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ROLE OF INDEPENDENT DIRECTORS IN CORPORATE GOVERNANCE

Chaya Singhal

BBA LLB Hons, NMIMS Bangalore, India

Abstract : Clients, employees, shareholders, and investors are just a few of the several stakeholders that a corporation serves as the focal point for. It is a tool that can raise a sizable amount of money for business endeavors. Every business choice should be transparent and fair to the company's stakeholders. Investment is attracted to and secured by an organization with excellent corporate governance and a competent board of directors. Independence of the board is crucial to ensuring that it fulfils its tasks impartially and holds the management accountable to the corporation. Having an independent director is the answer, according to accepted practices across jurisdictions. "Section 149(4)" of the Companies Act, 2013[1], mandates that each listed public company's board of directors shall consist of at least one-third Independent directors. Independent directors' role in corporate governance has come under more criticism in recent years. Others contend that the boardroom atmosphere has improved as a result of the emergence of the concept of "Independent Directors". It has been viewed by many as a substantial deterrent to fraud and subpar management. The independent directors, in principle, don't have any special ties to the company, so they can cast votes objectively and take part in other business affairs. Yet, the "Independent director" may be fired by a majority vote of the shareholders. Specifically, the "role of independent directors in corporate governance" is examined in the current research paper together with the situation of the Indian business sector today. The organizational framework of corporate governance will be enhanced, the interests of all stockholders will be respected, and the rights and interests of small- and medium-sized investors will be safeguarded through the appointment of independent directors. Using the Satyam case study of unethical behavior and phony audit, this paper will also optimize the independent director system.

Index Terms - Corporate Governance , Public company, Independent Directors, Companies Act 2013, Board of Directors, Stakeholder, minority
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CHAPTER 1: INTRODUCTION

INTRODUCTION

A corporation form of business runs on the corpus that is owned by several stakeholders, such as "creditors"; "investors"; "employees"; "customers"; "shareholders"; "the community", etc. So, it is an unquestionable fact that a firm relies mostly on capital raised from the general public to conduct operations. So, a company acts as a conduit for significant capital needed to run the business.

The idea of good governance enters the system at this point. In these circumstances, it is appropriate to recognize that with such a significant amount of funds being generated and investments being made, it begs the question of who will be responsible for making such substantial investment.

METHODOLOGY

1.1 STATEMENT OF PROBLEM

Investment "is attracted and secured" by organizations with effective corporate governance and competent boards of directors. The independence of the board is crucial to "ensure that the board conducts its tasks objectively and holds the management accountable to the" organization. Independent directors have been implemented under a "corporate governance" system. Because they are non-executive board members with no financial ties to the company, independent directors have been shown to have a positive impact on profitability, growth, and sustainability in corporate governance. They also contribute to the "operation and management of the company running smoothly and" effectively. Identifying "how the advent of the notion of Independent directors has enhanced the environment" of the boardroom is the goal of this research work.

[1] The companies Act Section 149(4)

1.2 LITERATURE REVIEW

I have used certain books and articles to prepare this research paper on the topic "ROLE OF INDEPENDENT DIRECTORS IN CORPORATE GOVERNANCE"

1. From the article " (Deepali Rani Sahoo, **An Analytical Study Relating to the Role of an Independent Director in the Globalised Era: A Detailed Study**, 2019)" it was easier to analyse the different roles, functions, duties of "Independent Director's as mentioned in the "Companies Act, 2013".

2. From the article "**ROLE OF INDEPENDENT DIRECTOR IN CORPORATE GOVERNANCE**" (Maheshwari, 2020) in the "EPRA International Journal of Multidisciplinary Research (IJMR)" it was inferred that independent directors serve as a link with external environment and also provide company with an international aspect.

3. From the Article "**THE ROLE OF INDEPENDENT DIRECTORS IN CORPORATE GOVERNANCE - A CRITICAL EVALUATION** (A., 2011)" , it was concluded that independent directors help in maintaining an ethical climate inside the premises of the organization.

4. The "**Satyam Scam of Corporate Governance (M/S. Satyam Computer Services vs Directorate Of Enforcement, 2018)**" brought to light a number of shortcomings in corporate governance practices, including "unethical behaviour"; "fraudulent accounting"; "the questionable function of auditors"; "an ineffective board"; "the failure of independent directors"; and "the non-disclosure of pledged shares".

5. From the book "**TAXMANN'S COMPANY LAW**" by DR. G.K KAPOOR AND SANJAY DHAMIJA,I was able to identify the different sections such as Section 2(47) and Section 149(6) which helped me to identify the meaning of an Independent Director.

6. From the book "**Guide for Independent Directors: Company law, SEBI Guidelines, Corporate Governance**" by Sanjiv Agarwal and Ankita Aggarwal, I got to know in detail about the independent directors, what role do they play in a company and what are their responsibilities.

