CORPORATE GOVERNANCE AND ITS EFFICACY IN PRESENT ERA

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1. Introduction

Few decades ago Governance as a word was rarely used by businessmen. Now, to run their organizations, almost all the organizations follow governance with specific importance on its accountability, integrity and risk management. Primarily, it is well established that corporate governance encompasses usual relationships among a company's board of management, its securities holders and other stakeholders.[1] Corporate governance also provides "the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined".[2] In other word, "Corporate Governance is about promoting corporate fairness, transparency and accountability".[3]Basically, two factors were accountable for underlining the corporate governance in the world. In the First place, the wave of financial crisis in 1998 in Russia, Brazil and most of the countries of Asia affected and destabilize seriously the economies of the global financial system. Secondly, the growing corporate scandals surfaced in United States and European countries due to bad corporate governance practiced by commercial men. In India, Corporate governance has gained a lot of importance after the Satyam fraud. This scam prompted the businessmen to focus on efficient, transparent and impeccable corporate governance in their companies for better stability, profitability, and desired growth.

"Further, the rapid pace of globalization and liberalization compelled companies to have effective corporate governance strategy and to adopt improved standards of corporate governance to run their business. To minimize case of fraud, malpractices in companies and financial instability, both policy makers and business managers stressed the importance of improved standards of corporate governance. In international level,

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[1] Stijn Claessens and BurcinYurtoglu, '*Corporate Governance and Development—An Update*', (Global Corporate Governance Forum, 2012, Focus 10). *Available at:* http://www.ifc.org/wps/wcm/connect/518e9e804a70d9ed942ad6e6e3180238/Focus10_CG%26 Development.pdf?MOD=AJPERES (accessed on November 6, 2016).

[2] OECD Corporate Governance Principles, 2004.Available at the following link- http://www.oecd.org/corporate/ca/corporategovernanceprinciples/3155772 pdf accessed on November 5, 2016.

[3] KartikeyKoti, 'Corporate Governance in India: An Impression' 1 (2) *International Journal of Research in Management & Business Studies* 66(2014). *Available at*: http://ijrmbs.com/vol1issue2/1/kartikey_koti.pdf (accessed on November 6, 2016).

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Organization for Economic Co-operation and Development (hereinafter 'OECD') and World Bank continuously worked upon for better corporate governance and adopted a set of principles to strengthen the structure of companies. Similarly, in India there were several reforms taken through a number of different paths from the Security and Exchange Board of India (hereinafter 'SEBI') and the Ministry of Corporate Affairs (hereinafter 'MCA'), Government of India to improve the corporate governance.[4]Recently, Government passed the Companies Act, 2013 which is one of the steps to improve corporate governance in India. This paper focus on the new development and emergence of new Companies Act, 2013 and the good practices incorporated in this Act. But before that it is essential to understand Corporate Governance and its development.

2. Emerging Markets and the Importance of Corporate Governance

"Good corporate governance is utmost crucial for the emerging countries as well as developed countries to achieve its economic goals. Here the developing countries market known as 'emerging markets', where the markets are more imperfect and suffer from greater informational deficits than markets in developed countries.[5] Bruner rightly said that "the developing countries' emerging markets are different from developed markets in areas such as accounting transparency, liquidity, corruption, volatility, governance, taxes and transaction costs.[6] It is very crucial for business entities to follow good corporate governance in the market for their success. "Improvement in corporate governance practices can improve the decision making process within and between a company's governing bodies, and should thus enhance the efficiency of the financial and business operations. Better corporate governance also leads to an improvement in the accountability system, minimizing the risk of fraud or self-dealing by company officers. An effective system of governance should help ensure compliance with applicable laws and regulations, and further, allow companies to avoid costly litigation"[7].Through good corporate governance the emerging market can produce

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[4] AfraAfsharipour, 'Corporate Governance Convergence: Lessons from the Indian Experience' (2009) 29 *Northwestern Journal International Law & Business* at 335. Available at: http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1687&context=njilb (accessed on November 6, 2016).

[5] Singh Ajit, 'Corporate Governance, Corporate Finance and Stock Markets in Emerging Countries' (2003) *ESR Centre for Business Research University of Cambridge*, Working Paper No. 2003-258.

[6] Bruner R, Conroy R, Estrada J, Kritzman M. and Li W., 'Introduction to `Valuation in Emerging Markets' 3 (4) *Emerging Markets Review* at 310-324 (2002).

[7] AfraAfsharipour, 'The Promise and Challenges of India's Corporate Governance Reforms', 1(1) *Indian Journal of Law & Economics* 33 (2010); Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1640249 (accessed on November 7, 2016).

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benefits, enhance the reputation of the organization and make it more attractive to customers, investors and suppliers.

3. Advantages of Good Corporate Governance[8]

The following are the main advantages of Good Corporate Governance:

(i) The first is the increased access to external financing by firms. This in turn can lead to larger investment, higher growth, and greater employment creation."

(ii) It also accelerates better operational performance through better allocation of resources and better management which resulted into the creation of wealth in more efficiently.

