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EFFECTIVENES OF INDEPENDENT DIRECTORS IN PREVENTING CORPORATE MISGOVERNANCE IN INDIA: A CRITICAL LEGAL ANALYSIS

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ABSTRACT

The independent directors can be delineated as a vital institution in the area of corporate governance in current times. Their main role is to bring objectivity, oversight and accountability in the decisions taken in boardrooms by striking a balance between the influence of management and promoters as well as protecting the interests of the minority shareholders and other stakeholders. The introduction of the Companies Act of 2013 and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations of 2015 indicates that the concept of independent directors has moved from being a regulatory institution to a legal framework in India. Although this complex legal system exists in regard to corporate governance, the efficacy of independent board members is still doubted in the face of continuing issues with corporate governance practices around the world. In the Satyam scandal, even a board consisting of renowned independent individuals failed to sense any wrongdoing. Scandals like IL&FS or ICICI Bank-Videocon raise many problems, such as asymmetry of information, domination by promoters, inadequate oversight of the board, and conflict of interests, to name a few. Current academic literature on the topic points to the essence of distinguishing legal independence from practical independence. The paper evaluates the effectiveness of India's laws and regulations pertaining to independent directors in preventing mismanagement in corporations. For this purpose, it reviews among others the SEBI LODR Rules and provisions of Schedule IV, Sections 149, 166, 177 and 178 of the Companies Act of 2013 along with the recommendations of the Kotak Committee for Corporate Governance and related judicial decisions. Furthermore, it looks into the conflict between independence and excess and establishes the involvement of independent directors in regard to specific corporate governance failures.

Keywords: Independent Directors, Corporate Governance, Companies Act 2013, SEBI LODR, Corporate Misgovernance, Board Independence, Minority Shareholders, Promoter Control, Corporate Accountability.

1. INTRODUCTION

Corporate governance represents the mechanism of control, management, and accountability of corporations. It aims to bring an acceptable balance between shareholder interests, managerial power, and the broad consideration of other stakeholder concerns. In contingent oriented settings like India, the concept of corporate governance assumes added importance, as one of the major governance issues is generally not the separation of managers and shareholders, but rather the modification of minority shareholders by promoters and controlling shareholders.

Independent directors have emerged as an important mechanism to address these concerns. Their role is to provide an objective view in the boards and evaluate decisions taken by executive directors, managers, and principal stakeholders. The concept of independent directors gained momentum in India with the introduction of the corporate governance norms by the Securities and Exchange Board of India (SEBI), especially through Clause 49 of the Listing agreement. The enactment of the Companies Act, 2013 transformed the institution by providing a clear legal framework for independent directors. Section 149 creates an obligation upon certain types of companies to appoint independent directors and also outlines the criteria for eligibility of appointment¹. Further, Section 149(12) provides a unique liability framework for independent directors and non-executives².

Schedule IV outlines the framework for Independent Directors and their key functions and duties and participation in board processes³. Simultaneously, SEBI's LODR Regulations provide additional standards for all listed entities' governance. However, this system of regulations does not automatically lead to an effective corporate governance process. When SEBI established the Kotak Committee on Corporate Governance in 2017, it specifically highlighted the necessity to ensure the "independence in spirit" of Independent Directors and their active involvement in the company's affairs⁴. The issue of differentiation of formal and real independence is central to this paper.

2. EVOLUTION OF INDEPENDENT DIRECTORS IN INDIA

The concept of independent directors has developed alongside the evolution of corporate governance and securities regulations in India. Before the formalization of laws on the matter,

¹ Companies Act, 2013, § 149(4), (6) (India).

² Companies Act, 2013, § 149(12) (India).

³ Companies Act, 2013, § 149(8) & sched. IV (India).

⁴ Securities and Exchange Board of India, *Report of the Committee on Corporate Governance* (Oct. 5, 2017).

