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Corporate Governance and Shareholder Activism: An Analysis of the Companies Act 2013

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ABSTRACT

This paper explores the evolution and nuances of corporate governance, tracing its development from the pre-independence era in India to the modern frameworks shaping global practices today. The study begins by examining early governance mechanisms during colonial rule, highlighting the influence of British colonial practices on corporate structures in India. It then delves into the post-independence era, focusing on India's transition toward more formalized corporate governance frameworks, influenced by both domestic needs and global standards.

The paper further compares governance practices in major jurisdictions, starting with the United States, where landmark regulations such as the Sarbanes-Oxley Act and proxy voting systems shaped corporate accountability and transparency. The governance model in the United Kingdom is explored next, with a focus on the UK Corporate Governance Code, emphasizing board composition, executive pay, and stakeholder engagement.

draws lessons from other jurisdictions, including Europe, Japan, and emerging markets, offering valuable insights for governance practices globally. The paper concludes with an analysis of the applicability of these global practices to India, considering the unique cultural, economic, and regulatory landscape of the country. The study underscores the dynamic nature of corporate governance and its adaptation to diverse global contexts.

Keywords*: Corporate Governance, Sarbanes-Oxley Act, Proxy Voting, Board Composition, Executive Compensation ,Transparency ,Accountability and Cross-Border Insights.*

I. INTRODUCTION

Corporate governance is defined as the spinal column of modern corporate legislation and entails processes, customs, policies, laws, and institutions that describe the direction, control, and accountability of a corporation towards its myriad stakeholders. The 2013 Companies Act, concerning India, constituted path-breaking legislation in which the spirit of investors' aspirations is fundamentally aimed at being juxtaposed with the responsibilities towards the

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corporations. These reasons include: Corporate governance will align activities of corporations with the priorities of shareholders and other stockholders; it will also introduce more transparency and accountability in fairness in corporate operations. These all make the emergence of shareholder activism as undeniably powerful in giving voice to shareholders in the decisions of corporate policy an indispensable force in this framework.[3] The Companies Act, 2013, had laid down various provisions to strengthen corporate governance in India-from the role and responsibilities of directors and auditors to every other stakeholder. In addition, it had identified the importance of strong mechanisms for active shareholder participation. Shareholder activism, if applied appropriately, may improve corporate performance, reduce the incidence of fraud, and foster ethical practices. The voice of the shareholders, especially the institutional investors, has increasingly been raised on issues that range from the appointment and removal of board members to broader questions of corporate strategy and sustainability. These changes reflect a global trend whereby shareholders seek to make their voice heard in order to have a say in corporate policies that promote long-term value creation.[4]

But then again, the efficiency of shareholder activism under the Companies Act, 2013 remains very much an issue to be debated. While the Act has provided many tools for a shareholder in order to empower his or her shareholders, in practicality there have been manifold challenges while implementing them with success. The Indian corporate universe has traditionally been promoter-driven, with diffused ownership and control. Ownership and controlling influence are generally held small, usually concentrated among a few individual and related-party shareholders, excluding external investors, or minority shareholders from debates in corporate governance effectively. This may become much more difficult with institutional and retail ownership, since effective collective action involves decision making by many more participants. Another obstacle to the arrival at informed decisions by the shareholders is access to prompt and accurate corporate information.[5]

II. NUANCES OF CORPORATE GOVERNANCE

Corporate governance is one of the critical factors determining the performance of firms in India. The highly dynamic and evolving economic sphere in India makes corporate governance a determinant of firm performance. This research essay investigates the effect of corporate governance on firm performance in India. In specific, the research seeks to identify the factors

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[3] Jeffrey Neil Gordon & Wolf-Georg Ringe, *The Oxford Handbook of Corporate Law and Governance* (Oxford University Press, 2018)

[4] Iragavarapu Sridhar, 'Corporate Governance and Shareholder Activism in India—Theoretical Perspective' (2016) 6(4) Theoretical Economics Letters 1-10

[5] Ernest Lim, *A Case for Shareholders' Fiduciary Duties in Common Law Asia* (Cambridge University Press, 2019)

that contribute to good governance and how they affect the various dimensions of firm performance. Corporate governance in India has undergone significant changes in the last few decades. The enacting of the Companies Act of 2013 and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), Regulation, 2015, marked the beginning of an era where the government demanded that Indian firms become more accountable and transparent. This was the only way that the investors 'confidence in the economy could be realized. It was also necessary to stimulate the growth of the economy by forming two securities laws: the Securities Contracts of 1956, and the SEBI Act of 1992. Good governance encompasses a broad range of practices that include board composition, ownership strategies disclosure and transparency in firms and hazard management. The constitution and functioning of the board of directors represent a critical concept in corporate governance. The board of directors provides oversight and guidance on a company's strategic trajectory. Research shows that a bigger percentage of independent directors improve financial performance and deter corporate wrongdoing. Ownership structure represents an essential part of corporate governance. The predominance of family-owned and family-controlled firms in India has an impact on productivity. Even as family-owned companies are more stable and focus on long-term results, they also present agency issues and family shareholder transactions. Studies indicate that widely owned and managed firms perform better.[6]

Second, transparency and disclosure framework that influence how a firm perform. In the Indian context, as an example, high level of compliance with the disclosure framework, where we consider the disclose of financial and nonfinancial information to all stakeholders at the right time and appropriateness. Empirical studies report market value and a reduction in the cost of capital of firms that disclose more likely than those that do not. In addition, a high level of disclosure increases the investor's confidence in the firm and helps the market to make good decisions. Third, risk management is also a determinant of how a firm will perform. Good risk management enables a firm to identify, assess, and manage various types of risks.

