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ROLE OF INDEPENDENT DIRECTOR IN CORPORATE GOVERNANCE

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ABSTRACT

A company is the common platform of various stakeholders, such as customers, employees, investors, shareholders etc. It is an instrument that can attract huge capital for doing business. Every transaction in a company should be fair and transparent to its stakeholders. A company having good Corporate Governance and an effective Board of Directors attract investors and ensure investment. Independence of the Board is critical to ensure that the board fulfils its role objectively and holds the management accountable to the company. The practice across jurisdictions indicates that the presence of Independent Director is answer to that. The present write up delves into the current scenario in Indian Corporate Sector and examine the role of Independent Director in Corporate Governance, in particular. As a system arrangement in corporate governance, implementation of the independent director will help improve structure of corporate governance, maintain interests of all stockholders, and protect rights and interests of small-and-medium size of investors. There exist such many issues as insufficient information of independent directors, weak independence, low enthusiasm, and shortage of talents in the practice of the independent director system in India. Therefore, we should strengthen and optimize the independent director system with case study Satyam case of unethical conduct and fake audit.

KEY WORDS:- ***Independent Director, Corporate Governance, CEO, Board of Directors, Stakeholder, minority, company, voting.***

INTRODUCTION

The board provides "balance" between the key managers and the shareholders. The law imposes fiduciary duties on the directors. The Directors have to perform the duty of care (due diligence in decisions) and the duty of loyalty (to the shareholders). Their conducts add business judgment will be judged by courts accordingly, Boards of directors are vital for the success of companies. In today's world, nobody can afford the "luxury of unilateral mistakes, sleepy companies and isolationism". "If companies cannot compete, they perish". Regarding the powers of the board, the American Bar Associations Model Business. Corporation Act states that "all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation. In other words, authority resides in the board of directors as the representatives of the stockholders. The board delegates authority to management to implement the company's mission". Solomon and Solomon (2004) felt that, for a company to be successful, it must be well governed. A well-functioning and effective board of directors is sought by every ambitious company. "A company's board is its heart and as a heart it needs to be healthy, fit and carefully nurtured for the company to run effectively. The advantages of having a strategic board are compelling. It allows a company to gain valuable expertise, enables strategic relationships, and facilitates financing, serves as a chink tank for strategic thinking, establishes accountability, attracts the best employees, facilitates exposure to new ideas, balances stockholders interests, helps to avoid mistakes and proactively manages change. The smaller the board, the greater the director involvement. An independent director is an independent person appointed to the board to ensure that his view is not internally focused. Independent directors are taking a higher profile role than ever before in balancing shareholder and management interest. Since the 1990's more and more professional non-executive directors (NEDs) have come into

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existence, Chief executives are beginning to realize the importance of the role of these highly experienced individuals. An independent board of directors in public listed companies is seen as an integral element of a country's corporate governance norms. Board independence has taken on a pivotal status in corporate governance that it has become almost indispensable. Consequently, governance reform in recent years has increasingly pinned hope as well as responsibility on independent directors to enable higher standards of governance. Cadbury Committee Report has led the development of corporate governance norms in various countries such as Canada, Hong Kong, South Africa, Australia, France, Japan, Malaysia, and India, just to name a few. Similarly, the U.S. requirement of independent directors has also resulted in readjustment of corporate governance norms in various countries. This was a reaction primarily to ensure the prevention of corporate governance scandals such as those involving Enron and WorldCom in their respective countries.

The section 149(4) of the Companies Act, 2013 states that every listed public company must have at least one-third of the total number of directors as Independent Directors (Singh 2015)[1]. The increase in the number of minority shareholders has increased the need for the Independent directors. The corporate governance has went over many changes in the recent years and the concept of Independent Directors is one of the most important changes among those. In 2009, the role of Independent Directors took a huge dent both in India and overseas after the Satyam scam. Large number of Independent Directors resigned the post which highlighted the powerless state of the Independent directors in the Indian Corporate Governance. The position of Independent Directors in a corporate governance dominated by promoters and controllers was very weak. According to the definition by International Finance Corporation [2] Independent directors must fulfill certain minimum requirements. The standard must be maintained in appointing the Independent directors to ensure integrity of decision making. The Independent directors must be unhampered by the circumstances to ensure their decision making is neutral.