(iii) It decreases the cost of capital and associated higher firm valuation. This makes more investments attractive to investors, also leading to growth and more employment.

(iv) Good corporate governance can be associated with a reduced risk of financial crises. This is particularly important, as financial crises can have large economic and social costs."

(v) Good corporate governance can generally improved relationships with all stakeholders in the corporations which also leads to the improving of social and labor relationships.

(vi) Lastly, Good corporate governance also beneficial to the issues such as environmental protection and sustainable development.

4. Development of Corporate Governance

This part is divided into two sections. The first discusses about development and growth of corporate governance at international level, especially in United States of America and Great Britain. The second section deals with development of corporate governance in India.

4.1. Global Development Scenario: USA &Great Britain

"The importance of the corporate governance gained momentum in western part of the globe particularly after Watergate scandal and bribe government officials by big corporations. Soon after, the United States adopted Foreign and Corrupt Practice Act, 1977 which was followed by Securities and Exchange Commission in 1979, for

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[8] StijnClaessens, Corporate Governance and Development, Global Corporate Governance Forum, 2003, Focus. Available at http://www.gcgf.org/wps/ connect/7fc17c0048a7e6dda8b7ef6060ad591 1/Focus_1_Corp_Governance_and_Development.pdf? MOD=AJPERES (accessed on November 7, 2016).

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mandatory reporting on internal financial controls. Again in 1980s, several business houses collapsed in USA; so another commission was set up as Tradway Commission to identify the cause and to give recommendation to the government in this respect. In 1987, Tradway Commission produced its report and suggested the need for proper control environment, independent audit committees, which would look-after internal control of companies."

In the last two three decades in Great Britain, several big scandals and corporate failures were experienced such as; the Bank of Credit and Commerce International (BCCI) Scandal, Barings Bank scandal, British& Commonwealth scandal, Polly Peck scandal, Maxwell scandal etc.[9] these scams necessitated the importance of corporate governance. In the early 1990s, a revolution was started under Sir Adrian Cadbury to stop financial reporting irregularities. In 1992, 'Cadbury Report'[10] published, which was popularly known as 'Cadbury Code'. It suggested for setting up different standard for corporate behavior and ethics. The City and the Stock Exchange as a benchmark of good boardroom practice gradually adopted this code.[11]In 1996, a committee was set up as 'Hampel committee' to review both 'Cadbury Report' and 'Greenbury Report 1995'. [12] In1998,This committee submitted its report, namely 'Combined Code of Corporate Governance,' which *inter alia* dealt with suggested measures in the structure and operations of the board, directors' remuneration, accountability and audit, relations with institutional shareholders, and the responsibilities of institutional shareholders.

"Likewise, in 2001 'Myners Review'[13] and in 2002 the 'Directors' Remuneration

[9]Financial Reporting Council, *The Great Britain Approach to Corporate Governance*, October 2010. Available at https://www.frc.org.Great Britain/getattachment/1db9539d-9176-4546-91ee-828b7fd087a8/ The-GREAT BRITAIN-Approach-to-Corporate-Governance.aspx (accessed on November 7, 2016).

[10]Cadbury Report published in 1992 outlined a number of recommendations around the separation of the role of an organization's chief executive and chairman, balanced composition of the board, selection processes for non-executive directors, transparency of financial reporting and the need for good internal controls. See also Cadbury A, *Committee on the Financial Aspects of Corporate Governance: Compliance with the Code of Best Practices* (London: Gee Publishing 1995).

[11] Cadbury Committee, *Committee on the Financial Aspects of Corporate Governance,* 1992, the Report of the Committee on the Financial Aspects of Corporate Governance, London.

[12] This committee was setup in January 1995 to identify good practices by the Confederation of British Industry (CBI), in determining directors' remuneration and to prepare a code of such practices for use by public limited companies of United Kingdom. The committee produced the Greenbury Code of Best Practice, which was divided into the four sections: Remuneration Committee, Disclosures, Remuneration Policy and Service Contracts and Compensation. See Directors' Remuneration, Report of a Study Group, 1995, Chaired by Sir Richard Greenbury. Available at: http://www.ecgi.org/codes/documents/greenbury.pdf (accessed on November 8, 2016).

[13] Government commissioned 'Myners Review', which objective was 'to consider whether there were factors distorting the investment decision-making of institutions'. It included suggestions for the improvement of communication between investors and companies and encouraged institutional investors to consider their responsibilities as owners and how they should exercise their rights on behalf of beneficiaries. Available at: http://www.kingstoncitygroup.co.Great Britain/.../Corporate%20governance%20develop (accessed on November

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Report Regulations', introduced better relationship between institutional investor and companies and the powers of shareholders in relation to directors' pay etc. In 2002 The Sarbanes-Oxley Act[14] was introduced to increase the accountability of auditing firm to remain objective and independent to achieve quality governance and to restore investor's confidence. Till 2003, few sections had been added on remuneration, risk management, internal control and audit committees."