Indian corporate law had been based on the basic concept of fiduciary responsibilities of directors and the requirement that the board should act in the interests of the company. However, with the growing concerns about the control exercised by management, lack of transparency, protection of minority shareholders, and the role of listed companies, the situation called for a more systematic structure of board oversight. A significant development in this regard was the establishment of the Kumar Mangalam Birla Committee on Corporate Governance by SEBI in 1999⁵, which evaluated corporate governance mechanisms applicable for listed companies. The Committee emphasized the importance of a sound board structure and recommended more non-executive and independent directors' participation, specifically in the boards of listed companies. The recommendations of the Committee laid the foundation for the introduction of Clause 49 of the Listing Agreement, thus creating several rules of corporate governance applicable for listed companies.

The development of Clause 49 helped in determining the governance of independent directors in the country through the establishment of different parameters relating to the structure of boards, the ratio of independent directors and the constitution of significant committees of the board. With the creation of the Naresh Chandra Committee in 2002⁶, there were developments in relation to the framework as this committee examined issues related to corporate governance and audit, mainly on auditor independence and the relationships between companies, management and auditors. Subsequently, SEBI established the Narayana Murthy Committee in 2002 to assess compliance with Clause 49⁷. The committee recommended the improvements in matters like audit committee, financial disclosure, related party transaction and the duties of independent directors. Such developments indicate a gradual shift from merely having independent directors to realizing their role in being vehicles for monitoring the management practices and protecting the interests of shareholders.

Independent directors' importance became significant with the introduction of the Companies Act, 2013⁸ which moved independent directorship from being a requirement of securities regulations to being a legal aspect of corporate law in India. Section 149 provides independent directors with rules of governance and states the requirements needed for their appointment, eligibility, and independence. In addition, Schedule IV contains the Code for Independent

⁵ Securities and Exchange Board of India, *Report of the Kumar Mangalam Birla Committee on Corporate Governance* (1999).

⁶ Ministry of Finance, Government of India, *Report of the Naresh Chandra Committee on Corporate Audit and Governance* (2002).

⁷ Securities and Exchange Board of India, *Report of the Committee Appointed by SEBI on Corporate Governance Under the Chairmanship of Shri N. R. Narayana Murthy* (2003).

⁸ Companies Act, 2013, § 149 & sched. IV (India).

Directors that provides the definition of roles and responsibilities of independent directors while detailing the ethical commitments. Moreover, the law included details regarding the liability of independent directors as provided in Section 149(12) where it establishes that being an independent director does not automatically render anyone liable for actions/inactions of a company, while assuring liability in case the independent director acts knowingly, or by consent.

With the establishment of the Kotak Committee on Corporate Governance in 2017⁹ under the chairmanship of Uday Kotak, the evolution achieved one of its major milestones. This Committee studied the functioning of corporate governance practices and underlined the need to ensure that independent directors were independent "in spirit," not merely in the formal sense. The recommendations of the Committee had to do with independent directors, the evaluation of the performance of the board, agreements with related parties, the composition of the board, and the participation of the shareholders. Later amendments to the framework confirm that simply establishing a percentage of independent directors is not enough to achieve sufficient corporate governance practices.

The persistent instances of corporate governance failures, despite the presence of independent boards, cast doubt on the concept of legal independence being equivalent to actual independence. Factors such as promoter's presence, lack of information, dependence on management for corporate data, lack of adequate knowledge; time constraints, and fear of being reappointed can prevent independent directors from questioning the management of the company. Therefore, in contemporary times, the Indian viewpoint recognizes independent directors as not merely people vested with a legal role but as an institutional mechanism that will provide independent oversight and will protect minority shareholders from corporate misconduct committed by management and promoters. The evolution of this organization also included a change from "independence based on legal classification" into "independence in its real sense."

3. STATUTORY FRAMEWORK UNDER THE COMPANIES ACT, 2013

3.1 Section 149: Appointment of Independent Directors

Section 149 of the Companies Act 2013 includes company's legal obligations in regard to independent directors in India. This section requires that listed public companies have a minimum of one-third independent directors on their board, and other types of public

⁹ Securities and Exchange Board of India, *Report of the Committee on Corporate Governance*.

companies must appoint independent directors from specific classes of companies¹⁰. This section aims to ensure sufficient independent directors are present at the board with competent authority to make unbiased decisions without undue influence from promoters and possible management. However, the essence of independence cannot only be strictly assumed based on numbers. An independent director can still be biased despite having the title.

