INDEPENDENT DIRECTORS, CORPORATE GOVERNANCE AND COMPANY PERFORMANCE- INDIA

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Abstract
This paper is being submitted to a University for PhD in Commerce- in the Subject of Independent Directors Corporate Governance and Company Performance in India.
The paper covers three areas
They are
- Independent Directors
- Corporate Governance
- The Company performance in India where there are independent directors

This paper tries to analyze the present scenario in Indian Corporate Sector and examines the role of Independent Director in Corporate Governance, in particular and the Company Performance thereon and what is the impact on Company performance.
We are looking at the following
- Companies Registered in India
- how the role of Independent Directors brings about better corporate governance and
- whether this brings about improved company performance.

We are examining whether Independent Directors (IDs) play a critical role in implementing sound corporate governance practices in companies.

Introduction
There are various important stakeholders in a company. These are
- Customers
- Employees
- Investors
- shareholders
- Bankers
- Government

A company, being a Legal entity can attract huge capital (which is a scare resource) for doing business.

Companies' performance and Government economic policies are linked. Hence there is a need of Good Governance, that will result in better company performance and achievement of Government Economic goals. We are trying to prove in this paper the importance of every transaction in a company should be fair and transparent to its stakeholders. In my view, this is the essence of Good Corporate Governance. The Authority that directs this is an effective Board of Directors (the board which includes independent directors).

Companies which have good corporate governance track record, attracts investors, ensure investment, increases stakeholder wealth and has a big role to play in county building and social responsibility.
For all this to happen, there has to be sufficient independence of the Board of Directors of the Company.

We look at the current scenario in Indian Corporate Sector and examine the role of Independent Director in Corporate Governance, in particular.
For a long period of time research has grappled with the idea on whether maximizing shareholder value is the ultimate goal of corporate activity or whether the goal is some other broader societal “good.”

A Company regulated through the statutes Companies Act, 2013 (earlier ‘1956) and other relevant legislation and securities regulation through SEBI, Stock Exchanges. Shareholders are the first and most important stakeholders. They have enormous powers granted through the statute. There are independent directors. To know if a company governed well, it is important to know how independent these directors are and what is powers and responsibilities of shareholders.

With more emphasis on performance, a closely related issue that has emerged now is the balance in governance roles and responsibilities between shareholders and boards.

**Majority Family Owned Listed companies In India**
We are studying the India Scene, we find that there are a large number of Listed companies which are family owned, meaning that majority shares are held by Family.

So, we can say, in India, we can say that there two types of listed companies. They are
- Professionally Managed companies, where the shareholding is widely disbursed
- Family Owned, where the shareholding is concentrated with a family

**Example of Professional Board Listed Companies are**
- L&T
- HDFC Limited
- Tata
- Infosys

While it may be premature to state that there are very few Professional Board Listed companies in India, we find from this paper, that there are indeed lesser number of professional Board Listed entities. However, they appear to be growing in number, albeit, very slowly.

There are certainly a large number of Family Owned Listed companies. Some examples are
- Reliance Group
- Aditya Birla Group
- Bharti Group

If we analyze the number of listed companies, we will find that over 75 percent of listed companies in India are Family owned.

In the context of the above, we are looking to find out whether
- IDs to deliver on their responsibilities to enhance corporate governance standards, as stakeholders increasing rely on them
- There have recently been some sweeping changes in the legal and regulatory framework. Has the ID used these to enhance corporate governance?
- Under the new dispensation, the key responsibilities of IDs relate to (a) strategy,
risk management and internal financial controls, (b) related party transactions, (c) ethical and compliance oversight and (d) succession planning and executive remuneration.

• Is Board evaluation of independent directors effective, are the IDs properly trained?

IN the light of all the above, and constraints in the form of Family owned companies and Professional Board, we attempt our study. To begin with, we will study about Independent Directors, Statutory position, roles, duties and issues associated with the position.

Independent Directors
Independent Directors, as the name suggests, are expected to be independent from the Company management and act as the trustees of shareholders. Conversely, it can be stated that, independent directors are those who are not subordinate to any other promoter-director or activity related to the company.

