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## **"Corporate Governance and Shareholder Activism in India: A Contemporary Analysis"**

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### **Abstract:**

This research paper provides an in-depth examination of corporate governance standards and shareholder activism in India's dynamic and growing corporate landscape. The study's goal is to shed light on the current situation of corporate governance in India, as well as its interaction with the growing phenomena of shareholder activism.

In recent years, India has seen a substantial shift in corporate governance norms, owing to regulatory reforms and a greater emphasis on openness, accountability, and ethical business practices. The regulatory framework controlling corporate governance in India is examined in this article, including the role of the Securities and Exchange Board of India (SEBI) and the Companies Act, 2013, in developing corporate governance principles.

The article digs into the changing dynamics of corporate governance procedures, as well as the growing impact of shareholder activism on altering company behavior. This magazine strives to emphasize the problems and opportunities offered by shareholder activism in India through an examination of key legislative frameworks, case studies, and international comparisons, ultimately contributing to a more nuanced understanding of its impact on corporate governance.

Finally, by presenting a contemporary examination of these essential features of India's corporate sector, this research article adds to the existing literature on corporate governance and shareholder activism. It emphasizes the importance of effective corporate governance in promoting long-term sustainability and shareholder value creation, and it provides valuable insights for policymakers, corporate leaders, and investors navigating the complex landscape of Indian corporate governance and shareholder activism.

### **Introduction:**

In an era marked by rapid globalization and an increasingly complex business landscape, corporate governance has emerged as a critical component in the functioning of businesses worldwide. The notion of corporate governance extends beyond the boardroom, transcending

the mere management of corporate affairs, to encompass the broader implications for society, investors, and stakeholders at large. In the Indian context, a dynamic and evolving economy, characterized by a burgeoning corporate sector, has sparked increased interest in the field of corporate governance. This publication, titled "Corporate Governance and Shareholder Activism in India: A Contemporary Analysis," delves into the subtle interplay between corporate governance practices and shareholder activism in the Indian corporate ecosystem. Company law in India has experienced a substantial transformation in the past few decades, with a heightened emphasis on corporate governance and shareholder activism. As the Indian economy continues to grow and attract investment, there is a growing recognition of the need for robust corporate governance methods to protect the interests of shareholders and other stakeholders. This magazine focuses on different elements of Indian company law, including recent reforms, problems, and the role of shareholders in supporting good corporate governance.

The economic liberalization of the early 1990s catalysed a remarkable transformation in India's corporate landscape, fostering unprecedented growth and innovation. Alongside this growth, however, came a heightened awareness of the need for robust corporate governance structures to safeguard investor interests, promote transparency, and ensure accountability. Over the years, India has witnessed a series of regulatory reforms, evolving corporate governance codes, and an increasing emphasis on responsible business conduct.

Simultaneously, shareholder activism has emerged as a powerful mechanism for shareholders to influence corporate decision-making. Shareholders, both institutional and retail, have become more assertive in advocating for change and holding boards and management accountable for their actions. This activism has taken various forms, including proxy battles, resolutions, and engagement campaigns, and has played a pivotal role in reshaping corporate strategies, policies, and even corporate culture.

As the corporate governance landscape in India continues to evolve, this journal aims to provide a timely and detailed examination of the important trends, difficulties, and possibilities in the field. We delve into the complexities of shareholder activism, analyzing its influence in altering corporate behavior and governance frameworks, and ultimately, the long-term sustainability of businesses. Through a multifaceted approach, this journal brings together

diverse perspectives, insights, and empirical studies offering light on the distinct dynamics of corporate governance and shareholder activism in the Indian setting.

In the following sections, we will explore the historical examine the growth of corporate governance in India, as well as the various facets of shareholder activism and analyze case studies that exemplify the impact of shareholder engagement on corporate decision-making. Additionally, we will consider the regulatory framework, governance best practices, and emerging trends that are shaping the future of corporate governance in India. We anticipate that this magazine will be a significant resource for academics, practitioners, policymakers, and all stakeholders interested in understanding and contributing to the ongoing debate in India about corporate governance and shareholder activism.