1.3 RESEARCH QUESTION

- What is meant by "Independent Directors"?
- How the emergence of "Independent Directors" has improved the conditions in a company?
- Have independent directors proved to be a boon or a bane to the company?
- Is it possible to effectively expand and assign independent directors the task to ensure protection of interests of minority shareholders and stakeholders?
- How to determine the independency of independent directors?

1.4 RESEARCH OBJECTIVE

- To study the meaning and importance of "Independent Directors"
- To study the role of "Independent Directors" for a good corporate governance
- To study the correlation of "Independent Director" and Corporate Governance.
- To analyse the true independency of "Independent Directors"

1.5 HYPOTHESIS

Even though they play a vital part, the independent directors do not have sufficient authority to safeguard the rights of the company's "minority shareholders". This puts such rights at risk.

1.6 METHODOLOGY

This research paper follows the method of "doctrinal research". Using this method, "a researcher composes a descriptive and detailed analysis of legal rules found in primary sources" ("cases", "statutes", or "regulations"). This research paper is also based on secondary sources such as articles, books and blogs.

CHAPTER 2: UNDERSTANDING THE INDEPENDENT DIRECTORS

2.1 WHO ARE INDEPENDENT DIRECTORS?

An individual is considered to be an "independent director" if, in accordance with Section 149(6), they do not hold the position of managing director, whole-time director, or nominated director. This indicates that the independent director would serve the company in the capacity of a non-executive director rather than an executive director. The obligation for independent directors to serve on the board is mandated by "Section 149(4)" of the Companies Act of 2013[2], which came into effect in 2013. In accordance with Section 149, each and every publicly traded firm is required to have an independent director constitute at least one-third of the total number of board members.

The problem is that it does not address the contentious issue of CEOs holding dual roles, which is currently a problem. However, it is important to note that in accordance with Regulation 17 of SEBI's ("the Securities and Exchange Board of India's") Listing Obligations and Disclosure Regulations, it is necessary for the board to have a balanced combination of executive and non-executive directors, with the latter group being required to have at least one female director.

Yet, there must be at least some independent directors on the board if the chairperson of the board of directors is a non-executive director in that particular scenario[3]. In addition, it is necessary for there to be a minimum of fifty percent of the board to be composed of independent directors in situations where the chairman of the board is an executive director.

If the non-executive chairman is connected to a promoter or to someone who holds a managerial role, there should be a particular emphasis placed on the need that at least half of the Board of Directors consist of independent directors.

2.2 NEED OF INDEPENDENT DIRECTORS

Since the Board of Directors consists of both executive and non-executive members, it is the independent director who is charged with being the watchdog and conscientious custodian of corporate governance to maintain the highest level of accountability.

The common practise in various countries effectively suggests that independent directors are necessary to ensure sound corporate governance.

Remember that a company with a well-balanced mix of a competent and good board of directors and sound "corporate governance" will always function as a honeycomb to investors. Hence, having an independent board of directors "assists in ensuring that the board is fulfilling its tasks objectively and that the management is liable to the company in the event of any" misbehaviour.

Adam Smith's "Invisible hand" theory cannot be applied to the job of independent directors because their primary responsibility is to ensure that they exert every available influence for the benefit of the firm and the minority shareholders. The "Independent Director" must be completely objective and have no personal stake in the success of the firm while simultaneously looking out for the interests of the company.

Independent directors first became prominent in India as a result of the Liberalization, Privatization, and Globalization of 1991.

Independent Directors involvement enhances corporate governance. A key component of ensuring independent directors function effectively in corporate governance is the board's independence. Since the corporation must continue to operate impartially, independent directors are now more crucial than ever. The provisions of the "Companies Act of 2013" apply to Independent Directors. Section 149 of the 2013 Companies Act[4] discusses independent directors (4). At least one-third of the board of directors of any listed public corporation must be made up of independent directors. A minimum number of independent directors for a class or classes of public firms may be established by the federal government.

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[2] The Companies Act,2013 Section 149(4)

[3] Peter C. Clapman and William C Greenough, "THE ROLE OF INDEPENDENT DIRECTOR IN CORPORATE GOVERNANCE" Heinonline

[4] The Companies Act,2013 Section 149

CHAPTER 3 : ROLE OF INDEPENDENT DIRECTORS

3.1 INDEPENDENT DIRECTORS IN INDIAN COMPANIES[5]

The ones who ought to serve on the corporate board and who ought not serve are topics covered by all corporate governance codes. If the directors are appropriately balanced, each corporate unit can manage and supervise its operations. Each member of the board should understand their respective responsibilities and roles. The function of the board, management, and executives must be clearly understood in order to practise good governance. In accordance with the Combined Code (1998), "the board should comprise nonexecutives of sufficient calibre and number to give their opinions substantial weight in the board's actions. This Committee continues to define independent non-executive directors as individuals who are "independent of management and free from any business or other relationship that could materially interfere with the exercise of their independent judgement. For effective governance, the board must still have an independent member. Every corporate governance standard has specific criteria for the minimum percentage of an independent board.

