
SCOPE OF INDEPENDENT DIRECTORS IN INDIA THROUGH THE LENS OF CORPORATE GOVERNANCE

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ABSTRACT

According to the legal standards established by the Companies Act of 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations of 2015, independent directors in India are supposed to exercise autonomy and independent judgement in corporate governance. An outline of the idea of independence for independent directors in the country is given in this abstract. The abstract outlines the requirements for independent board members in India, such as the lack of a major financial connection, a close family connection to the firm's promoters or administration, and not working for the company or being related to its workers. It emphasises the need of independent directors in maintaining objectivity, openness, and the defence of the rights of minority shareholders. The regulatory structure supporting independent directors' autonomy is further examined in the abstract, involving reporting of conflict of interest, tenure, and compensation as well as performance evaluation. It also covers the independent directors' legal obligations and duties, placing emphasis on the necessity of acting honestly and with proper care. The difficulties and arguments surrounding independent directors' autonomy are examined, along with worries about conflict of interest, a lack of knowledge, and management or promoter influence. It is also mentioned that regulatory procedures are effective and that independent directors need to be more independent and effective. The abstract ends by summarising the significance of independent directors for guaranteeing sound corporate governance and safeguarding the interests of stakeholders, while highlighting the need for continual assessment and enhancement of laws and regulations to increase their degree of independence in the nation's corporate landscape.

One of the greatest setbacks the Indian corporate sector had ever experienced occurred in 2009. The dangers of Nimesh Kampani acting for an independent director at Nagarjuna Finance, along with one of the largest financial scandals the Indian subcontinent had ever seen, upended the entire landscape of corporate governance¹. Deeper investigations into the function and role of unbiased directors in India as a result of these events quickly caused unease inside the corporate structures. The widespread departures of more than 620 independent directors of different corporate companies across India that followed were an unprecedented occurrence². The aforementioned incident had an impact on autonomous directors in relation to Indian corporations and boards of directors.

In order to determine whether independent directors are actually independent, this paper analyses their current position in the corporate sphere. The first section of the report covers a general overview of independent directors as well as the legal framework surrounding them. The argument over independent directors' independence is highlighted in Part II. Part III's final goal is to wrap up the paper by outlining some suggestions for the problems that have been discovered.

It has been claimed, as stated in academic writings about boardroom scholarships, that diversity on a corporate board of directors' results in an array of expertise and knowledge base as well as diverse viewpoints³. Diverse boards are seen as important in corporate governance trends for enhancing company performance and assuring effective management⁴. A heterogeneous board is said to aid in achieving more unbiased outcomes as well as aid in addressing significant issues like agency problems⁵. For instance, a recent study found that businesses with diversified boards saw an average 43% increase in profitability while those without diversified boards saw a 29% decline in profitability⁶. Additionally, there is a clear

¹ Vikramaditya Khanna and Shaun J. Matthew, "The Role of Independent Directors in Controlled Firms in India: Preliminary Interview Evidencer," Scholarship Repository, accessed April 9, 2023, https://repository.nls.ac.in/nlsir/vol22/iss1/3/?utm_source=repository.nls.ac.in%2Fnlisr%2Fvol22%2Fiss1%2F3&utm_medium=PDF&utm_campaign=PDFCoverPages, 36.

² Vikramaditya Khanna and Shaun J. Matthew, "The Role of Independent Directors in Controlled Firms in India: Preliminary Interview Evidencer," Scholarship Repository.

³ Harjoto, Maretno, Indrarini Laksmana, and Robert Lee. "Board Diversity and Corporate Social Responsibility." *Journal of Business Ethics* 132, no. 4 (2015): 641–60. <http://www.jstor.org/stable/24703556>.

⁴ Harjoto, Maretno, Indrarini Laksmana, and Robert Lee. "Board Diversity and Corporate Social Responsibility." 645.