In 2008, in Great Britain the global financial crisis deepened and damaged its banking and financial structure. It was pointed out by many enterprises and financial exerts economists that due to fragile and feeble corporate governance, companies failed to safeguard losses. The Great Britain Government asked Sir David Walker to look specifically into the issue of corporate governance in Great Britain banks and other large financial institutions to stabilize the banking system to protect people's savings and the economy.[15]

"The Walker Review[16] reported in 2009, which made 39 recommendations for better governance in banks, large insurance companies and other financial institutions. The FCR, body established by Government review the code and on the basis of recommendation, came out with a new version titled as the Great Britain Corporate Governance Code, which applied to company on 29th June 2010."

***OECD & World Bank*: "**

Organization for Economic Co-operation and Development (OECD) was the first non-governmental organization to take initiatives for good corporate governance through its first set of corporate governance principles in 1999. Further, OECD released a revised version of corporate governance principles in 2004, in order to create legal and

9, 2016). Also see Institute of Directors, *Standards for the Board – Improving the effectiveness of your board*, 2001, London: Kogan and Committee on Corporate Governance, *Hampel Committee*, Final Report 1998.

[14] Sarbanes Oxley Act of 2002 passed by the congress of the United States of America on 23rd January, 2002. The most important aspect of SOX is that it makes it clear that company's senior officers are accountable and responsible for the corporate culture they create and must be faithful to the same rules they set out for other employees. The CEO for example, must be responsible for the company's disclosure, controls and financial reporting.

[15] Available at: https://www.frc.org.Great Britain/corporate/Great Britaincgcode.cfm (accessed on November 8, 2016).

[16] The Walker Review published after extensive deliberations in Nov. 2009. It recommended on the

the effectiveness of risk management at board level, including the incentives in remuneration policy to manage risk effectively; the balance of skills, experience and independence required on the boards of Great Britain banking institutions; the effectiveness of board practices and the performance of audit, risk, remuneration and nomination committees; the role of institutional shareholders in Great Britain engaging effectively with companies and monitoring boards; and whether the Great Britain approach is consistent with international practice and how national and international best practice can be promoted; Available at: http://www.frc.org.Great Britain/corporate/Great Britaincgcode.cfm (accessed on November 8, 2016).

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regulatory frameworks for OECD and non-OECD countries."The OECD principles are ensuring the basis of an effective corporate governance framework, the rights of shareholders and key ownership functions, the equitable treatment of shareholders, the role of stakeholders in corporate governance, disclosure and transparency, and the responsibilities of the board.[17]

"The World Bank and OECD came together with a MoU on 1999, to reform and to respond to the need of individual countries to improve corporate governance through policy dialogue and co-operation. The co-operation between World Bank and OECD was structured along with two major initiatives; a Global Corporate Governance Forum (GCGF)[18] and a series of Regional Policy Dialogue Round Tables."[19]

4.2. Development Scenario: India

"During the British colonial period, Indian companies were controlled by British rules and regulations. First time, the Companies Act was introduced in India 1866 which was the photocopy of the English Companies Act at that time. Thereafter, it was amended and revised several times which was also the reproduction of English Companies Act at those times.[20]After the independence, particularly in 1950s and 1960s, the Tariff Commission and the Bureau of Industrial Costs and Prices were set up by the Government of India. Soon after the independence the Securities Contracts Regulation Act, 1956and the Companies Act, 1956 came into existence.[21] During 1970s to 1980s, the banking institutions developed rapidly, as a result there were several laws and regulation framed to regulate these institutions. Particularly in 1990s, during the period of globalization, privatization and liberalization (LPG) one of the important developments took place in the field of corporate governance and investor protection by establishment of the Securities and Exchange Board of India (SEBI) in 1992."[22]

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[17]Available at: http://www.oecd.org/corporate/ca/corporategovernanceprinciples/33977036.pdf (accessed on November 8, 2016).

[18] It's Mission in helping countries to improve the standard of governance, for their corporations, by fostering the spirit of enterprise and accountability, promoting fairness, transparency and responsibility. Available at: www.gcgf.org or www.worldbank.org/html/fpd/privatesector/cg (accessed on November 8, 2016).

[19]To improve the understanding of present corporate governance practices in specific regions and inform the international community about national and regional reform initiatives; to identify key areas for improvement, both in the regulatory domain and in standard business practices and formulate an agenda for reform action; finally, the Roundtables should also serve as an instrument to identify the needs, and facilitate the provision, of technical assistance in the area of corporate governance.

[20]The Companies Act in India was revised and amended in the year of 1882, 1913, 1932 and 1956 in consonance with the national and international demands.

