UNIVERSITY OF DELHI

Faculty of Law

LL.M (2/3 Year) I & V Term Course

Corporate Management and Social Responsibility

Course Code: 2YLM-EC-108/3YLM-EC-108

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Prepared and Compiled by:

Dr. Arti Aneja
Dr. Chanda Negi Bisht

LL.M (2/3 Year) I & V Term Course

[2024-2025]

Paper-2YLM-EC-108/3YLM-EC-108 : Corporate Management & Corporate Social Responsibility

Prescribed Legislations:

- **The Companies Act, 2013;**

https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf

- **Companies (Amendment) Act, 2020**

https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Prescribed Books:

Paul L. Davies, **Gower and Davies** ***Principles of Modern Company Law*** (Latest edition)
Gower's and Davies' ***Principles of Modern Company Law***, (11th ed., 2021)
Palmer's ***Company Law,***
A. Ramaiya, ***Guide to the Companies Act*** (19th ed., 2020)
Hicks, Andrew & Goo S H, ***Cases and Material on Company Law,*** Oxford University Press (8th ed., 2008)
Kershaw, David, ***Company Law in Context***, Oxford University Press, UK, (2nd ed., 2012)
Hanningan, Brenda, ***Company Law,*** Oxford University Press, UK, (6th ed., 2021)
K.M. Ghosh & Dr. K.R. Chandratre's ***Company Law***, (15th ed., 2015)
Avtar Singh, ***Company Law*** (17th ed., 2018)
H.K. Saharay, ***Company Law*** (7th ed., 2016)
Case Material supplied by Faculty of Law for Company Law

Note: Latest edition of textbook may be used.

Prescribed Journals:

Chartered Secretary: ICSI, New Delhi
Corporate Law Adviser
Company Law Journal

Recommended Readings:

- ***Report of the Company Law Committee, 2016***
https://www.mca.gov.in/bin/dms/getdocument?mds=XG76Wkvf48nDf7ajCKa8Jw%253D%253D&type=open

- ***Human Rights Responsibility of Multinational Corporations, Political Ecology of Injustice: Learning from Bhopal Thirty Plus?***
  Prof. Upendra BAXI

  http://journals.cambridge.org/abstract_S2057019815000073

1. Corporate Promotion and Formation

Concept of Promotion, Promoters- Duties, Powers and Liabilities, their legal position, Pre-incorporation contracts
Formalities for formation of company, Procedure of registration and role of registrar, Certificate of Incorporation and its conclusiveness, Commencement of Business

2. Corporate Incorporation

Memorandum of Association- Need, Contents and Procedure for alteration, Effect of Memorandum, Doctrine of Ultra Vires, Its origin, erosion and evasion, consequences of an Ultra Vires Transaction
Articles of Association- Contents and Relation with Memorandum, Doctrine of Constructive Notice, Doctrine of Indoor Management- origin, application and exceptions

3. Management and Corporate Governance

Evolution of Corporate Governance in India, Legislative framework for Corporate Governance Under Companies Act ,2013

General Body of Shareholders, Board of Directors: Position of Directors Vis-à-vis General Body of Shareholder, Directors: Types, Qualifications, appointment, remuneration, termination, Power and duties of Directors, Managing Director: appointment, term, remuneration and removal, Director's Identification Number, Independent Director

4. Oppression and Mismanagement of Companies

Rule in *Foss v. Harbottle*, Exceptions; Prevention of Oppression and mismanagement, misfeasance proceedings and winding up of on just and equitable grounds; Administrative ***Remedies-*** Removal of managerial personnel, appointment of Government directors, Special Audit; Class Action suits

5. Corporate Liquidation

Winding up of companies, Ground of winding up; Procedure of winding up; Appointment of liquidators;

6. Corporate Fraud and Corporate Criminal Liability

Serious Fraud Investigation, Satyam Scandal, Decriminalization of offences under the Companies Act, 2013

7. Adjudicatory Bodies

National Company Law Tribunal; National Company Law Appellate Tribunal – Constitution, Powers, Jurisdiction, Procedure, Judicial Review

8. Corporate Social Responsibility

Introduction to CSR; Need for CSR; Theories and Justification; CSR under Companies Act, 2013; CSR Policy Rules, 2014 and Schedule VII of Companies Act, 2013.
CSR & Triple Bottom Line Approach (the Future Benchmark), Corporate Social Responsibility - Issues and Challenges.

