

# RELATIONSHIP BETWEEN CORPORATE GOVERNANCE AND COMPANIES ACT

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## **ABSTRACT:**

This paper tries to seek out the connection between the companies Act,2013 and corporate governance within the company where, in the introductory part different definitions of corporate governance have been discussed alongside the historical emergence of corporate governance. Here, the connection between corporate governance and also the new companies Act,2013 has been discussed with emphasis on Corporate Social Responsibility norms under the said Act as CSR may be a vital part of corporate governance. In the second part of the paper, the legislative history of the Companies Act has been discussed alongside the objectives of the said act and its impact on corporate governance. Where the position and role of an independent director under the Companies Act are discussed intimately alongside the duties of directors that are envisaged within the Companies Act of 2013. In the last part of this paper, Satyam Scandal and changes that were adopted in corporate governance structure are discussed because this scandal plays a crucial role in structuring the corporate governance of the country and therefore the Companies Act has adopted many provisions due to this failure in governance.

## **Key Words:**

Corporate, Governance, Organization, Company, Director.

## **1. INTRODUCTION:**

The word Governance is derived from the Latin Word 'Gubernare' which means to steer usually applying to the steering of a ship. Similarly, the application of Governance in Corporate Houses is known as Corporate Governance.<sup>1</sup> Corporate Governance is a multi-faceted subject and hard to fathom in a compact definition. The primary subject of corporate administration is to coordinate sound administration arrangements in the corporate system in such a way to get financial effectiveness the association so as to accomplish twin objectives of profit maximization of the firm and investor/ shareholder welfare.<sup>2</sup> Corporate Governance gathers managing the business competently, guarantee to ethics and adequate and ideal revelation on each and every material issue to construct general accomplice sureness which will subsequently provoke powerful assignment of capital and upheld financial turn of events. Governance is tied in with running the

<sup>1</sup> Dash B, 'Provisions relating to Corporate Governance under new companies act 2013' (2016).

<sup>2</sup> Amrita Chattopadhyay, 'Importance of Corporate Governance and Companies Act, 2013' (2015) <

<https://www.caclubindia.com/articles/importance-of-corporate-governance-and-companies-act-2013-24923.asp>> Accessed on 1<sup>st</sup> November 2020.

association, yet incredible governance is connected to ensuring that is run sensibly and straight forwardly (du Plessis, Varottil, and Veldman, 2018).<sup>3</sup>

Institute of Company Secretaries of India comprehensively defines Corporate Governance as, "Corporate Governance is the application of best Management Practices, Compliance of Laws in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders."<sup>4</sup> This concept is based upon governing corporations in such a manner to respond to the stockholders and other stakeholders' financial demands and performing managements' stewardship functions.<sup>5</sup>

Corporate Governance has become a subject of wide public interest as the intensity of institutional investors has expanded and the effect of corporations on society has developed. However, thoughts regarding how enterprises should be administered shift broadly. Individuals dissent, for instance, on such essential issues as the reason for the company, the part of corporate boards of directors, the rights of shareholders, and the correct method to gauge corporate performance. The issue of whose interests should be considered in corporate dynamic is especially argumentative, with certain specialists offering power to stakeholders' premium in amplifying their financial returns and others contending that investors' different advantages — in, corporate strategy, executive compensation, and ecological policies, for instance — and the interests of different parties must be respected as well. These discussions have taken on another power notwithstanding changing capital business sectors and uber powers, for example, environmental change, pay disparity, digitalization, and rising populism sweeping the globe.<sup>6</sup>

In essence, different groups have attempted to define corporate governance. One group defines it as an attempt to discover a structure in such a manner that the power of realizations and decision makings of the managers will be exerted for servicing the firm's stockholders by the best channel. Another group emphasizes corporate governance from the economic realm and considers it as a means for making corporations more efficient by establishing appropriate infrastructures such as contracts and designing corporate rules and regulations. This view is focused on the principle of increasing the value (wealth) for the stakeholders.<sup>7</sup>

Corporate Governance is the new brilliant term begat in the corporate area in the last part of the 1990's by the Industry Association On Confederation of Indian Institute which was the first activity in Quite a while as a wilful measure to be received by Indian organizations. It has laid out a progression of deliberate suggestions to coordinate top tier practices of corporate governance in registered companies which contacts the four foundations of reasonableness, straightforwardness, responsibility, and duty in dealing with the issues of the organization.<sup>8</sup>

<sup>3</sup> Siva S and Kannappan M, 'Study of Corporate Governance under Companies Act, 2013' (2018) Vol.119 No. 17 International Journal of Pune and applied Mathematics 957-967.

<sup>4</sup> Pooja Das, 'All about Corporate Governance in India' (*Legodesk* 2016) <https://legodesk.com/legopedia/corporate-governance-in-india/#:~:text=%E2%80%9CCorporate%20Governance%20is%20the%20application,sustainable%20development%20of%20all%20stakeholders.%E2%80%9D> Accessed on 28<sup>th</sup> October 2020.

<sup>5</sup> Malik M and Imam M, 'Firm Performance and Corporate Governance through Ownership Structure' (2007) 88-110.

<sup>6</sup> Paine L and Srinivasan S, 'The guide to the big ideas and debates in Corporate Governance' (2019) Harvard Business Review.