HYPOTHESIS

The Independent Directors are not equipped with enough powers to protect the rights of minority shareholders.

REVIEW OF LITERATURE

The board Independence is thought to be an important step in ensuring the better functioning of the Independent Directors in Corporate Governance (Gupta). The Liberalisation Privatisation and Globalisation of 1991 played a vital role in the emergence of Independent directors in India(Koshy).The presence of Independent directors improves the quality of Corporate Governance(Lawrence and Stapledon).The independent director has to make the declaration of his independence at first meeting of the board and subsequently during every financial year the company and the company and the independent director must abide by the provisions of Schedule IV(Mittal).Thus, the Independent Director cannot be held accountable for matters outside his purview and knowledge(Clarke).Clause 49 provides that the Independent Director of a Company shall hold a meeting by only inviting independent directors(Singh 2015).The recent exposure of high-profile cases of fraud in India shows that the Independent Directors are taking interest in reviewing fraud risk management framework which was drafted to mitigate the risk of fraud(Ringe).The wealth maximisation has become the key corporate objective of the shareholders, legislators all over the world have understood the role the independent directors can play in protecting the rights of minority shareholders(Iwu-Egwuonwu 2010).Companies may bear the fruit of independent directors by having a same person as an Independent directors of all those companies, it may help in smooth functioning of all those companies without conflicts(Ferrarini).

METHODOLOGY

Narrative and Descriptive methodologies are used by the researcher for the study and based on doctrinal sources.

SOURCES OF STUDY

Only Secondary sources are referred for this research paper Secondary sources are in the form of Books and Articles.

POWER AND DUTIES OF INDEPENDENT DIRECTORS

The concept of "Invisible hand"(Smith, Adam) proposed by Adam Smith cannot be applied to the work of Independent Directors as their main role is in making sure that they use their utmost powers for the welfare of the company and the

[1] Avtar Singh, Company Law, Eastern Book Company, 2016
[2] (n.d.). Indicative Independent Director Definition - IFC. Retrieved June 1, 2018, from https://www.ifc.org/wps/wcm/connect/9d10d480409 1a9a7b3f4b3cdd0ee9c33/Independent+Director+IFC +Definition+2012.pdf?MOD=AJPERES

minority shareholders. The Independent Director is required to hold a very neutral view and should not have any interest in the company to function effectively and in the same time looking out for the welfare of the company. The Liberalisation Privatisation and Globalisation of 1991 played a vital role in the emergence of Independent directors in India[3](Koshy).The presence of Independent directors improves the quality of Corporate Governance(Lawrence and Stapledon)[4]. The board Independence is thought to be an important step inensuring the better functioning of the Independent Directors in Corporate Governance(Gupta)[5]. Thus, the need for Independent directors has increased to maintain the neutral functioning of the company. The Companies Act, 2013 has provisions for the Independent Directors. Section 149(4) of the Companies Act, 2013 talks about the Independent Directors. Every listed Public Company is required to have at least one-third of its total number of directors as Independent Directors. The central government may prescribe the minimum number of independent directors in class or classes of public companies(Arindam). The independent director, must be in the opinion of the board, a person of integrity, must possess relevant expertise and experience as per section 149(4)(a), he should not be a promoter of the company or of the holding or subsidiary company. He should have no pecuniary relations with the company and he should also not have relatives who have pecuniary relationships with the company. The independent director has to make the declaration of his independence at first meeting of the board and subsequently during every financial year the company and the company and the independent director must abide by the provisions of Schedule IV(Mittal).