3.1.1 Eligibility Requirements

Section 149 of the Companies Act 2013¹¹ specifies that for independent directors to function properly, they must fulfill certain requirements and ensure that they are not involved materially with the company with regard to finances, family, or professional relations with the company, its promoters, and its management. This is important in order to avoid conflicts of interest and guarantee that decisions are really impartial. However, the law mainly talks about apparent ties while informal ties, relationships, interests, and reputation may not be mentioned in the law.

3.2 Section 149 (12): Liability of Independent Directors

The liability framework for independent directors and non-executive directors who are not part of the promoters or the key managerial personnel (KMPs) is laid out in section 149(12) of the Companies Act, 2013¹². The liability is incurred when the wrongful act or omission is committed with the consent of the concerned person, is related to the business of the company or occurs with their approval or involved them without their being aware of it in due course of their duties. The provision is meant to strike a balance between accountability and the need for protection. Directors should not be made responsible for any wrongdoing of the company merely by virtue of being the members of the board since they may not have been aware of the happenings and had no real opportunity to prevent them from taking place. At the same time, the protection granted by the legislation should not become an excuse for inaction or careless actions. Thus, if an independent director knowingly commits some wrongdoing, ignores serious warnings or fails to display the required diligence of his/her position, he/she may be held liable.

Thus, section 149(12) introduces key elements of knowledge, involvement, and due diligence instead of automatic vicarious liability. This allows for a balance to be struck between ensuring that limited liability does not cause potential professionals to be discouraged from becoming independent directors and creating an environment where properly holding such directors

¹⁰ Companies Act, 2013, § 149(4) (India); Companies (Appointment and Qualification of Directors) Rules, 2014, r. 4 (India).

¹¹ Companies Act, 2013, § 149(6) (India).

¹² Companies Act, 2013, § 149(12) (India).

accountable may lessen the effectiveness of the model. The aim of the provision is to ensure that independent directors can be held liable for genuine instances of infringement of their oversight duties rather than for every possible case of wrongdoing performed by companies.

3.3 Section 166: Duties of Directors

The provisions of section 166 of the Companies Act, 2013¹³ depict the duties of the directors of a company. The directors must act in accordance with the Memorandum and Articles of the company and must act diligently, honestly, and in the best interests of the company and its members, employees, shareholders, and the society in general. Moreover, they must discharge their duties and responsibilities with due care and skill and use independent judgment and act rationally. It is necessary to employ appropriate judgment when making decisions. Responsibilities as defined in section 166 are crucial for independent directors as their role is mainly linked with impartial oversight of the management and protection of the company and its stakeholders from wrongful actions. The independent director should not just approve the proposals of management but do due diligence while making decisions. Simply attending the meetings and voting does not mean performing the role of an independent director properly. Thus, it can be said that the provisions of section 166 should be used in coordination with those of Schedule IV.

3.4. Schedule IV: Code for Independent Directors

The Companies Act, 2013's Schedule IV includes the Code of Conduct for independent directors, which explains what it would be like for them to participate in corporate governance¹⁴. According to the Code of Conduct, independent directors can maintain their integrity, act fairly, devote enough time and attention to their functions, acquire reasonable information and clarification and actively participate in the meetings in a board of directors and board. Also, independent directors should monitor the reliability of financial reports, act in line with the interests of stakeholders and ensure that there is enough discussion on significant problems before they are solved. At the same time, the Code of Conduct states that independent directors should express their own opinion while executing the decisions taken by the board of directors. In this way, Schedule IV indicates that independent directors should take responsible action instead of merely observing how the companies behave.

¹³ Companies Act, 2013, § 166 (India).

¹⁴ Companies Act, 2013, sched. IV (India).