<sup>7</sup> Namazi M and Kermani E, 'An Empirical Investigation of the Relationship between Corporate Ownership Structures and their Performances' (2013) Vol.1 No. 1 Journal of Finance and Accounting 13.

<sup>8</sup> James Chen. 'Corporate Governance Definition' (2020) < <https://www.investopedia.com/terms/c/corporategovernance.asp> > Accessed on 30<sup>th</sup> November 2020.

The primary decade of the new millennium saw sensational changes in the ownership patterns in major listed corporations in India. Two advancements were striking: Promoters especially in domestic private sector reinforced up their holdings to guarantee proceeded with entrenchment, and institutional investors altogether expanded their holdings particularly in the private sector management-controlled organizations fragment. In the two cases, these increments were accomplished at the expense of retail non-institutional investors whose holdings correspondingly recorded a precarious fall. This paper records this proof tries to recognize their fundamental reasoning and survey their implications for equity investment and governance in the country.<sup>9</sup> The genuine change in the corporate area could be felt with the presentation of 2009 Mandatory Corporate Governance Voluntary Guidelines which must be consent by organizations recorded on stock trade by Clause 49 of Listing Agreement including obligatory codes to be trailed by organizations relating to top managerial staff, review boards of trustees and different divulgences as for related gathering exchanges, informant approaches and so forth. The last consent to Corporate Governance rehearses in the powerful administration of the organization can be viewed as prologue to new noteworthy arrangements presented in the Companies Act, 2013 in type of independent directors, women directors on the board, corporate social obligation and compulsory consistence of Secretarial Standards gave by Institute of Company Secretaries of India according to Section 118 of Companies Act, 2013.<sup>10</sup>

## **1.1 COMPANY'S ACT, 2013 AND CORPORATE GOVERNANCE**

The new Indian Companies Act is a positive advance towards modernizing India's company law and adjusting it to worldwide principles.<sup>11</sup> It has given expanded dynamic forces to the organization, and presented arrangements giving minority shareholders extra rights and insurances. The presentation of one individual organizations and little organizations ought to lighten a portion of the authoritative weights that independent ventures need to manage, yet bigger organizations ought to get ready themselves for additional managerial weights because of changes in the arrangement of appointment of auditors and directors.<sup>12</sup>

There has been an ocean change in companies Act, 2013 which has waved its way from rule of corporate governance rehearses as the new key change in the demonstration.<sup>13</sup> The Companies Act, 2013 has taken a foot forward from SEBI's Clause 49 of posting understanding by presenting arrangements in the organizations exhibition 2013 which advances corporate governorship code in such a way that it will never again be confined to just recorded public organizations yet additionally unlisted public organizations. Companies Act, 2013 lays more noteworthy accentuation on corporate administration as it plainly gives the standards and guidelines to the equivalent.<sup>14</sup>

<sup>9</sup> N Balasubramanian and RV Anand, 'Ownership Trends in Corporate India' Indian Institute of Management Bangalore Working paper 141, < [https://www.iimb.ac.in/sites/default/files/2018-07/WP\\_No.\\_419\\_0.pdf](https://www.iimb.ac.in/sites/default/files/2018-07/WP_No._419_0.pdf) > Accessed on 16<sup>th</sup> November 2020.

<sup>10</sup> Shagunbhal, 'Corporate Governance under Companies Act, 2013' (2017) < <https://blog.iplayers.in/corporate-governance-companies-act-2013/> > Accessed on 21<sup>st</sup> October 2020.

<sup>11</sup> 'The report of companies law committee' (2016) Ministry of corporate affairs of Government of India.

<sup>12</sup> Abhishek Datta, 'Are the rights of minority shareholders protected?' (2020) <https://www.lawyered.in/legal-disrupt/articles/are-rights-minority-shareholders-protected-abhishek-dutta/> Accessed on 20<sup>th</sup> November 2020.

<sup>13</sup> 'summary of new arguments under Companies Act, 2013' (Novo Juris 2019) < <https://www.mondaq.com/india/corporate-and-company-law/786304/summary-of-new-amendments-under-the-companies-act-2013-in-2019-and-its-action-points> > Accessed on 21<sup>st</sup> November 2020.

<sup>14</sup> Bharat Vasani and Vidhi Sharma, 'Companies Act,2013: More Changes in the Offing' (Mondaq 2018)< <https://www.mondaq.com/india/corporate-governance/758404/companies-act-2013-more-changes-in-the-offing> > Accessed on 17<sup>th</sup> October 2020.



The new Act hopes to present all the more-straight imposition and administration in the corporate bodies other than making the basic condition for improvement in the present overall structure. It can be a striking perspective, as it hopes to upgrade corporate administration, unravel headings, improves the expenses of minority monetary experts and out of nowhere communicates the piece of screech blowers. The Act upholds incredible governance practices by putting the onus on free executives to get oversight the working of the Board and secure the excitement of minority investors. The new Act is a significant perspective in the corporate governance hover in India and is likely going to have colossal impact on governance of companies in the country.<sup>15</sup>

Some important elements that are included in companies Act, 2013 are:

- Modernization and administrative concordance in the wake of corporate embarrassments; (Satyam Saga and Sahara OFCD's issue).
- Recognition of good corporate practices and mechanical upgrades.
- Simplification of law by putting related arrangements under one statement/segment.
- Introduction of new arrangements to meet the current financial climate.