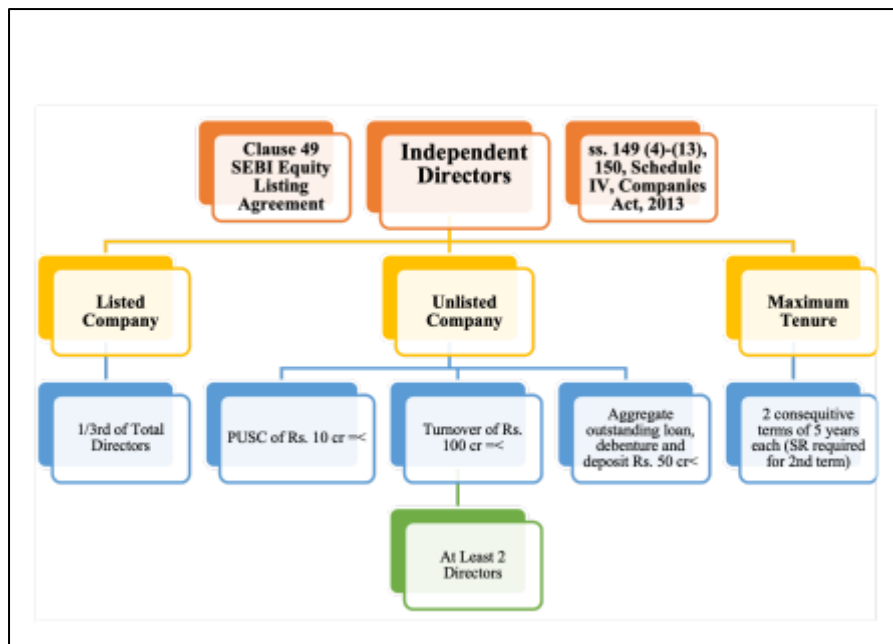
⁵ Maretno Harjoto Harjoto, Indrarini Laksmana, and Robert Lee, "Corporate Governance, Board Diversity, and Firm Value," JSTOR, accessed April 9, 2023, <https://onlinelibrary.wiley.com/doi/abs/10.1111/1540-6288.00034>.

⁶ Nupur Garg, "The Missed Opportunity with Diverse Boards," *The Economic Times*, March 6, 2021, https://economictimes.indiatimes.com/small-biz/hr-leadership/leadership/the-missed-opportunity-with-diverse-boards/articleshow/81360814.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

proportionality relationship between the stock value and the diversity of the board⁷.

As a result, the significance of independent directors in ensuring, enabling, and enhancing greater levels of corporate governance has been anticipated by governance trends⁸. Independent directors are given two main responsibilities, theoretically. The first is to behave in the best interests of the general public shareholders while keeping a close eye on the company's promoters and management. Second, they could offer the managers and promoters strategic and technical counsel and direction, acting as a knowledge and experience bank that would increase the firm's value⁹.

The idea was first presented in the USA in the 1950s as a means of encouraging good administration. After the "Enron Scandal," it was further institutionalized in statutes¹⁰. Closer to home, the "Birla Committee" presented its suggestions to the stock exchange Board of India



["SEBI"] in 2000, which led to the inclusion of clause 49, which sets forth corporate governance standards, in the Equity Listing Agreement¹¹. Following scandals like Enron, WorldCom, and others, the clause was

further modified to clearly include particulars regarding independent directors¹². Additionally,

⁷Nupur Garg, "The Missed Opportunity with Diverse Boards," The Economic Times.

⁸ Umakanth Varottil, "Evolution and Effectiveness of Independent Directors in Indian Corporate Governance," UC Hastings Scholarship Repository, 2010, https://repository.uchastings.edu/hastings_business_law_journal/vol6/iss2/1/.

⁹ Vikramaditya Khanna and Shaun J. Matthew, "The Role of Independent Directors in Controlled Firms in India: Preliminary Interview Evidencer," Scholarship Repository.