4. AUDIT COMMITTEE AND NOMINATION AND REMUNERATION COMMITTEE

4.1 Audit Committee

The Companies Act, 2013, through Section 177¹⁵, has provided for the formation of Audit Committees by specified companies in their organization structure in such a way that the function of the Committee must include independent directors in its members' structure. It reviews several major aspects of corporate governance, including matters such as reviewing financial statements, monitoring the accuracy of financial reports, ensuring independence and efficiency of the auditors, overseeing internal financial control, auditing related-party transactions, issuing risk management recommendations, and conducting investigation to check any suspected financial wrongdoing. This makes it a powerful instrument for independent directors to judge management practices and protect the interests of stakeholders. The Audit Committee would be able to investigate complaints received through the whistleblower mechanism and seek clarifications from management or auditors on issues as appropriate. The performance of the Audit Committee will depend on the quality, correctness, and timeliness of the information provided to it. If the management purposely conceals the facts or the audit company does not find the discrepancies, the independent council's task would become extremely complicated.

4.2 Nomination and Remuneration Committee

The Nomination and Remuneration Committee plays a key role in determining the structure of the board, proposing candidates for directorship, and ensuring adherence to regulations on the selection and payment of directors¹⁶. In this respect, it is more important for independent directors, as their independence greatly depends on the way they are appointed. If large shareholders make significant contribution in the process of appointing independent directors, it will be very difficult for them to make an unbiased assessment of the management from the very start. Therefore, the Committee is expected to determine the qualification, experience, honesty, and independence of prospective candidates, so that the process of appointment is based on merits and needs of the corporation without involvement of any personal or promoter's prejudices. In this context, the nomination process can be considered as an important structural issue in the corporate governance system of the country. The Kotak Committee on Corporate

¹⁵ Companies Act, 2013, § 177 (India).

¹⁶ Companies Act, 2013, § 178 (India).

Governance stressed the need for improving the appointment and functioning of independent directors, while later SEBI reforms concentrated more on their appointment, reelection, and dismissal¹⁷. An adequately functioning Nomination and Remuneration Committee can, therefore, contribute to the improvement of board diversity, skills, and independence; however, its effectiveness depends

5. REGULATORY FRAMEWORK UNDER SEBI LODR REGULATIONS, 2015

The Companies Act 2013 is enacted alongside the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, making it a complete regulatory framework for corporate governance for publicly listed companies¹⁸. LODR Regulations define certain requirements related to corporate governance issues like board composition, independent directors, board committees, related party transactions, disclosures, shareholder participation, board evaluations, and corporate governance reporting. More specifically, Regulation 23 requires that approval for related party transactions be given by the Audit Committee with independent directors playing a vital role in such approvals¹⁹. In addition, there are specific provisions regarding appointment, reappointment, and dismissal of independent directors, as well as provide them various meetings, induction programs, and declaration of independence. This shows the efforts undertaken by SEBI for the enhancement of transparency and proactive system of monitoring rather than only being concerned with board composition. However, having so many compliance requirements does not guarantee that corporate governance will be effective. In order for the LODR regulation to be successful, it does not only require compliance with certain provisions, but also that independent directors be ready and able to question the management, analyze information, and intervene when needed.

6. THE KOTAK COMMITTEE AND THE IDEA OF “INDEPENDENCE IN SPIRIT”

In 2017, the Kotak Committee on Corporate Governance came into being under the leadership of Uday Kotak and was one of the achievements for India's corporate governance system²⁰.

¹⁷ Securities and Exchange Board of India, *Report of the Committee on Corporate Governance*.

¹⁸ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, regs. 17–27 (India).

¹⁹ Id. reg. 23.

²⁰ Securities and Exchange Board of India, *Report of the Committee on Corporate Governance*.

The committee was formed to examine the relevant existing standards and recommend ways to enhance the performance, transparency, and accountability of the listed companies. One of the important aspects of the working of the committee was its recognition that the independent directors have to be independent not only technically or in legal terms but also "in spirit."

The Committee made several recommendations concerning board composition, appointment and removal of independent directors, board evaluation, related-party transactions, disclosure requirements, shareholder participation and greater accountability of boards. At the same time, it highlighted the necessity of allowing independent directors to play a more significant role in the decision-making process instead of being just passive participants. The recommendations reflected a growing recognition that corporate governance cannot be achieved through numerical compliance alone²¹.