#### CORPORATE SOCIAL RESPONSIBILITY:

Definition of the term CSR: The term CSR has been defined under the CSR Rules which incorporates but is not limited to:

Projects or programs concerning activities laid out in the Schedule; or

Projects or programs concerning activities undertaken by the Board in pursuance of recommendations of the CSR Committee as per the declared CSR policy subject to the condition that such policy covers subjects enumerated within the Schedule.<sup>16</sup>

This definition of CSR assumes significance because it allows companies to interact in projects or programs concerning activities enlisted under the Schedule. Flexibility is additionally permitted to the businesses by allowing them to settle on their preferred CSR engagements that are in conformity with the CSR policy.<sup>17</sup>

The Companies Act, 2013 has formulated Section 135, Companies (Corporate Social Responsibility) Rules, 2014 and Schedule VII which prescribes mandatory provisions for Companies to fulfil their CSR.<sup>18</sup> Organizations can satisfy this obligation through waste and contamination decrease measures, by contributing instructive and social projects, by being ecologically inviting and by embraced exercises of comparable nature. corporate social responsibility is a method of leading business, by which corporate elements obviously add to the social great. Socially dependable organizations don't restrict themselves to utilizing assets to take part in exercises that expansion just their benefits.<sup>19</sup> They use CSR to incorporate monetary, natural and social goals with the

<sup>15</sup> Siva S and Kannappan M, 'Study of Corporate Governance under Companies Act, 2013' (2018) Vol.119 No.17 International Journal of Pune and applied Mathematics, 957-967.

<sup>16</sup> Srivastava P, 'Corporate Social Responsibility and Environmental Sustainability in Indian Companies' (2013) Dalaylbagh Educational Institute.

<sup>17</sup> Mukharjee A, 'CSR Practices in Indian Corporate Sector study of select firm' University of Allahabad.

<sup>18</sup> Parmar G, 'Legal Compliances in CSR' (2018) Bombay Chamber of Commerce and industry.

<sup>19</sup> 'CSR spending obligation on companies needs to be jettisoned in its entirety' (*The Hindu Business line* 2019) <

<https://www.thehindubusinessline.com/opinion/editorial/csr-spending-obligation-on-companies-needs-to-be-jettisoned-in-its-entirety/article29291440.ece>> Accessed on 1<sup>st</sup> December 2020.

organization's activities and development. Corporate Social Responsibility is said to build notoriety of an organization's image among its clients and society.

A provision determining that the overflow emerging out of the CSR undertakings or projects or exercises will not shape part of the business benefit of the organization. The balance sheet of a foreign company to be filed under section 381(1)(b) of the Act shall contain an Annexure regarding report on CSR. The Board of Directors shall ensure that activities included by a company in its CSR Policy are related to the areas or subjects specified in Schedule VII (given below) of the Act.<sup>20</sup>

## **2. LEGISLATIVE HISTORY OF COMPANIES ACT, 2013**

The enactment of the Companies Act, 2013 (the "Companies Act, 2013" or the "Act") was one of the most significant legal reforms in India in the recent past, aimed at bringing Indian company law in tune with global standards. The Act incorporated recommendations made by various committees, such as the Naresh Chandra Committee, Dr. J J Irani Committee, Vepa Kamesan Committee, etc. It also went through a rigorous review process in the Parliament after being first tabled as a Bill in 2009. The Parliamentary Standing Committee on Finance examined the Bill twice, during which extensive public consultations were also held.<sup>21</sup>

The new law is pointed towards facilitating the way toward working together in India and improving corporate governance by making companies more responsible.<sup>22</sup> The 2013 Act additionally presents new ideas, for example, one – Person Company, small company, dormant company and corporate social Responsibility (CSR) and so forth. The Act presents noteworthy changes in the arrangements identified with governance, e-management, consistence and requirement, disclosure standards, auditors, mergers and acquisitions, class activity suits and registered valuers. The demonstration is presently in power with effect from first April 2014.<sup>23</sup>

During the most recent decade, Corporate Governance has gotten one of the most generally talked about themes in the business world, in India as additionally in nations like the United States of America and United Kingdom.<sup>24</sup> As expressed by the Narayanamurthy Committee Report, "Corporate Governance is about moral lead in the business". The Corporate Governance is past the domain of law. Consequently, nonstop endeavours are being made to impact changes in the material laws to improve the principles of Corporate Governance.<sup>25</sup> In a manner it tends to be said that the Companies Act, 1956, was maybe the main order liable for presenting some type of corporate

<sup>20</sup> Ankita Singla 'Corporate Social Responsibility (CSR) as per companies Act, 2013' (2018) < <https://taxguru.in/company-law/corporate-social-responsibility-csr-companies-act-2013.html> > Accessed on 14<sup>th</sup> October 2020.

<sup>21</sup> Ministry Of Corporate Affairs Government of India, 'Report of the companies Law committee' (2016).

<sup>22</sup> 'Improving Corporate Governance in India: Related Party Transactions and Minority Shareholder Protection, Corporate Governance' (2013) OECD Publishing <http://dx.doi.org/10.1787/9789264220652-en> Accessed on 28<sup>th</sup> November 2020.