### **I. Historical Perspective of Company Law in India:**

To grasp the current situation of business law in India, one must first understand its historical development. India's company law framework has its roots in the British colonial era, primarily the Indian Companies Act of 1913. Over the years, this legislation has undergone several amendments and revisions, ultimately leading to the Companies Act of 2013, it was a huge step forward in corporate governance in India.

The Companies Act of 2013 introduced sweeping changes, including the introduction of the concept of one-person companies, strengthened regulations on corporate social responsibility (CSR), as well as the formation of the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). These measures attempted to improve corporate governance, increase transparency, and safeguard shareholders' interests.

This section provides a historical overview of corporate governance in India, covering major milestones such as the formation of the Securities and Exchange Board of India (SEBI), the Companies Act, and the construction of the National Stock Exchange. It also outlines the gradual shift from a primarily promoter-driven corporate culture to one emphasizing shareholder rights and transparency.

A "company" is defined as a person's association formed or registered under current company rules, particularly the Companies Act, 2013, or the former company laws, namely the Indian

Companies Act, 1956/1913/1882, etc. Association of Persons (AOP) in this instance falls under two categories;

AOP that was incorporated was made up of a single individual who was not a member. having the ability to enter into contracts, buy any type of property, etc. It can be established either by company law (examples include RIL, TCS, SAIL, TATA, etc.) or through a special act of Parliament known as a statutory corporation (examples include LIC, GIC, SIDBI, ICSI, ICAI, etc.).

AOP unincorporated: Merely a grouping or aggregation of people, such as partnership firms. means that lack a legal identity and are not registered under the act.

A company, according to Haney, is a legal fiction with a separate identity, perpetual succession, and a common seal.

Among a business's key characteristics under company law are:

Association with a corporation entails registration under the current Companies Act of 2013, the former Indian Companies Act of 1956, and any other applicable legislation.<sup>1</sup>

### **Independent Legal Entity:**

It refers to a free individual who is endowed with human rights and faculties. No matter if it is a private limited or public limited company, it must be registered and given a legal name. The company and its members are separated by veils.

Continuous Succession:

'Forever' is what the word "perpetual" signifies. So that once a corporation is established through the legal process, only the legal procedure can end it. A member of a business may transfer his or her shares, and the transferee's name is recorded in the register. If a member passes away, his or her successor takes over, and the same is true in the event of insolvency. Perpetual succession is the name given to this aspect of the business.

### **Common Seal:**

This is nothing more than a company's official stamp or signature. The company's seal is attached to the document. It may be used as proof in a lawsuit. Limited Liability: Members'

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<sup>1</sup> <https://www.legalserviceindia.com/legal/article-7931-origin-and-development-of-company-law-in-india.html>  
(last visited on October 09, 2023)

obligations to the company are always capped to the value of their stock. Liability in this context refers to a legal requirement or responsibility to act or not act.

**Separate Property:**

Due to its legal identity, a corporation is able to hold, purchase, sell, lease, mortgage, gift, or otherwise transfer property in its own name. It simply means that a business may transfer property as either the transferor or the transferee.

A firm is a legitimate person with the ability to bring legal action against another party and be sued by that party. Both the firm and any individual are capable of suing one another.

## **II. The Regulatory Framework for Corporate Governance in India**

The regulatory framework that governs firms and financial markets is an important part of corporate governance in India. This section digs into the laws and regulatory authorities that control corporate governance practices, such as SEBI, the Ministry of Corporate Affairs, and the Insolvency and Bankruptcy Code. Recent revisions are examined, as well as their consequences for corporate governance.

### **A. The Companies Act, 2013: A Paradigm Shift**

The Companies Act, 2013, introduced sweeping reforms in corporate governance practices in India. It mandated the appointment of independent directors, stricter disclosure norms, and enhanced shareholder rights. These provisions aimed to promote transparency and protect minority shareholders' interests.

The new Companies Law includes numerous provisions concerning good commercial governance, such as the composition of the board of directors, the admission of women as directors, the admission of independent directors, directors training and evaluation, the constitution of the audit committee, internal audit, risk management committee, SFIO Purview, Accessories Companies Management, Compliance Center, and so on. All equivalent provisions of the new Company Law are required in order to provide a competent Commercial Governance framework.