¹⁰ Umakanth Varottil, "Evolution and Effectiveness of Independent Directors in Indian Corporate Governance," UC Hastings Scholarship Repository, 2010.

¹¹ Vikramaditya Khanna and Shaun J. Matthew, "The Role of Independent Directors in Controlled Firms in India: Preliminary Interview Evidencer," Scholarship Repository.

¹² Vikramaditya Khanna and Shaun J. Matthew, "The Role of Independent Directors in Controlled Firms in India: Preliminary Interview Evidencer," Scholarship Repository.

clear and comprehensive rules surrounding the selection of independent directors were incorporated into the 2013 amendment to the Companies Act. Similar terms are used to define independent members under paragraph 49 of the SEBI regulations and the Companies act, 2013.

According to Section 149(6), an independent director is a person who is not connected to the business but has pertinent experience and expertise. They shouldn't have any financial ties, be employees, auditors, promoters, relatives of promoters, occupy any key managerial positions, or have 2% or more of the voting power¹³. The same aims to guarantee impartiality and lack of bias in the boardroom as well as properly represent the interests of minority stakeholders. Every public business must have at least one-third of its directors be independent, according to sub-section (4)¹⁴. As they would require the consent of independent directors to approve a special resolution, it guarantees the diluting of the voting power of the majority stakeholders. To further ensure these directors' independence, the act's further plan includes a number of parts regarding their appointment, removal, compensation, tenure, etc.¹⁵

Majority v. Minority shareholders:

The terms "majority shareholding" and "minority shareholding," which are not defined in the Act, can be understood to mean, respectively, that a majority shareholder is a holder of shares owning a significant amount of shares of a company, typically more than fifty percent (It can also be the case that 50 percent sometimes may constitute majority as well, and as a result, has the power to influence most of the decisions, and that a minority shareholder is a holder of shares owning less than fifty percent. So, it is possible to think of degree of control as a defining characteristic between the two groups.¹⁶ Companies in India, particularly those that are publicly traded, frequently adhere to the "insider model of corporate governance," which is "characterised by coherent groups of "insiders" that have a closer and longer-lasting relationship with the company."¹⁷ The "insiders" typically control the majority of the company's shares, while the minority shareholders own dispersed shareholdings. There are several factors that contribute to this phenomenon.

¹³ Indian Companies Act (1872), § 149(6) (India).

¹⁴ Indian Companies Act (1872), § 149(4) (India).

¹⁵ Indian Companies Act (1872), § 149(6)-(13), s 150 and Schedule IV (India).

¹⁶ Anirudh Grover, "The Agency Problem of Majority V Minority Shareholders: The Way Forward in India," SSRN, May 17, 2021, <https://ssrn.com/abstract=3845978>.

¹⁷ Umakanth Varottil, "Evolution and Effectiveness of Independent Directors in Indian Corporate Governance," UC Hastings Scholarship Repository, 2010. Pg. 289.

- 1) **Promoter Ownership:** In many Indian enterprises, the promoters, who are frequently the founders or their families, own a sizable portion of the company. They may have founded the company and maintained ownership over the years, allowing them to exert greater influence and control over corporate choices.
- 2) **Historical Factors:** The insider model of corporate governance in India might be linked to historical circumstances in some cases. When enterprises were first created in the country, the prevalent practise was to have a concentrated ownership structure, with promoters owning a sizable amount of the stock. In many cases, this practise has persisted.
- 3) **Dual-Class Share Structures:** Insiders can also keep control by using dual-class share arrangements. These structures provide select shareholders, usually insiders, with greater voting rights than other stockholders. Insiders can retain power over crucial decisions even if they do not possess a majority of the economic assets.
- 4) **Regulatory Environment:** The regulatory structure in India also contributes to the perpetuation of the insider model. Historically, insiders and promoters have received preferential treatment and exemptions from regulations. However, it is important to note that the legislative landscape has been shifting in order to encourage improved corporate governance practises and defend the rights of minority shareholders.
- 5) **Investor Behaviour:** There is a culture of passive investing in India, where minority owners frequently do not actively participate in corporate governance problems. Because of this lack of participation, insiders have a stronger edge in influencing decision-making processes.