The regulatory framework of the Companies Act, 2013, touches on basic tenets of corporate governance directly related to shareholder activism. These include provisions dealing with the rights of minority shareholders, the independence of directors, and the governance of related-party transactions.[7] These range from the requirement of appointing independent directors so that there would be some kind of balanced decision-making inside the boardrooms to provisions

[6] Adrian Cadbury, *Corporate Governance and Chairmanship: A Personal View* (OUP 2002)
[7] Christopher M. Bruner, *Corporate Governance in the Common-Law World: The Political Context of the Board of Directors* (OUP, 2013)

that place shareholder approval as a pre-requisite in the context of major related-party transactions so that the voice of shareholders becomes louder inside the corridors of corporate affairs. Amidst such gaps in the legal framework, the prospect of shareholder activism forcing serious reform in corporate governance remains an uphill task. Of most concern is the rights of the shareholders. While Companies Act, 2013, theoretically provides for the same, practical implementation turns out to be a disappointment generally because of inefficiency in procedure and limited awareness among investors. Moreover, corporate accountability becomes more complicated in those cases where either the structure of the company is complicated or the decision-making process is not transparent. The role of regulatory bodies, such as the Securities and Exchange Board of India, therefore, becomes relevant. SEBI has taken some steps to improve the system of corporate governance and ensure larger participation by shareholders.[8] A more integrated and comprehensive approach is needed to overcome systemic hurdles that hinder the effectiveness of shareholder activism. The experiences of global jurisdictions provide important lessons, which can be used in assessing possible reforms with a view to further improving shareholder activism in India. Countries like the United States and the United Kingdom, for instance, have better-developed frameworks of corporate governance that have given voice to shareholders through means such as proxy voting and class-action lawsuits and by way of strict disclosure. Such practices can help inform the Indian legal framework in ways that will create an enabling environment for shareholder activism to flourish. For example, the concept of the stewardship code-the encouragement of institutional investors to be more active in engaging with investee companies-is picking up steam worldwide and could definitely be replicated in the Indian context. The initiatives would improve corporate governance and build better investor confidence, ultimately helping economic stability.[9]

III. PRE-INDEPENDENCE ERA: EARLY GOVERNANCE MECHANISMS DURING COLONIAL RULE

The development of corporate governance in India has been in fact from early days of British colonial rule when the body and bones of corporate law and governance came onto British winds. During this time, the corporate governance mechanisms were imposed and derived primarily from British government economic and legal frameworks, all into the trade and colonial interest and control of the Indian economy for the benefit of the Empire.[10]

[8] Grahan Nand Prasad, *Corporate Governance and Shareholder Activism in India* (University of Delhi, 2020)
[9] Lakshya Kothari, *Corporate Governance Failures and the Rise of Shareholder Activism: A Special Emphasis on India* (Karnavati University - Unitedworld School of Law, 20 March 2024)
[10] Shivaji Mukherjee, *Colonial Institutions and Civil War: Indirect Rule and Its Legacy in India* (Cambridge

(A) Establishment of the First Indian Companies Act (1857)

The Indian Companies Act of 1857 was the first law that gained significance for corporate governance purposes in India, modelled after the English Joint Stock Companies Act of 1844. The Act was fashioned in order to promote the establishment and growth of joint-stock companies in India, whose primary consideration was British investors. Limited liability was introduced to shareholders in case of a company's failure. It was all about providing an umbrella to accommodate provision for governments for the formation, registration, and operation of companies, but it lacked comprehensive regulatory measures for corporate governance.[11]

At this stage, corporate governance practices were quite elementary and concerned with only the aspects of finance without anything dealing with internal governance, accountability, or the now well-known mechanisms, and mostly this all was directed to the use of growing India for the advantage of the British government and foreign investors.

(B) Limited Regulatory Oversight

With the Indian Companies Act of 1857, it became possible to have companies and investors under the aegis of limited liability, but it did not provide crucial checks and balances for company directors and management. There was no clear definition of the manner of functioning of board members, and their accountability to the shareholders was close to non-existent. Hence the corporate governance system in that period revolved around informal systems of foreign interests, ignoring that of Indian shareholders or stakeholders.

(C) British Companies' Dominance

The dominance of British companies during the pre-independence period defined a contour feature-in the other ways; these companies were mainly established to annex India's resource treasures-tea-jute-coal-and other raw materials. Majority of the times, they were controlled by British shareholders and directors, and thus, Indian investees or stakeholders had an almost non-existent role. Smooth Corporate Governance of such companies were largely modelled after British corporate laws and practices under which profits were categorized for British investors' welfare and ignored others' interests.

The governance mechanism of these British companies was hierarchical and top down, exhibiting no or little contribution of Indian shareholders. Most of these early developing Indian companies, modelled along these lines of British entities, adopted the same approach toward

University Press 2021)

[11] Adetoyese Latilo et al, 'Strategies for Corporate Compliance and Litigation Avoidance in Multinational Enterprises' (2024) 6 *WJAST* http://dx.doi.org/10.53346/wjast.2024.6.1.0048 accessed 28 March 2025

their corporate governance. However, the governance remained heavily foreign-centric as the limited role by Indian participants.