List of case laws

1. *Salomon* v. *Salomon & Co., Ltd.* (1897) A.C. 22 (H.L.): (1895-95) All ER Rep. 33
2. *State Trading Corporation* v. *CTO,* AIR 1963 SC 811
3. *TELCO* v. *State of Bihar,* AIR 1965 SC 40
4. *R.C. Cooper* v. *Union of India* (1970) 3 SCR 530
5. *Daimler Co., Ltd.* v. *Continental Tyre and Rubber Co. (Great Britain), Ltd.,* 1916 AC 307: (1916-17) All ER Rep. 191
6. *Lee* v. *Lee's Air Farming, Ltd*. (1960) 3 All E.R. 420
7. *In re Sir Dinshaw Maneckjee Petit,* AIR 1927 Bom. 371
8. *CIT* v. *Meenakshi Mills Ltd*., AIR 1967 SC 819: (1967) 1 SCR 934
9. *Workmen* v. *Associated Rubber Industries Ltd.* (1985) 4 SCC 114: (1986) 59 Comp. Cas. 134 (SC)
10. *Workmen v. Associated Rubber Industries Ltd.*
11. *(1985) 4 SCC 11: (1986) 59 Comp. Cas. 134 (SC)*
12. *Gilford Motor Co., Ltd. v. Horne (1933) 1 Ch. 935*
13. *Subhra Mukherjee v. Bharat Coking Coal Ltd. (2000) 3 SCC 312*
14. *Kapila Hingorani v. State of Bihar (2003) 6 SCC 1*
15. *Ashbury Railway Carriage and Iron Co. Ltd.* v. *Riche* (1875) L.R.7 H.L.: (1874-80) All ER Rep. 2219 (HL)
16. *Cotman* v. *Brougham,* (1918-19) All ER Rep. 265 (HL)
17. *In re (Jon) Beuforte (London) Ltd*. (1953) Ch. 131
18. *Bell Houses, Ltd.* v. *City Wall Properties, Ltd.* (1966) 2 All E.R.674
19. *Re Introductions, Ltd., Introductions, Ltd. v. National Provincial Bank Ltd.* (1969) 1 All ER 887
20. *Dr. A. Lakshmanaswami Mudaliar* v. *Life Insurance Corporation of India,* AIR 1963 SC 1185

21. *In Re Mackinnon Mackenzie & Co. Pvt. Ltd., 71 C.W.N. 340 (1966)*
22. *Minerva Mills Ltd. v. Govt. of Maharashtra (1975) 45 Comp. Cas. 1 (Bom.)*
23. *Bharat Commerce & Ind. Ltd. v. Registrar of Companies (1973) 43 Comp. Cas. 275 (Cal., DB)*
24. *Royal British Bank v. Turquand (1856) 119 ER 886: (1843-60) All ER Rep. 435*
25. *Freeman & Lockyer (A Firm) v. Buckhurst Park Properties (Mangal) Ltd. (1964) 1 All ER 630*
26. *Kotla Venkataswamy v. Chinta Ramamurthy, AIR 1934 Mad. 579*
27. *Erlanger* v. *New Sombrero Phosphate Co.* (1878) 3 AC 1218: (1874-80) All ER Rep.
28. *Percival* v. *Wright* (1902) 2 Ch. 421
29. *Burland* v. *Earle* (1902) AC 83: (1900-03) All ER Rep. 1452
30. *City Equitable Fire Insurance Co., Re* (1925) Ch. 407
31. *Regal (Hastings) Ltd*. v. *Gulliver* (1967) 2 A.C. 134 (HL)
32. *Industrial Development Consultants Ltd*. v. *Cooley* (1972) 1 WLR 443
33. *Standard Chartered Bank* v. *Pakistan National Shipping Copn.* (2003) 1 All ER 173 (HL)
34. *Foss v. Harbottle (1843) 2 Hare 461: (1843) 67 ER 189*
35. *H.R. Harmer Ltd., Re (1958) 3 All E.R. 689*
36. *Scottish Co-operative Wholesale Society, Ltd. v. Meyer 1959 AC 324*
37. *Shanti Prasad Jain v. Kalinga Tubes Ltd., AIR 1965 SC 1535*
38. *Rajahmundry Electric Supply Corporation Ltd. v. A. Nageshwara Rao, AIR 1956 SC 213*
39. *Bharat Insurance Co. Ltd. v. Kanhaiya Lal, AIR 1935 Lah. 792*
40. *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holdings Ltd., AIR 1981 SC 1298*
41. *M.S.D.C. Radharamanan v. M.S.D. Chandrasekara Raqja (2008) 6 SCC 750: AIR 2008 SC 1738*
42. *German Date Coffee Co., In Re (1882) 20 Ch. D. 169*
43. *Seth Mohan Lal v. Grain Chambers Ltd., AIR 1968 SC 772*
44. *Aluminum Corporation of India Ltd. v. M/s. Lakshmi Rattan Cotton Mills Co. Ltd., AIR 1970 All. 452*
45. *Yenidje Tobacco Co. Ltd., Re (1916) 2 Ch. D. 169*

Key differences between the Companies Act of 1956 and 2013

The Companies Act 2013 has completely revamped the Act of 1956. The present law is spread into 470 sections compartmentalized into 29 chapters appended with 7 schedules. The Companies Act, 2013 brings within its fold several new concepts and provisions which seek to enhance more transparency and accountability in corporate governance. There are provisions, which enhance the compliance for even private companies other than bringing in new forms of business incorporation like one-person company.

It may be noted that the present course would provide for relevant comparisons between the Companies Act of 1956 and 2013 throughout the modules wherever necessary. The present unit provides for a snapshot of key differences between the Companies Act, 1956 and Companies Act, 2013.