Position under the statute
Companies Act, 1956 (which has been replaced by the Companies Act, 2013) does not contain any definition of Independent director. So we had to rely on definitions given in Clause 49 of the listing agreement. Clause 49 states that ID’s are those who apart from receiving director’s remuneration do not have any material pecuniary relationships or transactions with the company, promoters, senior management, holding company or subsidiary or associates which affect their independence. Clause 49 has been amended to define independent directors as follows.

As per revised Clause 49, a person shall not serve as an independent director in more than seven listed companies. Further, any person who is serving as a whole time director in any listed company shall serve as an independent director in not more than three listed companies.

Independent Directors – Evolution in India
The Kumar Manglam Birla Committee, formulated by Securities Exchange Board of India (SEBI) brought in the concept of “Independent Director” in the Indian corporate arena. This was followed by introduction of Clause 49 in Listing Agreement between companies and stock exchanges by SEBI in 2001.

Globally, things were changing at a very fast pace. Events which influenced more effective measures for Good Corporate Governance in companies were:

a. The collapse of Enron company in USA,

b. Worldcom failure in USA

c. Introduction Sarbanes Oxley Act (SOX) in United States.

With these events in hind sight, the Ministry of Company Affairs (MCA, then known as Department of Company Affairs -DCA) constituted, the Naresh Chandra Committee, to study and report on the measures for Corporate Governance in India. Subsequently, in 2003 Narayan Murthy Committee was constituted by Securities and Exchange Board of India (SEBI). The terms similar to that of Chandra Committee, whose recommendations were incorporated in the Clause 49 by amending it in 2004. Definition of Independent Directors as formulated by the Chandra Committee was
accepted however, without the condition of nine-year term.

Some of the key responsibilities of Independent Directors relate to
(a) Strategy, risk management and internal financial controls,
(b) related party transactions,
(c) Ethical and compliance oversight and
(d) Succession planning and executive remuneration.

It will be appropriate to state, to effectively discharge their responsibilities, Independent Directors need to devote sufficient time, undergo training, focus attention on agenda setting, seek independent professional advice and ensure that the board evaluation process is effective.

It will be appropriate to state that having Independent Directors is a welcome step for corporate governance in India. It is slowly coming to be correct that Independent directors can ensure that companies do not become, NPA, or fall into the Insolvency and Bankruptcy net.

Though the Act, 2013 empowers the ID’s to have a definite ‘say’ in the management of a company, which would thereby immensely strengthen the corporate governance, we try to find out if the Independent Directors are in fact actually an asset to the company or not.

Minority Shareholders and Independent Directors
Independent directors are the first line of defense for minority shareholders.
We need to be sure of the following

Do we know that independent directors are, really, acting independently of management and controlling shareholders to protect the interest of minority shareholders
Do we know that independent directors are, in fact, monitoring controlling shareholders and management, or providing consultative input and guidance on key managerial issues

The regulatory environment in India provides a window to observe the inner workings of independent directors. For publicly traded companies listed on National Stock Exchange (NSE) and Bombay Stock Exchange (BSE), the Securities Exchange Board of India (SEBI) encourages that listed entities disclose independent directors’ dissent during board meetings. It may be better approach if the Regulatory Authorities make it mandatory for listed entities to disclose in the Board Minutes any Dissent by Independent Directors.

Role of Independent Directors & Corporate Governance
It has been provide globally through various research, that Independent Directors (IDs) play a critical role in implementing sound corporate governance practices in companies.

Stakeholders are nowadays increasingly relying on Independent Directors to deliver on their responsibilities to enhance corporate governance standards and thereby increase stakeholders wealth.

Corporate management in India tend to think them representing the Corporation rather

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than representing the shareholders. In the
goal of the company it is not to maximize
the shareholder wealth, but to ensure
corporate growth by balancing the claims of
all important stakeholders viz., employees,
suppliers, local communities and of course
shareholders as well. Corporate raiders and
hostile takeovers are still a rarity in India.