Family promoters or controlling shareholders have historically and continue to dominate Indian businesses.¹⁸ The majority of Indian businesses are comparable to businesses in other emerging countries and Continental Europe in this sense. Many of the large Indian listed firms had lowly family-owned private businesses or even sole proprietorships as their genesis. These businesses saw the need to access more finance and outside expertise as their operations expanded; as a result, they eventually decided to issue their shares to retail and institutional investors. For

¹⁸ Paul Davies, "The Board of Directors: Composition, Structure, Duties and Powers - OECD," August 7, 2000, <https://www.oecd.org/daf/ca/corporategovernanceprinciples/1857291.pdf>.

instance, Reliance Industries Limited began as a modest textile business before becoming public in 1977. With annual revenues over US\$ 66 billion, the Reliance Group has now expanded to become one of India's largest private sector companies. Although this case may be a little unique, it is far from being the only instance of a small, privately held business growing to become a significant publicly traded business.¹⁹ The promoter families, on the other hand, have typically kept a sizeable investment and frequently (and even in public), do so zealously, view the listed firm as an expansion of the family inheritance. The promoters owned 46.97% of Reliance Industries Ltd as of June 30, 2013. As of June 30, 2013, promoters owned 74.98% of Wipro Ltd and 65.23% of Bharti Airtel Limited, respectively. Considering their sizeable shares, these controlling shareholders have easy access to the board and management; in fact, numerous Indian listed firms have a history of only using family members in high management roles. Members of the promoter family who simultaneously hold prominent executive positions include Mr. Mukesh Ambani (Reliance Industries Limited), Mr. Kumar Mangalam Birla (Aditya Birla Group), Mr. Naveen Jindal (Jindal Steel and Power Limited), Mr. Anand Mahindra (Mahindra & Mahindra), etc.²⁰ A number of Indian listed companies, aside from family-controlled businesses, have the state as their largest stakeholder, creating a unique set of issues that English and American businesses do not frequently face. The state owns 90% of Coal India Limited (as of March 31, 2013). On similar lines 69.23% of Oil and Natural Gas Company Ltd as of March 31, 2013, is owned by the state as well. For the majority of public sector listed corporations, the pattern is similar.²¹ So, it is clear that protecting minority shareholders from the excesses of the majority is the primary corporate governance challenge in India rather than the manager versus shareholder agency conflict. Therefore, family members being the main shareholders in the majority of these businesses, do not see a compelling reason to provide the independent directors with enough information. As a result, independent directors find it difficult to maintain accountability and transparency, especially when they attend so few meetings each year that are largely ceremonial in character. Since most major business structures are frequently conglomerates with a variety of interests and investments, independent directors are unable to completely understand the issues before the