IV. CORPORATE GOVERNANCE FOR INDIAN COMPANIES

With the emergence of the first Indian-control, joint-stock companies at the end of the 19th century, their impact was limited. Most would be found either operating in the textile areas, banking, or infrastructure. Most importantly, corporate governance was not a consideration among these companies, and as a result, most do not have it formally structured. The measured accountability and transparency levels were very low, and most of them were unregulated by any form of comprehensive legal or institutional structures.[12]

An exception was the Bombay Native General Insurance Company established in 1850, which was an early attempt at developing corporate governance practices. The company had many shareholders, some being Indian and others British, thus forming a kind of diversified management structure consisting of both Indian and European members although with a very unfair balance of power in terms of British domination.

(A) Poor Stakeholder Protection

In the colonial era, Indian stakeholders like employees, creditors, or minority shareholders had very few protections against any exploitation or injury. Protection was more strongly on the side of British investment and the British crown; most Indian enterprises relied both on personal or familial connections instead of legal mechanisms to support governance and dispute resolution. No strong legal framework around anything meant most Indian companies are functioning underneath a great future where financial transparency and honest dealings could be almost unheard of.

If British companies can get an easy access to capital markets and available with a clearer legal framework, Indian companies often remain disadvantaged as far as resources, political instability, and an evolving legal system are concerned. Traditional Indian business practices are familial-and caste based, decision-making power in the hands of a few individuals or families rather than a broader circle of stakeholders.

(B) Post-independence Era: Transition to Modern Corporate Governance Frameworks

The phase of post-independence threw open new avenues in the corporate sector - converting

[12] Phillip Lipton, 'The Evolution of the Joint Stock Company to 1800: An Institutional Perspective' (Monash U Department of Business Law & Taxation Research Paper No 19) https://dx.doi.org/10.2139/ssrn.1413502 accessed 28 March 2025

the largely colonial economy into an economy centring on self-reliance and industrial growth. The year of independence 1947 not only made clear the need for strong governance mechanisms in managing the private upcomers and the public sector enterprises became evident.[13] Corporate governance, by the time of independence in India, was not a well-formed but almost emerging concept. However, with economic planning coming in, the role of state-run institutions grew, while the legal and regulatory framework within the country started evolving to address increasing corporate management complexities.

(C) The Dawn of Corporate Governance Post-Independence:

During the initial stages of independence, there was no such term as corporate governance in India. However, the Indian government was really focused on devising a robust industrial policy framework, which in turn benefited domestic industries. This included other policy mechanisms like the Industrial Policy Resolution of 1948 and the Industrial Policy of 1956, opening the ways for public sector enterprises. The policies concentrated on steel, electricity, and heavy engineering industrialization with a fair degree of control. Since none of these policies specifically mentioned corporate governance, their imprint on the Indian corporate culture was no less significant.

The infrastructure of corporate governance during this phase was much determined by the demand of industrial growth, as most large corporations could either be state-run or work within a very tightly regulated environment. Predominantly companies were manned by their founders or having family-run boards, thus having concentrated ownership with control. At this stage, issues such as corporate accountability, transparency, and minority shareholder rights were not priority concerns at this juncture since corporate governance systems had only just been developed.

(D) Imprint of Companies Act 1956:

The Company Act 1956 was a unique piece of legislation in the evolution of corporate governance in India because unlike its predecessors, it failed to deal with most issues regarding corporate governance in the present day. However, it contained provisions relating to the incorporation, regulation, and dissolution of companies, while a lot of its contents are government-sidestep regulatory rules for companies in creating a readily intelligible legal framework to conduct business.

The coming into force of the Companies Act of 1956 witnessed the establishment of the

[13] S Baru, 'Self-Reliance to Dependence in Indian Economic Development' (1983) 11(11) Social Scientist https://doi.org/10.2307/3517074

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Registrar of Companies (RoC), tasked to oversee the registration and regulation of companies. This Act also enumerated the provisions of board functioning, rights of shareholders, and disclosures by corporations. Though the Act dealt with several issues regarding governance, including that of financial disclosure, it failed to present even close to complete frameworks concerning independent directors and emerging concerns regarding shareholder activism and corporate responsibility.

In 1956, the Nationalization of Banks and other industries brought even closer the government into the dominant day-to-day workings of critical industries, thereby limiting shareholders' roles in decision-making. Corporate governance, during that period, was largely determined by the centralization of the management, where government roles were more dominant in the business sector.

(E) The Emergence of Shareholder Activism in the 1980s:

India saw that, as the economy opened up towards the 1980s, particularly under the then Prime Minister Rajiv Gandhi, its corporate landscape began to change. India began to take its initial steps toward liberalization: and it was the first and biggest event to nay most influence on corporate governance practices. This period also saw the first major wave of shareholder activism as institutional investors and financial analysts started to demand more accountability from companies.[14]

Shareholder activism in India is still rather nascent in its nature since low shareholding makes accountability and clarity issues rise, but it did scale up during the intervention phase. This was the time when the concept of independent directors, whose primary job was going to look into the interests of minority shareholders, started gaining traction. It was also during this period in 1988 that regulatory bodies like the Securities and Exchange Board of India (SEBI) were formed and started addressing some issues of securities regulation, investor protection, and transparency in markets.