Independent directors - an overview of
their powers or deficiencies in law
Section 118. Minutes of proceedings of
general meeting, meeting of Board of
Directors and other meeting and resolutions
passed by postal ballot—
(1) Every company shall cause minutes of
the proceedings of every general meeting of
any class of shareholders or creditors and
every resolution passed by postal ballot and
every meeting of its Board of Directors or of
every committee of the Board, to be
prepared and signed in such manner as may
be prescribed and kept within thirty days of
the conclusion of every such meeting
concerned, or passing of resolution by
postal ballot in books kept for that purpose
with their pages consecutively numbered.
(2) The minutes of each meeting shall
contain a fair and correct summary of the
proceedings thereat.
(3) All appointments made at any of the
meetings aforesaid shall be included in the
minutes of the meeting.
(4) In the case of a meeting of the Board of
Directors or of a committee of the Board,
the minutes shall also contain— (a) the
names of the directors present at the
meeting; and (b) in the case of each
resolution passed at the meeting, the names
of the directors, if any, dissenting from, or
not concurring with the resolution.
(5) There shall not be included in the
minutes, any matter which, in the opinion of
the Chairman of the meeting,— (a) is or
could reasonably be regarded as defamatory
of any person; or (b) is irrelevant or
immaterial to the proceedings; or (c) is
detrimental to the interests of the company.
(6) The Chairman shall exercise absolute
discretion in regard to the inclusion or non-
inclusion of any matter in the minutes on the
grounds specified in sub-section (5).
(7) The minutes kept in accordance with the
provisions of this section shall be evidence
of the proceedings recorded therein.
(8) Where the minutes have been kept in
accordance with sub-section (1) then, until
the contrary is proved, the meeting shall be
deemed to have been duly called and held,
and all proceedings thereat to have duly
taken place, and the resolutions passed by
postal ballot to have been duly passed and
in particular, all appointments of directors,
key managerial personnel, auditors or
company secretary in practice, shall be
deemed to be valid.
(9) No document purporting to be a report of
the proceedings of any general meeting of
a company shall be circulated or advertised
at the expense of the company, unless it
includes the matters required by this section
to be contained in the minutes of the
proceedings of such meeting.
(10) Every company shall observe
secretarial standards with respect to general
and Board meetings specified by the
Institute of Company Secretaries of India
constituted under section 3 of the Company
Secretaries Act, 1980 (56 of 1980), and
approved as such by the Central Government.
(11) If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

(12) If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Additional requirements for IDs under the Companies Act, 2013 is as follows:

The ID should be a person of integrity and possess relevant expertise and experience.

The ID will be initially appointed for a period of five years and be eligible for reappointment subject to certain conditions for two terms. Thereafter, the ID shall be eligible for reappointment after a cooling-off period of three years.

Nominee directors shall not be considered as IDs.

An ID will not be entitled to any stock options in the company.

A person cannot serve as an ID in more than seven listed companies, and if such person is a whole-time director in any listed company, then the limit on independent directorship gets reduced to three listed companies.

At least one ID on the board of directors of the holding company shall be a director on the board of directors of a material non-listed Indian subsidiary company.

The ID should not be less than 21 years of age.

The ID should not have any business relationship with the company such as being a material supplier, service provider or customer or a lessee or lessee of the company.

Manner of selection and appointment of independent director

To find out the impact of Independent Director on corporate Board and their independence in discharge of duties, the following parameters have been examined:

- Qualification of Independent Director;
- Experience of Independent Director;
- Types of remuneration received by Independent Director;
- Number of Other Companies in which Independent Director holds position;
- Past Relationship with the Company;
- Board Meeting attended by Independent Director during the year.

Independent Directors and Board Independence

The ultimate aim of Independent Directors is to ensure Board Independence. The two terms Independent Directors and Board Independence are different terms. So there may no independent Directors but there could be Board Independence. And Vice Versa too,

What would the implications be, if greater board independence does not improve, and may reduce, firm performance? Steps like insisting that independent directors own more shares, or that they be more completely independent, could be worth trying.

Current India Scenario

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India a large percentage (approximately 75%) of companies that are traded in the Stock Exchanges are family owned, promoted and managed. (Source: Stock exchange data & Annual Reports of Companies, available in public domain)

This high percentage makes it that nearly two third of the Sensex/ Nifty fifth companies are family promoted, controlled and managed. These companies are very large, and have grown to this through family control. Some of the these family companies have recently listed and opened up Eg Godrej group.

So from our perspective, this large percentage of listed entities in India being family owned is a major point of difference with the western world.