It may further be noted that the Companies Act, 2013 has to be read with its Circulars, Notifications and Clarification Orders along with the Amendments done so far.

Further Suggested Readings / References:

- *Majumdar, Kapoor and Dhamija, Company Law and Practice: A Concise Commentary on Companies Act, 2013, Taxmann (updated 24th October, 2014).*
- *Companies Act, 2013 along with Rules.*
- *h ttp ://www.mca.gov. in/MinistrvV2/companiesact. html*

Corporate Law is a dynamic and rapidly changing field. The face of business worldwide has undergone a massive change since the enforcement of the old Companies Act of 1956. The number of companies in India has increased manifold. The Indian economy underwent liberalization in the early 1990s resulting in a transformation of business models. Foreign investors began to invest heavily in the country. While a number of amendments were made to the old Act, the need for a fresh and contemporarily relevant company law was felt widely. In many other jurisdictions old company law has been repealed and replaced with new legislations. The enactment of a new Companies Act, therefore, was much overdue.

A Brief History

The origin of corporate laws has to be traced from the 'corporate form' which existed from the Roman times in the form for churches and association Corporate Form has some basic features like artificial person with all rights and liabilities, separate legal entity, limited liability, perpetual existence, and common seal. These unique features of the 'corporate form' - 'corporate personality' bring with them its own set of legal issues and concerns which was addressed in one of the famous case of *Salomon v. A. Salomon & Co. Ltd.* in which the House of Lords in

England recognized the principle of 'separate legal personality' of corporate, separate and distinct from its members. The corporate form allows to business smoothly and conveniently, however, at the same time even raises the issue of accountability towards shareholders and creditors for which a system requires to be place. This brings in the host of laws relating to companies and other forms of business, which has corporate form (for. e.g. Limited Liability Partnership) and the institutional mechanism to deal with the problems (like Registrar of Companies), laws relating to securities (SEBI and its regulations) and Courts (High Courts - now National Company Law Tribunal).

A Bit of a History:

As regards this modern form of business, it seems the East India Company was first entity recognized with such powers in 1602. However, as regards jurisprudence, English Common Law resisted this position until 15th Century when it gave way to the view that corporation had a separate juristic personality other than that of its members. The history of Indian Company Law began with the Joint Stock Companies Act of 1850. Since then the cumulative process of amendment and consolidation has brought us to the most comprehensive and complicated piece of legislation, the Companies Act, 1956 which now stands amended by the Companies Act, 2013. The Companies Act, 1956 substantially incorporated provisions of the English Companies Act, 1948, which consolidated the principles of equity. However, there has since been substantial shift of principles and concepts from those contained in and developed around the English Companies Act, 1948. There is now a wide gulf between the Indian Companies Act, 1956 and

The English Companies Act, 1985 with the associated enactments. Tracing the development of company legislation in India, the first legislative measure to regulate the companies in India, as

noted above, was the enactment of the Joint Stock Companies Act of 1850. It was amended in 1857, a notable feature of the amendment being extension of limited liability benefit to insurance and banking companies. The Amending Acts, one in 1866 and the other in 1913 followed. The Indian Companies Act of 1913 was a fairly comprehensive measure taking into its stride the amendments in U.K. Companies Act till then made. This Act was extensively amended in 1936 and again at regular intervals thereafter.

The Government of India appointed a Committee in 1950 under chairmanship of *Shri Bhabha* to consider amongst other things the extent to which it was possible to adjust the structure and methods of the corporate form of business management with a view to weaving an integrated pattern of relationships as between promoters, investors and the management, principal among them being the legitimate rights of investors and the interest of creditor, labour and other partners in production and distribution may be duly safeguarded and the attainment of the ultimate end of social policy towards which the corporate sector must work. A comprehensive statute being Companies Act of 1956 was enacted pursuant to the recommendations of the *Bhabha Committee.*

The two notable features of the 1956 Act from the point of view of the present discussion are compulsory maintenance and audit of company accounts, and power of inspection and investigation by the Central Government. When the Act of 1956 functioned for a period of about a year and some, difficulties surfaced in its actual implementation, the Government of India appointed a committee under the chairmanship of *Justice A.V. Vishwanatha Sastri,* retired Judge of the Madras High Court in May 1957 to examine the working of the Companies Act, 1956. The terms of reference of the committee were quite wide. This Committee submitted its Report in 1957, which led to the Companies (Amendment) Act, 1960.

This amendment was specifically directed to the safeguarding of the private investment in the corporate sector. The Government of India acquired extensive powers for regulation of the financial management of the private sector companies, under the 1960 (Amendment) Act. In the meantime, the Government of India having received numerous complaints of fraud, embezzlement of funds and gross irregularities in the companies controlled and managed by *Dalmia-Jain combine,* appointed a Commission of Enquiry first presided over by *Justice S.R. Tendulkar* and subsequently by *Shri Vivian Bose,* a retired Judge of the Supreme Court of India.