<sup>23</sup> Nishith Desai, 'Companies Act 2013: Greater Emphasis On Governance Through The Board And Board Processes' (Mondaq 2013) < <https://www.mondaq.com/india/corporate-governance/319480/companies-act-2013-greater-emphasis-on-governance-through-the-board-and-board-processes> > Accessed on 2<sup>nd</sup> November 2020.

<sup>24</sup> Prabal Basu Roy, 'The Great Corporate Governance Challenge' (Business World 2020) < <http://www.businessworld.in/article/The-Great-Corporate-Governance-Challenge/18-06-2018-152244/> > Accessed on 4<sup>th</sup> December 2020.

<sup>25</sup> 'Key Recommendations of Narayan Murthy Committee on Corporate Governance' (GT Today 2015) < <https://www.gktoday.in/gk/key-recommendations-of-narayan-murthy-committee-on-corporate-governance/> > Accessed on 8<sup>th</sup> November 2020.

governance for a wide range of organizations. Likewise, the posting understanding acquired a bit of corporate administration explicitly material to recorded organizations as it were.<sup>26</sup>

For a long time the posting arrangement was principally intended to guarantee that each recorded company ensured the enthusiasm of its investors by guaranteeing certain base compliances like ideal dispatch of offer endorsements, yearly accounts, profit, and so forth. Unexpectedly, because of the Kumar Mangalam Birla Committee Report, the term "Independent director" turned into a piece of corporate vocabulary. To give legitimate character to the recently acquainted idea and with make it obligatory for the recorded organizations, SEBI affected changes in the posting arrangement by presenting a new condition as statement 49, solely committed to Corporate Governance. Proviso 49 additionally endorses a few different necessities, Audit Committee being the most significant.<sup>27</sup> The push of this article is restricted to the function of free chiefs in the plan of corporate governance and all the more especially, the arrangements contained in the as of recently passed Companies Act, 2013 (the new Act).

Strikingly, however the idea of independent directors was brought into power so far as posting organizations are concerned, no particular meaning of the expression "independent directors" Exist in the Companies Act, 1956 (the Act). The Birla Committee put the onus on the administration to choose concerning whether a specific director was an independent director or not for meeting the prerequisites as specified in clause 49.<sup>28</sup>

### **2.1 OBJECTIVES BEHIND THIS BILL:**

- Retain basic highlights of the current system, isolate meaningful law from the techniques to empower an unmistakable structure for good corporate governance that tends to the worries of all partners even handily.<sup>29</sup>
- Re-examine the law in order to empower a minimal rule that is amiable to simple comprehension and understanding.
- Empower more noteworthy adaptability in procedural angles so that with the difference in time the procedural system, to be endorsed through principles, might be corrected without revision of the considerable institution.
- Build up an atmosphere that empowers setting up of organizations and their development while empowering measures to secure the premiums of shareholders and investors, including little financial specialists, through legitimate reason for sound corporate governance rehearses and powerful implementation.<sup>30</sup>
- Give a structure to capable self-guideline through assurance of corporate issues through choices by investors, in the foundation of clear responsibility for such choices, blocking the requirement for a system dependent on Government endorsements.

<sup>26</sup> Anila P and Arpan Ghosh, 'Narayan Murthy Corporate Governance Committee Report, 2003'.

<sup>27</sup> Birla K, 'Report of the Committee appointed by SBI on Corporate Governance' < <http://www.nfcg.in/UserFiles/kumarmbirla1999.pdf> > Accessed on 3<sup>rd</sup> December 2020.

<sup>28</sup> Rohit Kharat, 'Birla Committee on Corporate Governance' < <https://www.scribd.com/presentation/181424958/Birla-Committee-Report-on-Corporate-Governance> > Accessed on 28<sup>th</sup> October 2020.

<sup>29</sup> Standing Committee of Finance, (Ministry of Corporate Finance) [https://www.prsindia.org/uploads/media/Company/Companies\\_Bill\\_%20SC%20Report%202012.pdf](https://www.prsindia.org/uploads/media/Company/Companies_Bill_%20SC%20Report%202012.pdf) Accessed 25<sup>th</sup> November 2020.

<sup>30</sup> 'Silent features of companies Act, 2012' (TaxGuru 2012) <https://taxguru.in/company-law/salient-features-companies-bill-2011-2.html> Accessed on 26<sup>th</sup> November 2020.