3.1.1 *HOW INDEPENDENT ARE INDEPENDENT DIRECTORS IN INDIA?*

An independent director's job is to protect the interests of the shareholders and act as a watchdog for the board. They would rather be a friend of the promoters than the board's watchdog because they were personally selected by the promoter[6]. Notwithstanding the fact that the independent director is compensated by the firm, it is important to keep in mind that all of the company's shareholders, not just its promoters, control it. As such, they are expected to represent the interests of the minority shareholders. Independent directors occasionally lack objectivity, which frequently includes:

- "Their selection procedure"
- "No age limit"
- "No specific qualification is required"
- "No right to interfere in day to day operations"
- "No time for replacement of an independent director"

I. *"SELECTION PROCEDURE"*

It is commonly emphasised that "independent directors" are "independent" even if the owners of the company still choose them. As the promoters choose the independent directors, there is no official selection procedure in place for them. "Independent directors" are required to consider the interests of all stakeholders, whereas promoters in positions of authority may act contrary to the interests of small shareholders. Their independence on the board is called into question by the selection process. If they are going to be chosen by the owners, they cannot be as autonomous as they should be. This method needs to be updated to reflect the directors' independence.

II. *"NO AGE LIMIT"*

There is no age restriction, in accordance with SEBI and the Companies Act of 1956. Under the "Indian Companies Act", a minor may become a director because there is no fixed age restriction. This assertion needs to be re-examined because it is obvious that a person under the age of 18 cannot acquire the required knowledge to act as an independent director of a corporation. The quality of the "independent directors" makes a difference, not the number of them. In order to support the independent director function, age restrictions are required.

III. *"NO SPECIFIC QUALIFICATION IS REQUIRED"*

Priority must be given to the qualifications of the independent directors who will be chosen. When in the boardroom, they ought to be well-equipped to raise pertinent issues at pertinent junctures. The most important requirement is that he be able to speak up for "minority shareholders" who are underrepresented on business boards. They need to be rational and have an open mind. Clause 49 of the "Listing Agreement of the Stock Exchanges and the Companies Bill 2008", which was just tabled in the Lok Sabha, does not specify the minimal degree of education or amount of work experience required. It only makes sense to have an independent director on the board if they can effectively represent the interests of minority shareholders, add value to the company, and possess a strong educational background. The requirements for independent directors must be re-evaluated by the "government" and "SEBI".

IV. *"NO RIGHT TO INTERFERE IN THE DAY-TO-DAY OPERATIONS"*

An "independent director" is not permitted to interfere with the corporation's routine operations. They are free to step in and fix things if they need to. They are meant to assist management in laying out the organization's goals for the company's shareholders. If a director is unable to take part in the regular operations of the company, he will be unable to perform his duties. This is due to the fact that he won't be able to understand how the business is operated. An independent director can speak out without fear since he is not bound by a different set of rules and regulations or legally protected from management. Independent directors must be granted the required power to take part in every-day business activities of the company. They can speak up and get involved in these processes as a result.

V. *"NO TIME LIMIT FOR REPLACEMENT OF AN INDEPENDENT DIRECTOR"*

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[5] Vikas Maheshwari,"*ROLE OF INDEPENDENT DIRECTOR IN CORPORATE GOVERNANCE*", Volume 6, International Journal of Multidisciplinary Research (July 2020)

[6]Meenu Gupta "*INDEPENDENCY OF INDEPENDENT DIRECTOR IN CORPORATE GOVERNANCE*", ICSI https://www.icsi.edu/media/portals/86/Independent%20Directors.pdf

There is no law establishing a time restriction for replacement in the event that an independent director resigns, is removed from office, or passes away, and promoters may utilise the defence that they have been unable in finding a replacement for a lengthy period of time. Because the independent director's fees or remuneration have climbed so much over the last three years, people are typically convinced to work for the organisation for a long time. Most of these directors would act in accordance with the promoters' judgement without taking the particulars of the business into account. 9\s. In addition to utilising any other strategy that ensures their independence, rotating such directors on a regular basis is essential to maintaining their independence.

3.2 ROLES OF INDEPENDENT DIRECTORS[7]

The corporation and its stakeholders place a high value on the independent director's function.
The Independent Directors have specific responsibilities listed in Schedule IV of the Act, including safeguarding stakeholders' interests, particularly those of minority shareholders, bringing together and harmonising the competing interests of minority shareholders, evaluating the management's performance, and resolving conflicts between management and shareholders. The “Independent Directors” are required to stay informed on the state of the business, its operations, and the environment in which it works. They shouldn't divulge sensitive corporate information unless the board has given the go-ahead or the law permits it. They must serve as “Chairpersons” or active members of the board's committees. Among many other responsibilities, they should regularly attend the business's General Meeting in order to maintain their knowledge, abilities, and acquaintance with the company up to date.
Independent directors are not given a unique duty or function. Independent directors are treated the same as other directors for the reasons of role and decision-making[8].

