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**“Dharma is to protect the Needy”**

**Article on**

**CORPORATE GOVERNANCE THE JOURNEY OF INDIAN  
CORPORATE WORLD**

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## **INTRODUCTION**

In the year 1991 privatization started in India. As this news spread out like fire in the global economy. And then India was ready to open up the global integration for its economy.

Due to this a large inflow of capital from the world to our country took place. As a large capital inflow took place, a lot of capital managers also came to India. As there was a large inflow of capital, to manage this the demand for the cash managers increased in our country. Numerous local cash managers raised them into a higher circle. As the inflow of money was handled by the corporates, so the money was only accessible to the top level management. And to access this in a better way they took the service provided by the money managers'. In order to impress the top level management the money managers developed some unconventional and creative techniques. Which resulted in unethical practices. In order to control the unethical practices taking place, Corporate Governance was formed. Corporate Governance is basically a set of rules and regulations/ guidelines that were framed to control the unethical practices used by the money managers.

The main idea of Corporate Governance is to focus on a company's structure so that it can ensure a transparent, fair and an accountable behavior of the corporate in the processes that are taken up by the company. Corporate Governance basically represents the business management that is in charge for the creation of value in the long term process.

The most accepted and used definition of Corporate Governance form the report that was published way back in the Cadbury Committee that was held at United Kingdom in the year 1992.<sup>1</sup> The topic on which the committee held was 'Corporate Governance'. And the committee stated that the 'framework' coordinates and controls the undertakings of the organization is the system of corporate governance.

If we look after the concept of corporate governance in a broader sense then we can define it as a system that revolves around the relationship that exists between the shareholders. For instance corporate governance deals with the relationship shared between the top level management, the board, promoters, shareholders and other external stakeholders.

The term Corporate Governance can be defined as a method in which a corporation is directed, administered, or otherwise controlled. It also helps to determine the corporate

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<sup>1</sup> Cadbury report | Codes & reports | Corporate Governance | ICAEW, , ICAEW , <https://www.icaew.com/technical/corporate-governance/codes-and-reports/cadbury-report> (last visited May 15, 2021).

direction and its performance. The term Corporate Governance includes “the laws and customs affecting that direction, as well as the goals for which the corporation is governed. The board of directors is typically central to corporate governance.”<sup>2</sup>

The relationship established through corporate governance between the top level management and all type of shareholders is of utmost importance. The other participants included in this are the creditors, employees, customers, regulators, and also the general body. The structure corporate governance is largely dependent upon the administrative, institutional, legality and the ethical environment of the local area.<sup>3</sup>

### **EXTENT AND SCOPE**

The following are the extent and scope:

1. This research paper will deal with the Corporate Governance and its working in the contemporary India.
2. This paper will also deal with the Nature and scope of Corporate Governance.
3. This paper will also cover the loopholes and shortcomings prevailing in the concept of Corporate Governance.
4. This research paper will also try to give suggestions by which this can be eradicated.

### **SIGNIFICANCE**

This paper will help the people who wants to know the origin of the corporate governance in India. This paper will also help the people who will be researching on this topic and through this paper they can research further. This paper will clarify the doubts of the people regarding corporate governance. It will also make people aware of the scams that took place due to lack of proper corporate governance. It will also help the students to know about how important corporate governance is.

As this paper focuses on the corporate governance it will educate the people about how cooperate governance work and how much important it is for the organizations to have a good corporate governance.

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<sup>2</sup> JAMES CHEN, *Corporate Governance* , INVESTOPEDIA ,

<https://www.investopedia.com/terms/c/corporategovernance.asp> (last visited May 15, 2021).

<sup>3</sup> Subha Kant Padhi, *Corporate governance the journey of Indian corporate world*, 10 INT. J. MANAG. 26–32 (2019), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3526715](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3526715).

## **RESEARCH OBJECTIVE**

The following are the research objectives:

1. To know about the history of the corporate world and the process through which it developed.
2. To know about the working of Corporate Governance.
3. To know about the standards of Corporate Governance.
4. To know about the functioning of SEBI.
5. To know about the major issues found in India under Corporate Governance.

## **RESEARCH QUESTIONS**

The following are the research questions:-

1. How did the corporate world in India developed?
2. How does the Corporate Governance work and what does it mean?
3. What are the Standards of Corporate Governance?
4. What is the work of SEBI in this?
5. What are the major issues found in India under Corporate Governance?