It will be interesting to know more about the characteristics of family owned listed companies in India, which are as follows

- The promoters are actively involved in the day-to-day management and run the enterprises as their private property.
- It is interesting to note that, this attitude is prevalent even when their holding is low in comparison with outside holdings.
- Generally, most family owned companies have a Family Constitution / Charter document
- It is believed that this Family Charter has the following provisions
  - Provides the Family Constitution
  - It describes family values and beliefs
  - It documents a code of conduct for family
  - Generally provides a path forward for a Succession Plan
- Family’s reputation inspires investors to invest in the business
- Commitment to family values and beliefs Commitment to family values and beliefs
- Emotional attachment to business
- Benevolent dictatorship
- Professional management: Only competent, decided by the Senior Most family group or member are inducted in the business; Other qualified Professionals in areas as finance, corporate law, strategy etc are inducted to fill in business; in skills, knowledge and experience
- In a Family Owned Listed Company, which do not have good family councils and management skills, Independent Directors may often end up in the following
  - Lack of motivation
  - Lack of liquidity: This could lead to several litigation, deadlock in management
  - Independent Director could subordinated to family’s interest
- In the Succession Plan, there is either no role or limited role of Independent Director
  - Often Family will decide for Induction of younger members without consideration of competence
- Given these situations, the Independent Director have to navigate to succeed
  - Based on the Annual Reports Data, filings in statutory authorities and with
Stock Exchanges, the following analysis has been made

- The lead independent director should first be a friend of the family, who enjoys their trust and confidence. So additionally ID is also a philosopher and guide
- The ID should be sensitive to the family aspirations, in particular the aspirations of the new generation.

**What is the role and duties of independent directors**

The role of an ID is considered to be of a great significance. The guidelines, role and functions and duties and etc are broadly set out in a code described in Schedule IV of the Act, 2013. The code lays down certain critical functions like safeguarding the interest of all stakeholders, particularly the minority holders, harmonizing the conflicting interest of the stakeholders, analyzing the performance of management, mediating in situations like conflict between management and the shareholder’s interest and etc.

**Role of independent directors in company meetings & committee meetings**

- The Act, 2013, requires the entire ID’s to meet at-least once in a year. The meeting must be convened without the presence of the non-independent directors and members of the management.
- An ID would also evaluate the performance of the chairperson of the company. Also, the Act, 2013 requires an ID to review the performance of the non-independent directors and the Board as a whole of the company. These measures would immensely aid in ensuring the smooth and proper functioning of the Board of Directors of a company.

✓ The Act, 2013 has also emphasized on the appointment of an ID as a member or as a chairperson in various committees. Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the board.

**Liability of an independent director**

Under the Act of 2013, the liabilities of the independent directors have been reduced, and are limited: “only in respect of acts of omission or commission by a company which had occurred with his knowledge, attributable through board processes, and with his consent or where he had acted diligently”.

**Important Statutes and Legal and regulatory framework that Independent Directors must look into to ensure better corporate governance**

**Implementation Mechanism of the Corporate Governance in India**

In India, the Corporate Governance Code is implemented by seeking adherence to the various laws, procedures, practices, rules, etc. relating to corporate functioning in our country.

The main elements which are used for implementation are as given below:

a. The Companies Act, 2013: board of directors, meetings, management, conduct of meetings, appointment or removal of auditors or directors, corporate restructuring, mergers, intercorporate activities,

b. The Insolvency and Bankruptcy Code, 2016

c. The Foreign Exchange Management Act, 1999: Implemented to regulate, control and monitor foreign
Corporate governance a simple definition

It was often understood corporate governance to mean “protection for minority shareholders”, which is another subject. Even people who understand what corporate governance means tend to mix up American theory with our reality.

Definitions of Corporate Governance:

“Corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment”.1

Why is corporate governance required?

Throughout the world the joint stock Limited-liability Company has become the preferred vehicle for running business. It has proved its worth in providing employment, generating wealth, and contributing to economic and social development. The original concept of the company, which stems from the mid-nineteenth century, has proved immensely innovative, elegantly simple and superbly successful.