- Address the viable worries of private ventures so individuals may manage and put resources into organizations with certainty, advance worldwide intensity of Indian organizations and furnish them with the adaptability to address the difficulties of the worldwide economy.<sup>31</sup>
- Join global practices dependent on the models recommended by the United Nations Commission on International Trade Law (UNCITRAL); and
- Accommodate a sensible and fitting system for requirement of the law that empowers legitimate examination and inconvenience of suitable assents involving punishments for rebelliousness and discipline for infringement of the law and for deceitful lead, keeping in see the experience coming about because of past financial exchange tricks and concerns communicated by Joint Parliamentary Committees consequently.<sup>32</sup>

### **3. COMPANIES ACT,2013 AND ITS EFFECTS ON CORPORATE GOVERNANCE:**

Companies Act,2013 features an excellent impact on corporate governance and much of provisions within the act provide specific command to the companies with regards to corporate governance. Here are a number of those important provisions,

#### **3.1 POSITION OF “INDEPENDENT DIRECTOR” IN BOARD COMPOSITION**

As per sub section 4 of Section 149 of the Companies Act 2013, every listed public company is mandatorily required to have at least one-third of the total number of directors as independent directors.<sup>33</sup> Unlisted public companies must appoint at least two independent directors in the following circumstances:

- i. if the paid-up share capital exceeds Rs.10 Crores.
- ii. if the turnover exceeds Rs.100 Crores.
- iii. if the aggregate of all the outstanding loans, debentures and deposits exceeds Rs 50 Crores.<sup>34</sup>

According to sub-section (6) of section 149 of the Companies Act, 2013 an independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director - as per sec 149 (6) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year.<sup>35</sup>

(iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that

<sup>31</sup> 'Highlights of the Companies Act,2012' <https://icsi.edu/media/portals/70/BACKGROUND23022013.pdf> Accessed on 27<sup>th</sup> October 2020.

<sup>32</sup> 'Historical Preview of new Act' (*Companies Act.in*) <https://www.companiesact.in/Companies-Act-2013/Historical-Preview-of-New-Act> Accessed on 17<sup>th</sup> November 2020.

<sup>33</sup> 'Section 149 of Companies Act,2013 – company to have board of directors' (*Corporate Law Reporter 2020*) < [http://corporatelawreporter.com/companies\\_act/section-149-of-companies-act-2013-company-to-have-board-of-directors/](http://corporatelawreporter.com/companies_act/section-149-of-companies-act-2013-company-to-have-board-of-directors/)> Accessed on 4<sup>th</sup> December 2020.

<sup>34</sup> Companies Act,2013 sec.149.

<sup>35</sup> 'Section 149(6) of Companies Act,2013' (*CAclubindia 2015*) < <https://www.caclubindia.com/experts/section-149-6-of-companies-act-2013-1990684.asp>> Accessed on 16<sup>th</sup> November 2020.

receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary, or associate company or that holds two per cent. or more of the total voting power of the company; or (f) who possesses such other qualifications as may be prescribed.<sup>36</sup>

### **3.2 ROLE OF INDEPENDENT DIRECTORS UNDER COMPANIES ACT,2013:**

While playing out the job expected of him, there is each probability that he could fall foul of the advertiser bunch who has the command over the board and in such a circumstance his determination will be tried. The law anticipates that him should defend what is directly in the conditions; in the event that it isn't feasible for him to persuade others regarding his perspectives, it will be his obligation to guarantee that his contradiction is recorded in the minutes of the procedures of the executive gathering. It isn't anything but difficult to characterize an "independent director", however, the new Act has endeavoured to give a definition by specifying to the first run through, the characteristics and capabilities that an individual ought to need to make that individual qualified for arrangement as independent director as opposed to posting the grounds of preclusion as has been the situation previously.<sup>37</sup>

Section 149(6) of the new Act endorses a few capabilities expected of an independent director in connection to an organization. One imperative is that he ought to be an individual of uprightness. On first idea it might sound absurd that it is important to indicate that an individual needing to be an independent director ought to take care of business of uprightness, since it ought to be without saying that each individual on the leading group of an organization ought to take care of business of uprightness.<sup>38</sup> Sadly, experience shows that numerous directors throughout the years have bombed in releasing their guardian obligations; maybe that is the reason the legislators have wanted to give in law that such an individual ought to take care of business of uprightness. Nonetheless, simultaneously it ought to be noticed that morals and ethical quality cannot be administered however moral guidelines of direct might be determined by the law. As though the endless capabilities recorded in the condition are insufficient, the Government has saved for itself the residuary capacity to recommend such different capabilities as the Government may regard fit.<sup>39</sup>

One can dare to dream that the extra capabilities that might be endorsed by the Government ought to not make the assignment of getting independent directors still more troublesome. The ten essentials referenced in Section 149(6) of the new Act for qualification to be an independent director shows the aim of the Government to guarantee that an independent director isn't just a skilled and experienced individual, however he ought not have any material financial or other relationship with the organization that would come in the method of his releasing his obligations without dread or favour.<sup>40</sup>

<sup>36</sup> Companies Act,2013, Section 149(6).

<sup>37</sup> Aditya Agarwal, 'Role of Independent Board of Directors under the companies Act,2013' (*Legal Service India*) <<http://www.legalserviceindia.com/legal/article-2566-role-of-independent-board-of-directors-under-the-companies-act-2013.html>> Accessed on 24<sup>th</sup> October 2020.

<sup>38</sup> 'Appointment and Qualification of Directors' (The Institute of Company Secretaries of India) <<https://www.icsi.edu/media/portals/0/APPOINTMENT%20AND%20QUALIFICATIONS.pdf>> Accessed on 27<sup>th</sup> October 2020.

<sup>39</sup> Ibid.

<sup>40</sup> 'Independent director under Companies Act, 2013' (*Lexology* 2014) <<https://www.lexology.com/library/detail.aspx?g=45f2cd2e-88a0-46bf-ba56-5b404c2e4681>> Accessed on 29<sup>th</sup> October 2020.