In instances where a corporation satisfies the legal requirements for independent directors, management may still not be subjected to scrutiny from those directors. As a result, the focus shifted from perceived independence to practical influence of the board and the efficiency of the board's decisions. This point is particularly significant for the prevention of corporate governance mistakes as independent directors can only perform their role effectively if they have all the necessary resources needed to monitor the activity of management.

7. THE SATYAM SCANDAL: FAILURE OF FORMAL INDEPENDENCE

The Satyam Computer Services scandal is one of the most prominent examples of the failure of Indian corporate governance systems that came to light in January of 2009. B. Ramalinga Raju, the founder and chairman of Satyam Computer Services, confessed to the falsification of the accounts of the company by acknowledging that the financial records of the company have shown inflated bank and cash balances along with false assets²². As such, the episode raised troubling questions regarding the effectiveness of independent directors, the Audit Committee, and external auditors in supervising management. A crucial factor here was the imbalance of information between management and independent directors. Whereas independent directors relied on the information and explanations provided by senior management, there was also the complexity of the information, which made it harder for no-specialist directors to detect any manipulation. The influence and authority of the managers of the company may have restricted

²¹ Id.

²² C. Ramalinga Raju, Letter to the Board of Directors, Satyam Computer Services Ltd. (Jan. 7, 2009).

the resultant nature of this review.

The Satyam case demonstrates that the effectiveness of independent directors depends on how they perform their tasks and not on how many meetings they attend and how many decisions they approve²³. Thus, the independent directors should be focused on reviewing in detail the financial statements of the company, investigating suspicious transactions, acquiring external information regarding any worrying transaction, and confronting executives when needed. Furthermore, the case highlights the significance of the Audit Committee, proper internal controls, independent external audits, and reliable whistle-blowing mechanisms. Ultimately, it showed that compliance with formal requirements does not mean good corporate governance. The main lesson learned from the Satyam scandal is that having independent directors does not ensure that a company will not engage in financial fraud, as the essence of independence is not only the fact that independent directors are independent as such but that they also have access to proper information and have the necessary knowledge and qualifications to analyze the information and have enough time to analyze it.

8. IL&FS CRISIS: INDEPENDENT DIRECTORS AND SYSTEMIC GOVERNANCE FAILURE

In 2018, the collapse of Infrastructure Leasing & Financial Services (IL&FS) posed another serious problem for the corporate governance system of India²⁴. Unlike conventional cases of the accounting fraud, the IL&FS crisis had the features of excessive leverage, defective risk management systems, complex group structures, liquidity problems, and financial crises of the interconnected corporations. The case demonstrates that the effective system of corporate governance includes not only supervision of the financial statements of a corporation but also management of the enterprise risk, group-level transactions, leverage and liquidity, relations with related parties, and systemic consequences of bankruptcy of the firm²⁵. It shows that a major drawback of independent directors is that they are usually supervising a single corporation and corporate groups can operate through a myriad of subsidiaries, affiliates, etc.

²³ Companies Act, 2013, § 177 & sched. IV (India).

²⁴ Ministry of Corporate Affairs, Government of India, official orders and statements concerning Infrastructure Leasing & Financial Services Ltd. (2018). Insert the specific verified order or report relied upon.

²⁵ Companies Act, 2013, § 177 (India); Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 21 (India).

9. INFORMATION ASYMMETRY AND THE LIMITS OF INDEPENDENT OVERSIGHT

Information asymmetry presents a major structural impediment to the successful working of independent directors²⁶. While management possesses crucial internal information about financial results, operations, risks, forecasts, personnel and business decisions, directors must depend on information from the management. Thus the accuracy, reliability and promptness of the information received by the independent directors affect their ability to detect illegal activity or identify new risks tremendously. The crisis in Satyam has demonstrated how the limitations imposed on independent directors in terms of the availability of information can hinder the monitoring function of boards and Audit Committees even if there are formal governance systems and structures in place²⁷. In the absence of access to independent sources of information independent directors may have difficulties in identifying secret transactions, discrepancies in financial information or problems connected with operation activities. This can be represented by the following causal chain: management controls information → independent directors depend on management information → limited ability to effectively monitor directors. Hence, simply increasing the number of independent directors cannot solve the problem; therefore, true independence should come together with better access to information, independent systems of verification and governance culture supporting investigations into management²⁸.