Instead, corporate governance in this period continued to be characterized by inefficiencies. Family-run enterprises still rule the roost in huge sectors, while the ownership structure makes even tighter, concentrated control, and minority shareholders are in most situations without influence over decision-making.[15]

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[14] Umakanth Varottil, 'The Advent of Shareholder Activism in India' (2012) SSRN Electronic Journal https://doi.org/10.2139/ssrn.2165162 accessed 17 February 2025

[15] Jeffrey Neil Gordon and Wolf-Georg Ringe, *The Oxford Handbook of Corporate Law and Governance* (Oxford University Press 2018)

(F) Economic Liberalization and the into the 1990s: A New Paradigm Shift:

The real sea change in corporate governance in India came in the early 1990s, with the introduction of economic liberalization policies by then Finance Minister Manmohan Singh. Liberalization, or opening up of the Indian economy within the context of economic reforms of 1991, transformed Indian companies from protected avenues to expose them to global economic competition; the need was to rethink about their governance structure as well.

Entry of foreign investors, international standards of business practices, and global best practices in corporate governance were the trademark features of this particular era. Need for a more transparent and efficient corporate governance structure kept rising, as Indian companies were now put to the integration of the economy. Institutional investors, mutual funds, and foreign direct investment (FDI) had increased demand for accountability, transparency, and protection of shareholder rights.

Reforms, which are undertaken during this period, will mainly be in light of compliance with global standards. The 1990s saw SEBI grow into a strong regulator, and much of the groundwork for reshaping corporate governance practices within the nation was laid. In 1999, the Report of the Kumar Mangalam Birla Committee on Corporate Governance marked the steering point of corporate governance in India. This Committee had specified certain principles guiding the functioning of boards, disclosures, and the role of independent directors.

The Birla Committee Report saw sweeping reforms in the face of Indian corporate governance, such as making independent directors compulsory and mandatory audit committees, and much-improved financial statement disclosures. The report laid the framework for significant shifts toward modern governance framework endeavours that balanced interests among shareholders, creditors, and other stakeholders.

(G) Post-2000: Strengthening Governance Frameworks and Implementation Challenges:

Further reforms and consolidation of corporate governance statutes were ushered in by the 21st century today.[16] One of the most promising pieces of legislation was the Companies Act of 2013, which governed many changes in the firm worlds. This Act contained provisions on how to incorporate companies, ensure the protection of shareholder rights, and increase the accountability of the board of directors.

Several provisions of the Companies Act, 2013 made strides in corporate governance, including

[16] Srikrishna Rao, 'Corporate Governance in the 21st Century: A Review of Legal Reforms and Their Effectiveness' (2024) 2 Indian Journal of Law 97 https://doi.org/10.36676/ijl.v2.i4.48 accessed 17 February 2025

provisions requiring companies to have independent directors, constituting audit and nomination committees, and frameworks for corporate social responsibility (CSR). The provisions that laid foundations for increased transparency in financial reporting and harsh penalties for failure to comply showed the strong intent of the Indian government in aligning its corporate governance standards with international best practices.

Such advances, however, did not enable successful implementation of corporate governance practices. Family-controlled businesses still dominate, and enforcement of weak regulations is often followed by lapses in corporate transparency. Activism on the part of shareholders and demand for better governance structures, however, continue to push the development of corporate governance in India.[17]

V. Governance practices in the United Kingdom[18]

United Kingdom is renowned for its vast role in global corporate governance, a well-developed legal and regulatory framework aimed expressly at fostering transparency, accountability, and engagement with their shareholders. The structure, which is Germany with a principles-based approach, the companies were encouraged to have the best practices rather than forcefully retarded rules to be complied with.

1. Principles-Based Approach to Corporate Governance

Indeed, the UK corporate advice speaks firmly about the challenge to be compared with statutory compliance and to allocate flexibility and self-regulation rather than a compliance framework. Compliance: Ensures that governance practices may frame according to the specific circumstances of the company yet can assure transparency and accountability.

UK Corporate Governance Code:

It is a Code containing principles and rule statements like those provided for public companies by the Financial Reporting Council (FRC).

Comply or Explain Mechanism:

The UK emphasizes flexibility provided in the "comply or explain" method of government, which means that the entities comply with the code or should possess reasonable grounds for non-compliance, which will then be mentioned in their annual report.

[17] Vasudha Joshi, *Corporate Governance: The Indian Scenario* (Foundation Books 2004)
[18] Financial Reporting Council, *'The UK Corporate Governance Code'* (September 2012)

2. UK Stewardship Code: Boosting Institutional Accountability

The UK Stewardship Code[19] was first enacted in 2010, and a big rewrite occurred in 2020 and 2021 because it should govern and facilitate activities within institutions: the generation of long-term value in the becoming-company's activities by moving institutional investors toward assuming responsibility.

Features of the UK Stewardship Code 2020

(i) Institutional Investors' Responsibilities

Institutional investors, which include a wide range of actors such as pension funds, asset managers, and insurance companies, should engage actively with the company, taking into account sustainable creation of value.

Engage with corporations, employ voting rights to influence management decisions, and be partners in a positive manner with the boards of directors.