3.3 CORRELATION BETWEEN INDEPENDENT DIRECTOR AND CORPORATE GOVERNANCE

Independent directors must be effective and efficient in order for corporate governance to be successful. Although directors are frequently thought of as "officers in default," independent directors are also thought of as the company's supervisors. They give management with direction to ensure that all choices benefit the company's different stakeholders and defend the interests of the minority shareholders," according to the company's website.

It is essential to discuss and comprehend the numerous scams and frauds that have occurred recently," including the “Satyam Computer case”,in order to "fully examine the important role of “independent directors” in India and to address the legal question of whether a director is actually independent.

[7] CV Baxi, “*THE ROLE OF INDEPENDENT DIRECTORS IN CORPORATE GOVERNANCE*”,Volume 2, “Asia Pacific Journal Of Management Research And Innovation” (2016)
[8] Kotishwar A. “*The Role Of Independent Directors In Corporate Governance - A Critical Evaluation*” Researchgate (July 2011) https://www.researchgate.net/publication/293389000_THE_ROLE_OF_INDEPENDENT_DIRECTORS_IN_CORPORATE_GOVERNANCE_-_A_CRITICAL_EVALUATION

CHAPTER 4: CORPORATE SCAM

Even if the board of directors is excellent and independent, the absence of the necessary conditions may prevent them from carrying out their duties in an efficient manner. The Satyam incident exemplifies a few of the reasons why independent directors efficacy in India may still be questioned.

4.1 SATYAM COMPUTE CASE STUDY[9]

4.1.1 *INTRODUCTION*

A renowned provider of information technology services, "Satyam Computer Services Limited" (recently renamed "Mahindra Satyam") was founded in India. At the end of 2008, "Mr Ramalinga Raju and his family", who served as the promoters of Satyam, retained around "8%" of the company's shares, with the remaining holdings being distributed. Both the National Stock Exchange and the Bombay Stock Exchange list its securities . Also, the NYSE has cross-listed the company's securities. This compelled Satyam to adhere to not only "Clause 49" but also the "Sarbanes-Oxley" Act's &"NYSE Listed Company Manuals" standards. The corporate governance practices at Satyam were a source of great pride. Although Satyam had a majority independent board at the pertinent time (end 2008), it over complied with Article 49's criteria. The board consisited of the following people:

"Executive Directors"

1) B. Ramalinga Raju, Chairman;
2) B. Rama Raju, Managing Director and Chief Executive Officer;
3) Ram Mynampati, Whole Time Director.

"Non- Executive Directors"

1) Prof. Krishna G. Palepu, Ross Graham Walker Professor of Business Administration at the Harvard Business School

"Independent Directors"

1) Dr. Mangalam Srinivasan, management consultant and a visiting professor at several U.S. universities;
2) Vinod K. Dham, Vice President and General Manager, Carrier Access Business Unit, of Broadcom Corporation;
3) Prof. M. Rammohan Rao, Dean, Indian School of Business;
4) T. R. Prasad, former Cabinet Secretary, Government of India; and
5) V. S. Raju, Chairman, Naval Research Board and former Director, Indian Institute of Technology, Madras.

4.1.2 *THE MAYTAS TRANSACTION:*

A board meeting of "Satyam" was called on December 16, 2008, to discuss a proposal for acquisition of Maytas Infra Limited and Maytas Properties Limited. Two types of information become very important to the transaction. One is that the Raju family controlled more than 30% of each of the Maytas pair of businesses, making the planned takeover deal a related party transaction. The Maytas enterprises were engaged in real estate and infrastructure development, both of which were unconnected to Satyam's primary business. The trades were important because the acquisition cost a total of Rs. 7,914.10 crores ($1,615.11 million). It's crucial to remember that, had the deal gone through, the Raju family, the individual promoters of Satyam, a publicly traded business, would have received a sizeable cash payment.

With the exception of "Palepu" and "Dham", who participated by audio conference, all directors were present at the board meeting on "December 16 2008". It is reasonable to anticipate substantial resistance from the independent directors to the Maytas purchases given the related party situation and diversification into unrelated businesses. The independent directors did voice some worries following the company's officials' presentation of the transactions to the board. Dr. Mangalam Srinivasan, the director, for instance, "suggested to involve the Board members right from the beginning of the process to avoid the impression that the Board is used as a rubber stamp to affirm the consequent or decisions already reached" and "enquired if there are any particular reasons either external or internal for this initiative and timing of the proposal." Rao and Dham, two additional independent directors, expressed concern about the dangers of a diversification approach as the company was entering a completely unrelated industry. Yet more people expressed their opinions, saying that "since the transactions are among related parties, it is important to demonstrate as to how the acquisition would benefit the shareholders of the company and enhance their value" and that "complete and justification" regarding the valuation methodology adopted "should be communicated to all the concerned stakeholders."