THE ROLE OF INDEPENDENT DIRECTORS

The role of an independent director is of great importance to the company and its stakeholders. Schedule IV of the Act puts down certain functions for the Independent Directors like protecting the interest of stakeholders mainly the minority holders, bringing together and harmonising the conflicting interest of the minority shareholders, analysing the management's performance, Resolving in situations where the management and shareholders are in conflict. The Independent Directors must keep themselves updated about the position, activities of the company and the external environment in which it operates. They should not reveal confidential information of the company unless approved by board or permitted by Law. They must actively participate in the committees of the board as Chairpersons or members. They should keep on refreshing their skills, knowledge and familiarity with the company, regularly attending the General Meeting of the company, among many other duties. The familiarization programmes have been introduced whereby the directors would be know with their role and functions in the company(Khanna)[6]. Clause 49 provides that the Independent Director of a Company shall hold a meeting by only inviting independent directors(Singh 2015). Analysing the performance of the other directors, assessing the quality and quantity of Much as Clause 49 does not specify to whom the independent directors owe their allegiance, it also does not contemplate any specific role for them. There is no separate task or function assigned to independent directors. The most prominent among such functions in the context of the majority-minority agency problem could have been for independent directors to consider and approve related party transactions that involve self dealing by controlling shareholders. But, there is nothing of the kind envisaged. Independent directors are treated like any other director for purposes of role and decision making and there is neither a specific privilege conferred nor a specific duty or function imposed on independent directors, in either case specifically by law, on the board.

WHO IS AN INDEPENDENT DIRECTOR?

An independent director is an independent person appointed to the board to ensure that his view is not internally focused. The actual role varies among the most common roles such as: part time chairman, confidant of the chief executive, expert with specialist knowledge, a community conscience, a contact maker, conferrer of organization status. The actual role performed by the independent directors

[3] (n.d.). India Business Law Journal - Nishith Desai Associates. Retrieved June 1, 2018, from http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Articles/New_directions.pdf

[4] (n.d.). Do Independent Directors Add Value? (1999) by Jeffrey Lawrence and .... Retrieved June 1, 2018, from https://law.unimelb.edu.au/__data/assets/pdf_file/0020/1710254/143 IndependentDirectorsReport2.pdf

[5] (n.d.). Independency of Independent Directors in Corporate Governance - ICSI. Retrieved June 1, 2018,from (M. Gupta)

[6] (n.d.). the role of independent directors in controlled firms in india - Manupatra. Retrieved June 1, 2018,from http://docs.manupatra.in/newsline/articles/Upload/8BC687F7-9B76-4342-A173-28F598A94BE9.pdf

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depends upon background and experience, company situation, current composition of the board, relations between the chairman and independent directors, board leadership structure, recruitment process and training and development.

CLAUSE 49 AND INDEPENDENT DIRECTORS

It is necessary at this stage to examine the specific provisions in Clause 49 relating to independent directors.

BASIC REQUIREMENT

Boards of listed companies are required to have an optimum combination of executive and non-executive directors, with at least half of the board comprising of nonexecutive directors. As regards the minimum number of independent directors, that varies depending on the identity of the chairman of the board. Where the chairman holds an executive position in the company, at least one half of the board should consist of independent directors, and where the chairman is in a non-executive capacity, at least one third of the board should consist of independent directors. Another condition was imposed in 2008 to determine the number of independent directors. Where the nonexecutive chairman is a promoter or a person "related to any promoter" of the company, at least one half of the board should consist of independent directors. The insertion of this condition was necessitated due to the then prevailing practice. Chairmen of companies retained themselves in a non-executive capacity, but were often relatives of the promoters (in case of individuals) or controllers of parent/holding companies (where promoters were other companies). For example, in family-owned companies, the patriarch or matriarch of the family would be the non-executive chairman, while the day to- day management (in executive capacity) would be carried out by persons from the subsequent generations such as children and grand-children. Promoter-related chairmen were thus able to exert significant influence. With this amendment to Clause 49, chairmen are required to be truly independent to justify the composition of the board with one-third being independent rather than one half.

INDEPENDENT DIRECTORS IN INDIAN COMPANIES

All the codes of corporate governance deal with who should and who should not be on the corporate board. Any corporate unit can run and control its operations properly if the balance of the directors is proper. Every person in the board should be clear about his role and responsibility. For good governance, it is very important to have clear direction, i.e., what is the role of the board and management and of the executives? There should be a proper mix of executive and non-executive directors in the board. This has the advantage of combining the executives' in-depth knowledge of the day-to-day affairs of the company with the wider experience of non-executive directors. Almost all the codes play an important role in selection of the board member, whether executive or nonexecutive. They should be selected based on their merit and for the greater good of the corporate unit. The Combined Code (1998) states: "The board should include non-executives of sufficient caliber and number for their views to carry significant weight in the board's decisions," According to this Committee, independent non-executive directors continue to be defined as those non-executive directors that are, "Independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgment."For good governance, it is very important to maintain an independent element in the board. All the codes relating to corporate governance provide clear guidelines about the proportion of the board to be maintained as independent. In the UK, it is recommended that non-executive directors should comprise not less that one-third of the board size and that the majority of the non-executive directors should be independent.