10. PROMOTER DOMINANCE AND THE “INDEPENDENCE PARADOX”

The concentration of ownership in Indian companies serves as a barrier to the efficiency of independent directors. Promoter-led companies are a prime example of this concentration. Independent directors are expected to be independent of promoters, but promoters still play a prominent role in the appointment, composition, payment, and reappointment of board members, as well as several other aspects of the operations. This creates the “independence paradox,” wherein an independent director who is supposed to supervise the conduct of controlling shareholders depends on the same shareholders for appointment on the board²⁹.

²⁶ Companies Act, 2013, sched. IV (India).

²⁷ C. Ramalinga Raju, Letter to the Board of Directors, Satyam Computer Services Ltd. (Jan. 7, 2009).

²⁸ Companies Act, 2013, sched. IV (India); Securities and Exchange Board of India, *Report of the Committee on Corporate Governance*.

²⁹ Companies Act, 2013, § 149(6), (10)–(11) (India).

Independent directors are therefore unlikely to act against the interests of the promoters, as independent directors' career prospects might depend on their relationship with them. Research conducted on regulated Indian entities found that there exist significant uncertainties and ambiguities regarding the functions of independent directors as well as regarding any issue of civil and criminal liabilities. Therefore, even though the formal criteria for eligibility exist, there may be no guarantees when it comes to the real independence of the directors.

An independent director must have the capacity to challenge management and oppose promoters without worrying about losing their position, future opportunities, or harming their image. In case of any contradiction with the influential shareholders, the actual independence of a given director may decrease dramatically. This becomes vital for companies, whose management consists of promoters because in such organizations the possibility of influence of the powerful shareholders on the board is high enough. That is why SEBI's regulatory provisions are aimed at increasing transparency about the process of independent directors' appointment, reappointment, dismissal, and resignation³⁰. As far as resignation might become an important governance barometer whenever the director mentions any unclear or ambiguous matters related to management or accounting procedures. However, under such circumstances, the role of independent directors becomes reactive rather than proactive. Therefore, the good governance practices claim to create an environment in which directors are protected while they raise the matters of their importance.

11. RELATED-PARTY TRANSACTIONS AND INDEPENDENT BOARD OVERSIGHT

Transactions between related parties (RPTs) involves important area where independent directors can play a role in helping protect minority shareholders and operating in a responsible manner. Any transaction involving promoters, directors or any related party can create conflict of interest and also create opportunity for misusing the corporate assets if not structured properly. The Companies Act of 2013 and SEBI LODR Regulations provide important safeguards in terms of disclosures, Audit Committee investigations, and shareholder oversight³¹. However, implementation of these protective provisions does not only depend on proper approval of the procedures but also depends on the quality of the decision-making

³⁰ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 25 (India).

³¹ Companies Act, 2013, §§ 177(4)(iv), 188 (India); Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 23 (India).

process. Independent directors should be provided with sufficient information and time to make their own assessment of the deal, as well access to impartial and competent advisors who can assist them in making decisions. In companies where promoters are holding substantial power or significant influence, this decision-making process can be compromised, which makes it impossible to act properly and resolve all governance issues.

12. BOARD EVALUATION AND SUBSTANTIVE ACCOUNTABILITY

The evaluations conducted by the board are vital for assessing the performance of independent directors as well as the board overall³². Proper evaluation should consider not only attendance but also quality of participation, knowledge of business and financial risks, ability to ask relevant questions, independence of mind, performance of committees, and contribution to the organization's strategy. However, evaluation can become just a formality in which members of the board evaluate each other without proper objectivity and necessary external supervision, especially in the boards heavily influenced by the promoter as the board members' interests could coincide³³. Therefore, the formal evaluation process does not necessarily reflect the real impact of independent directors. The focus should be on whether directors were able to question management assumptions, seek additional information, identify potential risks, and disagree whenever necessary. Thus, board assessments should rather be regarded as an effective accountability tool, which can help identify possible shortcomings in the oversight process and increase the efficiency of independent directors.

