

---

# **CORPORATE GOVERNANCE IN INDIA: MEANING, LAWS AND ABUSE**

---

Nishant Gulyani, LLM, Jindal Global Law School, Sonipat, Haryana

## **ABSTRACT**

Corporate Governance means the set of rules, regulations, or principles that govern and control a company. The term corporate governance itself explains its meaning that it regulates the working of a corporate. It primarily involves stabilizing the interest of the company's shareholders, financiers, executive officers, suppliers, customers, the government, and the community. Corporate governance has become a prominent subject of debate in India recently. Corporate India's focus has shifted from simple 'management' to 'governance,' and now to 'successful governance,' as India Inc. has risen by great strides. Given the unique hurdles that India Inc. experiences as a result of the high prevalence of family-run companies, there is an urgent necessity to transition from the 'King' and 'Kingdom' models of governance (where the promoter family's personal benefits come first) to the 'Custodian' model of governance. While some proponents have pushed hard to build a "democratic-righteous rule", some are still hesitant to give up authority, fearing that it will lead to their reign being abdicated. In this essay, an attempt has been made to explain the meaning, importance, and legal framework of corporate governance vis a vis abuse of corporate governance in Indian promoter-driven companies.

**Keywords:** Abuse, Governance, Management, Promoter driven, Shareholders.

## INTRODUCTION

After globalization in the early nineties, corporate governance got famous in India, and most of the literature on the subject was based on either the Sarbanes-Oxley Act of the United States or the Cadbury Committee Report of the United Kingdom. However, family ownership or concentrated ownership of a few people is still highly popular in Indian companies such as Reliance Group, Tata Sons, and Bajaj. This is a possible explanation for mismanagement, and it could come to a point wherein the promoters, promoters' families, top management, and directors use the company's activities for self-benefit, impacting accountability, integrity, and efficiency in corporate operations. A lot of attention is also paid to corporate governance because of how it affects both businesses and society<sup>1</sup>. Others disagree that the interests of the shareholders extend to decisions, strategy development, executive compensation, environmental policies, and the like. In contrast hand, few people think that other parties' rights, like an organization's mission, stakeholders' rights, and corporate decisions must also be honoured.

## WHAT IS CORPORATE GOVERNANCE?

Corporate governance is the term used to describe the guiding principles for a company that directs every area of its operations, covering compensation, risk management, and relationships in the workplace, as well as disclosing unfair practices and controlling environmental repercussions<sup>2</sup>.

It includes plans and guidelines to sustain a strong partnership among the company's owners (shareholders), the Board of Directors, administration, and other stakeholders including staff members, clients, the authorities, suppliers, and the public at large. It includes all types of organisations, whether they are for profit or not.

## Principles of Corporate Governance

Accountability refers to holding someone or a group of individuals accountable for their deeds. When productivity varies, organisations must establish a variety of methods to implement

---

<sup>1</sup> Aryan Sinha, Significance of Corporate Governance in the Present Context 4 IJLMH 432, 433 (2021)

<sup>2</sup> Bryce Tingle, What Is Corporate Governance? Can We Measure It? Can Investment Fiduciaries Rely on It? 43 QLJ 223, 227-228 (2013)

accountability. Additionally, it aids in resolving greater accountability in instances of poor corporate governance<sup>3</sup>.

Transparency makes it possible for an external to evaluate both the financial and non-financial components of a corporation, including its activities, policies, principles, technicalities, etc.

Impartiality means being neutral. The management ought to focus on a fair allocation of power and a balance of interests among all the stakeholders. For example, it is important to consider the rights of minority shareholders.

Liability refers to taking proper credibility of the stakes. Regarding the board, it entails accountability to all parties with an interest in the company and appropriate communication. When it comes to management, it primarily has to do with taking corrective action, punishing poor management, etc.

## **4P's of Corporate Governance**

### **Person**

Persons are the most important of the four corporate governance components since they are an essential part of any business strategy. The administration, which sets the objective, the board, which develops the plans and practices, the stakeholders, and investors with an interest in the business, as well as customers and outside observers, are all examples of people.

### **Process**

The process entails several procedures and actions that must be followed to accomplish the goal. Such processes are developed through evaluations of numerous institutional performance metrics. To retain effectiveness and continuity and reduce losses from external threats, it may also be improved over time.

### **Performance**

Performance analysis is one of the skills that every organisation needs the most. Corporate governance's performance review has the power to cut out ineffective programmes and efforts

---

<sup>3</sup> Bryce Tingle, What Is Corporate Governance? Can We Measure It? Can Investment Fiduciaries Rely on It? 43 QLJ 223, 227-228 (2013)

and reduce discrepancies.

## **Purpose**

Every element of corporate governance is designed with a specific objective. Every plan, policy, and process should be created with the goal of achieving the organisation's goals, which is its primary mission.