## **RESEARCH METHODOLOGY**

The above research is been done by following the doctrinal method of research. While writing this paper study of analytics and descriptive was used. To support each point given in the research paper proper explanation, examination, statutes, laws, and case laws are provided. “The starting point of research will be a strong doctrinal analysis. It would describe the law is now and whether there are indications as to how the law might be evolving or developing. It would follow the pattern of a positivist legal research. But the full pattern of research will be a clever mix of doctrinal, descriptive and analytical method.”

“It would critically evaluate the law and dwell into the areas which are uncertain and require changes or are evolving.” The citation style that is used to write this paper is 20th Edition Bluebook.

“Reference has been made from secondary sources like books, journals and articles and online websites. All the sources have been duly acknowledged.”

## **LITERATURE REVIEW**

Many papers and articles were used to write this. The major and important ones are reviewed below.

1. “CORPORATE GOVERNANCE THE JOURNEY OF INDIAN CORPORATE WORLD” by Professor Subha Kant Padhi, SSRN- id3526715. This paper gives an overall idea about how the corporate world in India works. This paper gives idea about SEBI and the evolution of corporates in India. It also includes about the issues that are faced under the corporate governance in India and the procedure to tackle those problems. This paper also talks and gives idea about India’s position in corporate governance. All in all this paper was an easy read for those who are new to this topic.
2. “CORPORATE GOVERNANCE: A JOURNEY FROM COMPLIANCE TO COMPETITIVE ADVANTAGE” by Dr. Pankaj M. Madhani, SSRN- id15213706. This paper talks about journey of Corporate Governance. The main focus of this paper is given on how the Corporate Governance form nothing to everything. This paper talks about the recommended standards of Corporate Governance. It also gives ideas about the Organization for Economic Cooperation and Development (OECD) and the principles of Corporate Governance. And also talks about the procedure in which the Corporate Governance can be improved. This is a bit advanced paper and a person referring to this paper must have some basic knowledge about the topic.
3. Article- Governance 101 “ALL YOU NEED TO KNOW ON CORPORATE GOVERNANCE PRACTICES IN INDIA” by Deloitte. This was the best article that I came across on this topic. A person without having any knowledge on this topic can read this to acquire the basic level of knowledge. I would suggest everyone to read this article as it is a very interesting and a very basic one.

## **CONTENT**

### **CORPORATE GOVERNANCE- MEANING**

Corporate governance can be said to be a mixture of rules, regulations, laws, and processes by which businesses are operated, regulated, and controlled. If corporate governance is used wisely keeping in view the internal and external matters then it will not only be beneficial for the shareholders but it also be beneficial for the stakeholders as well. Stakeholders include Customers, employees, investors, suppliers and vendors etc.

The main motive of corporate governance is to facilitate effective, entrepreneurial and prudent management which can give the company a long term success. Corporate governance is a mixture of activities that helps to bring transparency to the company's management due to which it attracts the customers. So basically corporate governance helps in governing the business.

In 1999 an Organisation named Economic Co-operation and Development (OECD) issued the first set of guidelines which was named as 'Principles of Corporate Governance' and later it was modified in the year 2003. In 2004 it was finally agreed by the members of OECD.

It states "Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. 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."<sup>4</sup>

#### **Why good corporate governance is important?**

Having a good corporate governance is of utmost importance for a company as it ensures to bring transparency to the operations of the company which in future will help to attract the customers and will increase the goodwill of the company. Good Corporate governance will also result in better accountability of the shareholders.<sup>5</sup> Further it will result in fairness and dealing which means the company will not be engaged in any unfair trade practices which will help the company to uplift their goodwill.

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<sup>4</sup> OECD & OCDE, *OECD Principles of Corporate Governance - 2004 Edition* (2004), <https://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf> (last visited May 15, 2021).

<sup>5</sup> YOGESH GUPTA, *Corporate Governance- All you want to know*, TAXGURU (2018), <https://taxguru.in/sebi/corporate-governance.html> (last visited May 15, 2021).