### **3.3 DUTIES OF DIRECTORS UNDER COMPANIES ACT, 2013:**

The arrangement for assurance of shareholders is a simple eye wash and does not really ensure the enthusiasm of the Stakeholders. The arrangement 166(2) is astutely phrased and forces a decent confidence obligation of a lot higher extent towards the company while it just demands with the consistence of a wellbeing standard for the security of the shareholders.<sup>41</sup>

(4) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

(5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.<sup>42</sup>

The current area covers effectively ascertainable bunches like investors and representatives alongside dubious classes like the network inside its ambit. The main infringement will be that of 'public intrigue' if the chief neglects to release his obligations qua the network prompting the interjection of the decision in Mid Kent Holdings v General Utilities<sup>43</sup> which went against an option to sue being presented on any of the entire populace against a position. The perusing of area as giving reason for activity to any individual from the network would be ridiculous and the current situation of law is probably not going to help in vindication of privileges of network because of its dubiousness.<sup>44</sup> The subsequent issue is in the idea of release of obligation. The inquiry is whether the articulation 'great confidence' is restricted to advancement of objects of the organization as found in plain perusing or is it to be stretched out to the demonstrations for partners also.<sup>45</sup>

The section can be perused as (1) The director has an obligation to act in accordance with some basic honesty in request to advance the objects of the organization to assist its individuals as entire; (2) The director has an obligation to act to the greatest advantage of the organization, its representatives, the investors, the network and for the security of climate, or it can even be understood like, (3) The director an obligation to act in great confidence so as to advance the objects of the organization to serve its individuals overall, (4) The director has an obligation to act in compliance with common decency and in the best interests of the organization, its representatives, the investors, the network and for the security of climate. On the off chance that one is to favour the view that the great confidence measure is joined distinctly to the advancement of objects of the organization it would imply that directors when representing the organization should emotionally accept that what they are doing is right and keeping in mind that releasing his obligations towards investors, he should impartially act in light of a legitimate concern for investors.<sup>46</sup>

<sup>41</sup> 'Duties of directors under new companies Act, 2013' (HG.org Legal Resources) < <https://www.hg.org/legal-articles/duties-of-directors-under-the-new-indian-companies-act-2013-33097> > Accessed on 1<sup>st</sup> December 2020.

<sup>42</sup> Companies Act, 2013, Section 166.

<sup>43</sup> (1997) 1 WLR 14.

<sup>44</sup> Lyons W, 'Corporate Liquidation and the General Utilities Rule' (vol. 38 issue 06 1984).

<sup>45</sup> Naniwadekar M, 'The Stakeholder Approach Towards Directors' Duties Under Indian Company Law: A Comparative Analysis' Working paper 16/03 (2016) < [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2822109](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2822109) > Accessed on 8<sup>th</sup> November 2016.

<sup>46</sup> John J, 'Section 166(2) of the Companies Act 2013: Protection of Stakeholders or Primacy of Company' ( SSRN 2017) < [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2885847](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2885847) > Accessed on 25<sup>th</sup> October 2020.

#### 4. SATYAM SCANDLE AND CORPORATE GOVERNANCE

##### SATYAM?

Ramalinga Raju, an administration moves on from Ohio University, established Satyam Computer Services Ltd., a Hyderabad-based programming Company in 1987. It obliged the IT needs of different parts like Healthcare, Bio-Tec., Telecommunication and Media, Automotive Banking and Finance, and so on. Preceding the year 2009, the Company was one of only a handful barely any quickest developing organizations in India, producing \$ 2.1 billion income and having about 9% of the piece of the overall industry. It had 53000 representatives and maybe was the primary Indian Company to be recorded on three International Exchanges, i.e., NYSE, DOW, and EURO NEXT. This Company had advancement focuses in around 66 Countries, and its fare represented about 76% of absolute deals income. In a stunning admission, Satyam's Chairman B Ramalinga Raju, in his letter of January 7, 2009, uncovered the greatest corporate extortion of the historical backdrop of India with controls including direct financial ramifications of Rs. 7,136 Cr.<sup>47</sup> Further disclosures by the Central Bureau of Examination (CBI) continuation of their enquiries stretch out this figure to Rs. 12,000 Cr. Furthermore, speculators in Satyam have lost at least Rs. 14,000 Cr. according to the new exposures (Tellis, 2009).<sup>48</sup>

##### 4.1 BEGINNING OF THE SATYAM SCANDAL

Ramalinga Raju, author, and CEO of Satyam Computers reported on January 7, 2009, that his organization had been misrepresenting its records for quite a long time, exaggerating incomes, and expanding benefits. Before that Raju caused an endeavour to have Satyam to contribute about Rs. 7000 Crore in Maytas Properties and Maytas Infrastructure — two firms advanced and constrained by his relatives.<sup>49</sup> On December 16, 2008, Satyam's Board cleared the venture, yet financial specialists contradicted it. The Board of Satyam, later on, was reconvened the very day and cancelled the proposed speculation. From that point acquiescence's followed from Satyam's non-leader Directors.<sup>50</sup> Leaving as Satyam's administrator and CEO, Raju said in a letter routed to his Board, the stock trades and the market controller, Securities and Exchange Board of India (SEBI) that Satyam's benefits were expanded more than quite a while to "unmanageable extents" and that it had to convey a larger number of advantages and assets than its genuine tasks advocated. He assumed sole liability for those demonstrations. He further expressed that "it resembled riding a tiger, not realizing how to get off without being eaten," "The prematurely ended Maytas securing was the last endeavour to fill the invented resources with genuine ones."<sup>51</sup>

<sup>47</sup> 'Satyam Scandal: How India's biggest scam unfolded' (Time Line 2015) < <https://qz.com/india/379877/the-satyam-scandal-how-indias-biggest-corporate-fraud-unfolded/>> Accessed on 3<sup>rd</sup> November 2020.