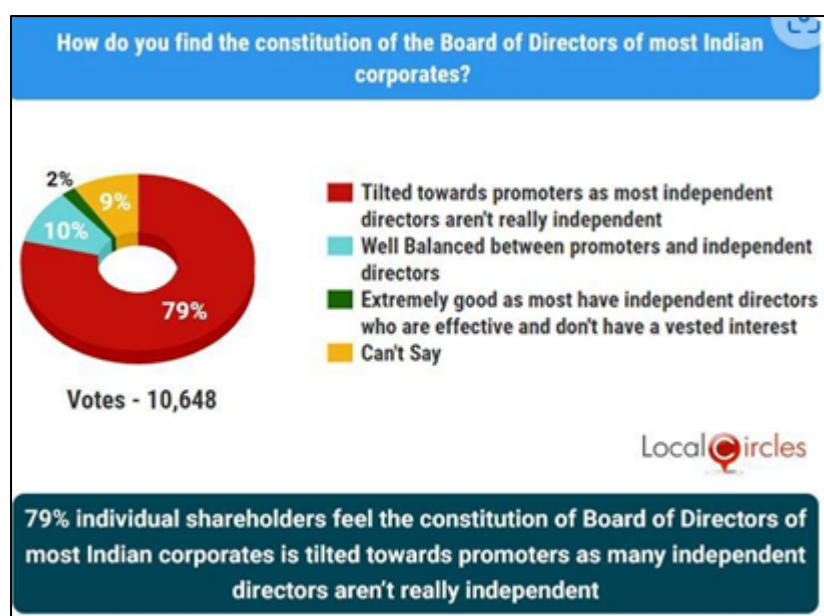
¹⁹ Reliance Industries Limited, "Retail Markets: Telecom: Petroleum Refining & Marketing: Petrochemicals: Hydrocarbon Exploration & Production: Jio 4G: Reliance Shares," Reliance Industries Limited, accessed April 9, 2023, <https://www.ril.com/>.

²⁰ "My Son Will Never Become the CEO of WIPRO," ECity Bangalore, 2013, <https://www.electronic-city.in/press/index.php?vol=jan13>.

²¹ Vikramaditya Khanna and Shaun J. Matthew, "The Role of Independent Directors in Controlled Firms in India: Preliminary Interview Evidencer," Scholarship Repository.

board²².

In addition to this, the independent directors are elected by the majority shareholders from a database. As a result, the candidate receiving the majority votes would be elected. This form of selection process points towards independent directors acting in favor of the majority shareholders at the cost of the companies welfare which includes minority shareholders. Therefore, the whole purpose of independent directors which are to guarantee impartiality and lack of bias in the boardroom as well as properly represent the interests of minority stakeholders, comes to an end. As the independent directors, after being elected tend to function for the welfare of the majority shareholders solely, and completely leaves the company including the minority shareholders out of the picture. In severe situations, controllers have



aggressively threatened to oust independent directors who didn't comply with their views. An Instance of the same would be In re Dole Food Co., Inc. Stockholder Litig., where outlining threats were made by a majority shareholder against a director who rejected a deal the controller was proposing.²³

This shows that how in general the independent directors are expected/required to function, and what could be the consequences if they make an attempt to act not in conformity with the controlling shareholder. Thus, it would not be unreasonable to pose a question at this stage

The genuine opinions of the public on effective governance are shown in a recent LocalCircles survey conducted in the Year 2020. According to the 10,648 individual shareholder replies gathered, "65% of respondents consider that independent directors of publicly traded businesses are not acting to safeguard the interests of the minority shareholders." Also, '79%

²² i-RAS | Informatics, "Login: Register: Remotlog: Global Library," RemotLog, accessed April 9, 2023, <https://www-livellaw-in.opj.remotlog.com/independent-directors-really-independent-indian-companies-dominated-promoters/?infinitescroll=1>.

²³ In re Dole Food Co., Inc. S'holder Litig., C.A. No. 8703-VCL (Del. Ch.).



of the respondents believe that the majority of Indian corporate boards are biased in favour of the promoters since many independent directors aren't actually independent.' Among other concerns about a lack of transparency and accountability, the top worries include claims of insider trading, fraud, and

selling corporate assets without the knowledge of shareholders.²⁴

The paper directors, or independent directors at publicly traded corporations, who exist only on paper and receive their retainer fee while attending only a few board meetings or frequently just skipping them entirely, are one of the other issues raised by common shareholders in the public discussions. Investors claim that certain firms have independent directors who are friends, relatives, or associates of the company's promoters and who hardly ever bring up important and tough governance concerns.