**Many vittles are-**

- Section 134, which authorizes the Board of Directors to attach a report to every fiscal statement including all the specifics of the situation, including the statement carrying the director's duty.

- Section 177, which mandates the Audit Committee to be formed by the Board of Directors of every publicly traded firm or any other kind of commission. It also specifies how the commission will be formed.
- Section 184, which allows the Director to disclose his interest in any company or companies, commercial body, enterprise, or other association of individuals. The director is required to disclose any similar interest at the first board meeting, and if the interest changes, the first meeting conducted following the corresponding change.<sup>23</sup>

### **B. SEBI Regulations (Listing Obligations and Disclosure Requirements), 2015**

The Securities and Exchange Board of India (SEBI) imposed rigorous regulations on listed corporations, reinforcing corporate governance norms. These rules cover board composition, audit committees, and disclosures, and they are in line with international best practices.

SEBI was created on April 12, 1992, as a non-supervisory authority. SEBI was founded with the primary goal of preventing fraud and protecting the interests of its investors. Its primary goal is to regulate the condition of the Stock Exchange while also icing the healthy development of the fiscal request. SEBI developed extensive Commercial Governance principles to ensure good commercial governance.

According to the new laws, corporations must obtain shareholder approval for RPTs (Related Party Transactions), it established whoosh cracker medium, clear accreditation to have at least one woman director on the Board, and it developed exposures on remuneration packages.

The nonsupervisory authority is amending Listing Agreement Clause 35B. According to the modified clause, listed firms must now provide their shareholders with the option of e-voting on all proposed or passed resolutions at general meetings. Those who do not have access to e-voting machines should be given the option of voting in writing on a postal ballot. The provision needed to be changed so that the provisions of the table agreement aligned with the provisions of the Companies Act, 2013. As a result, a new demand can be handed down to boost Commercial Governance morals in India with regard to listed firms.

SEBI has modified Clause 49 of the Listing Agreement in order to strengthen the Commercial Governance framework for listed businesses in India. The amended clause prohibits the independent directors from receiving any type of stock option. The amended provision now

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<sup>2</sup> <https://blog.ipleaders.in/corporate-governance/> (last visited on October 20, 2023)

<sup>3</sup> The Companies Act, 2013, sss. 134, 177, 184.



includes a Whoosh cracker policy, under which directors and employees can report any unethical behavior, fraud, or breach of the company's Code of Conduct. By enhancing the correction inspection Committee, it will now encompass examination of threat operation system and internal fiscal control, as well as keeping a check on inter-corporate loans and investments. The remedy now compels all enterprises to have a policy for determining 'material accessories,' which will be enforced.<sup>4</sup>

### **III. Corporate Governance in India:**

Emphasizing the importance of best practices in corporate governance, this part examines issues such as board diversity, risk management, and the role of independent directors. It also looks at how ESG (Environmental, Social, and Governance) considerations play a part in modern corporate governance.

#### **A. Board of Directors and Independent Directors:**

The composition and operation of the board of directors is a critical part of corporate governance in India. The Companies Act of 2013 mandates that a certain percentage of Independent directors should serve on the board, guaranteeing a balance of power and independence in decision-making.

#### **B. Audit Committees:**

The Act also mandates the formation of audit committees within the board structure. These committees are in charge of overseeing financial reporting, internal controls, and compliance with accounting standards in order to improve transparency and financial accountability.

#### **C. Shareholder Rights:**

Shareholder rights and protections have been significantly strengthened in India. Shareholders now have the ability to inspect corporate records, receive financial information, and vote on crucial decisions via electronic voting systems.

The rights of shareholders may be astronomically divided into three orders

1. The right of the individual shareholder
2. The rights of the minority shareholders, and

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<sup>4</sup> <https://blog.ipleaders.in/corporate-governance/> (last visited on October 12, 2023).