## **EVOLUTION OF LEGAL FRAME WORK OF CORPORATE GOVERNANCE IN INDIA**

The Companies act was enacted in the year 1866 and further it was amended three times. And that were done during 1882, 1913 and then in 1932. Before which the Indian companies and associations used to follow the colonial guidelines. A large part of the rules and guidelines were majorly favouring the impulses and likes of the British employers. Further in the year 1932 Partnership Act was enacted. The enactments enacted had a different approach, as it majorly focused on the working of a legitimate contract with companies and associations. “This period was an era of misuse/abuse of resources and shunning of obligations by managing specialists because of scattered and unprofessional proprietorship.”<sup>6</sup>

After India got its independence, there were many industrialists that were interested to take up the production of the essential items for which the government of India had directed and dictated fair prices for the same. During this point of time the government of India was setting up the “Tariff Commission and the Bureau of Industrial Costs and Prices”. During the 1950s introduction of the “Industries (Development and Regulation) Act and Companies Act” was done to the legal system.<sup>7</sup> The setting up of heavy industries was done during the time of 1960s. The time of 1970s-1980s was the point at which people starting giving importance to the accounting activity.

## **REFORMATION IN CORPORATE GOVERNANCE**

During the starting phase of India’s corporate governance reforms were majorly aiming at giving powers and making the Boards and Audit Committees more independent, focused and powerful supervisor of the team. They also gave powers to shareholders, including institutional and foreign shareholders/investors, in the motive of to supervise the management. Both “Ministry of Corporate Affairs (MCA) and the Securities and Exchange Board of India (SEBI)” played an important role in channelizing these reforms.<sup>8</sup>

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<sup>6</sup> Devika Sharma, *Evolution of Corporate Governance in India / SCC Blog*, SCC BLOG , <https://www.scconline.com/blog/post/2019/11/13/evolution-of-corporate-governance-in-india/> (last visited May 15, 2021).

<sup>7</sup> Corporate Governance in India – Practices, Framework | Deloitte India, , DELOITTE INDIA , <https://www2.deloitte.com/in/en/pages/risk/articles/governance-101.html> (last visited May 15, 2021).

<sup>8</sup> SEBI | Recommendations of the Narayana Murthy Committee on the Revised Clause 49 - Corporate Governance - Press Release, , SECURITIES AND EXCHANGE BOARD OF INDIA (2003), [https://www.sebi.gov.in/media/press-releases/dec-2003/recommendations-of-the-narayana-murthy-committee-on-the-revised-clause-49-corporate-governance-press-release\\_17040.html](https://www.sebi.gov.in/media/press-releases/dec-2003/recommendations-of-the-narayana-murthy-committee-on-the-revised-clause-49-corporate-governance-press-release_17040.html) (last visited May 15, 2021).

### 1. COST INFLATION INDEX (CII)- 1996

During 1996 the Indian Financial industry took their first major step with regards to corporate governance. The main motive behind this was to promote and generate a code for the companies. Irrespective of the company being a private sector or a public sector, banks or financial institutions, all corporate entities were included in this. “The steps taken by CII addressed public concerns regarding the security of the interest and concern of investors, especially the small investors; the promotion and encouragement of transparency within industry and business, the necessity to proceed towards international standards of disclosure of information by corporate bodies, and through all of this to build a high level of people’s confidence in business and industry. The final draft of this Code was introduced in April 1998.”<sup>9</sup>

### 2. REPORT OF KUMAR MANGALAM BIRLA ON CORPORATE GOVERNANCE

Mr Kumar Mangalam Birla was a well-known industrialist and he was further appointed as the Chairman by SEBI<sup>10</sup> in order to provide a comprehensive report concerning the insider trading in order to save the rights of the investors. The ideas demanded the recorded organizations for introductory and proceeding with divulgences in a staged way inside determined dates, through the posting arrangement. The companies were asked to disclose their annual reports separately, this was done to check whether or not the companies have acted according to the recommendations of the company. The main motive behind doing this was to enable the shareholders have the idea where the company is, and in what they have invested, this resulted in ensuring proper corporate governance.

### 3. CLAUSE 49

During 2003 the committee realised the importance of proper auditing body so they have specific suggestions regarding the same to the Constitution and functions of Board of Audit Committees. SEBI at that point of time reviewed its listing contract so that it could add the

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<sup>9</sup> SMITA JAIN, *Corporate Governance-National and International Scenario* , <https://www.icsi.edu/media/webmodules/programmes/33nc/33souvearticle-smitajain.pdf> (last visited May 15, 2021).