Company – limited liability

It is worth reminding our-selves that in the limited liability company, the business is incorporated as an independent legal entity, separate from its owners, whose liability for its debts is limited to the amount of equity capital they have agreed to subscribe. In law the company has many of the rights of a legal person - to buy and sell, to own assets, to incur debts, to employ, to contract and to sue and be sued. The company has a life of its own. Although this does not guarantee perpetuity, it does give the company an existence independent of the life of the proprietors, who can transfer their shares to others.

Why is Corporate Governance needed:

Globally in all jurisdictions, ownership is the basis of power over the company? The shareholders have power to nominate and elect directors, (including independent directors) who run the enterprise on their behalf. The directors are the stewards of the business’s resources and demonstrate their accountability to the shareholders, in the form of regular financial account and directors’ reports. Regular shareholders’ meetings provide an opportunity for the directors to report and answer shareholders’ questions.

Evolution of Corporate Governance

As with countries, companies need to be governed as well as managed. Corporate governance is concerned with this process. The Board of directors is central and its structure and processes are fundamental; so are the board’s relationships with the company’s shareholders, regulators, auditors, top management and other legitimate stakeholders.

Corporate Governance today

Originally, the basis of corporate governance was shareholder power of management. Shareholders were relatively

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few and close enough to the board of directors to exercise a degree of control. Indeed in several of smaller, tightly-owned companies around the world that is still the situation today. But there are several large companies which have huge shareholder base (eg Reliance Industries Ltd) . The corporate governance model here is different from that of the smaller companies.

The distinction between governance and management
The board of directors seldom appears on the management organization chart: yet it is the ultimate decision making body in a company. The role of management is to run the enterprise: management operates in hierarchy. The role of the board is to see that it is being run well and in the right direction, whereas the Board does not operate as a hierarchy.

Corporate Governance – Position in India
The Indian corporate sector is evolving as far as legal structure and internal management, control and administration of corporations is concerned. It is faced with numerous issues demonstrating the ineffective implementation of laws and code of business ethics. Since many Indian Companies are expanding to overseas market, there is better awareness to maintain good standards of Corporate Governance. Qualitative improvement in Corporate Governance in our country based on a code of good corporate practices and meaningful disclosure of information to shareholders, hold the key to corporate success. This is necessary in the context of changing profile of corporate ownership, with the increasing flow of foreign investment, preferential allotment of shares to the promoters of companies and the new role being given to mutual funds. This means better governance and management of corporate bodies, prompt compliance of legal and financial obligations and adherence to ecological and environmental standards. The benefit of such a governance must accrue to the investors, customers, lenders of finance and to the society at large.

In India, the importance of Corporate Governance and its relation with Independent Directors (referred as “ID’s”) is now well recognized with the introduction of corporate governance clauses in Listing Agreements, and SEBI guidelines and regulations. The Companies Act, 1956 (referred as “the Act, 1956”) do not directly talks about ID’s, as no such provision exists regarding the compulsory appointment of ID’s on the Board. However, Clause 49 of the listing agreement which is applicable on all listed companies mandates the appointment of ID’s on the Board. A need has been felt to update the Act and make it globally compliant and more meaningful in the context of investor protection and customer interest.

The Companies Act, 2013 (referred as “the Act, 2013”) came into force as Act no. 18 of 2013 after obtaining the assent of the President on August 29, 2013. The Ministry of Company Affairs (referred as “MCA”) enforced the 98 sections of the Act through the notification dated September 12, 2013. Section 149 of the Companies Act, 2013 deals with the appointment and qualification of ID’s on the board of the Company and
their importance in good corporate governance in the Company. **Some recent codes and regulations which have an impact on independent directors and corporate governance in India**

In India the concept of Independent directors came into being with the introduction of Clause 49 to the Listing Agreement. This came into being in 2006.

The importance of the role of an Independent Director is of great significance. The guidelines, role and functions and duties and etc. are broadly set out in a code described in Schedule IV of the Companies Act, 2013.

The code lays down certain significant functions like safeguarding the interest of all stakeholders, particularly the minority holders, harmonizing the conflicting interest of the stakeholders, analyzing the performance of management, mediating in situations like the conflict between management and the shareholder’s interest, etc.

The independent directors are also expected to attend the general meetings of the company and to keep themselves aware of the matters which are going on in the company.