3. The rights of the maturity shareholders<sup>5</sup>

Shareholders are an essential component of any business, and the Act grants shareholders a variety of rights and benefits. The following are some of the most important shareholder rights under the Companies Act of 2013:

- **Right to Receive Shares:** Shareholders have the authority to In exchange for the money they invested in the company, they will be granted shares.
- **Right to Transfer Shares:** Shareholders can transfer their interests in accordance with the rules of the company's Articles of Association.
- **Right to Inspect Records:** Shareholders have the right to inspect a variety of corporate records, including the register of members, books of accounts, and meeting minutes.
- **Right to Attend and Vote at General Meetings:** Shareholders have the right to attend and vote at corporate general meetings, including annual general meetings (AGMs). Each share has one vote in most cases, however particular classes of shares may have varying voting rights.
- **Right to Receive Dividends:** Dividends are paid to shareholders when the corporation declares them. Dividends are declared and paid in accordance with corporate earnings and other regulatory obligations.
- **Right to Information:** Shareholders have the right to be informed about the company's financial performance and affairs. Financial statements, annual reports, and other related documentation must be sent to shareholders by the company.
- **Right to Appoint and Remove Directors:** Shareholders can appoint or remove directors at general meetings. They have the authority to make critical decisions about the makeup of the board of directors.
- **Right to Approve Related Party Transactions:** Shareholders have the right to approve transactions between the corporation and its linked parties that are subject to regulatory oversight.
- **Right to Raise Concerns and Ask Questions:** Shareholders can raise concerns, ask questions, and seek clarifications during general meetings. The company is obligated to address these concerns to the extent possible.
- **Right to Right Issues:** Shareholders have the right to participate in the company's rights issue of shares, allowing them to keep their proportional ownership.

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<sup>5</sup> The Companies Act, 2013

- Right to Inspect Statutory Registers: Shareholders can inspect the statutory registers, such as the registration of members, the record of debt holders, and so on..
- Right to Participate in Corporate Governance: Shareholders play an important role in the company's corporate governance, including approving the appointment of auditors and the company's corporate social responsibility (CSR) policy.
- Right to Class Action: Shareholders can initiate class action suits under certain circumstances to safeguard themselves and the company's interests.<sup>6</sup>

#### **IV. Challenges in Implementing Corporate Governance:**

Despite the substantial reforms in India's corporate governance framework, challenges persist. Some of the key challenges include:

##### **A. Enforcement:**

Effective enforcement of corporate governance regulations remains a challenge. Regulatory bodies like the Regulatory bodies such as the Securities and Exchange Board of India (SEBI) and the Ministry of Corporate Affairs (MCA) must enforce rigorous compliance and prosecute violators.

##### **B. Transactions involving Related Parties:**

Related party transactions continue to be a source of concern for Indian firms. Keeping such transactions at arm's length and in the best interests of the corporation and its shareholders remains a difficulty.

Related Party Transactions (RPTs) can raise concerns, particularly when they are abusive or not conducted in a transparent and fair manner. Regulatory authorities and corporate governance standards in India, as in many other countries, strive to address these concerns and defend the interests of minority owners and stakeholders. Here are some issues concerning abusive Related Party Transactions in India:

- Conflict of Interest: One of the primary concerns is the conflict of interest that may arise when RPTs involve key management personnel or significant shareholders. This could result in decisions that benefit related parties at the expense of the corporation or its smaller owners.

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<sup>6</sup> <https://www.scconline.com/blog/post/2021/11/02/related-party-transactions/> (last visited on October 12, 2023). (Website-lexscriptamagazine.com) 11 ([Email-riday.riday.r662@gmail.com](mailto:Email-riday.riday.r662@gmail.com))

