pen ACCLAIMS

Volume 22, September 2022 ISSN 2581-5504

"The Significance of Directors' Autonomy in Indian Corporate Governance Promoting Independent Decision-Making"

Ayushi Gurnani
UPES, Dehradun

Introduction

The establishment of effective corporate governance is crucial for ensuring the seamless and effective operation of a company enterprise, with the Board of directors serving as the primary catalyst for this governance. Nevertheless, the Board encounters many obstacles while formulating executive judgments, namely reconciling the concerns of many stakeholders inside the organization. To tackle this matter and advocate for the concerns of diverse stakeholders, including minority shareholders, the Companies Act of 2013 implemented the notion of independent directors. This legislation mandates that a minimum of one-third of the total directors in each publicly listed company must be independent directors. Furthermore, the Act establishes criteria for their appointment and outlines a code of conduct that independent directors must adhere to.[1]

Moreover, it is required that every unlisted public company that exceeds specific benchmarks in terms of paid-up capital, turnover, or outstanding loans must select a minimum of two independent directors. Unlisted corporations must legally conform to the provisions outlined in Section 149 of the Act. Similarly, listed companies and those seeking to be listed must also fulfil their obligations in accordance with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Research questions

1. How does freedom of action on the part of directors affect impartial decision-making in India's corporate structure?
2. When protecting shareholder rights, public interest, and corporate integrity in India, how helpful have independent directors been on company boards?
3. How can we encourage independent decision-making by directors to improve corporate governance in India?

Statement of Problem

Directors' independence and the promotion of autonomous decision-making is a pressing issue in Indian corporate governance. There is an urgent need to evaluate whether the current legislative framework effectively empowers directors to make choices in the best interests of stakeholders while maintaining transparency and accountability in light of recent years' numerous corporate

[1] Popli GS and Popli R, 'Corporate Governance and the Role and Responsibility of Board of Directors in India with Special Focus on Independent Directors' [2015] SSRN ELECTRONIC JOURNAL 42.

scandals and governance failures. Trust and stability in India's business climate can be fostered by increasing knowledge of how much directors' independence is used to protect ethical standards and support long-term sustainability.

Research Methodology

The researcher has employed a doctrinal research technique to gather information in this study. Using a doctrinal research approach, the researcher has acquired documents from libraries, corporate finance law files, and other sources to conduct the study. While putting up the proposal, the researcher consulted books, diaries, and articles to gather knowledge and awareness of the subject matter.

DIRECTORS' AUTONOMY IN INDIAN CORPORATE GOVERNANCE AND INDEPENDENT DECISION-MAKING

Corporate governance practices in India and factors influencing independent decision-making

The concept of Independent Directors arose to address the need for more diversity and objectivity in corporate decision-making. All shareholders, predominantly minority and tiny owners, will have their interests better safeguarded and represented if there are people on the Board who are apart from the company's management and key stakeholders. The term "independent director" refers to a board member who is not involved in the day-to-day operations of a firm and has no ties to the company's founders or management. A company's management, Board, and other stakeholders can all benefit significantly from having independent directors who can mediate between the various groups and keep power and interests in check. A company's governance system must comprise the right mix of executive and independent non-executive directors. Independent directors' primary responsibility is to contribute new ideas to the Board's deliberations on various topics, such as strategy, risk management, and the review of the Board's performance.

Protecting the interests of minority shareholders and ensuring the accuracy of financial reports are two of the primary responsibilities of Independent Directors under the Code of Conduct. To carry out its duties, the Board must have at least two-thirds of Independent Directors serve on the Audit Committee, which is responsible for reviewing and approving related party transactions and monitoring the financial reporting process and the reliability of financial information. Independent directors play a crucial role in any organization, and one of their primary responsibilities is to enhance the company's corporate governance framework and risk management procedures. They are the guardians of ethical business practices for the company. However, true independence can only be realized via action; it is a mentality that requires one to question established norms and

authorities. That's why fostering a culture and atmosphere that encourages independence for Independent Directors is crucial.[2]

Over time, corporate governance in India has seen a dramatic transformation. A corporate governance framework is a set of policies, procedures, and practices used to steer and control a business to serve the interests of all of its constituents, including investors, managers, clients, vendors, creditors, regulators, and citizens.