HOW INDEPENDENT ARE INDEPENDENT DIRECTORS IN INDIA

An independent director is expected to act as watch dog of the board and protect the interest of shareholders. Since they are handpicked by the promoters himself so they prefer to be a friend of the promoters rather than be the watch dog of the board. Though independent director is paid by the company, it must be borne in mind that the company is not only owned by its promoters but all share holders so they are supposed to represent the interest of the minority shareholders. There are circumstances where independent directors are not independent, which broadly includes:-

- their selection procedure
- no age limit
- no specific qualification is required
- no right to interfere in the day-to-day operations
- no time limit for replacement of an independent director

Independent directors are still the only hope to instill discipline in the murky world of corporate finance, provided their independence is not being compromised. If they are no more independent then their appointment in a company will be meaningless. This position deserves to be corrected by empowering SEBI and the Indian government.

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(a) Selection procedure

A lot of emphasis is placed on the "independence" of independent directors their selection is still in the hands of owners of the company. No process of selection has been prescribed for the independent directors, as they are directly handpicked by the promoters. Promoters in control may take decisions that are not in the interest of small shareholders, an independent director must keep in mind the interest of all stakeholders. Such procedure for their selection raises question on their independence at the board. They can not be as independent as they are expected to be, if they are going to be appointed by the owners. This procedure has to be changed for the independence of directors. As long as they are appointed by management, the concept of independent directors is a myth, for truly independent directors, they have to be nominated by the SEBI which is a regulatory authority. If they have a right to regulate, then surely they have a right to even suggest the appointment of directors[7].

(b) No age limit

There is no age limit has been prescribed under Companies Act, 1956 and by the SEBI. According to Indian companies Act a minor can become a director since no age limit is prescribed. This point must be rethink as a person who is under 18, as surly cannot acquire enough experience to become an independent director of a company[8]. It's not the quantity of Independent Directors but the quality of Independent directors that make difference. There must be an age limit which can justify the position of an independent director.

(c) No specific qualification is required

There is need to focus on the quality of independent directors who are going to be appointed. They should be qualified enough so that they can ask right questions at the right time when they are at board. The most important requirement is his ability to stand up for minority shareholders, who are not represented on company boards. They need to be sound in judgment with an inquiring mind. Clause 49 of the Listing Agreement of the stock exchanges and the Companies Bill, 2008 introduced in Lok Sabha's last session does not prescribe the minimum qualification or experience essential. Presence of independent director on the board makes sense only if they are well-educated, can add value to the company, and represent minority shareholders' interests. The government and SEBI must review the qualification for independent directors.

(d) No right to interfere in the day-to-day operations

An Independent director has no right to interfere in the day-to-day operations of company. They have right to intervene in any misgivings or misdeeds. They are supposed to support the management in getting the delivery of what the objectives of the company are to its shareholders. If a director can not get into a company's day-to-day operations, he cannot understand how it is governed and will not be in the position to fulfill his responsibilities. There is no separate law under which an independent director operates; he has no legal protection from the management so that he can raise his voice fearlessly. For the involvement of independent director in day-to-days operations of company they must be given authority so that they can intervene in the day-to-day operations of company and may be able to raise their voice.

(e) No time limit for replacement of an independent director

There is no guideline prescribing a time limit for replacement of an independent director in case there is a resignation or removal or death of an existing one and promoters are taking a plea that they have not been able to find a replacement, which could stretch for indefinite period. The fees or remuneration of an independent director has grown so substantially in the last three years that an individual is often tempted to have an extended stay in the organization. Most of these directors would go by the decision of the promoters of the company without examining the details of company[9]. To retain the independence of director there is need to rotate such directors periodically or by any other method whereby the independence of independent director is secured.