[21] Sharma J.P, *Governance, Ethics and Social Responsibility of Business*, (Ane Books Pvt. Ltd. New Delhi, 2014)

[22] For a detailed history of developments in Indian corporate governance, see AfraAfsharipour, 'Corporate Governance Convergence: Lessons from the Indian Experience', (2009), *Northwestern Journal of International Law & Business* 335; Rajesh Chakrabarti, Corporate Governance in India—Evolution and Challenges (2005),

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After liberalization privatization and globalization era, the persistent and persisting steps taken by the government of India and numerous leading organizations to have good corporate governance. According to Mr. Bajpai, then chairman of the SEBI, "the Securities and Exchange Board of India (SEBI) continues to raise the bar for good Corporate Governance." The first phase of India's corporate governance reforms were aimed at making boards and audit committees more independent, powerful and focused monitors of management as well as aiding shareholders, including institutional and foreign investors, in monitoring management.[23]

"The Confederation of Indian Industry (CII), in 1998 proposed basic code for corporate governance, which dealt with the laws, regulations, practices and implicit rules that determines a company's ability to take managerial decisions with shareholders and creditors and customers. In addition to this, the CII code emphasized on greater transparency in the listed company."[24]

Kumar Mangalam Report on Corporate Governance[25]

"In 1999, SEBI setup a Committee under the chairmanship of Kumar Mangalam Birla to give a comprehensive view of the issues related to insider trading to protect the rights of various stakeholders. The Mangalam committee recommended the responsibilities and obligations of the board and the management in instituting the systems for good corporate governance and emphasized on the rights of shareholders in demanding corporate governance. This committee also recommended that the companies required disclosing separately in their annual reports, a report on corporate governance outlining the steps they have taken to comply with the recommendations of the committee. In 2000, on the basis of CII code and Kumar Mangalam Report, the department of company affairs prepared a report, which was known as report of the task force to achieve corporate excellence through corporate governance for the companies according to their size and capabilities. Finally, SEBI incorporated and implemented Birla Committee's report on corporate governance and enforced Clause 49[26]in its listing agreement phase wise."

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unnumbered working paper no 2005-20; Available at: http://ssrn.com/abstract=649857.(accessed on November9, 2016).

[23] Joshi V, *Corporate Governance: The Indian Scenario*. (Foundation Books, New Delhi, 2004).

[24] Confederation of Indian Industry, (March 1998) Desirable corporate governance: A Code (Based on recommendations of the national task force on corporate governance, chaired by Shri Rahul Bajaj).

[25] Shri Kumar Mangalam Birla et al., the Securities and Exchange Board of India, Report of the Kumar Mangalam Birla Committee on Corporate Governance (1999), available at http://www.sebi.gov.in/commreport/corpgov.html. (Accessed on November 9, 2016).

[26] Clause 49 of the Listing Agreement, which deals with Corporate Governance norms that a listed entity should follow, was first introduced in the financial year 2000-01 based on recommendations of Kumar Mangalam Birla

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Reserve Bank of India Report on Corporate Governance

For, the Reserve Bank of India also has been assigned to work on good corporate governance. In 2001, RBI produced two reports; first, report of the advisory group on corporate governance, whose primary objectives was to compare the status of corporate governance in India with the internationally recognized best standards and recommend the good practices for better corporate governance in India. Second, RBI report on the consultative group of Directors of Banks, which focused on the review of the supervisory role of the boards of the bank and financial institutions for the better governance strategy by feedback on the functioning of the board.[27]

Naresh Chandra Committee

"The Ministry of Finance and Company Affairs in 2002 established a committee known as Naresh Chandra Committee and appointed Naresh Chandra as Chairman. The committee was framed to examine several corporate governance issues and to recommend changes in the diverse areas like the statutory auditor, procedure for appointment of auditors and determination of audit fee, certification of accounts and financial statement by management and directors. The committee submitted its report on December 2002 and recommended the role, remuneration and training etc. of independent directors & auditors and auditor-company relationship to strengthen corporate governance."[28]

N. R. Narayana Murthy Committee[29]

"The SEBI, in 2002 established another committee known as Narayana Murthy Committee under the chairmanship of Mr. N R Narayana Murthy, to review Clause 49 of the listed agreements and to revisit the Companies Act, 1956 & The Indian Partnership Act 1932. Finally in October 2004, SEBI accepted the recommendation by Murthy Committee on Clause 49 of listing agreement and other changes to the Companies Act, 1956. The committee report recommended Audit Committee, Non-executive directors, relating to whistle Blower Policy and various parameters like fairness, accountability, transparency, and ease of implementation, verifiability and enforceability."

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committee. After these recommendations were in place for about two years, SEBI, in order to evaluate the adequacy of the existing practices and to further improve the existing practices set up a committee under the Chairmanship of Mr. Narayana Murthy during 2002-03.

[27] Aparna Sharma, 'Legal framework and Corporate Governance: An Indian Perspective', 15(1) *IJCEM International Journal of Computational Engineering & Management* (2012).

[28] Naresh Chandra, Report of the CII Task Force on Corporate Governance 2 (November 2009), available at www.mca.gov.in/Ministry/latest news/Draft_Report_NareshChandra_CII.pdf (accessed on November 9, 2016).

[29] N. R Narayana Murthy, 'Report of the SEBI Committee on Corporate Governance', p.5. Available at: http://www.sebi.gov.in/commreport/corpgov.pdf. (accessed on November 10, 2016).