(ii)**Transparency and Disclosure Requirements**

All SM&CR required principles include guidelines on public disclosure, mainly concerning stewardship policies, investment strategy, and engagements conducted.

Passive residue and lead institutional investors towards actions touching on interest in consideration of beneficiaries improving continued pressure.

(iii) Integrated ESG Factors

The new stipulation within the 2020 Stewardship Code involves the inclusion of ESG in decision-making within the context of investment decisions.

This risk assessment must be publicized in how the consideration would be part of it in making investments into climate change, social impacts, and ethics in businesses.[20]

(iv) Reporting Obligations:

Institutional investors are required to submit annual reports detailing how they have fulfilled their stewardship responsibilities

Continued monitoring ensures altogether that the accountability in investment governance has liberalized.

[19] Financial Reporting Council, *'The UK Stewardship Code'* (September 2012)
[20] KR Andrews, *Ethics in Practice: Managing the Moral Corporation* (Harvard Business Review 1989)

3. Shareholder Engagement Mechanism in the UK

This is because the UK has a very enabling framework in terms of the rights of shareholders in corporate governance through which shareholders exercise their rights in board oversight, determine the CEOs' pay, and enable good governance reforms. There are numerous available shareholder-engagement mechanisms in the UK, some of which are:

a) Shareholders' Rights according to the Companies Act 2006

The companies Act 2006, which defines corporate governance in the UK, given the purview of the rights of companies' shareholders and which are as follows:

i. Voting Rights:

- Their acts of attending board annual general meetings and rose important issues like board appointments, executive pay policies, mergers or acquisitions, etc., among others.
- Really meant that serious governance exists at this level as distinct from the nonsensical principle where he can do more than one role.

ii. Motion Submitted:

- A shareholder who commands at least 5% of the business can bring boots on the ground in terms of resolution brought before an annual general meeting (AGM).
- In other words, it pushes investors to challenge management on their decisions and in some cases seek reforms in governance.

iii. Right to Call General Meetings[21]

- There is a possibility for any shareholder within the 5%-owning group of requiring the management to conduct an emergency general meeting (EGM) whenever important issues arise for the governance of the business.

iv. Shareholder Litigation and Derivative Actions

- Enhancing Executive Accountability and Disclosure of Director Remuneration - Implement very high binding rules on the formation and payment of directors according to the hypothecated terms presented by the investor community.
- Issued to UK-based companies in 2013, require all pay structures for the top executives and managing directors to be dispensed for approval by shareholders at least every 3

[21] ICSI, 'Guidance Note on General Meetings' https://www.icsi.edu/media/website/SS-2%20General%20meeting.pdf accessed 28 February 2025

years.

- They enable companies to attribute pay to the general success in the sale and customer enjoyment of their goods as derived through best operational performance.

Proxy Voting System and Influence of Institutional Investors

They ensure wider participation by allowing institutional investors to vote on behalf of individual users in business governance.

The other tensors of these institutions, including Glass Lewis, Egan-Jones, or Institutional Shareholder Services, play an important role in directing investor voting decisions.

4. UK Approach to Board Independence & Accountability

Board independence and translucency in the UK[22] would be completely the method for containing discretionary structures of both conflicts and to enable effective decision-making. Most fundamental governance mechanisms are listed in the following:

- Definition of Board Composition Requirements

The UK Corporate Governance Code stipulates that not less than half of the directors must be independent nonexecutive directors (NEDs), making sure they oversee management.

- Separation of CEO[23] and Chairperson Roles

An individual will hold the office of Chief Executive and that of Chairman by one person cannot have the effect of excessive centralization of power.

Part of that enhances tautness in the exercise of governance over what otherwise is extremely complicated as repetitious.

- Mandatory Audit and Risk Committees

Moreover, in one easy step, audit and risk committees have to be established and managed by independent directors in order to favourably ensure both risk management and financial transparency.

5. Regulatory Framework underpinning Shareholder Activism

And under the UK laws, shareholder activism is strongly supported by several rules and regulations which include:

[22] Martin Kyere and Marcel Ausloos, 'Corporate Governance and Firms' Financial Performance in the United Kingdom' (2020) International Journal of Finance & Economics https://doi.org/10.1002/ijfe.1883 accessed 28 February 2025

[23] S Finkelstein, 'Rethinking CEO Stock Options' *Bloomberg* (18 April 2009)

Financial Services and Markets Act 2000: Regulates financial markets to ensure sufficient protection for all investors.

UK Takeover Code - Governs predominantly the corporate mergers and acquisition rules involving this fairness treatment of shareholders during a takeover bid.

6. Case Studies of Shareholder Activism in the United Kingdom

- Royal Dutch Shell–Carbon Tights Activism, 2021

There was an effective demand for more stringent targets to have been placed by shareholders on Shell in terms of reduction of carbon emissions, thus adding substantially to the cause for more environmentally sustainable engagement.

Follow This and Climate Action 100+, as advocacy groups, played essential roles in guiding Shell's environmental policies.

- Barclays Bank–Governance Reforms, 2020

It was made for the blocking of the executive's salary increase and the recapturing of any risk management policies that had been overlooked.

The result of this was Barclays' apologetic action in the drawing up of their salary and risk policy in order to comply with shareholders' expectations.