Corporate governance in India is governed by a set of rules that have been in place for some time. Companies in India must follow the rules and regulations established by the Securities and Exchange Board of India (SEBI) and the Companies Act 2013. Shareholder rights, financial reporting, and board composition are only a few topics these rules address.

The Board of Directors is given special attention in Indian corporate governance. Including at least one female director and the function of independent directors in providing supervision are both essential elements. Financial reporting and risk management are two areas that an audit committee must monitor. This Board checks the reliability of the financial accounts and the effectiveness of the risk management procedures.

In India, transparency is a fundamental principle of responsible business practices. Shareholders and the general public have a right to know about a company's financial statements, related-party transactions, and other material events. This openness promotes reliance and duty on one another.

In India, stockholders can vote, receive dividend payments, and gain access to company documents. The "one-share, one-vote" policy assures that each shareholder's voting power is proportional to their ownership stake. The Companies Act of 2013 mandated CSR budget allocations for some businesses. This motivates businesses to support environmental and social objectives.[3]

Decisions made within a firm must be treated as objectively as possible, which is why independent directors are so important. They must make objective decisions and look out for the company's best interests, not their own. Independent directors are required to serve on the boards of publicly traded corporations in India. These board members are there to check the power of management and encourage decentralized decision-making.

A board's ability to make impartial decisions may be affected by factors such as the number of women on the Board and the variety of backgrounds represented. Boards with a wide range of backgrounds are less likely to succumb to groupthink and more likely to act autonomously.

---

[2] OECD, *Improving Corporate Governance in India: Related Party Transactions and Minority Shareholder Protection* 41-52 (OECD 2014).
[3] Dadhich G, 'The Emerging Role of Independent Directors in the Boardroom' [2016] CORPORATE GOVERNANCE IN INDIA 183.

A robust whistleblower mechanism encourages people to speak up about organizational wrongdoing without worrying about repercussions. Such systems encourage openness and impartial monitoring.

An organization's moral climate significantly impacts employees' capacity to make impartial judgments. Organizations with solid values in ethics and honesty are more likely to make choices that promote long-term viability and protect the interests of their stakeholders. Businesses that actively involve their stockholders, workers, and others in decision-making tend to be more autonomous because they consider a more comprehensive range of opinions.

Activist shareholders can steer decision-making in the company's favour by exerting pressure on the Board and management. In some cases, this can lead to more decentralized decision-making in response to the needs of shareholders. Risk assessment and management are vital parts of making decisions on your own. Robust risk management policies increase the likelihood of autonomous, risk-aware decision-making inside an organization.

Legal and regulatory framework

Companies that fall under the definition of "specified classes of companies" in Section 149 of the Companies Act 2013 must have independent directors on their boards. It is the responsibility of independent directors to look out for all parties' interests, which is emphasized in Section 149(6).

Independent directors are provided with a code of conduct and duties under Schedule IV of the Act. To ensure impartial financial decision-making and oversight, Section 177 requires the establishment of an audit committee composed of a plurality of independent directors.[4]

Related party transactions are governed by Section 188, which ensures that any dealings between directors, key management, or their families are subject to objective review. Sections 177(9) and 177(10) require the creation of a whistleblower mechanism that encourages independent investigation by permitting employees and directors to submit concerns regarding unethical behaviour.

The legal precedents in Indian corporate governance that relate to directors' autonomy and autonomous decision-making include:

- Independent directors are crucial in preventing corporate fraud, as demonstrated by the Satyam case. The importance of independent directors' participation in decision-making was highlighted by criticism that they needed to do their jobs more thoroughly.[5]

[4] Bhattacharyya AK, *Corporate Governance in India: Change and Continuity* 96-104 (Oxford University Press 2016).
[5] Satyam Computer Services v. Directorate of Enforcement, WAMP.No.155 of 2016.