<sup>10</sup> REPORT OF THE COMMITTEE APPOINTED BY THE SEBI ON CORPORATE GOVERNANCE UNDER THE CHAIRMANSHIP OF SHRI KUMAR MANGALAM BIRLA, REPORT OF THE KUMAR MANGALAM BIRLA COMMITTEE ON CORPORATE GOVERNANCE, , <https://www.nfcg.in/UserFiles/kumarmbirla1999.pdf> (last visited May 15, 2021).

recommendations. The above made rules were listed in Clause 49.<sup>11</sup> It was a new section that created in the listing agreement of 2000 and 2003.

**4. MARCH 2001- “REPORT OF THE ADVISORY GROUP ON CORPORATE GOVERNANCE.”**

This report mainly did a comparison between the corporate governance on India with that of the world’s best standards. And further suggested to improve the standards of corporate governance in India.<sup>12</sup>

**5. APRIL 2001- “REPORT OF THE CONSULTATIVE GROUP OF DIRECTORS OF BANKS.”**

The Reserve Bank of India (RBI) constituted a corporate governance of directors of banks and financial institutions in order to evaluate the role of boards of banks and financial institutions and to get feedback on the activities of the boards with respect to transparency, audit committee, disclosure etc. so that they could get suggestions and feedbacks which help the board of directors to be more efficient and reduce the risk.

**6. DECEMBER 2002- “REPORT OF NARESH CHANDRA ON CORPORATE AUDIT AND GOVERNANCE COMMITTEE.”**

This committee took the responsibility to “analyse, and suggest changes in different areas like—the statutory auditor and company relationship, procedure for appointment of Auditors and determination of audit fee, restrictions if required on non-auditory fee, measures to ensure that management and companies put forth a true and fair statement of financial affairs of the company.”<sup>13</sup>

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<sup>11</sup> SEBI | Recommendations of the Narayana Murthy Committee on the Revised Clause 49 - Corporate Governance - Press Release, *supra* note 8.

<sup>12</sup> Reserve Bank of India - Reports (2001), , RESERVE BANK OF INDIA (2001), <https://www.rbi.org.in/Scripts/PublicationReportDetails.aspx?ID=219> (last visited May 15, 2021).

<sup>13</sup> NARESH CHANDRA COMMITTEE REPORT, 2002 , (2002), <https://www.finmin.nic.in/sites/default/files/chandra.pdf> (last visited May 15, 2021).

**7. FEBRUARY 2003- “SEBI REPORT ON CORPORATE GOVERNANCE BY N.R. NARAYAN MURTHY”**

To study the role of independent director, risk management, related parties, codes of conduct and financial disclosures, directorship and director compensation SEBI constituted a committee so that it can improve the standards of corporate governance.<sup>14</sup>

**8. JANUARY 2003- “REPORT OF NARESH CHANDRA COMMITTEE II ON REGULATIONS OF PRIVATE COMPANIES AND PARTNERSHIPS.”**

As during that point of time the number of private sector companies were increasing rapidly so there was a need to revisit the old laws. In January 2003 the government formed a committee to look upon this framework. This was done to ensure a rational and scientific environment. This report mainly focused on the “Companies Act, 1956 and the Partnership Act 1932.”<sup>15</sup>

**9. AMENDMENT OF CLAUSE 49- MURTHY COMMITTEE**

In accordance with that of the recommendations given by Murthy’s Committee, in the year 2004 SEBI did some changes in Clause 49. But due to the incapability of the industry to accept the vast change they decided to postpone the implementation until 01.01.2006. “While there were many changes to Clause 49 as a result of the Murthy Report, governance requirements with respect to corporate boards, audit committees, shareholder disclosure, and CEO/CFO certification of internal controls constituted the largest transformation of the governance and disclosure standards of Indian companies.”<sup>16</sup>

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<sup>14</sup> SEBI | The Report of Shri N R Narayana Murthy Committee on Corporate Governance [For Public Comments], , [https://www.sebi.gov.in/reports/reports/mar-2003/the-report-of-shri-n-r-narayana-murthy-committee-on-corporate-governance-for-public-comments-\\_12986.html](https://www.sebi.gov.in/reports/reports/mar-2003/the-report-of-shri-n-r-narayana-murthy-committee-on-corporate-governance-for-public-comments-_12986.html) (last visited May 15, 2021).