Lessons from Other Jurisdictions

Given the financial and cultural factors of different jurisdictions, corporate governance structures vary. This section would discuss the corporate governance patterns of Japan and Germany. The treatment of minority shareholders in Japan and the two-tier board system in Germany will be taken as examples. Similar structures in these jurisdictions would offer useful considerations for improving Indian corporate governance under the Companies Act, 2013, dealing with issues of shareholder rights, board structure, and possible regulatory mechanisms.

VI. THE CORPORATE GOVERNANCE MODEL IN JAPAN

1. Growth of Governance: Next in Japan Evolution Route

The development of a corporate governance model is currently the new in-thing in Japan. Traditionally, payment was primarily through keiretsu system corporations that had heavy, close inter-corporate relationships and partly shared in the equity of affiliates. This effectively minimized shareholder influence as know-it-all big corporations and banks ran the show in decision-making.[24]

The initiatives were brought about by the financial crisis in the 1990s, and Japan took a leaf from international steps to codify its statutes to fit with the fact that the Act, 2005, and respective subsequent revisions have firm shareholder rights, independent boards, and all the necessary regulatory elements.

2. Protecting the Interests of the Shareholder

Protection of minority shareholders is a key area within corporate governance in Japan. The Companies Act has some devices to prevent majority shareholders from suppressing minority interests. They include:

Derivative Actions: hinder minority shareholders' right to bring the company to court following misconduct by directors. This, in turn, enhances internal accountability.

Independent Directors: Corporate governance rule amendments stipulate a requirement for presence of independent directors on the boards of these companies to ensure neutral control.

Disclosure and Transparency: Listed companies must comply with rigorous terms and conditions, full disclosure norms that include financial statements and risks associated with business. They allow the stakeholders to participate in a business decision-making to ensure that every business is accountable.

Say-on-Pay Mechanisms: More interference by shareholders in approving the excessive remunerations paid to executives.

3. The Stewardship Code and Corporate Governance Code

Stewardship Code and Corporate Governance Code[25] are the two notable new introductions to the governance apparatus in Japan. These are largely used to emphasize on some issues, like:

Institutional Shareholder Responsibilities—That push for active engagement of investors with the management of the company.

Mandatory Presence of Independent Directors-It ensures fair management and transparency.

Growth to be Sustainable and Lucrative in the Long Run-This pushes the company to outlive and dictate longer than just short-term profits.

These have developed increased share activism as foreign firms do not only take part in the

[24] Z Chen, Y Huang and KCJ Wei, 'Executive Pay Disparity and the Cost of Equity Capital' (2013) 48(3) CUP
[25] J Buchanan and S Deakin, 'Has Japan's Corporate Governance Reform Reached a Turning Point? Some Cautionary Notes' (2024) 30(3) Asia Pacific Business Review 433 https://doi.org/10.1080/13602381.2024.2320535 Accessed 28 February 2025

capital market but also challenge companies on how to organize governance and other concerns.

4. Shortcomings and Criticism

However, most of the changes, the introduction did, and this has however not given considerable marks of change in Japan's governance model. The strong dominance of insiders mostly limits the productivity of an independent director. Shareholder activism though has shown increasing trends as opposed to Western economies; however, it remains low due to strong management influence and related cultural norms. In many cases there is a slow pace of government in reforms being assimilated by the traditional firms.

5. Lesson for India

India needs to learn from Japan in a number of ways:

Minority Shareholder Rights: By amending the Companies Act, 2013, to ensure strict derivative suit provisions and improving the status of independent directors.

Strengthening Institutional Shareholder Activism: Adopting a stewardship code like Germany would help in empowering institutional investors to be able to affect corporate governance.

The enhancement of governance has to go through adding more independent directors to boards, thereby making them more transparent and accountable.

VII. The Corporate Governance Model in Germany

1. Two-tier Board System: An Overview

Germany[26] has a two-tier independent ruling structure. Below are the key manifestations of this framework:

Management Board (Vorstand): It deals with the present operation as its significant strategic framework.

Supervisory Board (Aufsichtsrat): The higher board supervising over the management board, appointing the executives and representing the shareholder and worker’s interest.

This has been codified in the German Aktiengesetz (stock corporation act) with the sole intention of enhancing responsibility in the whole place while reducing cases of conflict of interest.

[26] M Goergen, MC Manjon and L Renneboog, ‘Is the German System of Corporate Governance Converging Towards the Anglo-American Model?’ (2008) 12 J Manage Governance 37 https://doi.org/10.1007/s10997-007-9040-7 accessed 28 February 2025

2. The Role of the Supervisory Board

The nucleus of the entire corporate governance edifice in Germany is, as a matter of fact, the supervisory board. This board has the following basic functions:[27]

Monitoring the Quality of Assumed Strategic Decisions: Every time it comes to evaluating financial performance and corporate strategy.

Appointing and Dismissing the Executive Bodies: Power to appoint and terminate the members of the management board falls under the supervision of the supervisory board.

Representation of Stakeholders: According to German law, employees possess the right to really get a place on the supervisory, hoping that there would be an improved inclusivity in the governance process.

3. The Shareholder in the Governance Process

While shareholder rights in Germany are clearly defined, the right to information and voting are essential components of these rights. The Companies Act, according to the German system, provides for:

Voting Rights in General Meetings: Shareholders may vote at a general meeting about certain significant resolutions, for example on the appointment of a management body or on a merger.