This Commission submitted its report in the fall of 1962. *Vivian Bose Enquiry Commission*

Report unearths the intrigue, abuse of trust jugglery of company funds, misuse and abuse of positions of power in the management of the affairs of *Dalmia-Jain Group* of Companies as also criminal breach of trust in respect of the funds of the Company reposed in the promoters and controllers of the private companies and how they utilized the corporate finances for their personal advancement. This report, led to the enactment of Companies (Amendment) Act, 1965, which vastly increased the Governmental control of the private sector companies.

The Companies (Amendment) Act, 1974 which inter alia introduced Section 58A simultaneously ushered in vast changes in the 1956 Act making greater inroads by Central Government in the management of companies governed by 1956 Act. A step-by-step study of the various amendments would unmistakably reveal the greater and greater intervention and control by State and this control was in direct proportion to the abuse of the economic power wielded by the corporate sector.

Things have further changed with the amendments carried out in the Companies Act, 1956 and associated corporate Acts, e.g., the Securities and Exchange Board of India Act, 1992, SEBI Rules and Regulations, etc., to somewhat keep pace with associated corporate legislations in the globalized economic scenario. However, still the UK laws influence the laws in India. In *Delhi Cloth Mills*[10] court said:

Any scientific attempt at presenting the history of company law in our country inevitably telescopes into the history of company law in U.K. because more or less the framers of the company law in India followed in the shadow of the development of the law in U.K. Corporate sector wields tremendous economic power and this organized sector has throughout challenged by all the means at its command, social control by political institutions and more particularly the State. The law developed in the footsteps of abuse by the corporate sector of its economic power and dominating influence in the world of national and international industry, trade and commerce. If uncontrolled, the result is disastrous and the infamous South-Sea Bubble should be an eye-opener. The first and second decades of the 18th century were marked by an almost frenetic boom in company flotation. When the flood of speculative enterprises was at its height, Parliament in U.K. decided to intervene to check the gambling mania when it drew attention to the numerous undertakings which were purporting to act as corporate bodies without legal authority, practices which manifestly tend to the prejudice of the public trade and commerce of the kingdom. That which governs the least, governs the best, the laissez faire doctrine was firmly entrenched. Since then at regular intervals, the State control became more or less discernible in successive company acts.

Initially, the Securities Contract Regulation Act 1956 restricted the trading in forwards and futures so also trading in stocks other than recognized under the Act. Similarly, there were constraints on raising foreign capital and investing in foreign ventures. The things changed with the Industrial Policy of 1991 when liberalization was introduced in the wake of globalization. The Companies Act, 1956, has been amended as many as 24 times since 1956. The major amendment to the Companies Act, 1956, was made after considering the recommendations of the *Sachar* Committee by enacting the Companies Amendment Act, 1988. The next major amendment was made by the Companies Amendment Act, 2002, consequent to the report of the high powered *Eradi* Committee. Looking at the proliferation and diversity of amendments, which have been made to the Act, it was thought that the law be re-codified and accordingly, an attempt was made to make a comprehensive review of the Companies Act, 1956.

The comprehensive review began with the introduction of Companies Amendment Bill 1993 and 1997, which failed, as the assent of the Parliament could not be received. The Ministry introduced the Companies (Amendment) Bill, 2003, containing important provisions in the arena of independence of auditors, relationship of auditors with the management of the company, independent directors with a view to improve the corporate governance practices in the corporate sector. Thereafter, the Ministry of Corporate Affairs published a Concept Paper11, which was then examined along with responses by an Expert Committee headed by *Dr. J.J. Irani,* which submitted its report in 2005. Starting from the introduction of the Companies Bill, 2009 in the Lok Sabha, one of the two Houses of Parliament of India, on 3 August 2009 it took four years to get the new Companies Act, 2013 when on 29 August 2013 it received the assent of the President.

A General Overview:

The new Companies Act, 2013 is contemporary legislation with an objective to have best global practices. This consolidates and amends the law relating to companies in India. While the present Act has brought down the number of sections from about 700 to 470, the Act provides for large amount of delegation through Rules. “Out of 470 sections, more than 300 sections use the words “as may be prescribed’. The present Act needs to be read with the detailed Rules, which are referred to in the substantive provisions. As of now, there are 24 sets of Rules notified. As regards the Act, out of 470 sections 260 sections are fully notified and 187 sections are yet to be notified with 17 sections partly notified. The provisions relating to Producer Companies in the Companies Act, 1956 (Part IXA - Sections 581A to 581ZL) has been retained and shall be applicable mutatis

mutandis to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed.

While the Companies Act, 2013 was enacted with a view of ease of doing business, the enforcement of the provisions have been a challenge and this is evident from the fact that as of now, since 1st April, 2014 there are 52 circulars issues, 16 amendments to the Rules have been made, and 8 Removal of Difficulties orders have been issued. In its one year of existence, the Act required also an amendment (2015) to iron out some major creases in the legislation. These provisions would be discussed in detail in various units of the Course. There are notifications issued for clarifying non-application of certain provisions of the Act to Private Company, Government Company and Nidhi Companies also. These additional documents make the task of reading of Companies Act, 2013 a bit complex.