<sup>48</sup> 'Satyam scam: All you need to know about India's biggest accounting fraud' (Hindustan Times 2015) < <https://www.hindustantimes.com/business/satyam-scam-all-you-need-to-know-about-india-s-biggest-accounting-fraud/story-YfHTZy9K6NvsW8PxIEEYL.html>> Accessed on 3<sup>rd</sup> November 2020.

<sup>49</sup> 'Satyam Scam – The Story of India's Biggest Corporate Fraud!' (Trade Brains 2020) < <https://tradebrains.in/satyam-scam/>> Accessed 20<sup>th</sup> November 2020.

<sup>50</sup> 'Satyam Scandal: The biggest issue revolving around Corporate Governance' (Lexforty 2020) < <https://lexforty.com/legal-news/satyam-scandal-the-biggest-issue-revolving-around-corporate-governance/>> Accessed on 5<sup>th</sup> November 2020.

<sup>51</sup> Ramalinga Raju (2009) < <https://www.outlookindia.com/website/story/it-was-like-riding-a-tiger/239402>> Accessed on 28<sup>th</sup> November 2020.

Raju recognized that Satyam's Balance Sheet included Rs. 7,136 Crores in non-existent money and bank adjusts, accumulated premium and errors. It had additionally expanded its 2008 second quarter incomes by Rs. 588 Crores to Rs. 2,700 Crores and real working edges were not exactly a 10th of the expressed Rs. 649 Crore. The organization's fixed stores reports were produced, redirecting Rs 1,250 Crore at the pace of Rs 20 Crore for each month over a time of numerous years. It held in excess of 400 Benami land exchanges of thousands of sections of land. The Company guaranteed that the quality of the organization was 53,000 against genuine representative quality of just 40,000.<sup>52</sup>

#### **4.2 CORPORATE GOVERNANCE FAILURE AT SATYAM:**

A fascinating, rather incomprehensible point of view of the disappointment of Corporate Governance at Satyam is given by the certainty that Satyam was granted the 'Brilliant Peacock Award' in 2008 for worldwide greatness in Corporate Governance. The Satyam embarrassment truly raised doubt about the adequacy of all the prescient advances educated in the study hall. Given the elements of the trick, there would be so called economic scientists, independent of whether they were defenders of essential, specialized, or quantitative examination, have been severely hoodwinked. 'Satyam' means a total demolition of the Indian Corporate Governance structure as well as the contemporary legal postings on bookkeeping and evaluating. To put the above reality in context, it is lucky at this highlight repeat a concentrate of the in popular letter of Raju dated January 7, 2009 tended to Satyam 's Board.<sup>53</sup>

##### 1. The Balance Sheet conveys as of September 30, 2008

- Inflated (non-existent) money and bank adjusts of Rs. 5,040 Cr. (as against Rs. 5,361 Cr. reflected in the books),
- A collected enthusiasm of Rs. 376 Cr. which is non-existent,
- A downplayed risk of Rs. 1,230 Cr. by virtue of assets organized by me,
- An over expressed account holders' position of Rs. 490 Cr. (as against Rs. 2,651 [Cr.] reflected in the books). For the September quarter (Q2) we detailed an income of Rs. 2,700 Cr. and a working edge of Rs. 649 Cr. (24% of incomes) as against the real incomes of Rs. 2,112 Cr. and a real working edge of Rs. 61 Cr. (3% of incomes). This has brought about fake; money and bank adjust going up by Rs. 588 Cr. in Q2 alone.<sup>54</sup> While conceding the misrepresentation in his abdication letter, Raju attested that he and his sibling Rama Raju had gotten no budgetary profit by the exaggerated incomes. He likewise guaranteed that other board individuals did not know about the genuine situation of the organization. The accompanying concentrate of his letter uncovers how this began and why he has made the self-admission.<sup>55</sup>

<sup>52</sup> 'Corporate Accounting Fraud: A Case Study of Satyam Computers Limited' < [http://www.nja.nic.in/P-948\\_Reading\\_Material/P-948\\_Audit\\_of\\_Fraud\\_in\\_economic\\_crimes/ACCOUNTING%20FRAUD.pdf](http://www.nja.nic.in/P-948_Reading_Material/P-948_Audit_of_Fraud_in_economic_crimes/ACCOUNTING%20FRAUD.pdf) > Accessed on 28<sup>th</sup> November 2020.

<sup>53</sup> Girish Chandra Prasad, 'The positive fallout: Better laws to govern corporates' (*Financial Express* 2015) < <https://www.financialexpress.com/industry/satyam-scam-the-positive-fallout-better-laws-to-govern-corporates/62355/> > Accessed on 1<sup>st</sup> December 2020.