The independent directors cannot be faulted for failing to see the problems or voice their concerns during the board meeting, as they did both. Unexpectedly, the board resolved to move forward with the Maytas deal without any disagreement at all as the meeting's final result. Following the board meeting, Satyam promptly informed the stock exchanges of the board's consent as required by the listing agreement. The investors did not at all take well to this revelation. Due to intense selling, Satyam's American Depository Receipts stock price fell by nearly 50% in a single trading session, forcing the company to retract the Maytas plan eight hours after it was made public.

This incident raises several concerns about the "independent directors" function. If the transactions were fraught with problems, why did the independent directors approve them "unanimously" despite their strongly expressed concerns? Why didn't the independent directors consider the interests of the minority public (institutional and individual) shareholders when the transaction involved a blatant transfer of funds from the company—which was owned more than 90% by public shareholders—to the individual promoters? This is akin to a company's controlling shareholders syphoning off funds to the detriment of all other stakeholders. Why couldn't the independent directors understand how the transactions were causing the shareholders to lose a significant amount of money and halt them or simply postpone the decision by requesting further information on the transactions? How could the investors have prevented the deal from going through when the independent directors couldn't stop it themselves? These are difficult problems, but it is evident from this incident that shareholder activism played a bigger role in criticising a bad

[9] Pratip Goswami "*Corporate Accounting Fraud: A Case Study of Satyam Computers Limited*" Academia.au, https://www.academia.edu/10971389/SATYAM_SCANDAL_A_case_study_

corporate governance practise than independent directors did. In the case of insider systems like India, where independent directors are meant to protect minority shareholders' interests, Satyam's directors may have fallen short of their goals.
Four of the non-executive directors left Satyam's board in the ensuing controversy this affair caused. The majority of independent directors, however, justified themselves by asserting that they had voiced their concerns about the Maytas transactions in the appropriate manner. In the first week of 2009, as the markets were still recuperating from the alleged breaches in corporate governance at Satyam, evidence of a larger "scandal" surfaced, creating more concerns about the function of independent directors.

4.1.3 FRAUD

On January 7 2009 , the company's chairman, Mr. Ramalinga Raju, admitted to falsifying the company's financial accounts, notably by recording bogus cash assets totaling more than US$1 billion. The confession further showed that the proposed Maytas buy-outs were merely fictitious transactions created to distort Satyam's financial sheet and eliminate discrepancies. In response to this disclosure, the company's stock price declined by more than 70%, wiping out the wealth of its stockholders, some of whom are employees with stock options. Minority shareholders suffered greatly as a result of their ignorance of Satyam's financial statements' accuracy (or lack thereof), which made the majority minority agency dilemma worse.
The Indian government reacted vehemently to this incident. Investigations into the situation were started by a number of regulatory bodies, including "the Ministry of Corporate Affairs", the Government of India, and SEBI. When a number of the company's independent directors had left, government-nominated individuals replaced the remaining directors. Following the confession, the police quickly detained a number of key Satyam executives, including the chairman, managing director, and chief financial officer, while also detaining two partners of Satyam's auditor, Price Waterhouse Coopers.
The various authorities are still conducting their investigations, which will probably take some time, and it is anticipated that the results won't be known for some time. The Serious Frauds (Investigation) Office's probe for the Ministry of Corporate Affairs is the only significant one that has been finished. Broadly speaking, the Satyam incident has rekindled calls for corporate governance reforms in India, some of which are already in progress.
Under the direction of its new government-nominated board of directors, the corporation itself experienced a stunning turn around in fortunes. The new board and their advisors assumed control of the business, selected a new CEO, and made unceasing efforts to keep customers and staff. Finally, the company itself was sold to Tech Mahindra, another Indian IT player, in a deal that garnered praise from all parties involved for how quickly the various parties—in particular the new Satyam board—acted to revive the business and safeguard the interests of its stakeholders.

