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Comparison between Indian Board of Directors and Foreign Board of Directors

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ABSTRACT

With the significance of board independence, composition, diversity on board, governance structures and legislative frameworks, this paper explore the similarities and difference between Indian board of directors with the other country's board of directors such as U.K., U.S., Germany, Australia, France. While the foreign boards have different proceed towards the composition of board and responsibility of directors, the Companies Act, 2013 governs the Indian board of directors which place an importance on director's independence and gender diversity.

Keywords: Board of directors, comparison, Indian board, Foreign board.

I. INTRODUCTION

A Board of Directors is the governing body of a company, they are responsible for overseeing its overall direction and strategy. Every company is required to have a minimum number of directors according to the nature of the company, if it is a public company, it need at least three directors, if it is a private company it need at least two directors and for the one-person company one director is enough.

The key responsibilities of the board of directors include setting the strategic direction, ensuring regulatory compliance, identifying and managing risks, upholding corporate governance and overseeing corporate social responsibility initiatives.

This study intends to perform a comparative examination of board governance between India and significant foreign economies, including the U.S., U.K., Germany, France, and Australia. Analysing their frameworks, roles and board procedures enables an understanding of how various countries equilibrate responsibility, board composition, independence and shareholder participation.

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(A) Research Objectives

- To compare the corporate governance frameworks and legal regulations governing boards of directors in India and selected foreign countries such as U.K., U.S., Australia, France and Germany.
- To assess how Indian and foreign boards of directors differ in their governance structures.

(B) Research Questions

- What are the key differences in the structure and composition of boards of directors between Indian companies and companies in developed economies (e.g., the UK, US, Australia, France, and Germany)?
- How do corporate governance regulations in other nations compare to regulatory frameworks like India's Companies Act, 2013?

(C) Significance of the research

- Understanding these differences can help improve corporate governance practices.
- Knowledge of the differences can aid in strategic planning, especially for companies looking to expand internationally.

II. ROLE OF THE BOARD OF DIRECTORS

- Setting Strategic Direction
- Ensuring Regulatory Compliance
- Management of risk
- Upholding Corporate Governance
- Overseeing Corporate Social Responsibility (CSR)
- Financial Oversight
- Succession Planning
- Advisory Role
- Enhancing Shareholder Value
- Meeting Regularly

III. COMPARISON BETWEEN INDIAN BOARD OF DIRECTORS AND FOREIGN BOARD OF DIRECTORS

(A) Comparative Analysis of Indian and Foreign Boards

Corporate boards are structured, governed, and operate differently across countries, influenced by cultural norms, legislative frameworks, and variations in corporate governance. Examining Indian boards alongside those from industrialized economies such as the United Kingdom, United States, Australia, Germany and France highlights the advantages and disadvantages of various governance models. Key aspects of this comparison include board composition, independence, diversity, responsibility, and the overarching legal and regulatory frameworks.

(B) The Makeup and Organization of the Board

In **India**, many enterprises are still family-run, and boards often consist of both independent and promoter-led directors. The Companies Act, 2013 mandates that listed firms appoint a specific number of independent directors, requiring independent directors to constitute one-third of the board, with larger firms also needing to include a woman director⁴.

A driving principle in North America, especially the **United States**, is shareholder primacy, which results in unitary boards with an emphasis on independent directors and both non-executive and executive directors.

The **United Kingdom** Corporate Governance Code promotes a division between the chairman and CEO positions, and boards are urged to include a sizable number of non-executive independent directors.⁵

Germany, on the other hand, features a unique two-tier board structure consisting of a supervisory board responsible for appointing a management board that handles day-to-day operations, with a focus on stakeholder participation, particularly through employee representation⁶.

In **Australia and France**, boards predominantly consist of independent non-executive directors, though French firms may adopt either a unitary or dual board structure. Both countries stress the need for impartial oversight, with Australian board committees like audit and risk committees focusing on governance integrity.

⁴Ministry of Corporate Affairs, Report of the Expert Committee on Company Law, Chapter 4

⁵Pinsent Masons, The Role of the Board, Chairman and Non-Executive Directors – The UK Corporate Governance Code

⁶ German Corporate Governance Code, 2019

(C) Board Independence

India's Companies Act, 2013 aims to mitigate conflicts of interest by mandating independent directors on boards, requiring them to consider the interests of all stakeholders. However, the independence of these directors is sometimes questioned due to potential close ties with promoters⁷.

In **North America and the U.K.**, board independence is a cornerstone of good corporate governance, with the U.S. requiring a majority of board members to be independent and the U.K. Corporate Governance Code mandating that at least 50% of directors be independent non-executives⁸.

In **Germany**, the dual-board structure inherently separates management from supervision, allowing for a broader representation of stakeholder interests, including employee representatives, which strengthens the system of governance.

In **Australia**, as required by the Australian Securities Exchange Corporate Governance Principles, which promote impartial governance, even if there is no statutory requirement.

(D) Diversity on the Board

The **Indian Companies Act, 2013** has established a requirement for at least one women director on the boards of listed companies in India, aiming to increase female representation. However, many Indian corporations still face challenges in achieving true diversity across gender, race, and expertise.

In the **U.S.**, many companies have voluntarily implemented diversity policies, leading to greater gender diversity in boardrooms, with major stock markets like NASDAQ requiring diverse representation among directors⁹.