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In the last decade also, the Government of India set up several committees to develop corporate governance and corporate law & policy. The Government accepted most of the recommendations from these committees to advance governance standard. In 2000, the Indian Code of Corporate Governance, approved by Securities and Exchange Board of India (SEBI) and was implemented in stages over the following two years. There were significant amendment done in the Companies Act 1956 in 2002 and 2004 in areas such as postal ballots and audit committees. Later, the J.J Irani Committee reviews the Companies Act 1956 and its recommendations led to a rewrite of the law and a new Companies Bill, 2008.[30] In 2008, the Satyam fraud led to renewed reform efforts by Indian authorities and regulators. SEBI also brought new amendments in February 2009 requiring greater disclosure by promoters (i.e., controlling shareholders) of their shareholdings and later changes to the Listing Agreement, including requiring listed companies to produce half yearly balance sheets.[31]Likewise, in the month of December 2009, the Ministry of Corporate Affairs (MCA) published a new set of "Corporate Governance Voluntary Guidelines 2009", aimed to encourage companies to implement the improved practices in the administration of boards and board committees, the appointment and rotation of company's auditors, and generating a whistle blowing mechanism."

The Companies Bill to the Companies Act 2013

In the year of2008on October 23, Companies Bill, 2008 was introduced in the Lok Sabha to replace the Companies Act of 1956 but it was not succeeded. Again Companies Bill, 2009 was re-introduced on 3rd August 2009 in the Lok Sabha which was referred to the Standing Committee on Finance of the Parliament for examination and report.[32]Report of the Standing Committee on Finance on Companies Bill, 2009 was introduced in the Lok Sabha on 31st August 2010. Thereafter, The Companies Bill, 2012 was introduced and passed in the Lok Sabha on 18 December 2012. Companies Bill, 2012was placed before the Rajya Sabha and passed by it on 8th August 2013. Further, this bill finally sent to president for his assent and after having received the assent of the President of India on 29 August 2013, it has now become the much-awaited Companies Act, 2013.[33]

30. Jamshed J. Irani*et al*., Expert Committee on Company Law, Report of the Expert Committee to Advise the Government on the New Company Law 3 (2005), available at www.primedirectors.com/pdf/JJ%20Irani%20Report-MCA.pdf. (accessed on November 10, 2016).

31. *Id*. at 23.

32. See Chakshu Roy &Avinash Celestine, Legislative Brief: The Companies Bill, 2009, *PRS Legislative Research* (Aug. 18, 2009), available at http://www.prsindia.org/uploads/media/ (accessed on November 11, 2016).

33. Nitin Kumar, 'Companies Act 2013: An Analysis of Key Rules', 1(5) *Sai Om Journal of Commerce & Management* 16 (2014) .

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4.3. Corporate Governance: New Developments after the Companies Act, 2013

"It has been seen that before Companies Act 2013, corporate governance was mainly being followed by the Clause 49. But the Introduction of Companies Act 2013, bring new provisions and regulations in corporate sectors. This Act deals with 470 sections spread over 29 chapters and 7 schedules, which replaced the old Act 1956.[34] The basic objective of the Act is to promote self-regulation and introduces novel concepts including one-person company, small company, dormant company and corporate social responsibility.[35] It also promotes investor protection and transparency by including concepts of insider trading, class action suits, creation of a National Financial Reporting Authority and establishment of Serious Fraud Investigation Office for investigation of fraud. Further, a mammoth section 2 containing 94 definitions has been added for better clarity."

Key Provisions of Corporate Governance

The Companies Act, 2013 dealt with the following provisions of corporate governance-

(i) The new Act incorporated the new definitions of interested director, key managerial personnel, financial statement, accounting standards auditing standards and voting right etc. it also introduced a new class of companies called 'One Person Company' (OPC), which entitles an individual to can carry business with limited liability.[36]

(ii) "The new Companies Act, 2013 introduced few changes regarding composition of board of directors. The Act provides that a company may have a maximum 15 directors on the board. However, on the requirement of more directors, the company need special resolution and requires shareholders' approval. For the first time, the Act also defines the role and responsibility of board of directors and makes them accountable more and more with company's functions. Failure of these duties and responsibility will lead them to punish with fine."[37]

(iii) The Concept of Independent Directors (IDs) was brought in by the Act of 2013. It requires the all listed companies to have at least one-third of the board as Independent Directors for the term of five consecutive years.[38] It also fixes detailed qualifications for the appointment of an ID, such as he has to be a person of

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[34] Available at: http:// www.caclubindia.com/ articles/ synopsis- of- companies- act- 2013-18424.asp#.VHIe61eUfe0 (accessed on November 12, 2016).

[35] Geetika Vijay, 'Corporate Governance under the Companies Act 2013: A More Responsive System of Governance' (2014), Vol 4, Issue 4, *Indian Journal of Applied Research*, ISSN - 2249- 555X. At http://www.theglobaljournals.com/ijar/articles.php?val=MzY5NQ==&b1=833&k=209 (accessed on November 15, 2016).

[36] See, Section 2 (62), the Companies Act, 2013.

[37] See, Section 149, the Companies Act, 2013.

[38] See, Section 149 (4), the Companies Act, 2013.