- **Lack of Transparency:** When RPTs are not adequately disclosed or transparent, it can be difficult for stakeholders to assess their fairness. Lack of transparency may hide abusive practices, leading to potential financial losses for the company.
- **Unfair Pricing:** RPTs might involve transactions at prices significantly different from market rates. Overpricing or underpricing can have an influence on the company's and its shareholders' financial health. For example, if a company buys goods or services from a related party at an inflated price, it could harm the company's profitability.
- **Weakening Corporate Governance:** Abusive RPTs can weaken corporate governance, undermining the principles of fairness, accountability, and responsibility. This can harm the company's reputation and threaten its long-term viability.
- **Violations of the law and regulations:** Abusive RPTs may violate various legal and regulatory requirements. The Companies Act of 2013, as well as the SEBI (Listing Obligations and Disclosure Requirements) Regulations of 2015, include laws that govern RPTs and require disclosures.
- **Minority Shareholder Protection:** Minority shareholders are often the most vulnerable in abusive RPT scenarios. Their interests must be protected, and the abuse of RPTs can harm their investments and erode their trust in the company.
- **Impact on Corporate Valuation:** Abusive RPTs can affect a company's financial statements and valuation, making it difficult for investors and analysts to make informed decisions.
- **Regulatory Scrutiny and Penalties:** Indian regulators like SEBI and the Ministry of Corporate Affairs (MCA) monitor RPTs closely. Companies involved in abusive RPTs may face regulatory scrutiny, fines, or legal action.

To overcome these problems, businesses must ensure that RPTs are conducted fairly and transparently. They must follow all applicable legal and regulatory obligations, including seeking shareholder permission where necessary. To defend the interests of all stakeholders, independent directors on the board play a critical role in overseeing and examining RPTs. In order to prevent abusive RPTs and demonstrate their commitment to good corporate governance, companies should maintain strong internal controls and disclosures.<sup>7</sup>

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<sup>7</sup> <https://www.scconline.com/blog/post/2021/11/02/related-party-transactions/> (last visited on October 12, 2023).

**C. Whistleblower Protection:**

Whistleblower protection measures must be expanded further to encourage people to reveal corporate wrongdoing without fear of retaliation. It is critical to strengthen these processes in order to promote openness, accountability, and ethical behavior in both the public and commercial sectors. It cultivates a culture in which employees, consumers, and stakeholders feel empowered to speak out against wrongdoing and fraud, ultimately benefiting society as a whole. By enhancing whistleblower protection, we can ensure that those who expose wrongdoing are shielded from harm, and that justice is served when misconduct is uncovered. Here are some reasons why whistleblower protection mechanisms should be further strengthened:

1. **Promoting Accountability:** Whistleblowers often expose unethical or illegal activities within organizations that might otherwise go unnoticed. Strengthening whistleblower protections encourages individuals to come forward, thus increasing accountability for corporate wrongdoing.
2. **Safeguarding the Public Interest:** Whistleblowers help protect the public interest by revealing actions that may harm consumers, investors, or the environment. Strong protections ensure that those who report such wrongdoing are not deterred by fears of retaliation.
3. **Encouraging Ethical Behavior:** Robust whistleblower protections send a message that ethical behavior is valued and that reporting wrongdoing is a responsible and courageous act. This can influence the corporate culture and encourage employees to adhere to ethical standards.
4. **Preventing Cover-Ups:** Whistleblower protection mechanisms reduce the likelihood of organizations trying to cover up misconduct or silence individuals who report it. This, in turn, reduces the potential harm caused by corporate wrongdoing.
5. **Legal Compliance:** Strong whistleblower protection procedures are frequently matched with legal requirements, ensuring that firms comply with applicable laws and regulations. Noncompliance may result in legal ramifications for the organization.
6. **Strengthening Internal Reporting:** Robust whistleblower protections can lead to an increase in internal reporting of misconduct, allowing organizations to address issues more effectively before they become public scandals. This can help mitigate damage to an organization's reputation and financial stability.

- Promoting a Just Society: A society that values and protects whistleblowers is more likely to maintain a just and fair environment where individuals are willing to expose wrongdoing and where the rule of law is upheld.<sup>8</sup>

#### **IV. Shareholder Activism in India:**

Shareholder activism has gained momentum in India, with institutional and retail investors using their rights to influence corporate decisions and advocate for responsible business practices. Some notable examples of shareholder activism in India include voting against executive pay packages, challenging mergers and acquisitions, and advocating for environmental and social responsibility.

##### **A. Role of Institutional Investors:**

Mutual funds and pension funds, for example, have played an important role in shareholder agitation. They frequently exercise their voting rights to support resolutions that are consistent with their ESG (Environmental, Social, and Governance) ideals.