4.1.4 *OUTCOME*

In awaiting, it's important to look into how Satyam's financial statements were falsified in the first place, despite the "Sarbanes-Oxley Act" ("as the company was also listed on the NYSE") and Clause 49's application (because Satyam was listed on Indian stock exchanges). These corporate governance failures happened despite Satyam appearing to have complied with all the onerous requirements imposed by Clause 49 and the Sarbanes-Oxley Act , including the appointment of an impressive array of independent directors, the creation of an audit committee, and the audit of its financial statements by a "Big Four" audit firm. This incident raises important concerns regarding the application of corporate governance standards in India and emphasizes the failure of imported ideas.
More precisely, there are a number of important concerns regarding the function of independent directors in such circumstances. Independent directors for Satyam were powerless to stop financial statement fraud. This failure can be explained by a number of factors. Without a doubt, the Satyam board was substantially independent and included eminent and trustworthy people. Yet, as independent directors typically base their choices on information given to them by management, it is generally unrealistic to expect them to find corporate frauds. The Chairman's Confession even admits that "one of the board members, past or present, had any knowledge of the circumstances in which the business is placed" in Satyam's own case. Independent directors have very little chance of discovering such scams because they are not involved in the day-to-day operations of the company. Because of this, it is impossible to expect independent directors to exercise watchdog activities even when monitoring functions are imposed on independent boards due to their role's inherent limitations. Also, independent directors are busy people who only have a limited amount of time each year to attend to matters relevant to the boards of the companies they serve. This restricts their capacity to investigate the company' financial, business, and other issues further.
Independent directors may be influenced by the controlling shareholders because they are vulnerable to nomination , appointment, and removal at the hands of the controlling shareholders. Although being bound by the NYSE's listing rules, Satyam lacked an independent nomination committee that might have separated the appointment of directors from the controlling shareholders' scrutiny. While they may have implicitly owed allegiance to the company's promoters who were in a position to influence their nomination and retention on the board, it is clear from the case at hand that the independent directors were unwilling to vigorously oppose the management's and promoters' ideas.
Moreover, the functions of "independent directors" are not defined by "Indian corporate governance standards". As we have seen in Satyam's case, a lack of clarity in their tasks could lead to less desirable consequences from independent director action. Most importantly, independent directors do not have a specific role in transactions between linked parties and controlling shareholders. For instance, such office bearers are likely to assume greater accountability for their decisions if it is mandated that all such linked party transactions must be approved by a vote of independent directors alone. Once more, independent directors are not given a distinct function under the "Indian corporate governance laws".
The Satyam incident is also evidence of a signaling issue with independent directors' function. That is, the job of independent directors is given more (and often unjustified) weight than is necessary by corporate governance principles. The corporate governance standards give stakeholders in the company a false sense of security by portraying independent directors as defenders of various corporate interests, possibly including minority shareholders.
The Satyam incident has shown, however, that even when independent directors apply a reasonable amount of vigilance in their work, there are limits to how effective they can be in uncovering frauds.
However, there is the bigger problem of promoter influence in Indian corporations, which has an impact on how independent directors conduct themselves. Although though some companies are listed on stock exchanges and therefore have public

shareholders, promoters (who are controlling owners) nevertheless have a large amount of influence over decisions regarding their companies. Promoters are granted several specific functions under Indian law. This largely holds true even for businesses with tiny proportion owners who exercise influence. The Satyam incident shows how even at low levels of promoter ownership, a corporation can still be exposed to significant promoter influence, necessitating a solution to the agency issues between controlling shareholders and minority shareholders. As Satyam illustrates, it can be challenging for businesses to switch from the insider model to the outer model through constant dilution of shares by controlling shareholders. Corporate governance regimes in developing nations like India that are anticipated to see this change from insider to outsider regimes due to the diminution of controlling shareholding must have procedures in place to combat promoters with small shareholdings' disproportionate control.

The Satyam case amply highlights the incapacity of the country's current corporate governance standards to address failings in family-controlled businesses, even when promoter shareholding is at a modest level. Any changes to the independent director regime that result from this case should take into consideration how vulnerable minority shareholders are in organizations that operate in a system where insiders and outsiders coexist.

CHAPTER 5: INDEPENDENT DIRECTORS AND MINORITY SHAREHOLDER

There is always a group of people in a democracy who are impacted by the choices made by the other group or the majority. By having an opposition party to represent the views of people who voted against the incumbent party, a country's governance is balanced. Only if the independent directors choose to speak up for the rights of minority shareholders will corporate governance be balanced. Minority shareholder rights advocacy is not the independent directors' primary responsibility; instead, they have a duty to the corporation[10]. The company's interests must come before those of any one person or group of people, according to the director. But, it does not absolve the independent directors of their responsibility to defend minority rights. All businesses follow the majority rule, albeit the tribunal has the authority to override it occasionally. Only in such circumstances does the tribunal get involved. These directors have a responsibility to protect the interests of small shareholders. As diligent watchdogs, the independent directors must perform their duties. More accountability for the independent directors is necessary for greater performance. Independent directors' responsibility is to maintain a balance of power between the board and management. The independent directors must make use of the authority granted to them to seek justice for the shareholders who are impacted by the majority's decision. Everyone agrees that the independent director model is the best way to govern a corporation. Independent directors effectively defend the rights of minority shareholders because they are answerable to public investors. But, they haven't done a good enough job of upholding their rights, and the idea of independent directors needs to be changed for it to work more effectively.
Certain decisions regarding the management of the corporation must be made in the day-to-day operations of an organisation, and the majority of the members normally make these decisions. The interests of the majority shareholders may occasionally clash with those of the minority shareholders over the course of this kind of decision-making. If decisions are made in this situation that aren't in the best interest of the company as a whole but just serve the needs of one particular cluster, the minority cluster whose interests may be compromised will speak out against the decision.