Volume 22, September 2022 ISSN 2581-5504

- Tata Sons and Cyrus Mistry's court struggle has prompted discussions regarding corporate governance standards, in particular, the ability of independent directors to sway crucial judgments like the dismissal of a company's chairman.[6]
- The lawsuit between SEBI and Sahara Group highlights SEBI's responsibility to safeguard investor interests and maintain the independence of market regulators. This shows how important it is for regulators to make decisions without outside influence.[7]
- The dispute between Infosys' co-founder, Narayana Murthy, and the Board over corporate governance standards, highlighted the function of independent directors in resolving governance concerns and fostering openness in company operations.[8]

IMPACT OF DIRECTORS' AUTONOMY ON CORPORATE PERFORMANCE

There are many obstacles that independent directors must overcome to fulfil their fiduciary duties and remain objective. An independent director's ability to do their job effectively depends on familiarity with the company's business. There is a need for specific knowledge of each industry's peculiarities, legal requirements, and risk factors. Knowing competitors' critical performance indicators in the same market is also essential.

In addition to a solid grounding in corporate law, an independent director should have a firm grasp of any industry-specific economic statutes that may affect the company. Independent directors may find it challenging to carry out their duties under the current framework because of the heavy reliance on information from senior management.

We can argue that the Act may have overreached itself, generating difficulties that inhibit the proper functioning of independent directors even though it intended to promote their importance and contribution. The Act has several regulations that tend to impose strict dos and don'ts, which could constrain the discretion of independent directors.

There should be specific changes made to increase the quality of governance. Even after the Act has been in effect for some time, there is still plenty of room to learn about and fix these difficulties. Determining the challenges that prevent independent directors and corporations from meeting legal requirements is crucial. Improving corporate governance to higher levels will benefit from investigating the incentives open to independent directors to ensure compliance with the Act's intent.

Some Independent Directors may have had or may have links with the company's promoters or management, notwithstanding the requirement for independence. Although these connections may not be considered "material" under the law's definition, they may still influence the director's

[6] Cyrus Investments (P) Ltd. v. Tata Sons Ltd., 2019 SCC OnLine NCLAT 858.
[7] Sahara India Real Estate Corporation Limited and Others v. Security and Exchange Board of India (SEBI), Case no. 8643 OF 2012.
[8] Narayana Murthy v. Mr. H.N. Nanjegowda, ILR 2008 KAR 1574.

ability to make objective decisions. The impartiality of a director can be compromised by the slightest of links. There is a risk that their judgment will be clouded by unconscious biases, loyalties, or overfamiliarity, undermining the required level of objectivity and rigour. The director may be hesitant to ask difficult questions or criticize management out of fear of upsetting or alienating them.[9]

There is some doubt about Independent Directors' capacity to give each company their full attention when they sit on the boards of many businesses. When concerns affect two or more companies in which they serve as directors, this could create a conflict of interest.

Directors serve voluntarily and are compensated for their time and effort, which may affect their judgment. Directors may be encouraged to adopt bold or inconvenient stances on important issues for fear of losing lucrative directorship fees if they do so.

Independent Directors may need domain expertise or appropriate industry experience to grasp complex company choices. This may prevent them from effectively contributing to meaningful discussions and delivering insightful opinions. Accidental disclosure of confidential information to Independent Directors is one potential source of conflict of interest for them. Concerns about the security of sensitive customer information have been raised in light of the possibility of such disclosures.

Directors with a lot of leeway to make decisions may be more inclined to try new approaches and take some risks. Innovating and responding quickly to shifting market conditions can boost a company's competitiveness and long-term growth. Directors' strategic decision-making is enhanced when they are given discretion. A company's capacity to outperform the competition might benefit from its responsiveness to market opportunities and dangers.

Director independence is associated with a greater likelihood of success in balancing the needs of shareholders, employees, and customers. Better performance metrics and longer-term viability may result from such harmony. The degree to which directors can make decisions independently depends on factors, including the Board's structure and the number of independent directors. Boards with a wide range of members, each with unique experiences and opinions, tend to make better decisions.[10]

Directors with discretionary authority can establish and enforce firm-wide codes of conduct. Companies with excellent and effective governance tend to attract more ethical investors, boosting productivity. Directors' independence can fuel strategic choices in the long run, but it needs to be

---

[9] Baxi CV, *Corporate Governance: Critical Issues* 149-154 (Excel Books 2007).
[10] Agarwal Sanjiv Agarwal Ankita, *Guide for Independent Directors; Company Law, SEBI Guidelines, Corporate Governance* 125-131 (Bloomsbury India 2021).

tempered by a firm grasp on the books. The success of a business can suffer if more independence encourages risky financial decisions or a lack of regard for fiscal responsibility.