Although true ethnic diversity is still difficult to achieve, the **United Kingdom** has made progress towards gender diversity through programs like the Hampton-Alexander Review, which establishes goals for female representation on boards.¹⁰

Germany has implemented gender quotas that require supervisory boards to have at least 30% female representation, resulting in a significant increase in women holding board positions¹¹.

France's strict gender quota regulation requires 40% female representation on boards,

⁷The Independence of Directors in Indian Corporate Governance. *International Journal of Corporate Governance*, 11(2), 145-160.

⁸U.S. Securities and Exchange Commission, Rules and Regulations, 17 C.F.R. S 240.10A-3.

⁹NASDAQ Listing Rule 5605(f).

¹⁰ Hampton-Alexander Review, *Improving Gender Balance in FTSE Leadership*, 2016.

¹¹German Act on Equal Participation of Women and Men in Executive Positions, 2015 (Ger.)

substantially transforming board composition.

In **Australia**, while there are no formal quotas, strong advocacy from institutional investors for increased gender and skills diversity is evident¹².

(E) Supervision by Regulators and Accountability

With the passage of the Companies Act, 2013, which requires yearly performance reviews and the creation of independent committees like audit and remuneration committees, corporate governance in **India** has changed in the favour of accountability and transparency. Since Corporate Social Responsibility (CSR) laws require businesses to fund social and environmental projects, the audit committee is essential to maintaining accountability.

In the **U.S.**, the Sarbanes-Oxley Act (SOX) enforces strict standards for internal controls and financial reporting, with the Securities and Exchange Commission playing a vital role in ensuring boards act in shareholders' best interests¹³.

The **U.K.**'s "comply or explain" policy promotes transparency and adaptability while holding boards accountable to governance standards.

Germany's dual-board system ensures that both management and supervisory boards adhere to governance principles, with employee representation on supervisory boards enhancing accountability.

In **Australia and France**, boards are expected to prioritize shareholder and stakeholder interests, with regulatory organizations imposing strict penalties for non-compliance, thus holding boards accountable for corporate governance failures.

(F) Making Stakeholders Feel Involved

The introduction of mandatory Corporate Social Responsibility shifted corporate governance framework in India towards stakeholder governance, requiring boards to consider the needs of various stakeholders, including the communities and the employees.

The **United States** and the **United Kingdom** place a higher priority on shareholder interests, but current trends indicate a change towards a more comprehensive evaluation of stakeholders. The Companies Act of the U.K. encourages directors to evaluate how their choices affect stakeholders over the long run.

Germany's co-determination model ensuring employee representation on boards, thereby

¹²Australian Securities Exchange (ASX) Corporate Governance Council, Corporate Governance Principles and Recommendations (4th ed. 2019).

¹³Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (2002).

enhancing stakeholder engagement¹⁴.

France emphasizes stakeholder governance through its stringent social and environmental legislation, ensuring corporate responsibility is integral to governance practices.

(G) Legal and Regulatory Oversight

Legal and regulatory oversight is crucial for aligning corporate governance practices with ethical standards and safeguarding stakeholder interests.

In order to improve accountability, the businesses Act of 2013 and SEBI regulations in **India** require listed businesses to have a minimum number of independent directors and at least one women director¹⁵.

In the **United States**, stringent oversight through the Securities Exchange Act and SOX establishes rigorous requirements for financial accountability and internal controls, enforced by the SEC.

With a focus on independent non-executive directors and a "comply or explain" philosophy, the **United Kingdom** is governed by the Companies Act 2006 and the UK Corporate Governance Code.

Germany's two-tier board system includes supervisory boards that ensure compliance with governance standards, while France's corporate governance framework, guided by the French Commercial Code, emphasizes independent oversight and social responsibility¹⁶.

Australia's framework, governed by the Corporations Act 2001 and ASX Corporate Governance Principles, mandates a majority of independent directors for listed companies, fostering a balance between shareholder and stakeholder interests. While enforcement mechanisms and penalties for non-compliance vary across jurisdictions, the overarching trend is towards enhancing accountability, transparency, and stakeholder engagement in corporate governance practices worldwide¹⁷

IV. CONCLUSION

The composition and the functioning of Boards of Directors in India and in other countries

¹⁴Employee Representation and Stakeholder Engagement in Corporate Governance: Germany's Co-Determination Model, 89 Yale L.J. 287 (2001).

¹⁵S. Mitra, Enhancing Accountability through the Companies Act, 2013 and SEBI Regulations, 15 Int'l J. Corp. Governance 325 (2021).

¹⁶A. Bäcker, Compliance and Oversight: A Comparative Analysis of Corporate Governance in Germany and France, 16 J. Int'l Corp. Governance 245 (2021).

¹⁷Hussainey, K. & Wang, M. (2019). Enhancing Accountability and Transparency through the Corporations Act 2001 and ASX Corporate Governance Principles in Australia. *Journal of Corporate Governance*, 14(2), 101-120.

reflect a blend of cultural, regulatory, and operational distinctions. While Indian boards often focus on a balance between the family-run businesses and independent directors, emphasizing a collaborative approach, foreign boards, particularly in Western countries, tend to prioritize the greater degree of independence and diverse expertise. Regulatory frameworks also vary significantly, impacting governance practices and the roles of members in the board. Understanding these differences is essential for fostering effective corporate governance and enhancing the strategic alignment of businesses across borders. Ultimately, knowing these differences allows companies to hold the strengths of diverse governance models, promoting robust and sustainable growth.