Minority Protection: Now, every small shareholder has freedom of legal redress against maladministration or unfair practice in the running of a particular company.

Higher Disclosure Standards: Companies are to submit full reports on governance practice and finance health.

4. Effect on Corporate Accountability

The two-tier board system manages to have accountability in the case in some ways, such as:

Independent Oversights: The severe issues surrounding risk management falls to the supervisory board.

Much Transparency: Just as has been separated into functions, also has segregation of accounts. This could lead to hyper-increased confidence for a period of maximum change.

Confining Conflict of Interest: Avoids every risk of impropriety within the company's decision-making process with independent supervisory members always checking executive overreach.

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[27] Jean Plessis, 'The German Two-Tier Board and the German Corporate Governance Code' (2004) 15 European Business Law Review 1139 https://doi.org/10.54648/EULR2004053 accessed 28 February 2025

5. Issues and Criticism

It has much potential in terms of good control mechanisms and makes the same things possible. It includes:

Slowing down the decision: The Fortunes decision-making sometimes takes too long, thus leaving the right company behind.

Into the fringe between dual boards: Different targets and perspectives for operations are set by totally divergent visions of the management and supervisory boards.

Operating costs go up to by maintaining and administering two separate boards.[28]

6. What India Needs to Pick Up

Germany's form of governance would offer some help to the society in the following ways:

Strengthened supervision at the board: India currently does a lot of the one-tier board operations, unlike Europe, where much is done through a supervisory committee. This oversight comes handy into the system to reduce abuses.

Emphasis on Independent Directors Role: Germany has great supervision boards-an example of the blunt application of an independent influence in the process.

VIII. Applicability of Global Practices to India

Given the regulatory limitations in place, it is conceivable that incorporation of these global practices in India under the Companies Act sounds like a positive move for policymakers, regulators, and stakeholders[29] around the world. Even though progress has been made in enhancing the corporate governance enforcements in India, however, the country still faces challenges in overcoming the differences with the rest of the world. Global systems in the country are also enhanced by Community Advan ce Companies and Microfinance Institutions; and this performs a balancing role as the people’s corporations in India in promoting access to microfinance in vast rural areas. This chapter is aimed at assessing the appropriateness of incorporation of global corporate governance principles in India. In this, the analysis of regulatory compatibility, enforcement regimes, socio-cultural factors, and the role of institutional investors is undertaken.

[28] Christian Strenger, Julia Redenius-Hövermann, and Gül Demirtaş, ‘The Governance System of Germany: Background and Discussion of its Code’ (CGI Working Paper, Frankfurt School of Finance & Management, July 2023)

[29] J Choi and HL Wang, ‘Stakeholder Relations and the Persistence of Corporate Financial Performance’ (2009) 30(8) Strategic Management Journal 895

(A) Regulatory Compatibility and Legal Framework

Alignment with International Standards: A reading on Indian corporate governance laws vis-à-vis the global paradigms such as the OECD Principles of Corporate Governance and the G20 Principles.[30]

SEBI and Companies Act, 2013 Reforms: Changes made included the amendments and the reforms undertaken by enacting the Companies Act and many other laws in India, as well as the Listing Obligations and Disclosure Regulations (LODR) issued by the SEBI.

Insufficiency in Regulatory Clarity and Legal Implementation: It will demonstrate areas within which the enforcement of the legal provisions has been unsatisfactory as well as those of the corporate law, that have been made ambiguous making it difficult for them to be implemented and those that provides for practices that are against the provisions included in the statutes.

(B) Independent Directors and Board Structure

Global Board Composition Standards: This section will give an insight into the composition of corporate boards in certain countries such as USA, UK and Japan and the importance of independent directors in decision-making.

Effectiveness of Independent Directors in India: On the other hand, practical hurdles should be appreciated, axillary to the issues of independence, in ensuring that all board members under the corporate laws of India are able to bring some value on the board table.

Comparative Study on Board Diversity: While on one hand INDIAN CORPORATE SPACE has been facing a remarkable diversity pressure, there has been a similar increase in the global involvement on board diversity and woman in the board and its comparison.

(C) Shareholder Rights and Activism

Empowering Minority Shareholders: This part of the work assesses how the Indian companies' legislation provides for onerous, minority-friendliness provisions in relation to the location of minorities in such corporate worlds as opposed to the position in developed countries.

Shareholder Proposals and Voting Rights: This part examines the proxy and electronic voting systems in practice in India as against the US, UK and other countries.

Institutional Investor Engagement: This part of the study is focused on the role of institutional investors in economic development and in enhancing the welfare of the common Indian citizens beyond any other dimensions of corporate governance. This is with emphasis on practices in

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[30] Beate Sjåfjell and Christopher M Bruner (eds), *The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (Cambridge University Press 2019).

the UK following the Stewardship Code introduced by FRC.

(D) Transparency and Disclosure Norms

Financial and Non-Financial Disclosures: Understanding global practices of disclosures including the concept of integrated reporting and ESG (Environmental, Social and Governance)[31] and evaluating if Indian companies can apply the same more so the emerging norms.

Compliance with Global Reporting Standards: Knowing to protest, how far India has gone as far as propagation of International Financial Reporting Standards and other international accounting norms.