## **LEGAL FRAMEWORK**

There is no specific legislation that deals with corporate governance only in India. Hence there are several legislations in which some of the provisions directly or indirectly deal with corporate governance. Two of them are mentioned below:

### **Companies Act 2013:**

Some of the provisions of the Companies Act that talk about Corporate Governance are mentioned below:

1. Section 134 requires the Board members to link a report to each financial report that contains each of the specifics of the issue, along with the statement containing the director's obligation<sup>4</sup>.
2. Section 177 mandates the formation of an Audit Committee by the Management Board of every publicly listed corporation or any other type of committee. It also specifies how the committee will be formed<sup>5</sup>.
3. Section 184 requires the Director to disclose his ownership or control of any firm, corporate body, enterprise, or other association of individual persons. The director is obliged to reveal any such interest at the first board meeting, and if the interest changes, the first meeting will be held after the change<sup>6</sup>.

---

<sup>4</sup> The Companies Act, 2013, § 134, No. 18, Acts of Parliament, 2013 (India)

<sup>5</sup> The Companies Act, 2013, § 177, No. 18, Acts of Parliament, 2013 (India)

<sup>6</sup> The Companies Act, 2013, § 184, No. 18, Acts of Parliament, 2013 (India)

Finally, to increase transparency in corporate control, the legislation calls for the establishment of an Online Registration to keep track of national and international corporations, as well as private corporate entities. This Register should be kept updated at all times.

### **Security Exchange Board of India**

SEBI has developed comprehensive Corporate Governance Guidelines to guarantee effective corporate governance. Clause 35B of the Listing Agreement is being revised by the regulatory authority. According to the amended provision, listed companies must now provide their shareholders with the option of e-voting on all proposed or passed resolutions at meetings.

SEBI also amended Clause 49 of the Listing Agreement in order to strengthen the Corporate Governance structures for listed firms in India. This clause is aimed to inspect corporate operations in order to protect shareholders' best interests. Clause 49, in general, provides the following:

#### **1. Governing Body/Board of Directors (Board of directors)**

The Board of Directors must have the requisite independent directors. If the Chairperson is a non-executive director, at least 1/3rd of the Board has to be autonomous; if the Chairperson is an executive director, at least the majority of the Board has to be autonomous. A relative of a promoter or executive director also isn't deemed as an autonomous director<sup>7</sup>.

#### **2. Audit Committee**

The newly established Audit Committee must have at least 3 directors as members, with at least 2/3rd of them being autonomous.

#### **3. Transparency Requirements**

Continuous disclosures about economic and monetary payment transactions, director monetary compensation, and so on make sure corporate transparency.

---

<sup>7</sup> Sristi Nimodia, Critical analysis of the role of directors in corporate governance under Company Law, iPleaders Blog (February 15, 2023, 9:15 PM), <https://blog.iplayers.in/critical-analysis-of-the-role-of-directors-in-corporate-governance-under-company-law/>

#### 4. CEO/CFO certification

To formally verify to the Board that they may have reviewed the income reports and that they are truthful and comply with relevant laws and regulatory standards, as well as to accept responsibility for internal audit.

#### 5. Reporting and Compliance

A separate section in the financial report is devoted to Company Governance adherence, a quarterly compliance memorandum to the stock exchange signed by the compliance officer or CEO, and the corporation divulging compliance to non-mandatory basic requirements in financial statements.

### ABUSES IN CORPORATE GOVERNANCE

A core principle of today's corporations is the idea that shareholders will provide the money the business needs to thrive. In spite of the fact that promoters make sizable contributions to the share capital of these companies, the maximum contribution that any one promoter can make cannot exceed 75% of the paid-up capital. Those with a majority stake in the company are the de facto decision-makers. The continuity of the relationship between the company's management and its capital providers rests on the trust that exists between them. Historically, the relationship between management and investors, especially minority shareholders, has been hampered by instances in which the management and board of directors of the companies broke investor trust<sup>8</sup>.

#### Corporate Governance abuses in Tata Sons Limited:

One of the primary causes of corporate governance problems is confusion about who, if anyone, actually runs a company. Since the Tata Group's ownership structure is so complex and has so many tiers, it is difficult for the average person to grasp how the company is structured. Tata Sons itself does not hold any shares; rather, other entities controlled by Tata Sons hold the shares. It may appear at first glance that Tata Sons has no influence over the businesses in the Tata Group, but in reality, Tata Sons is a control node for the family that founded many of the Tata businesses. This suggests that corporate governance abuses are

---

<sup>8</sup> Nikita Gupta & Shubhani Garg, Analysis of Rising Corporate Governance Issues and Challenges for Indian Companies in Covid-19 (2020) 4 IJLMH 88, 93-94

possible because someone other than the board of directors and the shareholders are involved in running companies. The promoter of multiple Tata Group firms, Tata Sons Limited, indirectly called for an extraordinary general meeting of corporations to remove Mr. Cyrus Mistry, a director and chairman. Section 169 of the Companies Act, 2013, allows a simple majority of present shareholders to remove a director<sup>9</sup>. Tata Sons have enough shares to "democratically" remove Mr. Cyrus Mistry from the directorship. Often, promoters remove directors for reasons unrelated to the company, minority shareholders, or other stakeholders. This instance shows how dominant promoters take over the board of directors' independence<sup>10</sup>.

