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# LEGAL FRAMEWORK AND CORPORATE GOVERNANCE IN PERSPECTIVE OF INDIA

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CORPORATE
GOVERNANCE

**ABSTRACT :**

*Corporate governance is a system through which companies are directed and controlled. Corporate governance is primarily about the transparency, integrity and accountability of a company's operations. The goal of corporate governance is to serve the best interests of all stakeholders. Stakeholder is a term coined for the development of corporate governance. In the past everything was worth looking at from the view of the shared holders. A shareholder is a person who is directly or indirectly associated with a company. Stakeholders can be internal or external. Internal stakeholder promoters, members, workers, executives, etc.., external stakeholders can be customers, lenders, sellers, retailers, bankers, communities, governments, etc.*

**KEYWORDS :** *Corporate governance , directed and controlled.*

## INTRODUCTION :

It is a well-known fact that even though a company, a person is in the eyes of the law, and there are some limitations in his personality to perform certain tasks. It is only a judicial person who exists in terms of law and is not able to make specific decisions, which is a characteristic of natural persons. The decision making and running of the company is something that the company cannot do on its own as an individual. Thus, the company depends on natural persons to operate. In the Companies Act, these functions were assigned to the directors separately and to the persons in the style of the board of directors collectively. From the above it can be seen that the progress and prosperity of the company depends mainly on the collective decision in the form of directors and boards. Since the entire focus is on the directors collectively and the directors individually, corporate governance is primarily concerned with establishing a system where directors are entrusted with responsibilities and duties related to the direction of corporate operations.

It seems that the emergence of this term is not entirely justified in the context of corporate governance. This can be verified from the fact that rich companies exist even before the various reports on corporate governance. Thus, these codes are a basic feature of all health institutions even in earlier times. For the above reasons racial values may be the primary virtue for traditional accountability because the latter has transparency or better control over their governance. As the days go by these virtues are getting worse day by day and there is a need for a code of conduct in some form to control them. Similarly, whenever a society witnesses something bad, it resists it in its own way or through the rulers. In the modern age, these rulers are in some cases kings and in some cases democratic governments. If we look at corporate governance in this context, our lack of ethical management in some cases, people who do not have the right knowledge to guide in some cases, and most importantly those who can, will surely lead us to think of failure in companies. Intelligent criminals who play tricks with them and with people should be recognized.

## INDIAN PERSPECTIVE:

The pathetic corporate failures of corporate governance, unethical business practices and inadequate disclosure have accelerated worldwide. Effective corporate governance depends on two factors. Transparency in the conduct of business and secondly the legal and administrative framework that the government has created is a gap between the fulfilment and practice of corporate governance.

1. **Corporate Governance, reforms, Clause 49 and IT Governance:** Corporate governance is, to a large extent, a set of mechanisms by which outside investors protect themselves from insiders. The issue of corporate governance has been on the agenda since the 1980s, following the Corporate Governance Code issued by the Cadbury Committee. The Kumar Mangalam Birla Committee, in association with the Cadbury Committee, has also issued a Code of Corporate Governance for i-India companies. According to the Kumara Mangalam Birla Committee, corporate governance is a system through which companies are directed and controlled. The board of directors is responsible for the management of their companies. The role of stakeholders in appointing directors and auditors and ensuring that the proper management structure is in place. The Board's responsibilities include adhering to the company's strategic objectives, providing leadership to implement them, overseeing the management of the business, and reporting to stakeholders on their operations. The functions of the Board are subject to the rules, regulations and stakeholders of the General Assembly. The governance structure of a country protects investors from the seizure of managers and large shareholders. In different jurisdictions, the rules that protect investors come from different sources, including company, security, bankruptcy, acquisition and competition laws, and the rules of the stock exchange.
2. **Legal Framework in Corporate Governance:** Companies in India are required to comply with the SEBI Guidelines in the Companies Act, 166, the Kumara Mangalam Birla Report on Corporate Governance, the Accounting Standards issued by ICAI and the list of stocks on which they are listed. The Companies Act, 1956 is the relevant law in India that governs the incorporation, operation and turnaround of companies. General businesses such as declaring dividends, appointing directors, accepting financial statements and appointing auditors require 52% of stakeholder approval, while all other business activities require76% shareholder approval. If a company wants to start a new business, it needs the approval of 76% of the shareholders, which means that the board with the larger company must convince the shareholders of their policy of approving their specific resolution because the shareholders are usually managers. In such cases. Looking at the composition of the board prescribed by this Act, we have found that the Act is silent about the composition of the directors or the minimum qualifications required for becoming a director. However, in the Kumara Mangalam Birla report, in case of appointment / appointment of directors, the stakeholders should be informed again about the working conditions, information on working skills and number of directors in other companies. Director. If the Chairman is the Executive Director, at least half of the Board of Directors shall be independent and in other cases please one - one third of the total directors shall be at least 3 Directors and in number of cases shall not exceed a maximum of 12. It has been approved by the Central Government. It further states that no person can be a director for more than 20 companies. The KMB report strongly states that directors should not be members of more than 10 committees of chairpersons of more than one committee in all companies. By law, honorarium payable to managing employees, if there is only one person, should not exceed 5% of net profit and in case of more than one manager, it should not exceed 10% of net profit without prior permission. Central Government Limits on Salaries and Permits to Managing Employees in case of Losses in the Current Fiscal Year. Under this section, minority shareholders are protected under section 88 of the Act. Members with at least 10% share capital can apply to the Company Law Board (CLB) for assistance in cases of repression and mismanagement. There