Factors that could determine Independent Directors and Corporate Governance

(1) Why does an independent director dissent, i.e. how does an independent director justify his or her dissent?
(2) What is the position of Independent Director briefly under Co Act
(3) When is an independent director more likely to dissent and who is more likely to dissent? And
(4) Does dissent matter sufficiently to affect independent director’s career and the company’s performance and impact Corporate Governance?

(Note: Since most India Listed companies are Family Owned, the above analysis is made much harder),

Independent directors have various roles to fulfill in their official capacity to ensure corporate governance. Following, in my opinion, are the most important ones:

Firstly, they must discharge their duties and must try to bring transparency in the working mechanism of the company. Since shareholders, especially the minority shareholders, are usually not equipped to look into those affairs of the company, and thus they look forward to independent directors so as to provide such transparency.

Secondly, they are required to review the related party transactions and also to ensure the efficiency of “Whistle Blower”

These, essentially, safeguard the interests of the stakeholders.

Thirdly, The Companies Act, 2013, provides for mandatory appointment of independent directors in following committees so as to meet the corporate governance requirements:

Nomination committee
Remuneration committee
Committee related to investor relations,
Audit committee.

**Responsibilities of independent directors for a good corporate governance**
Being a member of the Board, their role and responsibilities are very much similar to any other director of the Board. The fiduciary duties of care, diligence and acting in good faith apply equally to independent directors as to other directors.

**Role towards the Board**

It is the duty of the independent director to ensure that all those concerns that are important for the company are properly addressed by the board of directors. The objectives and duties of the independent directors are same as that of the executive directors. However, as compared to the executive directors the time that is needed to be devoted by the independent director and the degree of skill and care required for the company, both are less.

How many independent directors
Where there is executive chairman, 50% of the Board has to be independent directors. Otherwise it is 1/3 of the total board should be independent directors.

**Source:** Filings of Companies in Stock Exchanges through their annual reports, public notices and shareholding pattern

**Findings**

Based on some important responsibilities to be performed by Independent Directors, the following findings emerge

Prior research on board composition *It is important to note here that prior research does not establish a clear correlation between board independence and firm performance.*

Does board composition affect firm performance?

Prior studies of the effect of board composition on firm performance generally do not affect firm performance after at certain threshold.

**Conclusion**

The corporate governance regulations in India are supposedly stringent. However, since majority of listed companies in India are family owned, the impact of the Corporate Governance Regulation, Independent Directors and Company Performance is not clearly visible.

Have Independent directors enabled corporate governance in India?

Given this argument, we look at whether Independent Directors have enabled better Corporate Governance in India. The need for the independent directors can be established by the fact that they are expected to be independent from the management and act as the trustees of shareholders. This implies that they are obligated to be fully aware of the conduct which is going on in
the organizations and also to take a stand as and when necessary on relevant issues.

In India the concept of Independent directors came into being with the introduction of Clause 49 to the Listing Agreement. This came into being in 2006. The importance of the role of an Independent Director is of great significance. The guidelines, role and functions and duties and etc. are broadly set out in a code described in Schedule IV of the Companies Act, 2013.

The code lays down certain significant functions like safeguarding the interest of all stakeholders, particularly the minority holders, harmonizing the conflicting interest of the stakeholders, analyzing the performance of management, mediating in situations like the conflict between management and the shareholder’s interest, etc.

The independent directors are also expected to attend the general meetings of the company and to keep themselves aware of the matters which are going on in the company.

What does the study reveal
Recourse to independent directors by private equity investors per se is not tied to performance increases.

Our study also shows that independent directors impact the rate of return only on deals which require very specific skills, i.e. turnaround and buyout investments.

Besides, busy independent directors do not seem to affect negatively the internal rate of return.