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integrity, relevant expertise and requisite experience. Regarding the duties of the IDs, it has incorporated professional conduct for them by laying down facilitative roles, such as offering independent judgment on issues of strategy, performance and key appointments, and taking an objective view on performance evaluation of the board. The new Act also empowers the IDs to certain extent because of their greater accountability and transparency in the functioning of the company.[39]

(iv) "This Act made mandatory for listed companies[40] and certain other public companies by introducing the appointment of at least one women director on the board of company.[41]Therefore, it is directly pointing the companies to promote women empowerments."

(v) The new Companies Act, 2013 necessitated different committees to be formed by the board of directors; such as (a) audit committee (b) nomination and remuneration committee (c) stakeholders relationship committee (d) Corporate Social Responsibility Committee (CSR). In fact, these committees are required by the Act for better functioning of the board of directors.[42] The function of the audit committee and the nomination and remuneration committee is to provide the infrastructure for boards, whereas the stakeholder's relationship committee and CSR Committee have been assigned with the charge of keeping interaction with key stakeholders.

(vi) "The Act established Corporate Social Responsibility (CSR) under Section 135. Through this provision the companies which are making huge profits has to spend on CSR related activities. Companies net worth of Rs 500 crore or more or turnover of 1000 crore or net profit of Rs 5 crore, shall ensure that these companies spends at least 2 percentage of the average net profits during every financial year."

(vii) To Investigate frauds of serious nature in corporate sectors, the new Act has given more power and authority to serious Fraud Investigation Office (SFIO). It has the power of arrest in respect of certain offences and takes action by penalty for frauds.[43]

(viii) Last but not the least, the new Act introduced provisions for class action where it is required that specified number of member(s), depositor(s) or any class of them, may file an application before the Tribunal seeking any damage or compensation or

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[39] See, Section 149 (8), the Companies Act, 2013.

[40] See, Section 149(1), the Companies Act, 2013; Every Listed Company /Public Company with paid up capital of Rs 100 Crores or more / Public Company with turnover of Rs 300 Crores or more shall have at least one Woman Director.

[41] See, Section 149 (1), the Companies Act 2013.

[42] See, Sections 135, 177, and 178, the Companies Act 2013.

[43] *See*, Sections 211 and 212, the Companies Act 2013.

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demand any other suitable action against an audit firm. The order passed by the Tribunal shall be binding on all the stakeholders including the company and all its members, depositors and auditors.[44]

5. Corporate Governance: An Eagle Eye on Corporate

5.1. Setting up of National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT)

"Upon the receipt of the Presidents assent, the bill has become the Companies Act 2013. This Act has changed many existing provisions and introduced many new concepts. One of the major changes adopted by the Companies Act 2013, is National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT),in place of Company Law Board (CLB).[45]This new tribunal consists both judicial members and technical members. However, the President is the head of the Tribunal, while the chairman is the head of Appellate Tribunal. According to Companies Act 2013, to become a judicial member at NCLT, an individual is or should have been a High Court Judge or District Judge for at least five years or with a minimum of ten years' experience as an advocate of a court. Similarly, to become a technical member, an individual is or should have at least 15 years of experience in chartered accountants or cost accounts or company secretary.[46]However, the process of formation of the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) has been kept in abeyance on account of a legal challenge in the Supreme Court to certain provisions of the Companies Act, 2013 relating to the constitution and composition of these bodies. The detailed procedure for transfer of pending cases will be finalized by the NCLT after it is established."[47]

Corporate Governance and NCLT & NCLAT

"A sound mechanism is important to regulate an organization. Now a day, the tremendous growth and development in corporate sector required a mechanism like NCLT and NCLAT. The objectives of this mechanism is to handle the dispute arise, and to help reduce the pendency of winding-up cases, shortening the winding-up process, and avoiding multiplicity and levels of litigation before high courts, the Company Law Board and the Board for Industrial and Financial Reconstruction. This Tribunal will also

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[44] *See,* Section 245, the Companies Act 2013.

[45] *See*, Section 408, the Companies Act 2013.

[46] *See*, Sections 407, 408, 409, 410, 411, 412 and 413, the Companies Act 2013,

[47] Smt. Nirmala Sitharaman,MoS in the Ministry of Corporate Affairs gave this information in written reply to a question in the Lok Sabha on August 8, 2014. Available at http://pib.nic.in/newsite/PrintRelease.aspx?relid=108368 (accessed on November 15, 2016).

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cover merger and acquisition disputes and the dispute arising while converting public ltd. to private ltd. There are also plan to set up 12 to 13 NCLT benches all over India to speed up corporate dispute redressal. However, the final decision is yet to be taken. So it will not wrong if we say that it's a well decision taken by the government and policy makers to smother the governance system. However, we have to watch the further development to set up the tribunal."