When utilizing one's independence, keeping risk in mind is essential. The Board of directors should have procedures to help them recognize potential dangers, evaluate them, and lessen their impact. Successful risk management may safeguard a business's resources and productivity.

While independence is valuable, it must be paired with responsibility. Management should be held accountable for their actions, and the Board of directors should offer supervision. This prevents autonomy from resulting in unrestrained authority.

Director independence is generally evaluated regarding its effect on shareholder value as an indicator of the company's overall performance. Stock prices and shareholder returns tend to rise when companies make strategic decisions based on solid information and with the long-term interests of shareholders in mind.[11]

CONCLUSION AND RECOMMENDATIONS

Independent Directors play an increasingly crucial role in influencing the future of corporate ethics and responsibility as the business landscape changes. The screening procedure for Independent Directors should be more rigorous to ensure they qualify to serve on boards.

Independent Directors are a positive development toward better corporate governance, but ensuring their actual independence in practice isn't easy. To maximize their effectiveness as corporate ethics guardians, they must balance objectivity and knowledge. Companies can maintain the credibility of Independent Directors, improve transparency, and increase stakeholder trust in the corporate system by addressing the reasons that challenge independence and implementing actions to support their autonomy.

Independent Directors' functions should be rethought and implemented to ensure businesses' long-term viability. This can help businesses avoid governance problems that might damage their reputation and lay the groundwork for a more open and accountable business culture.

With independent directors, it is possible to achieve corporate governance goals in the long run. When placed in the context of India's rising economy and the record levels of investment money streaming into the country's businesses, this argument gains even more weight.

Intentionally recruiting independent directors can be the trigger that propels start-ups toward lasting success as they aim to disrupt industries and redefine standards. While startups may not be required by law to have independent directors on Board, adding such seasoned people can help

[11] Ibid.

propel the company forward. These directors inject startups with knowledge, foster a culture of governance, and communicate their dedication to stakeholders clearly and compellingly.

Appointing independent directors also sends strong signals that will be felt throughout the whole start-up community. A willingness to accept outside advice shows that a startup is mature and open to new ideas, increasing its chances of success. Potential investors will appreciate this change since it demonstrates a robust governance system, a sign of responsible management. In addition, having independent directors can help establish a young company's legitimacy in the eyes of investors, potential business partners, and government regulators.

Suggestions-

1. Promoting a strict regulatory atmosphere that adheres to the values of openness and responsibility is crucial. Corporate governance standards must be continually reviewed and updated to keep up with the ever-evolving nature of markets. This includes bolstering the role of independent directors, increasing disclosure requirements, and more.
2. Directors should be well-versed in their roles and responsibilities. Therefore ongoing education and training programs are essential. Using such tools, board members can better think for themselves and make decisions that are in the best interests of everyone involved.
3. Another vital recommendation is to increase the representation of underrepresented groups on company boards. More informed and impartial decisions may be made with the help of a board that represents a wide range of perspectives, expertise, and experience levels. Increasing the Board's impartiality can be accomplished by emphasizing gender diversity.
4. Integrity and ethical leadership must also be encouraged within businesses. Businesses should promote a strict code of ethics that includes safeguards for anonymously reporting unethical behaviour by employees or other stakeholders.
5. Companies should have transparent criteria for selecting and evaluating independent directors to encourage independent decision-making successfully. This guarantees that only qualified and impartial individuals are selected for board membership.
6. Businesses should encourage shareholder input and engagement in all aspects of operations. Shareholders should be consulted on significant issues and given enough information to make educated choices.
7. In addition, firms that have effectively adopted directors' autonomy and fostered independent decision-making should be studied and their best practices shared. The regulatory bodies, industry associations, and advocacy groups should work together to increase awareness about the significance of directors' autonomy and independent decision-making, and other organizations can learn from the examples set here. Robust corporate governance procedures are essential to fostering confidence in Indian businesses and ensuring their continued long-term success, which can be highlighted via public awareness initiatives.