Finally, independent directors tend to resign when performance is unsatisfactory and consent to shave losses when performances are negative.

| Strategy, risk management, internal financial controls | Strategy: Information about other companies, their strategies and industry trends. Risk (a) compiling a risk inventory, (b) formulating assessment techniques and risk response strategies, (c) creating a risk appetite and improving tolerance levels, (d) ensuring effective communication and monitoring and (e) integrating ERM with operational systems. Internal Controls: a. risk of material misstatement, entity level controls, | Results vary. Large entities follow these, but medium and smaller units do not follow this process. In FMC, the role of Independent directors in this area is restricted and hence, to that extent it impacts Corporate Governance and ethics |

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| **Related party transactions** | b. significant accounts and disclosures, relevant financial assertions, significant processes, deficiencies and remedial measures and c. communicati on of the same to the Audit Committee and the board. | **2. Prior research on board composition**<br>**Error! Bookmark not defined.**<br>**Ethical and compliance oversight**<br>**Statutory compliance reports are placed at each meeting of the Board. However, it is found that where there are critical issues, these are not reported to Stakeholde rs (such as notice from ED for FEMA, etc). ID in FMC plays a key role in this Ethical and compliance oversight.** | By and large, most professional companies follow this process (For eg. L&T limited, HDFC Limited). On the other hand, there is no guarantee that FMC follow this process and the Independent Director has no say in this matter. Briefly, the ID has to fall in line. ID can only ensure that there is no breach of the Act on this matter. In the report, they have to state that they have complied with all applicable rules and regulations. IDs are also required to review the vigil mechanism established by the company and ensure that whistleblowers are not victimised. IDs, as part of their responsibility, need to periodically evaluate the extent and effectiveness of the code of conduct trainings, whistleblowing incidents, reporting |
systems and disciplinary actions. In certain cases, they may even request for audits by the internal or external auditors to satisfy themselves that the programs are running effectively.

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<th>Succession planning and executive remuneration committee</th>
<th>Remuneration committee nomination committee</th>
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<td>Most companies have independent directors on these two committees, but there appears to be no movement forward on leadership issue, unless it is a purely professional company as compared to family listed entity. In FMC, ID has a relatively minor role in this part as the Promoter decides.</td>
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Hence, we can confidently say that full compliance with clause 49 yet to be achieved. Almost a decade after Clause 49 of the SEBI Listing Agreement was implemented; compliance has not yet been fully achieved. Clause 49 of listing agreement states that the board of directors of the company shall have an optimal combination of executive and non-executive directors, with no less than 50% of the board comprising non-executive directors. It also states that where the chairman of the board is a non-executive, at least one-third of the directors should be independent and in cases where the chairman is an executive, at least half of the board should be independent directors.

Non-executive directors remuneration- The average total remuneration received by non-executive directors was INR 2.9 mn in 2015, compared to INR 2.5 mn in 2014. The minimum sitting fees per meeting paid to non-executive directors in 2015 was INR 20,000. In the companies surveyed, non-executive directors received an average commission of INR 4.2 mn in 2015, compared with INR 4 mn in 2014.
In India context, we could study Corporate Governance, Firm performance from two angles

They are

Professionally Managed Listed Companies

Family owned Listed Companies

From the table provided below (Source: Business India), of the top 20 companies in Assets value, only a handful few (3) are Professional Managed Listed Companies and the Remaining are Family Owned Listed Companies.

According to a Report published in Press Trust of India, November 3, 2011 Family controlled listed companies - India leads in Asia.

**Illustrative list of some of the important family owned Companies are**

The Tata Group:

The Reliance Group

The TVS Group

The Jindal Group

The Birla Group (there are several Birla family group, significant among them is Aditya Birla Group)

The Rane Group (engineering)

The Reddy Group (Pharmacy)

Wipro Group

**Illustrative List of some Professional Managed Listed Companies are**

Larsen & Toubro Limited

ICICI Limited

Infosys Limited

With increasing awareness, investors dependence on regulators to protect them has substantially reduced. Investors on make their decisions with the ultimate aim which is to maximize shareholder value.

The key differentiator, with everything else being common, will be the ability to create self-driven, self-assessed, self-regulated organization with a conscience. That is when there is a Good Corporate Governance and this is all organization's need to look to.

Since Corporate performance is closely linked to the government's economic policies, the government has every right to monitor it. However, there is also a need to monitor the functioning of corporates vis-à-vis guarding the interests of investors and creditors.

**Measures that may help**
o Dissent of Independent Directors should be recorded in the Minutes.

o In the absence of recording the dissent expressed by Independent Director, it will not be appropriate to look at the Corporate Governance Philosophy in the company.

o Independent director should be made to head Sub committees of Directors relating to remuneration, accounts and audit and any special projects.