5.1 PROTECTION OF RIGHTS OF MINORITY SHAREHOLDERS

One of the most important problems with the trendy corporations legislation is the protection of minority shareholders in the area of company activities. Striking a balance between the corporate entity's effective management and the interests of the small individual shareholders should be the goal. It is only fair to anticipate that any decisions made in organisational concerns will be made in accordance with the values of fair play and natural justice. The interest of minority owners must be safeguarded merely in case such an attempt is unsuccessful. The scientist's goal in the gift analysis article is to look into the subject of protecting the interests of minority shareholders. By doing this, it will be possible to study minority rights throughout common law history as well as rights of majority shareholders. The law governing majority rule and minority rights must be investigated. Even though the majority rule has generally been upheld by the courts, there are several circumstances in which this rule may not be applicable.

The rule established in **Foss v. Harbottle[11]** applies to situations when businesses have the authority to formally penalize social control offences. Nonetheless, there may be exceptional situations in which no majority of shareholders will affirm or accept. In such circumstances, each stakeholder may file a lawsuit to have debts owing to the corporation enforced. The stockholder now serves as the "business interest's" representative. The following are instances where the rule of majority is not applicable: Actions that are "ultra vires" and that no majority shareholders will approve will result in a stockholder bringing a lawsuit against the corporation. In situations where the corporation exceeds its authority, the Foss v. Harbottle rule is not applied. This was demonstrated in the case of **Bharat Insurance Co. Ltd v. Kanhaiya Lal[12]**, where the litigant, who was a stockholder of the respondent company, complained about the corporate entity creating numerous investments without providing adequate security, in violation of the note, and sought an injunction to prevent the corporate entity from making any additional investments of this nature. According to the court's decision in favour of the litigant, application of an organization's assets wasn't just a matter of internal management, even though the corporate was generally considered to be the best option and it was generally accepted that the court shouldn't get involved in such matters. One stockholder was qualified to file a lawsuit against the corporation in the present case because the corporate administrators were acting outside of their authority. It is important to keep in mind, though, that the plaintiff's personal conduct should be proper when suing the corporation. If a minority shareholder sues the company, there is a procedural issue that has to be resolved. In order to serve justice to the company that is being run by bad administrators, the court may intervene and determine if the litigant has the right to sue the company. The court may decline to accept the plaintiff's action if the plaintiff's behaviour puts the company in danger of receiving just justice or if there is an excessive delay in the delivery of the action. Another exception to the rule of the majority is when a majority commits fraud against a minority. Under the revised Companies Act of 1985, a disgruntled minority shareholder has three broad legislative remedies against unfairness on the part of those in charge of the corporation. They have the following measurements: First off, it gives minority shareholders a specific remedy whenever they need to be treated unfairly or unfairly. Second, once the company is stirred up, minority shareholders are free to assert contractual rights against the company without being constrained by the requirements of the rule of majority. Finally, it is legal for minority shareholders to obtain indirect redress through an examination of the company's operations by inspectors designated by the Secretary of State for Trade and Trade, who may act on the inspector's report after receiving it. A member who feels they have been treated unfairly may file a petition for relief with any court (in practise, all petitions are filed with the Business Court, which may order the corporate action based on conduct that has been proven to be unfair and harmful to both the petitioner's interests and those of the majority of members or the members as a whole). The official receiver, liquidator, or any other member of the corporation, with the court's permission, may also request an order against any gift or past officer of the corporation, anyone

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[10] M.P. Paridhi Selvan and M. Kannappan, "*A Study On Role Of Independent Directors In Protecting The Rights Of Minority Shareholders*", Volume 119 No. 17, International Journal of Pure and Applied Mathematics (2018)
[11] Foss vs Harbottle, (1843) 67 ER 189
[12] Bharat Insurance Co. Ltd vs Kanhaiya Lal, **AIR 1935 Lah 742**

who has served as the corporation's liquidator, administrator, or body receiver, as well as anyone else who has participated in or taken a partial interest in the promotion, in the second case of effecting of an organisation. Lastly, as part of the third option available to the minority shareholders, the Secretary of Commerce and Trade may appoint one or more inspectors to look into the business's affairs. The Secretary of State is free to appoint inspectors on any of the available reasons for appointment without having to say which ground is being used. Furthermore, he is not required to provide the evidence or information that launched the investigations or the justifications for initiating them.

The minority now has more power than before to seek redress when the majority violates their rights thanks to these statutory rights. The minority can seek recourse in court for any breach of their rights because they are legally protected by regulations controlling how businesses must operate.

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CHAPTER 6: JUDICIAL RESPONSES TO ROLE OF INDEPENDENT DIRECTORS

The “Supreme Court” and several “high courts” have established the standards for holding directors liable in a number of instances. Because independent directors are included under the term "directors" itself and there is no special provision for their culpability, they are subject to the same obligations as directors.

The Supreme Court reaffirmed in (**M/s Pepsi Foods Ltd. vs Special Judicial Magistrate , 1997)**[13] that it is the magistrate's duty to use his judgement before summoning the directors in a criminal matter on the basis of allegations made against the directors of the company because summoning the directors or officers of the company for a criminal matter is in and of itself a serious matter. However, the court erred when determining the directors' liability **(UP Pollution Control Board vs M/s Mohan Meaking Ltd., 2000)**[14] and others by stating that every member charged with the charge and responsibility of conducting the company's business shall be held liable who had given their consent or had assisted in the commission of the offence.