EXECUTIVE DIRECTORS VS. INDEPENDENT DIRECTORS

Empirical evidence on the association between outside independent directors and firm performance is mixed. Some studies have found that having more outside independent directors on the board improves firm performance (Barnhart et al. 1994; Daily and Dalton, 1992; Schellenger el ah, 1989) while other studies have not found a link becween outside independent directors and improved firm performance (Hermalin and Weisbach, 1991; Fosberg, 1989; Molz, 1988). However, other empirical evidence does suggest that outside independent directors do play an important role of shareholder advocate. Shareholders benefit more when outside independent directors have control of

[7] Pearce II, J.A, and Zahra S.A. (1991), The relative power of CEOs and Boards of directors, Associations with Corporate Performance Strategic Management Journal 12

[8] www.vccircle.com/500/news/the-legal-implications-rajus-confession

[9] www.uslaw.com/law_blogs/?item=342048

the board in tender offers for bidders (Byrd and Hickman, 1992), Beasley (1996) found that outside independent directors reduce the likelihood of financial statement fraud." Bhagat and Black (2007) opined that Enron (with eleven independent directors on its 14-member board) could not prevent wealth destruction. As such, highly independent boards may not be justified, A board should contain a mix of inside, independent, and affiliated directors. Inside directors are conflicted, but well-informed whereas, the independent directors are relatively ignorant about the company. Han and Wang (2004) investigated the relationship between board structure and firm performance using a sample of 490 publicly listed, firms in China. They found significant relationship between firm performance and three characteristics: the rewards to directors, the stock holdings of directors and the existence of independent directors Effect of Independent Directors on Firm Performance: Choi, Park and Yoo (2005) examined the relationship between board independence and firm performance for South Korea and found that the effects of independent outside directors on firm performance are strongly positive. Huang, Hsu, Khan and Yu (2003) examined the stock market reaction to the announcement of outside director appointments in Taiwan. The empirical findings indicate that there exists a significantly positive reaction to the announcements. The appointments of outside directors appear to be more beneficial for a country with poor corporate governance mechanisms. Panasian, Prevost and Bhabra (2004), investigated the impact of the Dey Committee guidelines that boards in Canada comprise. a majority of independent directors. They found evidence that adoption of this recommendation positively affected performance, not only for firms that became compliant, but also for those firms that were always compliant and increased their proportion of outsiders on the board. According to Bhagat and Blade (1999), there is no convincing evidence that greater board independence correlates with greater firm profitability. Brown and Caylor (2004) created a broad measure of corporate governance, Gov-Score, a composite measure of 51 factors encompassing eight corporate governance categories: audit, board of directors, charter/ bylaws, director education, executive and director compensation, ownership, progressive practices, and state of incorporation. They found that better-governed firms are relatively more profitable, and pay out more cash to their shareholders. Block (1999) stated that the importance of outside directors is widely debated. Bhagat, Brickley, and Coles (1987); Fama (1980); Fama and Jensen (1983); Gibbs (1993) and others argue that outside directors promote the interest of shareholders. However, others argue that the reverse is true. Their study indicated that the announcement of the appointment of an outside director (up to a critical mass) is still viewed as supportive of stockholder interests and likely to produce positive abnormal returns.

INDEPENDENT DIRECTORS AND THE COMPANY PERFORMANCE

The Board has two types of director namely executive and non-executive. Executive directors are responsible for the day-to-day management of the company. They have the direct responsibility for the aspects such as finance and marketing. They help to formulate and implement the corporate strategy. The key strength are the specialized, expertise and wealth of knowledge that they bring to the business. They are full-time employees of the company and should have defined roles and responsibilities. Executive directors are the subordinates or the CEO; they are not in a strong position to monitor or discipline the CEO. It is important to have a mechanism to monitor the actions of the CEO and the executive director to ensure that they pursue shareholder interest. Cadbury (1992) identifies the monitoring role of non executive directors as their key responsibility. Dare (1993) maintains that non-executive directors are effective monitors when they question the company strategy and ask awkward questions. In additional, they are able to provide independent judgment when dealing with the executive directors in areas such as pay awards, executive director appointments and dismissals. Effective monitoring requires that the non-executive directors are independent of the executive director who is a retired ex-director or who works for a firm that provides services to the company, and may be perceived as less than wholly independent, A non-executive director's independence may increase with the passage of time. But this is subject to the independent directors making conscious efforts to contribute to the board process. Duality and performance: This occurs when one individual holds both the positions, namely, CEO & chairman, The CEO is the full time post and has the responsibility for day-to-day running of the company obliging implementing the strategy, and is responsible for the company's performance. The post of the chairman is part-rime. The Chairman's main responsibility is to ensure that the board works effectively; hence the role involves the monitoring and evaluating the performance of the executive directors involving the CEO. According to the Cadbury report, the chairman has the responsibility for looking after the board room affairs, and ensuring that the non-executive directors have the relevant information for the board meetings, as also other company information. The Cadbury committee recommended that the posts of CEO & chairman should be separated. Independent non-executive directors are likely to provide sound opinions on