5.2. National Financial Reporting Authority (NFRA)

"The Companies Act 2013, under section 132, introduced a new regulatory authority known as National Financial Reporting Authority (NFRA) in place of National Advisory Committee on Accounting Standards (NACAS).[48] The basic objectives to establish this authority is to advice enforce and monitor the compliance of accounting and auditing standards as well as to act as a regulatory body for accountancy profession. The NFRA is a quasi-judicial body, which consist of a Chairman and such other prescribed members not exceeding 15.[49]The head office of the NFRA shall be at New Delhi and it may, meet at such places in India it deems fit. The NFRA consist of three committees such as; Accounting Standards Committee, Auditing Standards Committee and Enforcement Committee etc."

Corporate Governance and NFRA

"This is one of the crucial steps taken by government, as this national level body has to regulate standards of all types of reporting such as; financial as well as non-financial matters. This authority has the power to recommend to the CG on the

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[48] *See*, Section 132 of the Companies Act 2013.

[49] The Composition of National Financial Reporting Authority (NFRA) is as following-

(1) A Chairperson who is an eminent person and has expertise in accounting, auditing, finance or law.

(2) A maximum of 15 members comprising of

a) Member- Accounting,

b) Member- Auditing and

c) Member- Enforcement.

(3) A representative of the Ministry of Corporate Affairs who is not below the rank of Joint Secretary or equivalent.

(4) A representative of RBI, nominated by it and who is a member of RBI Board.

(5) A representative of SEBI who is its Chairman or whole-time member and is nominated by SEBI.

(6) A retired Chief Justice of a High Court or a person who had been a High Court Judge for not less than 5 years to be nominated by the central government.

(7) President of the Institute of Chartered Accountants of India (ICAI).

The Chairperson and other members who are in full time employment of NFRA cannot be associated with any audit firm including related consultancy firms during the course of their employment and two years after the expiry of such appointment. Available at http://blog.ipleaders.in/powers-and-functions-of-national-financial-reporting-authority-under-companies-act-2013/ (accessed on November 15, 2016).

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formulation and lying down of accounting and auditing policies and standards for adoption by companies or their auditors, monitor and enforce the compliance with accounting standards etc. Further, the Authority has also given the power to investigate *suo moto* or a reference made to it by the CG by bodies corporate or persons into the matter of professional or other misconduct committed CA and CS firms. By doing this, this will create fear among the firms and corporates to be honest and transparent in financial and non-financial matters, which will lead a good governance atmosphere inside the company.

5.3. Investor and Education Protection Fund[50]

"Under Section 125 (5) of the Companies Act 2013, the Investor Education and Protection Fund (IEPF) Authority was established. And Investor Education and Protection Fund (established under section 125(1) of the Companies Act 2013) to educate and protect interest of investors, constituted and notified under section 125(5) of the Act and managed by the Authority.[51] The head office of the Authority shall be at New Delhi and may established offices at other places in India with the prior approval of Central Government. Corporate Affairs Ministry Secretary would be the ex-officio chairman of the authority. Besides, there would be nominees from Securities and Exchange Board of India (SEBI) and Reserve Bank of India (RBI) an eminent legal expert and three members having at least 15 years experience in investor education and protection related activities. The CEO would be on the level of Senior Administrative Grade (SAG) in Indian Company Law Services or similar central government Service and shall be responsible for day to day operations and management of the authority."

Corporate Governance and IEPF

Now Ministry of Corporate Affairs, under Rule 2012, has notified that Investor Education and Protection Fund requires every company to file e-form containing the information relating to unclaimed and unpaid amounts. Through this new rule, securities holders will be able to know their unclaimed amount (including interest on them) every year from the website of their companies and also from the MCA IEPF website.

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[50] *See,* Section 125, the Companies Act 2013.

[51] *See,* Chapter I and Chapter II of the Investor Education and Protection Fund Authority Rules, 2013; Available at: http://www.onepersoncompany.in/uploads/6/9/1/2/6912590/final_iepf_authority_establishment_rules_24_10_2013-1.pdf (accessed on November 15, 2016).

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5.4. Serious Fraud Investigation Office (SFIO)

"The Ministry of Corporate Affairs under resolution dated 2003, established the Serious Fraud Investigation Office (SFIO), to investigate corporate frauds. SFIO, a multi-disciplinary organization with a Director and experts from all backgrounds such as accountancy, forensic auditing, law, information technology, investigation, company law, capital market and taxation. Generally, SFIO, take up investigation in such cases of fraud received from Department of Company Affairs. Section 211 of the Companies Act 2013 deals with SFIO, the Government has also granted statutory status and more power to SFIO."[52]

Corporate Governance and SFIO

"According to a report of Ministry of Corporate Affairs, in the last three years, 64 cases were referred to SFIO, out of which the SFIO completed 55 cases. Now, Ministry of Corporate Affairs developed a "Fraud Prediction Model" in SFIO for generating early warning signals for prediction of fraud and malfeasance in the corporate sector. A High-powered Steering Committee is also set up by the ministry with technical experts in various fields to design a comprehensive framework for a fraud prediction model. The committee submitted the report that the Director of the SFIO to be given the power to arrest persons if he has reason to believe that such persons are guilty of certain offences, including fraud. The investigator of the SFIO, have now certain powers vested in a civil court under the Code of Civil Procedure, 1908 with respect to the summoning of and enforcing of attendance of persons and examining them on oath, discovery and production of books of accounts and other documents, the inspection of books, registers and other documents etc. Some of the major scandals investigated by SFIO are Reebok Scandal, Satyam Scandal, and now Saradha Group scam, where SFIO proved its ability and proficiency. So the recent fraud in Saradha group is also an example that shows the need and importance for effective investigation and prosecution of corporate fraud.[53] Now it is very much clear that SFIO has got its wing now to take certain steps to investigate corporate frauds independently, which is essential for good governance."