Furthermore, the Mumbai High Court ruled in **(Homi Phiroz Ranina & Ors. vs State of Maharashtra, 2003)**[15] that it is the complainant's duty to substantiate the director's claimed illegal conduct since there must first be a prima facie case against the directors or officials of the corporation. Additionally, the new “Companies Amendment Bill 2009” shields Independent Directors from legal and criminal culpability as long as they refrain from meddling in the day-to-day operations of the business.

In **(K.K. Ahuja vs V.K. Vora & Anr, 2009)**[16], the Supreme Court made the observation that responsibility for the company's business operations at the time the offence was committed, not holding the office of director, is what gives rise to culpability. In **(Keki Hormusji Gharda & Ors vs Mehervan Rustom Irani & Anr, 2009)**[17]**.**, the “Supreme Court” also reaffirmed the Pepsi Food Ltd judgment's guiding concept that liability cannot be imposed simply because one holds the position of director within the organisation. Similar to this, it was determined in **(Pepsico India Holdings Pvt.Ltd vs Food Inspector & Anr , 2010)**[18] that a simple accusation against a director would not be enough to hold them accountable due to a lack of specific claims regarding his involvement in the day-to-day operation of the company.

After examining “Section 5 of the Companies Act of 1956”, it is clear that independent directors fall under the term of "Officer in default" in that section. By virtue of being the "officer in default" for any misbehaviour on the part of the firm, independent directors are deemed accountable for both financial and criminal penalties , according to a detailed examination of section 292A.

[13] M/s Pepsi Foods Ltd. vs Special Judicial Magistrate , (1998) 5 SCC
[14] UP Pollution Control Board vs M/s Mohan Meaking Ltd., 2000 3 SCC 745
[15] Homi Phiroz Ranina & Ors. vs State of Maharashtra, 2003 BomCR Cri
[16] K.K. Ahuja vs V.K. Vora & Anr, (2009) 10 Scc 48
[17] Keki Hormusji Gharda & Ors vs Mehervan Rustom Irani & Anr, 2009 (6) SCC 475
[18] Pepsico India Holdings Pvt.Ltd vs Food Inspector & Anr , (2011) 1 SCC 176

CHAPTER 7: SUGGESTIONS AND CONCLUSIONS

7.1 SUGGESTIONS

1. The board's independence should be preserved to guarantee the firm's proper operation since a board that is independent will win investors faith and trust, which is necessary for any company to continue doing business. The board's independence ensures that the management's policies are really monitored to see if they are in line with the organization's long-term goals.
2. A significant area of worry is the board's lack of commitment to the interests of the shareholders, which results in ineffective corporate governance and eventually serves as a catalyst for frauds to emerge. Thus, it is important to keep an eye on the board's accountability to the shareholders.
3. The maximum number of firms a person can be employed as an independent director for must be decreased in order to enhance the status of the independent directors. Currently, a person can serve as an independent director for 20 companies; this number should be decreased so that these individuals can concentrate their efforts on fewer organisations, increasing their efficiency and dedication to the cause of the company's improvement and the rights of the majority shareholders. Smaller businesses may be impacted since there may not be as many qualified and effective independent directors available for appointment. To address this issue, it is necessary to raise awareness of the need for independent directors so that this position is not seen as one for seasoned professionals and that young people begin to prepare for it and see it as a vocation.
4. The independent directors must have the flexibility to voice their own viewpoints; they should not merely act as a watchdog against the majority or a devoted member of one particular group. The company must be the independent director's primary interest, not their own. The company's interest must come first.
5. Several high-profile scandals, including the Satyam Scandal, are evidence that a critical evaluation of the firm's performance and policies is necessary for any business to survive. Hence, "independent directors", who are unrelated to the management, can contribute to an unbiased evaluation of the company's policies, choices, and performance in order to promote and practise good governance and ensure the credibility of investors around the world.
6. Independent directors independence should be promoted in order to ensure sound judgement in the decision-making process by giving the directors a way to connect with the long-term interests of the shareholders.
7. Legal protection for independent directors is necessary to allow them to criticise the management and voice their ideas in favour of the interests of the shareholders.

7.2 CONCLUSION

Independent directors can contribute greatly if the interests of minority shareholders are safeguarded. In a democracy, there are always dissenters whose rights are violated. The independent directors are legally responsible for their actions and inactions in both civil and criminal court due to their fiduciary duty to the corporation. On boards, independence allows a director to be objective and evaluate the performance and health of the company without being unfairly affected by interested parties or encountering any conflicts of interest. Independent directors are unable to protect every person's rights. The company's interests must be regarded as taking precedence over all others. The results of this study show that independent directors lack the power required to protect the interests of minority shareholders.

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