<sup>54</sup> 'Satyam Computers 2009' <http://srcgbo.edu.in/pdf/bc796cd06e3171866769fd50c42836b6.pdf> Accessed on 8<sup>th</sup> November 2020.

<sup>55</sup> Ibid.



### **4.3 RESULTING EFFECT OF THE SATYAM SCANDAL ON CHANGES IN CORPORATE GOVERNANCE STRATEGIES IN INDIA:**

After the embarrassment, the Confederation of Indian Industries set up a team to propose changes. National Association of Software and Services Companies set up a corporate governance and morals advisory group headed by Narayana Murthy.

This Committee proposed changes identifying audit committees, shareholder rights, and whistle blower policy. SEBI's advisory group on revelation and bookkeeping principles gave a conversation paper in 2009 to think on the intentional reception of global monetary detailing principles; The arrangement of Chief Financial Officers by review boards of trustees dependent on capabilities, experience, and foundation; and the pivot of inspectors like clockwork with the goal that commonality doesn't prompt corporate negligence and blunder.<sup>56</sup>

The Ministry of Corporate Affairs in 2009, gave a lot of intentional rules for corporate governance on the accompanying issues:

- The Independence of Directors.
- The jobs and duties of review advisory groups.
- The jobs and duties of the Boards of organizations
- Informant strategies.<sup>57</sup>

The detachment of the workplaces of the executive and the CEO to guarantee autonomy. An arrangement of balanced governance. Terms and states of arrangement of Directors, for example, their residencies, compensation, assessment, the issuance of a conventional letter of arrangement, and setting limits on the quantity of Companies in which an individual can be a Director. In 2010, SEBI corrected the Listing Agreement to incorporate the arrangement managing the arrangement of a chief financial officer.<sup>58</sup>

### **4.4 IN 2013, THE INDIAN COMPANY LAW WAS AMENDED, AND IT INCORPORATED THE FOLLOWING PROVISIONS:**

1. It plainly characterized the obligation and responsibility of independent Directors.
2. It plainly characterized the obligation and responsibility of Auditors.<sup>59</sup>
3. It accommodated the obligatory turn of reviewers and review firms. It recommended a legal chilling time of five years following one term as an evaluator.
4. An inspector cannot perform non-review administrations for the organization and its holding and auxiliary organizations. This arrangement is added to guarantee that there is no irreconcilable circumstance, which may emerge if an inspector performs different capacities for a similar organization, for example, bookkeeping and speculation consultancy

<sup>56</sup> Prakash V, 'Satyam scam: Lessons for Corporate Governance' (Vo.2 issue 12 2012).

<sup>57</sup> 'Corporate Governance and voluntary guidelines 2009' (Ministry of Corporate Affairs, Government of India 2009) <  
[https://www.mca.gov.in/Ministry/latestnews/CG\\_Voluntary\\_Guidelines\\_2009\\_24dec2009.pdf](https://www.mca.gov.in/Ministry/latestnews/CG_Voluntary_Guidelines_2009_24dec2009.pdf)> Accessed on 5<sup>th</sup> November 2020.

<sup>58</sup> Singh J, 'Satyam Fiasco: Corporate Governance failure and lessons therefrom' (2010).

<sup>59</sup> Ajay Prasad, 'Impact of recent amendments to the companies Act,2013' (2013) <  
<https://www.mondag.com/india/shareholders/665420/impact-of-the-recent-amendments-to-the-companies-act-2013>>  
Accessed on 29<sup>th</sup> October 2020.

administrations. It accommodates the obligation of Auditors to report deceitful acts saw by them during the presentation of their obligations.<sup>60</sup>

5. It accommodates having autonomous Directors on the Board of the Companies. (Autonomous Directors implies Directors who do not have a material or financial relationship with an organization).
6. Independent Directors have been banned from accepting investment opportunities and are not qualified for get compensation for their administrations, with the exception of repayment. At any rate 33% of the Board of an organization needs to comprise of independent Directors.<sup>61</sup>
7. Review panel needs to oblige a greater part of independent Directors. One independent director is needed to be an individual from the compensation advisory group moreover.
8. Extra revelation standards are – accommodating the proper assessment of the presentation of the Board of Directors, documenting gets back with the Registrar of Companies as for any adjustment in the shareholding places of advertisers and the best ten investors, have likewise been ordered.
9. Solution for starting class activity suits against the organization and its examiners for harms has been given in the changed Companies Act.<sup>62</sup>



<sup>60</sup> Rahul Jain, 'Overview of recent amendments in Companies Act,2013' (2018) < <https://taxguru.in/company-law/overview-amendments-companies-act-2013.html>> Accessed on 21<sup>st</sup> October 2020.

<sup>61</sup> 'Major Changes brought by the Companies Act, 2013' (AGR Law and beyond) <[https://icmai.in/upload/PPT\\_Chapters\\_RCs/Bilaspur-23082015.pdf](https://icmai.in/upload/PPT_Chapters_RCs/Bilaspur-23082015.pdf)> Accessed on 22<sup>nd</sup> November 2020.

<sup>62</sup> Ibid.