is a provision for minority shareholders to appoint a representative director on the board. There is no special provision within companies to protect creditors. If the company defaults, the creditors have to move to the civil court for recovery of the arrears, which is demanded to spend more time and money around the courts. The Securities Bill was recently passed by the Indian Parliament in June 2002. Therefore, creditors can get long term arrears of the company in normal period. The Institute of Chartered Accountants of India has the relevant authority to issue standards, which are mandatory in most cases. So far we have 28 standards that provide guidelines for the publication of financial information to ensure uniformity among companies. The Securities and Exchange Board of India is a regulatory authority that issues regulations, guidelines and guidelines to companies to ensure that stock exchanges are regularly complied with as per the additional requirements mentioned in the listing agreement.

3. **Pre Liberalization:** In the early years, Indian associations were governed by colonial rules, and many of the rules and regulations were maintained at the behest of British employers. 1866 The, introduced 1882, 1913 and 1932. The Indian Partnership Act was first enacted in 1932. The law of companies is to manage the corporate operations of the agency model as individuals / businesses. The companies entered into legal agreements with joint stock companies. Scattered ownership was characterized by the misuse / abuse of responsibilities by managing agents. The question of profit making and control became obsolete and various conflicts began.

The period of 1950 and 1960 cost was a period of increasing industrial activity and costs. Origin was the demand for many products in which the government offered reasonable prices. This was the time when the government set up the Tariff Commission and Industrial Expenditure and the Bureau. 1951 Development Regulation of India Act 1956 - Companies Act came into existence Development and banking institutions came into existence. As an integral part of the cost accounting function, the mid-70s were a time of cost, volume, and profit analysis.

## POST LIBERALIZATION:

After liberalization, India is getting close attention from institutions / companies from all over the world with the aim of creating new markets. Progressive organizations in India have tried to establish a system of good corporate governance. There have been many discussions and events leading to the development of corporate governance. The Basic Minimum Code for Corporate Governance was proposed by the Board of Industry of India (CII) in 1998. Handles corporate governance laws, procedures, methods and inherent rules that determine a company's managerial decision-making capacity. Its exclusive claimants, creditors, customers, state and employees are claimants.

## The First Phase of India's Corporate Governance Reforms:

Efforts to improve corporate governance in India were made known by the Corporate Industries Group, many of which were industrialized in supporting and drafting corporate governance guidelines after strong advocacy from industry groups, SEBI deliberately adopted Corporate Governance Reforms. The objectives of the first phase of corporate governance reform in India were aimed at bringing together more independent, powerful and management-focused monitors, as well as stakeholders with institutional and foreign investors in mounting management. Although both SEBI and MCA play a key role, these reform efforts have changed in many places.

1998 Confederation of Indian Industry (CII) desirable corporate governance in Code1996, in CII took the first institutional initiative in Indian industry by taking a special initiative on corporate governance. The purpose was to develop and disseminate the code of companies in the private sector, public sector companies, banks of financial institutions and all those companies which are corporate entities. The CII took steps out of public concern about the interests of investors, especially the need to move towards international standards of disclosure in business and industry, promoting transparency in the business and industry of small investors. The final draft of the code came out in April 1998.

### Kumar Mangalam Birla Report on Corporate Governance:

SEBI has appointed Kumar Bhagam Birla as its chairman. A comprehensive approach to internal trade issues will be provided to protect the rights of various stakeholders. The main focus of the committee's report is a set of recommendations that distinguish between the board's responsibilities and responsibilities in establishing a mechanism for good corporate governance, and emphasizes stakeholder rights in the demands of corporate governance. Many recommendations are mandatory. The list of these agreements is expected to be executed on the companies listed for the initial and ongoing projects in phases on specific dates through the agreement. Companies are required to disclose separately in their annual reports, a report on corporate governance describing the steps they have taken to comply with the committee's recommendations. This will enable the stakeholders to know that the companies that have invested in them have stood with the companies that have invested in them and are standing in the context of the specific initiatives taken to ensure strong corporate governance.