One of the significant introductions by the new Companies Act is the provisions relating to Corporate Social Responsibility (CSR) - Section 135. It requires certain companies to earmark 2% of the average profit of the preceding three years for CSR activities and make a disclosure to shareholders about the policy adopted in the process. There is Constitution of a High-Level Committee to suggest measures for improved monitoring of the implementation of Corporate Social Responsibility (CSR) by companies. There are several other provisions which have been introduced for the first time, i.e. one person company, class action suits, etc.

Recently, the Ministry of Corporate Affairs has constituted a Companies Law Committee being chaired by Secretary MCA to:

a. make recommendations to the Government on issues arising from the implementation of the Companies Act, 2013 and

b. to examine the recommendations received from the Bankruptcy Law Reforms Committee, the High-Level Committee on CSR, Law Commission and other agencies while undertaking (a) above.

Corporate Governance

1. **OXFORD HANDBOOK OF CORPORATE GOVERNANCE, Mike Wright, Donald Siegel, Kevin Keasey and Igor Filatotchev, eds., Oxford University Press, 2013 "The History of Corporate Governance"**

available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1975404

"Corporate governance" first came into vogue in the 1970s in the United States. Within 25 years corporate governance had become the subject of debate worldwide by academics, regulators, executives and investors. This paper traces developments occurring between the mid-1970s and the end of the 1990s, by which point "corporate governance" was well-entrenched as academic and regulatory shorthand. The paper concludes by surveying briefly recent developments and by maintaining that analysis of the inter-relationship between directors, executives and shareholders of publicly traded companies is likely to be conducted through the conceptual prism of corporate governance for the foreseeable future.

2. **Thomas Wuil Joo, "Theories and Models of Corporate Governance", *UC Davis Legal Studies Research Paper No. 213*,**

available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1543397

This essay is a brief historical survey of the leading models of the corporation in American legal theory, with emphasis on the contemporary theory of contractarianism. "Corporate governance" is often said to chiefly concern the "internal" governance of corporations: that is, the relationship among the participants in the corporate enterprise. "Internal" governance is sometimes distinguished from "external" regulation of the nominally "private" business corporation by the state. But the internal and external relationships are intertwined and not mutually exclusive. Thus, even as the contemporary legal discourse on corporate governance purports to focus on internal matters, it advances arguments regarding the extent to which internal relationships are, and should be, structured by private claimants, and the extent to which they are, or should be, structured externally by the state. These issues are often framed in terms of a debate over the "nature" or "essence" of the corporation. Recurring questions include who "owns" the corporation, whether a corporation is an "artificial" phenomenon created by state fiat or a "natural" by product of human interaction, whether the corporation is an entity separate from its constituent individuals, and why decision-making authority is concentrated in professional managers. The shifting answers to these questions are presented as justifications for, or critiques of, the existing corporate governance regime, but can also be seen as shorthand for unspoken normative assumptions about the respective roles of the group, the state, and the individual.

3. **Jayanth Rama Varma, "Corporate Governance in India: Disciplining the Dominant Shareholder",**

available at

http://dspace.kottakkalfarookcollege.edu.in:8001/jspui/bitstream/123456789/721/ 1/iimbr9-4.pdf

The nascent debate on corporate governance in India has tended to draw heavily on the large Anglo-American literature on the subject. This paper argues however that the corporate governance problems in India are very different. The governance issue in the US or the UK is essentially that of disciplining the management who have ceased to be effectively accountable to the owners. The problem in the Indian corporate sector (be it the public sector, the multinationals or the Indian private sector) is that of disciplining the dominant shareholder and protecting the minority shareholders. Clearly, the problem of corporate governance abuses by the dominant shareholder can be solved only by forces outside the company itself. The paper discusses the role of two such forces - the regulator and the capital market. Regulators face a difficult dilemma in that correction of governance abuses perpetrated by a dominant shareholder would often imply a micro-management of routine business decisions which lie beyond the regulators' mandate or competence. The capital market on the other hand lacks the coercive power of the regulator, but it has the ability to make business judgements. The paper discusses the increasing power of the capital market to discipline the dominant shareholder by denying him access to the capital market. The newly unleashed forces of deregulation, disintermediation, institutionalization, globalization and tax reforms are making the minority shareholder more powerful and are forcing the companies to adopt healthier governance practices. These trends are expected to become even stronger in future. Regulators can facilitate the process by measures such as: enhancing the scope, frequency, quality and reliability of information disclosures; promoting an efficient market for corporate control; restructuring or privatizing the large public sector institutional investors; and reforming bankruptcy and related laws. In short, the key to better corporate governance in India today lies in a more efficient and vibrant capital market. Of course, things could change in future if Indian corporate structures also approach the Anglo-American pattern of near complete separation of management and ownership.

