IFC.

[36] Id.
[37] Id.
[38] Id.
[39] Id.
[40] Id. at 11.
[41] International Finance Corporation, https://www.ifc.org/wps/wcm/connect/b3f84d89-541a-45cc-a7db-41a20c021763/IFC_Indicative_Independent_Director_Definition_062719.pdf?MOD=AJPERES&CVID=mKqgtnW, (Last Visited march 24, 2023).
[42] Id.
[43] Id.

As per the SEBI,[44] an independent Director is a non-executive director who, aside from earning the director's salary, has no significant financial ties to the firm, its promoter, directors, senior management, or any other connections that may compromise the independence of the direction. They cannot be connected to the company's executives from the three financial years prior, or to anybody who has had a managerial position at the board level or one below it, including the promoters. In the three years prior, they should not have held the positions of partner, executive, or member of an audit firm connected to the corporation. They shouldn't be a major stakeholder in the business, a supplier of materials, a servicer for customers or lessors, or a provider of any services.[45]

The IDs generally fit within the corporate governance system as a whole. They are chosen to provide a functional and balanced board. There is no getting around the reality that the board of directors (BoD) is the most important tool for adhering to corporate governance, and that it has to be closely monitored. By actively criticizing the formulation of policy choices and initiatives, the IDs support the board.[46] By closely examining the management's performance, they also ensure responsibility. They can complete these activities more effectively due to their independence because they don't have any affiliations that can influence their judgments. They are responsible for the company's decisions, but they are less likely to be influenced by their interests.[47] They are in a unique position to examine the company's procedures because of the aforementioned qualities, since they have typically been seen as "adversaries" inside the board. But, since they have come to understand that independent directors bring more to the table than they do, which suggests that over the long term, independent directors bring a more unbiased viewpoint, their stance has progressively grown more acceptable.[48]

There exist two distinct models of corporate governance: the Outsider model and the Insider model.[49] The Outsider model observed in countries such as the US and the UK is distinguished by a clear separation between ownership and control, where shareholders and the board assume these respective roles. India adheres to the Insider model, characterized by the significant influence of closely-knit familial groups, leading to the consolidation of ownership in a select few. As the models exhibit distinct characteristics, the associated challenges also vary accordingly.[50]

The Outsider Model is subject to the Manager-shareholder Agency predicament, whereby the Board's decisions may not fully align with the collective interests of shareholders.[51] To ensure effective oversight of the board and equitable representation of shareholder interests, the introduction of independent directors has been proposed. Conversely, the Insider Model is susceptible to the Agency problem between Majority and

[44] Securities and Exchange Board of India, Equity Listing Agreement, 2000. cl.49 (A) (iii) (2000).

[45] Id.

[46] Your legal career coach, https://www.yourlegalcareercoach.com/roles-and-responsibilities-of-independent-directors-under-company-law/, (last Visited march 24, 2023).

[47] Id.

[48] Jitendra Singh, Mike Useem & Harbir Singh, Corporate Governance in India: Is an Independent Director a Guardian or a Burden, Knowledge at Wharton, (March 25, 2023, 8:15PM), https://knowledge.wharton.upenn.edu/article/corporate-governance-in-india-is-an-independent-director-a-guardian-or-a-burden/.

[49] Umakanth Varottil, *Evolution and Effectiveness of Independent Directors in Indian Corporate Governance*, 6 Hastings Bus. L.J. 281 (2010).

[50] Id.

[51] Id.

Minority shareholders, where the concentration of power among Majority holders may result in neglect of the interests of Minority shareholders.[52]

Due to the prevalence of large-family-dominated businesses, Since they are chosen and managed by the promoters, independent directors may not be able to balance the interests of minority shareholders and the Indian corporate sector has come under fire for its poor track record of upholding corporate governance requirements, which poses substantial risks to accountability and transparency.[53] The primary shareholders in most of these businesses have traditionally been family members who did not feel compelled to provide the IDs with enough information, making it difficult to work for them, especially given that they used to attend only a few meetings each year that was largely ceremonial.[54] Because of this, it was hard for independent directors to properly understand the issues before the boards and to hold huge corporations accountable. This stood in stark contrast to the more effective Western businesses where IDs are seen as management's collaborators and "outside guardians" whose responsibility it is to make sure the management doesn't lose sight of generating shareholder value.[55]

Researchers suggest that the national commission of independent directors can be a solution for the appointment and monitoring of working of independent directors under the central government which will provide sufficient autonomy to the independent directors.[56] Along with this, independent directors must submit an annual report to the commission about the working of the company and if they are resigning, they must state a clear reason for their resignation.[57]

Conclusion

In a society, people can be honest, ethical and may be dishonest or unethical. The same applies to an organization also, where we cannot expect everyone to be true and fair so we need a framework where potential risk can be detected so that the organization can run properly and damage can be prevented. In the case of corporate governance independent directors play the role of risk detection and risk prevention but it is seen that where big corporate houses and crony capitalism are in existence, they are unable to do anything in preventing the risk. So, independent directors in the corporate governance framework must be strengthened and their liability must be fixed by way of the statute itself, not by regulations. Corporate boards' operating procedures should be changed to enable independent directors to more effectively oversee executive directors. In addition to this, there have been questions regarding the Caliber of independent directors and their suitability for the position. The need for training and orientation must be emphasized more to address this issue.

[52] Id.

[53] Supra note 46.

[54] Id.

[55] Manu Sharma, Role of Independent Directors in Corporate Governance, 16 Supremo Amicus 198 (2020).

[56] Sriranjani R, Circle Among Square: Comparatively Analysing the Role and Need for Independent Director in India with Singapore, 5.2 JCLG 98, (2023).

[57] Id.