13. CONCLUSION

Independent directors play a crucial role in corporate governance in India, ensuring independent oversight, protecting minority shareholders, and limiting the influence of management and promoters. The Companies Act 2013 of India and the SEBI LODR Regulations lay down the provisions regarding the appointment, role, independence, accountability, and engagement of independent directors in various committees of the board. This framework has been established predominantly due to the recommendations of Kotak Committee, which marks a shift from merely having independent directors on the board to placing importance on independence in true spirit. However, the analysis suggests that the existence of a good legal framework does not guarantee the non-occurrence of corporate

³² Companies Act, 2013, sched. IV, pt. II (India); Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 17(10) (India).

³³ Securities and Exchange Board of India, *Report of the Committee on Corporate Governance*.

crimes. The cases of Satyam, IL&FS depict that corporate failures could happen even when independent directors are present and some governance mechanisms exist. The lack of balance in information, domination of the promoters, dependence on appointment/reappointment, lack of adequate experience, and fear of losing the position, regular evaluations, and an overly compliance-oriented mindset could reduce the efficacy of independent directors significantly. All these issues highlight the gap between merely having independence and actual independence.

The effectiveness of independent directors shouldn't be judged only by their place on a board of directors, attendance at board meetings, or taking part in the decisions made at meetings, but also by their ability to collect reliable information, ask questions to the management, dispute promoters, and assess transactions with related associated parties. Furthermore, when the effectiveness of independent directors increases, their accountability must not change. Section 149(12) makes it clear that independent directors will not be automatically held responsible for any corporate misconduct. At the same time, those directors who have committed crimes should be held liable. Therefore, it should be noted that the improvement of independent directors' effectiveness should be a process that emphasizes the quality of independence more than the mere presence of independent directors in corporates. Making the appointment and appointment processes more transparent, having an access to the true information, getting the help from the professionals, receiving targeted training, and building an extensive communication network with whistle-blowers will guarantee the independent directors become more effective.

Independent directors, however, cannot be the sole solution to corporate misgovernance. Their effectiveness is dependent on the corporate governance surrounding them, such as the role played by auditors, regulators, shareholders, internal control systems, compliance structures and an environment that promotes transparency and accountability. The main challenge that corporate governance in India faces is the change from “independence in name” to “independence in substance.” Independent directors can only play their intended role in curbing corporate misgovernance in India if they possess real independence, adequate information, appropriate expertise and confidence in going against those in power.

REFERENCES

1. Primary Sources

1. The Companies Act, 2013.
2. Companies (Appointment and Qualification of Directors) Rules, 2014.

3. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.
 4. Schedule IV to the Companies Act, 2013.
 5. SEBI, Report of the Committee on Corporate Governance, chaired by Uday Kotak, 2017.
 6. SEBI, Formation of Committee on Corporate Governance, 2017.
 7. SEBI, proposals concerning strengthening the framework for independent directors, 2021.
-
2. Cases / Judicial Material
 1. Supreme Court of India, proceedings concerning liability of independent directors under Section 149(12), Companies Act, 2013.
 2. Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609.
 3. Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668.
 4. SMS Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89.
-
3. Secondary Sources
 1. Vikramaditya Khanna & Shaun J. Matthew, "The Role of Independent Directors in Controlled Firms in India: Preliminary Interview Evidence," National Law School of India Review, Vol. 22.
 2. "Evolution and Effectiveness of Independent Directors in Indian Corporate Governance."
 3. "Role and Responsibilities of Independent Directors under the Companies Act, 2013: An Analytical Study."
 4. "Independent Directors and Corporate Scandals in India: Lessons from IL&FS, ICICI and Satyam."
 5. "Satyam Fiasco: Corporate Governance Failure and Lessons Therefrom."
 6. Wharton, "Scandal at Satyam: Truth, Lies and Corporate Governance