<sup>15</sup> NARESH CHANDRA, *Report of the Committee on Regulation of Private Companies and Partnerships* (2003) (2003), <http://reports.mca.gov.in/Reports/3-Naresh Chandra committee report on regulation of private companies and partnerships, 2003.pdf> (last visited May 15, 2021).

<sup>16</sup> SEBI | Recommendations of the Narayana Murthy Committee on the Revised Clause 49 - Corporate Governance - Press Release, *supra* note 8.

## **LANDMARK CASES RELATED TO CORPORATE GOVERNANCE**

### 1. Satyam Computers Scam Case.<sup>17</sup>

Satyam Computers scam is regarded as the greatest scam. It was a corporate scandal that affected the Indian company named Satyam Computer Services in the year 2009. In 1987, P Ramalinga Raju and his brother established a business named Satyam Computers. It was a Hyderabad based IT company. It was listed by the BSE in the year 1990-91. This company was regarded as a jewel in the IT industry. But in reality it was an outcome of a financial crime.

In 2009 the chairman P Ramalinga Raju admitted that he manipulated the company's accounts. The scam was of 7000 crore. On 7<sup>th</sup> January 2009 SEBI received an e-mail from P Ramalinga Raju in which he confessed that he manipulated the books of accounts of his company.

On 9<sup>th</sup> April 2015 P Ramalinga Raju along with 10 of his members were convicted of their crime. P Ramalinga Raju and three of his members were imprisoned for 6 months.

### 2. ICICI Videocon Scam Case.<sup>18</sup>

In this case ICICI Bank provided a Loan of rupees 3,250 crore to Videocon out of which 2810 crore was declared as non-performing asset.

The Board is considered to be guilty as they gave a passed the loan to its CEO without taking proper measures. And after the investigation got released in the public domain it is regarded as the case of nepotism, and they further refuse to take any further questions regarding this.

### 3. Vanishing company Scam.<sup>19</sup>

This scam was majorly seen during April 1992 – March 1996. During this period 4,057 public issues were done which amounted to Rs.54, 250 crore. Not only small but big companies were caught doing this. As they were not only guilty of aggressive prising but they were guilty of miss using the funds. Due to this case people started knowing the importance of good corporate governance.

<sup>17</sup> Susmit Pushkar & Susanah Naushad, *What Changed In The Legal Landscape Post Satyam Scam*, <https://www.moneycontrol.com/news/opinion/what-changed-in-the-legal-landscape-post-satyam-scam-2480623.html> (last visited May 15, 2021).

<sup>18</sup> Rachit Garg, *ICICI v. Videocon case analysis - iPleaders*, <https://blog.ipleaders.in/icici-v-videocon-case/> (last visited May 15, 2021).

<sup>19</sup> Pranav Haldea, *Revisiting vanishing companies*, <https://www.financialexpress.com/archive/revisiting-vanishing-companies/107386/> (last visited May 15, 2021).

#### 4. Kingfisher Airlines

Due to lack of funds and illegal internal corporate funding to parties Kingfisher lost its flying licence. "It was entirely evident that assets had been transferred from United Spirits Ltd. (USL) to subsidise Kingfisher, that United Breweries (UB) Holdings was utilised as a channel for raising loans and giving them to his group, that intercorporate credits were given to related groups without the Board's approval, accounts were inappropriately expressed, reviews were stage overseen, etc. during the period Mr Vijay Mallya was responsible for USL."<sup>20</sup>

### **CONCLUSION AND RECOMMENDATIONS**

As indicated by the issues given above, there is an immense scope of responsibilities upon the Directors of the company to agree with the principles and best practices given in various rules and regulations. Besides the rules and regulations that are suggested by different organizations, it is expected that the companies will act sensibly and maturely towards the society. As the companies play a very vital role in the society therefore it is expected that will act responsibly. The load is already reduced for the organisations as a set of rules are fixed and there are hardly any expectations that those will be amended. So, due to this the companies can function smoothly. Stakeholders showing their interest and taking part actively in the decision making process is also of utmost importance. All big authorities such as Government, RBI, Statutory authorities, and independent directors must come together and develop the laws if needed.

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<sup>20</sup> Devika Sharma, *supra* note 6.

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