There is room for further improvement in the areas of Corporate Governance, Minority Interest Protection, Statutory Compliance.

However, as over the next couple of years, there will be more benefits that accrue to Companies.

**Chart on Measure for implementation of Good Corporate Governance in Companies in India to ensure stakeholders wealth**

<table>
<thead>
<tr>
<th>Measures</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meetings attendance</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Presence in Committees</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Better Corporate Governance</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Increased Profitability</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Increased shareholder returns</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

**CONCLUSION**

It can be concluded as follows in India (based on above said measures)

A good number of Family owned companies have broad based their Boards and have given a positive listening ear to advise and role of Independent Directors.

The Professional Managed companies have benefited by Independent Directors, eg recent Corporate Governance issues in a well-known IT company.

Corporate Governance has improved vastly across all forms of listed companies.

There is room for further improvement in the areas of Corporate Governance, Minority Interest Protection, Statutory Compliance.

However, as over the next couple of years, there will be more benefits that accrue to Companies.

**Chart on Measure for implementation of Good Corporate Governance in Companies in India to ensure stakeholders wealth**

<table>
<thead>
<tr>
<th>Measure for implementation of Good Corporate Governance in Companies in India to ensure stakeholders wealth</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mandatory tenure for Independent Directors.</td>
<td></td>
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<tr>
<td>Under the Act, an independent director can have a maximum of two tenures of five consecutive years (a total of ten years), with a cooling off period of three years.</td>
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<tr>
<td>Listing agreement</td>
<td></td>
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<tr>
<td>Clear demarcation of the roles and responsibilities of the Chairman of the Board and that of the Managing Director/CEO. The Roles of Chairman and CEO should be separated to promote balance of power.</td>
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<td></td>
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<tr>
<td>Mandatory Induction training for Independent Directors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No mandatory training for Independent Directors</td>
<td></td>
<td></td>
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<tr>
<td>The board should undertake a formal and rigorous annual evaluation of its</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual evaluation is not mandatory</td>
<td></td>
<td></td>
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<tr>
<td>performance and that of its committees and individual directors. Disclosure</td>
<td>Remuneration policy for the members of the Board and Key Executives should be clearly laid down and disclosed.</td>
<td></td>
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<td>---</td>
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<td></td>
</tr>
<tr>
<td>Remuneration policy as per KMP</td>
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<td></td>
</tr>
<tr>
<td>the Corporate Compliance Committee of the Board of Directors of the company. The Secretarial Audit Report should form part of the Board's Report.</td>
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</tr>
<tr>
<td>Adoption of Whistle Blower Policy should be made mandatory, to begin with, for listed companies. A model policy in this regard may be specified covering important clauses that protect employees' interests.</td>
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</tr>
<tr>
<td>Secretarial Audit should be made mandatory in respect of listed companies and certain other companies. The Secretarial Audit be conducted by a Company Secretary in Practice. The report on the audit of secretarial records shall be submitted by the secretarial auditor to the Corporate Compliance Committee of the Board of Directors of the company. The Secretarial Audit Report should form part of the Board's Report.</td>
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<tr>
<td>The Audit partner/Firm should be rotated on the grounds such as : 1. to maintain independence of Auditors. 2. to look at an issue (which may be financial or non-financial) from different perspective. 3. to carry out an Audit exercise with different mind set i.e. when the same person does an Audit continuously, he is bound to have a fixed mind set towards the company.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Perodicity of Rotation</td>
<td>Audit Partner - Once every three years</td>
<td>Audit Firm – Once every six years</td>
</tr>
</tbody>
</table>

References

NSE and BSE websites
MCA websites
N.R. Narayan Murthy Committee on Corporate Governance, 2003
The Companies Act, 2013
The Companies Act, 1956
Kumara Mangalam Birla Committee on Corporate Governance, 1999
Listing Agreement
FEMA, 1999
Cadbury Committee on Corporate Governance
Annual Reports of Listed Companies provided in the NSE / BSE Portals, and the companies respective websites
OECD (2017), OECD Corporate Governance Factbook 2017

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