Therefore, according to the survey, which posed the question “Are independent directors in publicly listed companies acting to safeguard minority shareholders’ interests or merely promoters”? (Total votes- 8,969) Sixty-Five percent of the respondents believe that independent directors believe that the independent directors are working to safeguard the interest of the Promoter/Majority Shareholder only. In addition to this, only one percent believe that minority shareholders’ interest is being catered to by the independent directors of the company. Whereas, 11 percent hold a balanced opinion, where their belief reflects that independent directors effectively cater to interests of minority as well as majority shareholders.

²⁴ Local Circles, “65% Citizens Say Independent Directors in Public Companies Are Not Acting to Protect the Interest of Minority Shareholders,” LocalCircles, accessed April 9, 2023, <https://www.localcircles.com/a/press/page/corporate-governance-survey-2020#.Yn4FcS0Rpap>.

And lastly, 23 percent of the total fail to form an opinion regarding the same.²⁵

Relation between concentrated shareholders and Independent Directors

To better comprehend their relationship, we must assess two factors:

- 1) Appointment of independent directors.
- 2) Compensation of Independent directors.

Appointment

In order to appoint a director, a shareholders meeting must first vote on a proposal for such director's nomination, with a majority of shareholders present required to ratify each director's nomination for the motion to be passed. The Nomination and Remuneration Committee has been set up, and its role has been outlined under section 178 of the Companies Act, to decide whether a person who has nominated himself for the role of director should be recruited as an independent director.²⁶ The Nomination and Remuneration Committee can only recommend the appointment of an independent director, and such nominations are contingent on the board passing an ordinary resolution and receiving shareholder approval on it.²⁷

On June 29, 2021, the SEBI issued a press release²⁸ outlining a number of initiatives it had taken to address the issues raised in the SEBI Consultation Paper, which discussed the absence of transparency in the standards/criteria the Nomination and Remuneration Committee employs when considering and suggesting the nomination of independent directors to the board which gives promoters an opportunity to influence the appointment process according to them.²⁹

However, even if the Nomination and Compensation Committee reveals the criteria, this will not address the problem because they only recommend independent directors to the board. The ultimate decision is still made by the shareholders, who are not obligated to act in response to

²⁵ Local Circles, "65% Citizens Say Independent Directors in Public Companies Are Not Acting to Protect the Interest of Minority Shareholders," LocalCircles, accessed April 9, 2023, <https://www.localcircles.com/a/press/page/corporate-governance-survey-2020#.Yn4FcS0Rpap>.

²⁶ Section 178(2), Companies Act, 2013.

²⁷ Section 149(10), Companies Act, 2013

²⁸ SEBI, PR No. 22/2021 (Issued on 29 June 2021)

²⁹ Regulation 25 (10), Securities and Exchange Board of India Regulations, 2015.

such disclosures. Additionally, even though the independence requirement might be based on the Companies Act and SEBI standards, the Nomination and Remuneration Committee could still construct it and use it as a screening method for candidates. Also excluded from the scope of the press release are publicly traded companies that are not listed.

According to certain research, 60% of the firms are lacking a nomination committee for the appointment of independent directors, and in most companies, their main shareholders have discretion over such appointments³⁰. Other study reveals that only 25% of companies have a mechanism for selecting non-executive directors, showing that even though a legal provision exists, the procedure for appointing independent directors is not adhered strictly.³¹

Compensation

Independent directors are compensated with commissions that are correlated to profit, outlined in section 149(9) of the companies act, which further indicated that independent directors may earn compensation only in the form of fee under section 197(5).

Profit-related commission is a type of commission that is based on the company's annual profit. Their pay is correlated with the company's performance and earnings, which increases their motivation to contribute to the expansion and growth of the business. The more they work on the expansion of the business, the more profit the company will make over the course of a fiscal year, which will result in a higher commission from the profit coming to the independent directors. Because of this, independent directors are strictly dedicated to pay more attention to the company's short-term (while they are still on the job) than to its long-term performance.