### Task Force Report on Corporate Excellence Through Governance:

The Company Affairs Department prepared a report on corporate excellence through governance. Depending on the size and capacity of the companies as well as the needs of the market, the task force recommended the implementation of the necessary measures in phases.

### Clause 49 Augmentation:

Shortly after the CII Code came into force, SEBI appointed the Birla (Birla Committee) of the Corporate Governance Committee. In 1999, the Birla Committee submitted a report to SEBI to enhance corporate governance for listed companies. The Birla Committee's recommendations focused on improving the functioning and structure of the Company Board and increasing public disclosure to stakeholders in the context of the Company Board. The Committee has made specific recommendations in this regard regarding the representation and independence of the Board as maintained in Section. The committee also recognized their importance, made a number of specific recommendations regarding the functioning of the Audit Committees and the establishment of the Board's Audit Committees. The Birla Committee has also made a number of recommendations on issues of disclosure and transparency, especially in relation to the information provided to shareholders. , And those companies should send specific information to stakeholders, such as quarterly reports and analyst presentations.

SEBI amended its listing agreement to include recommendations for the country's new Code of Corporate Governance. These rules, which are included in the clause in, the new clause of the inventory agreement was implemented between 2000 and 2003. The reforms first applied to newly listed and large companies, then to smaller companies, and finally to the majority of listed companies.

### Advisory group on Corporate Governance Report:

The administrative system is different in each country and is shaped by its political, economic and social history as well as its legal framework, with keen interest shown by institutions such as the World Bank. The Asian Development Bank etc…, OECD developed a theory that serves as a good standard internationally. The Advisory Group on CG intuitively sought to compare the status of corporate governance with the best recognized standards and suggested improvements to the standards of corporate governance in India.

### Report of the consultative Group of Directors of Banks / Financial Institutions:

A Consultative Group of Directors of Banks and Financial Institutions was set up to review the supreme role of the Board of Directors of Banks and Financial Institutions and to study the verification, transparency, disclosure, audit committees, etc. on the functioning of the Board. And make recommendations to make the role of the Board of Directors more effective in terms of risk reduction and exposure. Following the best international practice suggested by the Basel Committee on Banking Supervision, the Committee recommended a review of the existing framework for the existence of the Constitution, Board of Banks and Financial Institutions.

### Report of the committee on Corporate Audit and Governance Committee:

The Department of Corporate Affairs (DCA) under the Ministry of Finance has appointed a committee under the chairmanship of Naresh Chandra to look into various issues of corporate governance. The committee recommended changes in various areas such as the Statutory Auditor Company Relationship, the process of appointing auditors and fixing of audit fees, restrictions required if there is no audit fee, management and measures taken to move companies forward. True and correct statement of the financial affairs of the company, it also reflects on other measures such as authentication and management of accounts and financial statements from directors.

### SEBI report on Corporate Governance:

The Securities and Exchange Board of India (SEBI) has constituted a committee to study the role of independent directors, concerned parties, risk management directors and directors of compensation, code of conduct and financial disclosure in an effort to improve governance standards. The committee based its recommendations on various factors such as accountability, transparency, ease of implementation.

### Report of the committee on regulation of private companies and partnerships:

Companies 1966 act included license and permit raj. The law has been amended more than two dozen times to take into account various changes in the business environment. The law needed to be reconsidered as a large number of companies in the private sector came into the picture. To consider this framework, the government constituted a committee in January 2003 to ensure a scientific and rational regulatory environment. This was the main focus of the report.

### Amendment of 49 Clauses:

The idol committee paid special attention to the role and responsibilities of the audit committees. It recommended that the audit committee be made up of financially literate members, that the audit committee be given a larger role, and that the Vishti blockers be admitted to the audit committee without first informing their supervisor. The committee further requires that the companies confirm this every year. He did not deny admission to the audit committee or to whistle-blowers who were generally treated unfairly.

In 2004, in response to the recommendations of the Idol Committee, SEBI further amended the section amendments; however, the implementation of these changes was postponed till January 1, 2006, mainly due to industry resistance and unwillingness to accept such broad creams. Although the Murti report has resulted in a number of changes to clause-to-to-be, the biggest change in Indian governance and disclosure standards are corporate governance, audit committees, stakeholder disclosure and internal controls under the Chief Controller / CFO.

### CONCLUSION:

Creative and external stakeholders, such as consumer leaders, dealers, government officials, bankers should be properly selected bankers who will be representatives in the government and will include companies of their quality. Corporate governors have a high responsibility to ignore them under the law. So only the right internal and external stakeholders can be brought into the office of the Board of Directors who have only the interest of the company internally and privately to secure the guidance and tighten the financial leakage or waste of funds of the Governing Board. The selection of company secretaries should be done directly by the expert committee so that only honest and experienced secretaries can carry out their duties properly.

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