Whistleblower Protection Mechanisms: Review of how under the existing provisions do the policies tend to affect the whistleblower tracing the basic roots and connecting the business to those of the US Sarbanes-Oxley Act and other such international frameworks.

(E) Executive Compensation and Corporate Accountability[32]

CEO[33] and Executive Pay Regulations: Such as contribution of organizers designing the compensation structure of top executives in Indian companies considering the global practices and enforcement of 'Say-on-Pay' provisions.

Performance-Based Remuneration Models: In-depth study on the possibilities of implementation of the practice of long-term incentive programs (LTIPs) typically used in the US and the European governance structures.

Regulatory Oversight on Pay Disparities: Have tied this to international actions in addressing the persistent practice of high executive wages and how it compares to the Indian approach in ensuring good governance.

(F) Role of Regulatory Bodies and Enforcement Mechanisms

Comparison of Global Regulatory Authorities: In this sub-section, the assessment carried out will aim at understanding the safety roles of such bodies in the United States, the United Kingdom, and Brazil.

Effectiveness of Indian Enforcement Mechanisms: An analysis will be done on how effective this SWOT and operational analysis is carried out in India under the National Company Law

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[31] Calvert Asset Management Company and The Corporate Library, 'Board Oversight of Environmental and Social Issues: An Analysis of Current North American Practice*'* (2010)

[32] LA Bebchuk and JM Fried, *Pay without Performance: The Unfulfilled Promise of Executive Compensation, Part II: Power and Pay* (Harvard University Press 2004)

[33] LA Bebchuk, M Cremers and U Peyer, 'The CEO Pay Slice' (2011) 102(1) Journal of Financial Economics

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Tribunal, the Stock Exchange of Indian, and the other agencies.

Judicial and Quasi-Judicial Remedies: Comparing the dispute resolution systems applied in India and other jurisdictions for the purpose of securing the interests of Investors.

(G) Corporate Social Responsibility (CSR) and Sustainability Practices[34]

Mandated vs. Voluntary CSR Frameworks: The intention of this section is to weigh the effect of the requirement for Mr X company to set aside 10% of its accounting profit as social development fund as mandatory under section 135 of the Companies Act, 2013 of Iwilda and, its comparison with the modern approaches of corporate social responsibility[35] based on philanthropies in the United States and Europe.

Sustainability and ESG Considerations: This particular chapter looks at the progress made by Indian companies in incorporating ESG principles.

Impact of Global ESG Norms on Indian Companies: What bearing would global ESP norms—such as the United Nations Sustainable Development Goals—have on India's processes, goals or specifically, companies?

(H) Challenges and Future Roadmap for India[36]

Regulatory and Institutional Barriers: Time and again it has been challenging to incorporate corporate governance standards of countries such as India into pure legal framework in that such global issues are usually better left for international legal networks and communities.

Adaptation to Local Economic and Cultural Context: Attitudes toward the locally tailored adaptation of standards while maintaining the basic principles of good corporate governance are very different in different economies of the developed countries and - therefore - in emerging markets as well.

IX. Conclusion

The evolution of corporate governance in India, particularly under the Companies Act, 2013, has been instrumental in laying a foundation for enhanced transparency, accountability, and stakeholder participation in corporate affairs. A significant facet of this framework is the promotion of shareholder activism, which serves as a vital mechanism for ensuring that

[34] B Cheng, I Ioannou and G Serafeim, 'Corporate Social Responsibility and Access to Finance' (2014) 35(1) Strategic Management Journal
[35] Business in the Community, 'Rewarding Virtue: Effective Board Action on Corporate *Responsibility'* (2007)
[36] Pankaj Kumar Gupta and Singh Shallu, 'Evolving Legal Framework of Corporate Governance in India – Issues and Challenges' (2014) 4(2) Tribuna Juridica http://www.tribunajuridica.eu/arhiva/An4v2/20%20Gupta.pdf accessed 28 February 2025

management decisions are aligned with the long-term interests of shareholders and other stakeholders. The Act has made considerable strides in empowering shareholders—through provisions such as mandatory independent directors, greater disclosure requirements, and mechanisms to check related-party transactions. However, the practical realization of these provisions still faces significant challenges.

The traditionally promoter-driven corporate ecosystem in India presents a substantial barrier to effective shareholder engagement. The high concentration of ownership and control limits the influence of minority and institutional shareholders, often rendering shareholder activism ineffective. Additionally, limited awareness among investors, procedural inefficiencies, and the lack of timely access to relevant corporate information dilute the intended impact of legislative reforms. Although SEBI has taken several initiatives to enhance governance standards and protect shareholder interests, there remains a pressing need for a more integrated, participatory, and investor-centric approach.

Furthermore, the Indian corporate landscape can benefit greatly from global best practices. Mechanisms such as proxy advisory firms, class action lawsuits, and stewardship codes—effectively used in jurisdictions like the U.S. and the U.K.—can serve as useful models for strengthening shareholder activism in India. These reforms can foster a culture where shareholders are not just passive investors but active participants in corporate decision-making. In conclusion, while the Companies Act, 2013 has set a strong legislative framework for corporate governance and shareholder rights, its effectiveness is contingent upon robust implementation, greater investor education, and proactive regulatory oversight. Strengthening institutional frameworks and drawing on global experiences will be crucial in shaping a governance environment where shareholder activism thrives, ultimately contributing to better corporate performance, market discipline, and economic resilience.

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