Independent directors were another corporate governance issue during the Mistry-Tata dispute. Mr. Nusli Wadia, an independent director of three Tata group companies (Tata Motors, Tata Steel, and Tata Chemicals), was fired for opposing Ratan Tata by supporting Cyrus Mistry as chairman. This abuse shows the poor situation of independent directors in Indian public limited firms. Independent directors in promoter-dominant corporations are completely dependent on promoters, challenging their independence. "Independent" directors just serve the "boss" who got them into the corporation, not the company, shareholders, or stakeholders. If a director like Mr. Nusli Wadia opposes dominant promoters, he will be dismissed.

### **Corporate Governance abuses in Infosys Limited:**

Even Infosys Limited's founding chairman, NR. Narayanamurthy, has spoken out against the board's poor corporate governance practices and how they've contributed to widespread anxiety throughout the organisation. This controversy first arose because of the extremely large, unprecedented, and exceptional severance compensation given to departing executives David Kennedy and Rajiv Bansal<sup>11</sup>. The founder publicly questioned the board's nominations and the compensation committee's honesty. Despite objections from the then-CFO and with no explanation or record of the cause for such a high-value acquisition, another complaint on the Infosys board is that the business acquired an Israeli software start-up called Panaya at a price substantially over the valuation of the company. There were also claims that insider trading had occurred. Subsequently, a third-party inquiry conducted by Cyril Amarchand Mangaldas,

---

<sup>9</sup> Companies Act 2013, s 169

<sup>10</sup> Meenakshi Azad, Corporate Governance Abuses and the Ownership Structure of Indian Companies, Academia ( February 25, 2023, 6:05 PM), [https://www.academia.edu/7781633/Corporate\\_Governance\\_abuses\\_by\\_Dominant\\_shareholders\\_in\\_India\\_to\\_a\\_dopt\\_Healthy\\_Governance\\_Practices](https://www.academia.edu/7781633/Corporate_Governance_abuses_by_Dominant_shareholders_in_India_to_a_dopt_Healthy_Governance_Practices)

<sup>11</sup> B. S. Hothi and Mamta Shah, Corporate Governance and Leadership- A Case of Infosys and TATA, 1 Amity Journal of Strategic Management 67, 68-70 (2018)

a legal firm based in Mumbai, found no wrongdoing on the part of the corporation. Despite management's assurances that the company will "operate independently," allegations against Infosys' board raise major concerns about possible violations of corporate governance and a lack of transparency<sup>12</sup>.

## CONCLUSION

In order to promote socio-economic development, businesses should carefully abide by corporate governance, which is the essence of an organisation. Corporate governance serves as a core principle to guide operations, supervise processes, examine procedures, punish poor management, have an influence on the climate, etc. A solid corporate governance framework maintains authenticity while providing benefits to all stakeholders and the firm as a whole. Bankruptcy, dishonesty, scandal, and, in the worst situations, the collapse of the company are all consequences of poor corporate governance. The corporate governance challenges in India vary from those in the United States and the United Kingdom. In India, the problem lies not with disciplining the management and Board of Directors but with the majority shareholders who hold the lion's share of the company's capital.

While the years 1993–2014 saw steady progress in corporate governance regulation in India, with the Companies Act, 2013, and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 serving as the capping achievements, the system still has some inherent weaknesses that allow for corporate governance abuses. Still persisting in Indian businesses is agency problem<sup>13</sup>, or the inherent conflict of interest between management and stockholders. The agency problem remains a danger to good corporate governance, as seen by recent cases of corporate governance abuses in Indian corporations.

---

<sup>12</sup> Meenakshi Azad, Corporate Governance Abuses and the Ownership Structure of Indian Companies, Academia ( February 25, 2023, 6:05 PM), [https://www.academia.edu/7781633/Corporate\\_Governance\\_abuses\\_by\\_Dominant\\_shareholders\\_in\\_India\\_to\\_dopt\\_Healthy\\_Governance\\_Practices](https://www.academia.edu/7781633/Corporate_Governance_abuses_by_Dominant_shareholders_in_India_to_dopt_Healthy_Governance_Practices)

<sup>13</sup> An agency problem is a conflict of interest in any relationship where one party is expected to act in another's best interests.