4. **Mitra N.L. "Corporate governance: Sojourn to find a yardstick", Journal of Indian Law Institute,(2014)**

available at http://14.139.60.114:8080/jspui/bitstream/123456789/12157/1/037_Corporate%20Governance%20%28437-462%29.pdf

Corporate governance is a self-correctional effort of public companies in capitalism to face the challenges of public policy. In the last hundred years, corporate governance has attracted the notice of public policy and law makers in the times of financial crises. Corporate governance, yes or no, is not the question. How effective can corporate governance be made is the challenge. In India there are family business groups who play pivotal role in the management of the companies. These integrated groups use innovative control-mechanisms to keep firm control on the corporate empire through systems of pyramiding corporate establishments and interweaving trust system into it. The repercussions of absence of effective corporate governance in India can be ascertained from the increasing fraud in the corporate sector. The new Companies Act, 2013 aims to bring the regulation of companies by corporate governance

mechanism. Nonetheless, the appointment of independent directors and auditors by the company in its AGM as prescribed in the company law does not in reality strengthen corporate governance but is often used to camouflage managerial mismanagement and adventurism. Therefore, the concept of corporate governance needs to be relooked in the light of changing trends of the corporate sector.

5. **Santosh Pandey &Valeed Ahmad Ansari, "A Note on the Efficacy of the Current Corporate Governance Regulations in India",**

available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2333023

Unlike the central governance issue in the Anglo Saxon world, which is essentially that of disciplining management that may stop being accountable to the owners, who usually are dispersed shareholders, the central challenge in corporate governance in India is that of disciplining the dominant shareholder and protecting the interest of the minority shareholders. Besides family ownership, other forms of domination, such as domination by government or a foreign group, also exist in Indian organizations. Additionally, often promoters of companies exercise influence that is disproportionate to their actual shareholding. This study finds that differences in the nature of the dominating shareholder(s) result in significant differences in the firm's corporate governance characteristics and in firm performance. These differences lead to serious doubts on the efficacy of a uniform, prescriptive corporate governance code – as is being attempted in India.The need for deeper research, leading to fresh insights that would help in developing a more effective policy for corporate governance, is emphasized

6. **Kotak Committee on Corporate Governance**,

available at http://www.nfcg.in/KOTAKCOMMITTEREPORT.pdf

The SEBI Committee on corporate governance was formed on June 02, 2017 under the Chairmanship of Mr. Uday Kotak (the executive vice chairman and managing director of Kotak Mahindra Bank) along with different stakeholders from the Government, industry, stock exchanges, academicians, proxy advisors, professional bodies, lawyers etc., with the aim of improving standards of corporate governance of listed companies in India. The Committee comprised of twenty five members in total and was requested to submit its report to SEBI within four months. The Committee was requested to provide its recommendations with the aim of improving standards of Corporate Governance of listed companies in India on the following issues: Ensuring independence in spirit of Independent Directors and their active participation in functioning of the company; Improving safeguards and disclosures pertaining to Related Party Transactions; Issues in accounting and auditing practices by listed companies; Improving effectiveness of Board Evaluation practices; Addressing issues faced by investors on voting and participation in general meetings; Disclosure and transparency related issues, if any; Any other matter, as the Committee deems fit pertaining to corporate governance in India. The Kotak Committee recommendations addressed certain core issues in relation to corporate governance. These recommendations are in line with the global practices and amendments made to the SEBI LODR Regulations are a step forward in terms of achieving transparency and credibility in the corporate environment altogether.

For more comments read

Medha Srivastava and Adamya Vikrant, "Analysis of Kotak Committee Recommendations on Corporate Governance" available at https://www.mondaq.com/india/corporate-governance/875864/analysis-of-kotak-committee-recommendations-on-corporate-governance

7. **Pallak Bhandari, "Corporate Governance A Comparative Analysis in India and the US",** available at https://digitalcommons.bryant.edu/cgi/viewcontent.cgi?article=1018&context=honors_accounting

In this capstone project focuses on the importance of transparency and monitoring within corporate governance, especially in India and the US. To understand corporate governance, the author studied the different theories and models of corporate governance as well as sustainability reporting. This research discusses the legal and regulatory environment within India and the US, and through a comprehensive study of the regulatory bodies within the two countries, the author determined the best practices of corporate governance and conducted a comparative analysis across India and the US with focus on 13 elements: insider trading, disclosure and certification of financial statements, remuneration disclosure, code of ethics and corporate social responsibility, auditor independence, independent directors on the board, effectiveness of regulatory bodies, board leadership structure, data protection laws, enforcement of laws, presence of women and minorities on board, stricter standards of licensing, and proper standards of financial reporting. Based on the results, this research shows that there is significant different between the corporate governance models of India and the US due to the cultural and environmental differences between the two countries.