5.5. Corporate Governance & SEBI

"Securities Exchange Board of India (SEBI) was established to act like a watchdog to observe the activities of stock market and regulate stock market in 1988. During this period this was failed due to inefficient exercise and control over the stock market due to lot of malpractices in stock exchange. As a result in 1992, government of

[52] *See.*, sections 211 and 212, the Companies Act 2013,

[53] Giving teeth to Serious Fraud Office, *Available at*: http://www.thehindu.com/opinion/op- ed/giving-teeth-to-the-serious-fraud-office/article4807786.ece (accessed on November 20, 2016).

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India brought a separate legislation by the name of SEBI Act, 1992 and conferred the statutory power and had given SEBI the legal status. The main objectives of the SEBI are to protect the interest of investors and to promote the development of stock exchange, to regulate the activities of stock market and to regulate and develop a code of conduct for intermediaries such as brokers, underwriters, etc.[54]

It has been seen that SEBI played a major role for effective and transparent corporate governance. This is evident from the continuous updation of guidelines, rules and regulations by SEBI time to time. SEBI had constituted several Committees on Corporate Governance under the Chairmanship of Shri Kumar Mangalam Birla, another Committee on Corporate Governance under the Chairmanship of Shri N. R. Narayana Murthy to enhance the transparency and integrity of the market and for better corporate governance by amendments into clause 49 of the listing agreement. Now after the Companies Act 2013, through a circular dated April 17th 2014, SEBI released the amendments to clause 35B and clause 49 of the Equity Listing Agreement. Now, under changed 35B norms, listed companies are required to provide the option of facility of e-voting to shareholders on all resolutions proposed to be passed at general meetings. Under clause 49, pertaining to corporate governance, listed entities have to get shareholders' nod for related party transactions. It would be effective prospectively from October 1 onwards.[55]Major Amendments under Listing Agreement of SEBI are briefed as follow:

(i) Shareholders Rights (Clause 49): There should be equitable treatment of all shareholders of same series of a class. Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. Voting rights should be given to foreign shareholders. Company should formulate a policy to prevent Insider trading and abusive self-dealing.[56]

(ii) Provisions regarding Independent Directors (Clause 49): "This enforces certain restrictions on the IDs such as Outside Directorship, tenure and stock option. The SEBI has decided that the maximum number of boards an independent director can serve on listed companies be restricted to 7, while the directorship would be capped at three if the person is serving as a whole time director in any listed company. An ID can only hold office for two terms of five years each and on the reappointment for the second term has to be sought from shareholders through a special

[54] Available at http://www.sebi.gov.in/sebiweb/stpages/about_sebi.jsp (accessed on November 20, 2016).

[55] Available at: http://businesstoday.intoday.in/story/sebi-issues-detailed-corporate-governance-norms/1/205313.html (accessed on November 20, 2016).

[56]Available at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1410777212906.pdf (accessed on November 20, 2016).

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resolution. Except that there are certain mandatory provisions regarding IDs, these are Issue of formal letter of appointment to IDs and disclosure of such letter to shareholders and training of newly appointed and existing IDs."[57]

(iii) Related Party Transactions:"RPTs to require prior approval of the audit committee. Material RPTs to require shareholder approval though special resolution and concerned related parties to abstain from voting on such resolutions. Disclosure of all material RPTs on a quarterly basis with compliance report on corporate governance. Disclosure of policies on dealing with RPTs, in website and Annual Report.[58]

(iv) Disclosure and Transparency (Clause 49): Under this clause, company is required to ensure timely and accurate disclose information to its securities holders. The information provided by the company should be equal, timely and cost efficient. Maintaining of minutes of the meeting should be taken care by the company.

6. Conclusion

"Corporate Governance is in its new form with many new visions for corporate. After the introduction of Companies Act 2013, Indian has really some of the best corporate governance laws. The new Companies Act 2013 introduced many significant changes in the provisions related to governance, e-management, compliance and enforcement, disclosure norms, auditors and mergers and acquisitions. Also, new concepts such as one-person company, small companies, dormant company, class action suits, registered valuers and corporate social responsibility have been included. But it is only the corporate, how they are going to monitor and implement these new laws to improve their governance."

[57]In report on SEBI's revision of the Clause 49 of the Equity Listing Agreement, *Available at:* http://www.ingovern.com/wp-content/uploads/2014/05/Revised-Clause-49-New-Corporate-Governance-Norms-for-India-Listed-Companies.pdf (accessed on November 20, 2016).

[58]. Available at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1410777212906.pdf (accessed on November 20, 2016).

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