To influence corporate governance procedures, institutional investors engage in communication with firm management and board members. The corporate accountability framework, board compensation, and sustainability initiatives are the topics of shareholder and board discussions. Institutional investors can advocate the adoption of policies and practices that improve business ethics and performance standards by engaging in constructive conversation.<sup>9</sup>

##### **B. Proxy Advisory Firms:**

Proxy advisory firms have emerged as key players in facilitating shareholder activism by providing research and recommendations on proxy voting issues.

Proxy consulting businesses scrutinize publicly traded corporations, their performance and resolutions, and advise shareholders on their rights. They work in the best interests of

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<sup>8</sup> <https://www.oecd.org/corruption/committing-to-effective-whistleblower-protection-highlights.pdf> (last visited on October 12, 2023).

<sup>9</sup> <https://www.linkedin.com/pulse/role-institutional-investors-corporate-governance#:~:text=Institutional%20investors%20engage%20in%20dialogue,board%20compensation%2C%20and%20sustainability%20initiatives> (last visited on October 20, 2023)

shareholders, who may not always be able to assess the impact of a company's resolutions. These firms recommend that investors vote for or against corporate decisions.<sup>10</sup>

#### **V. Case Studies:**

To illustrate the impact of shareholder activism in India, this journal includes case studies of prominent shareholder activism campaigns and their outcomes.

##### **A. The Tata-Mistry Dispute: ( Cyrus Investments Pvt Ltd & Anr. v. Tata Sons Ltd. & Ors.)**

This case explores the events that transpired between Tata Sons, Ratan Tata, and Cyrus P Mistry and critically enumerates the roles of various stakeholders such as the Board of Directors, Promoters, Management, Shareholders, regulatory authorities, and institutions. Various difficulties in corporate governance include distinguishing between the roles of the board and management, board composition, the function of the Chairperson, and protection.<sup>11</sup> Many facets of corporate operation are highlighted in this case. It emphasizes the significance of many aspects of corporate governance, including the importance of the board, the legislation, succession planning, the role of independent directors and promoters, the necessity of essential legal documents such as articles of association, minority shareholder rights, and so on. Tata, a global corporation with over 100 years of history, was thrown into crisis due to a lack of trust among its stakeholders or a failure to adhere to some fundamental governance metrics. Members may come and go, but the institutional legacy and principles should never be jeopardized. The case went through all of India's legal institutions and current corporate governance norms, and the Companies Act was put to the test. Institutions such as the NCLAT, NCLT, MCA, and the Supreme Court played critical roles in the outcome and learning from corporate India's most ferocious legal battles.<sup>12</sup>

##### **B. Minority Shareholder Protests:**

Several instances of minority shareholders criticizing corporate acts such as mergers and acquisitions demonstrate retail investors' growing role in corporate decision-making.

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<sup>10</sup> <https://indianexpress.com/article/explained/everyday-explainers/proxy-advisory-firms-oppose-anant-ambani-appointment-8990115/> (last visited on October 20, 2023)

<sup>11</sup> Cyrus Investments Pvt. Ltd. & Anr vs Tata Sons Ltd. & Ors. , Company Appeal (AT) No. 254 of 2018

<sup>12</sup> <https://journalppw.com/index.php/jpsp/article/download/13666/8838/16585> (last visited on October 19, 2023).

## **VI. Conclusion:**

Company law in India has undergone substantial changes in recent years, with a renewed focus on corporate governance and shareholder activism. The Companies Act of 2013 introduced critical reforms to strengthen corporate governance practices and protect shareholder rights. However, challenges remain in the enforcement of these regulations.

Shareholder activism has emerged as a powerful force in shaping corporate behavior and promoting responsible business practices. Institutional investors and retail shareholders alike are using their influence to advocate for transparency, accountability, and sustainability.

As India continues to grow as a major global economy, it is imperative that the regulatory framework and corporate practices evolve to ensure that the interests of shareholders and stakeholders are safeguarded. By addressing challenges and fostering shareholder activism, India can further enhance its corporate governance landscape and attract investment with confidence.