Corporate Fraud

8. **Bhasin, Madan Lal, Corporate Accounting Fraud: A Case Study of Satyam Computers Limited**
Available at SSRN: https://ssrn.com/abstract=2676467

From Enron, WorldCom and Satyam, it appears that corporate accounting fraud is a major problem that is increasing both in its frequency and severity. Research evidence has shown that growing number of frauds have undermined the integrity of financial reports, contributed to substantial economic losses, and eroded investors' confidence regarding the usefulness and reliability of financial statements. The increasing rate of white-collar crimes demands stiff penalties, exemplary punishments, and effective enforcement of law with the right spirit. An attempt is made to examine and analyze in-depth the Satyam Computer's "creative-accounting" scandal, which brought to limelight the importance of "ethics and corporate governance" (CG). The fraud committed by the founders of Satyam in 2009, is a testament to the fact that "the science of conduct is swayed in large by human greed, ambition, and hunger for power, money, fame and glory". Unlike Enron, which sank due to "agency" problem, Satyam was brought to its knee due to 'tunneling' effect. The Satyam scandal highlights the importance of securities laws and CG in 'emerging' markets. Indeed, Satyam fraud "spurred the government of India to tighten the CG norms to prevent recurrence of similar frauds in future". Thus, major financial reporting frauds need to be studied for "lessons-learned" and "strategies-to-follow" to reduce the incidents of such frauds in the future.

9. **Shivanna, Manoj, The Satyam Fiasco - A Corporate Governance Disaster!**

Available on
SSRN: https://ssrn.com/abstract=1616097 or http://dx.doi.org/10.2139/ssrn.1616097

Corporate Governance is becoming increasingly important for companies across the globe. With the number of companies failing and the increasing frequency by the day, the markets now feel the need for an express code stressing on good corporate governance. Corporate Governance depends on two main aspects, firstly, the commitment of the management towards integrity and good business decision making and secondly, it is up to the monitoring agencies to put in place a set of standard practices to ensure sufficient disclosure, clarity of decisions and ethical decision making for both family managed businesses and professionally managed businesses, likewise.
In this case study, we have taken up Satyam Computer Services Ltd, the fourth largest IT firm in India as a case sample and studied the failures of corporate governance at different layers which led to a collapse of this magnitude. Not only were there failures at the regulatory level, but also at the executive level. With no express code for corporate governance in India, the company failed to follow the industry standard best practices and as a result, collapsed. This study would be useful to students and regulators in identifying the different kind of failures in a family owned business like Satyam and to policy makers in designing and implementing corporate governance frameworks for professionally managed as well as family managed businesses like Satyam.

e-booklet - Boost to Ease of Doing Business and Investment in the Country - Decriminalisation of offences under the Companies Act,2013

available on
https://www.mca.gov.in/bin/dms/getdocument?mds=b%252FwPV78FspzshOgBlbk02g%253D%253D&type=open

Adjudicatory Bodies

10. **Charu Vinayak "NCLT A Single Roof For All Corporate Disputes", INTERNATIONAL JOURNAL OF ADVANCED RESEARCH**

available on http://www.journalijar.com/uploads/861_IJAR-11273.pdf

The National Company Law Tribunal (NCLT) is a strong quasi-judicial body in India that is constituted with the objective of the settlement of dispute related to the companies at the single place without delays and adjudicates almost all issues relating to companies in India. Keeping in view the pendency of legal matters and need forspecialized knowledge of the persons discharging the responsibility of adjudicating the matters involving intricate issues relating to the subjects, the process of setting up of specialized tribunals has gained acceptability over a period of time. The NCLT was established under the Companies Act 2013 and was constituted on 1 June 2016.

11. **NCLT & NCLAT Opportunities & Challenges: Provisions Under NCLT For Oppression & Mismanagement**

available at https://www.icsi.edu/media/portals/22/Team-1%20Project%20on%20NCLT%20&%20NCLAT%20Opportunities,%20Challenges.%20Oppresstion%20&%20Mismanagement.pdf

This is a project report based on the study incorporated by the batch of ICSI, which gives us an insight about National Company Law Tribunal (NCLT) &National Company Law Appellate Tribunal (NCLAT) with respect to its Composition, Powers, Tenure, Opportunities for a Company Secretary, Challenges faced by the Tribunals, its role in redressing Oppression & Mismanagement under the Companies Act, 2013.

12. **Prithviraj Senthil Nathan, "India: Civil Court Vs NCLT In Adjudicating The Company Law Matters: The Debate Continues",**

available at https://www.mondaq.com/india/shareholders/839106/civil-court-vs-nclt-in-adjudicating-the-company-law-matters-the-debate-continues

The Supreme Court of India in *Shashi Prakash Khemka* V. *NEPC Micon & Others,* while determining the question as to whether an issue relating to transfer of shares should be adjudicated by Civil Courts or by the Company Law Board, held that the matters in which power has been conferred on the National Company Law Tribunal, the jurisdiction of the Civil Courts is completely barred. In the said case, it was alleged that the dispute that was in question was the title of shares and therefore the Civil Courts should have the power to adjudicate the matter. The Court, while, setting aside the judgment given by the Madras High Court observed that relegating the parties to the civil suit would not be an appropriate remedy since Section 430 of the Companies Act, 2013 ("Act") is widely worded. This judgment assumes significance for the reason being there is historically a dispute between the Civil Courts and the courts empowered under the Indian Companies Act in terms of jurisdiction when it comes to adjudication of the company law matters. The Article explores these differences and tries to shed light on the position under the Companies Act 2013. While doing so, the Article specifically analyses the disputes involving (questioning) the appointment and removal of directors.