Cases of Independent Directors failing to perform their duties in enterprises with a concentrated shareholder structure

Tata Sons vs Cyrus Mistry

Mr. Nusli Wadia, an independent director of several Tata groups, attempted to get involved in a high-profile conflict between Mistry and the Tata sons for it to be solved. The majority shareholders of the company did not like him trying to represent the concerns of minority

³⁰ FICCI & Grant Thornton, 'CG Review 2009: India 101-500'

³¹ AT Kearney, AZB & Partners and Hunt Partners, 'India Board Report – 2007: Findings, Action Plans and Innovative Strategies' (2007)

shareholders, and thus the shareholders voted to have him removed from his position as an independent director from many Tata businesses.³² This demonstrates that independent directors have no capacity to take an active role in every situation, even when those situations concern the company. Independent directors have a limited range of power and autonomy.

Sun TV Network

The Sun TV network generated 85.7 crores in revenue for the fiscal year 2012/2013, owing to the combined efforts of its 1916 employees, which makes it, 4.5 lakhs on average per employee, . The promoter directors, however, were paid a salary of 56.2 crores per person, or 1250 times what each employee made. This is a significant increase in pay compared to the employees. Sun TV's remuneration committee was supervised by an independent director, although 75% of the company's shares were owned by its promoters, demonstrating that independent directors were unable to adopt fair pay standards while they were in power.³³

Suggestions to combat the problem of independence of Independent Directors:

1) Minimum Public Shareholding's limit being increased:

In India, the shares of a corporation is largely held by the promoters and his close relatives, because of which the controlling/majority shareholding is with the promoters.³⁴ This structure where concentrated shareholding exists completely defies the important characteristic of separation of ownership and management, which gives rise to minority shareholders being exploited. According to the existing regulatory framework, all listed businesses must have a minimum of 25% of their total shares held by the public.³⁵ In order to separate or segregate the shareholding and trading rights from owners who were managers as well as to create a system where there is a clear separation of ownership and management, the government implemented the concept of demutualization³⁶ in the operation of stock exchanges as a single in-house member beneficiary entity to a public beneficiary. In order to spread ownership from a limited

³² Umakanth Varottil, 'SEBI'S Backtrack On Independent Directors' (The Indian Express, 2021)

³³ Manu Kaushik, 'Non-Executive Directors At Indian Firms Have Not Proved Effective' (Business Today, 2013)

³⁴ Tunia Cherian, "India Has Third Highest Number of Family-Owned Businesses'," The Hindu BusinessLine, January 8, 2018, <https://www.thehindubusinessline.com/economy/india-has-third-highest-number-of-family-owned-businesses/article64285968.ece>.

³⁵ Samco, "Stocks with High Promoter Holding: Shares Pledged by Promoters of NSE," Samco, accessed April 9, 2023, <https://www.samco.in/technology/pledge-monitor>.

³⁶ Securities Contract (Regulation) Act., § 2(ab) (India)

few to the general public, the government can implement this idea by raising the minimum public shareholding.

2) Fiduciary duty of the majority shareholders:

After the incorporation stage, the majority shareholders owe a fiduciary duty towards the company and minority shareholders being an important aspect.³⁷ Even after having a fiduciary relationship the majority shareholders have abused their position for making profits for themselves at the cost of the company's welfare by virtue of related party transactions. The concept of controlling shareholder obligations has been recognised and integrated into laws in some jurisdictions, despite the fact that there is no particular provision addressing them in Indian law. In a consultative paper on the review of corporate governance norms in India published in 2012, the Securities and Exchange Board of India acknowledged the fiduciary duty owed by the controlling shareholder to the minority shareholder and suggested that controlling shareholders of listed companies enter into relationship agreements with the listed company and the minority shareholders that would outline their obligations.³⁸

3) Independent Directors' Appointment Procedure:

Choosing an independent director from the data bank is solely the responsibility of the company and is accomplished by voting in the general meeting. Currently, the appointment of independent directors is brought out through a selected data bank managed by the relevant regulatory authority. As a result, the appointment will be made by the candidate who received the majority of the votes.³⁹ This selection depicts that the independent directors get selected and acquire such a position which makes it somewhat mandatory for them to work in the favor of the controlling/majority shareholders. As a result, this election procedure may eventually impair their independence as well as reduce their effectiveness. As a result, a more expert, open, and independent system for independent director appointment is required. To counter this problem, the Financial Services Authority of the UK has come up with a dual voting structure, wherein the majority and minority shareholders must both agree to the nomination of

³⁷ OECD, "Improving Corporate Governance in India," OECD iLibrary, accessed April 9, 2023, https://www.oecd-ilibrary.org/governance/improving-corporate-governance-in-india_9789264220652-en.

³⁸ SEBI, "Consultative Paper on Review of Corporate Governance Norms in India," SEBI, accessed April 9, 2023, https://www.sebi.gov.in/reports/reports/jan-2013/consultative-paper-on-review-of-corporate-governance-norms-in-india_24100.html.

³⁹ Indian Companies Act (1872), § 152(2) (India).

independent directors for premium listed businesses with controlling shareholders.⁴⁰ In addition to this, “majority of the minority” approach would also be an effective solution to the problem. In this approach the votes of the minority shareholders are also taken into account during the appointment of independent directors.⁴¹ This would negate the powers of the controlling shareholders during the appointment of independent directors, thus, would result in independent directors being independent as there would no more exist an obligation on the part of the independent directors to act as puppets of the majority shareholders.

4) Board of Directors’ Appointment:

A director is appointed by the votes casted by the shareholders present at the general meeting, the majority of votes given to a particular person would lead to his appointment.⁴² But in India, the problem of concentrated shareholding exists, thus, it also leads to a probability that the board that is being adopted would only act at the whims and fancies of the controlling/majority shareholders. In light of this, it is advised that the relevant regulatory body make more of an effort to persuade boards and controlling shareholders to cast a wider net when looking for qualified directors who have established their independence on the subject at hand. To provide an effective solution to this problem, I believe that “vota di lista” an Italian mechanism would be accurate. In “vota di lista”, all shareholders who are summoned to vote may do so on a slate of nominations put forth by both major shareholders and minority shares. such that the slate put forth by minority shareholders results in the election of at least one director.⁴³

Therefore, the mechanism adopted in India majorly revolves around the concept of family-owned businesses, and even if family-owned business is not the case, majority/controlled shareholding of a company is kept with a group of people. This brings us to the question of independency of independent director. As the independent directors are elected by the controlling/majority shareholders, thus, the same are expected to act in favor or be the puppets of the controlling shareholders. In light of this, the regulatory authorities should be inclined towards coming up with laws that negate the powers of the majority shareholders when it comes

⁴⁰ OECD, “Improving Corporate Governance in India,” OECD iLibrary, accessed April 9, 2023, https://www.oecd-ilibrary.org/governance/improving-corporate-governance-in-india_9789264220652-en.

⁴¹ OECD, “Improving Corporate Governance in India,” OECD iLibrary, accessed April 9, 2023, https://www.oecd-ilibrary.org/governance/improving-corporate-governance-in-india_9789264220652-en.

⁴² OECD, “Improving Corporate Governance in India,” OECD iLibrary, accessed April 9, 2023, https://www.oecd-ilibrary.org/governance/improving-corporate-governance-in-india_9789264220652-en.

⁴³ “International Financial Institution Governance: The Role of Shareholders,” *Good Governance and Modern International Financial Institutions*, 2019, pp. 44-57, https://doi.org/10.1163/9789004408326_004.

to selection of independent directors, and confer the same to the minority shareholders. If the regulator authority is successful in bringing out the above-mentioned change, then we can reasonably make a claim that the independent directors in India are independent.