Corporate Social Responsibility

13. **Mallika Tamvada, "Corporate social responsibility and accountability: A new theoretical foundation for regulating CSR",** ***International Journal of Corporate Social Responsibility***

available at https://jcsr.springeropen.com/track/pdf/10.1186/s40991-019-0045-8

The absence of consensus on what should constitute Corporate Social Responsibility has inhibited consistent CSR legislation around the world. This paper poses a fundamental question on what should constitute CSR and what should be the nature of CSR regulation? By constructing the boundaries of CSR, the paper offers scope for consistently developing CSR regulation around the world. It construes CSR as consisting of business relation and impact

relation, and demonstrates that these are intertwined with legal responsibilities of business and, consequentially, with accountability. It accomplishes this by establishing the obligatory nature of responsibilities using the lens of ethical and legal jurisprudence. This new approach towards CSR recasts it as an obligatory responsibility that is linked to accountability. Furthermore, the framework provides a foundation for consistent development of CSR regulation across different countries that can lead to effective discharge of corporates' social responsibilities.

14. **Dustin Smith and Eric Rhiney, "CSR commitments, perceptions of hypocrisy, and recovery",** ***International Journal of Corporate Social Responsibility***

available at https://jcsr.springeropen.com/track/pdf/10.1186/s40991-019-0046-7

This paper examines perceived hypocrisy when a failure is aligned with prior social performance. It is hypothesized that commitment to a CSR domain creates greater performance expectations thus exacerbating the effects when an aligned failure occurs. Study 1 demonstrates that failure alignment and severity increase perceived hypocrisy which negatively impacts customer evaluations of trust, repurchase intent, and brand attitude. Study 2 evaluates two response strategies of apology and compensation vs. no response. An apology significantly reduced perceptions of hypocrisy only when the failure was unaligned with prior CSR. Compensation significantly reduced hypocrisy in both the unaligned and aligned conditions.

15. **Mauricio Andrés Latapí Agudelo , Lára Jóhannsdóttir and Brynhildur Davídsdóttir, "A literature review of the history and evolution of corporate social responsibility", International Journal of Corporate Social Responsibility**

available at https://jcsr.springeropen.com/track/pdf/10.1186/s40991-018-0039-y

There is a long and varied history associated with the evolution of the concept of Corporate Social Responsibility (CSR). However, a historical review is missing in the academic literature that portrays the evolution of the academic understanding of the concept alongside with the public and international events that influenced the social expectations with regards to corporate behavior. The aim of this paper is to provide a distinctive historical perspective on the evolution of CSR as a conceptual paradigm by reviewing the most relevant factors that have shaped its understanding and definition, such as academic contributions, international policies and significant social and political events. To do so, the method used is a comprehensive literature review thatexplores the most relevant academic contributions and public events that have influenced the evolutionary process of CSR and how they have done so. The findings show that the understanding of corporate responsibility has evolved from being limited to the generation of profit to include a broader set of responsibilities to the latest belief that the main responsibility of companies should be the generation of shared value. The findings also indicate that as social expectations of corporate behavior changed, so did the concept of Corporate Social Responsibility. The findings suggest that CSR continues to be relevant within the academic literature and can be expected to remain part of the business vocabulary at least in the short term and as a result, the authors present a plausible future for CSR that takes into consideration its historical evolution. Finally, this paper gives way for future academic research to explore how CSR can help address the latest social expectations of generating shared value as a main business objective, which in turn may have practical implications if CSR is implemented with this in mind

16. **Asha K.S. Nair & Som Sekhar Bhattacharyya, "Mandatory corporate social responsibility in India and its effect on corporate financial performance: Perspectives from institutional theory and resource-based view",**

available at https://onlinelibrary.wiley.com/doi/epdf/10.1002/bsd2.46

The enactment of the Companies Act of 2013 in India mandating CSR spending is a regulatory pressure from the government. Institutional theory suggests that such regulatory pressure has an impact on firm heterogeneity and consequently on the competitive advantage of a firm. On the other hand, a firm's resources and capabilities like R&D expertise, advertising intensity and staff welfare& training intensity leads to firm heterogeneity and helps firm to achieve competitive advantage. So, this paper combines the insights of the resource-based view with the institutional perspective from the organization theory to study the combined impact of both on financial performance. The study was conducted on Indian firms which belonged to the top thousand firms by sales for the time-period between the years 2010 and 2018. The data was collected from CMIE Prowess database.

17. **Ministry of Corporate Affairs, Report Of The High Level Committee On Corporate Social Responsibility**

available on
https://www.mca.gov.in/bin/dms/getdocument?mds=%252BrRbQA%252BCqhvfqclgrd%252BH8w%253D%253D&type=open

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- https://nclat.nic.in
- https://nclt.gov.in
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