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proposals and to become more effective decision monitors and likely to promote the interest of the shareholder

LEGAL RESPONSIBILITIES OF INDEPENDENT DIRECTORS

According to the law, the independent director has the same responsibilities and liabilities as any other director.

Civil Liability: The duties of a director are to act honestly and in good faith in the best interests of the company. These liabilities apply to independent directors as well as to the executive director.

Criminal Liability: The criminal liability depends on the nature of the offence. Some of the requirements under the law constitute, in their non-performance or performance, a criminal offence, and attract the liability. Proof of any knowledge and or complicity is not required. The offence basically requires proof of failure to exercise the due care (negligence) or of dishonesty. The liability of the independent director depends upon the level of involvement and knowledge. Thus the independent director is more liable when the necessary step to avoid a breach of the criminal code has not been taken.

LIABILITIES INDEPENDENT DIRECTORS

Wrongful disclosure by the chairman and members of the audit committee in company's annual report should attract: disqualification and penalties. If the non-executive director had the knowledge of unlawful acts by the management or the board and fails to act according to the law, then the said director should be made legally liable for such ignorance. The different liabilities of the executive directors and non-executive or independent counterpart should be considered. The persons considered responsible for the contravention committed by the company are: (i) The managing director; (ii) Executive or whole- time director; (iii) Managers; (iv) The company secretary; (v) any person in accordance with whose instructions the board is accustomed to act; (vi) any person who has been entrusted and charged by the board to be an officer in default subject to his or her consent. Non-executive directors are far less liable for the ignorance of the provisions in the Companies Act than their executive counterparts.

LIMITATIONS OF INDEPENDENT DIRECTORS

We discuss some of the major limitations of the role and functions of independent directors in particular and other categories of directors in general. Let us mention at the outset that the limitations arise on account of two sources; one is an internal source; personality factors of an individual director; while the second is the external source; ownership of a firm; board composition and structure; board process; board strategies; among others. It is pertinent to note that the mere presence of independent directors on a company's board is not enough. We have significant evidence world-wide of corporate failures and poor board performance even with adequate number of experienced independent directors. It is not, therefore, their mere presence on the board but the value they add to the board process which will ensure effective corporate governance.

PERFORMANCE MEASUREMENT OF INDEPENDENT DIRECTORS

The output of the teams and individuals are measured. In most of the organizations, measurement is not done at the board level. Most of the organizations don't know what is to be measured at the board level. Moreover, the director's efforts yield results that are spread over the years, and are not limited to the current year itself. It may be so because directors do not want to expose themselves to the appraisal. The criteria for measuring efforts or inputs of the director should be measured by soft method (not rigorously) to reveal to the independent director how his contribution is being perceived. It has been suggested that the independent directors should appraise themselves with the use of a matrix that shows the effectiveness in each role against the importance of that role. To have the effective use of self-appraisal, the independent director should discuss with the board members as to what are their important roles. The matrix can be used to assess skills or competencies in terms of importance and effectiveness. This kind of analysis can reveal the area which is important to the board and an area of weak contribution by the independent director should encourage the discussion among the board and the remedial action should be thought of. With the use of appraisal technique, an area of the problem can be identified and solution like training, access to key information and greater availability of time can be worked out. The appraisal also helps in identifying the cause of resignation or dismissal. This would reveal whether the independent: director was Ineffective or he was forced to resign because he was too challenging to the executive management. There are other techniques like appraisal by the chairman, team members, shareholders, confidential feedback, etc.

CASE STUDY OF CRITICAL ISSUES OF SATYAM EPISODE

Even where there is a stellar independent board of directors, it may not be possible for them to perform their role effectively if the conditions that facilitate

proper performance do not exist. The Satyam episode demonstrates some of the reasons why the effectiveness of independent directors in India may continueto be in doubt.

(i) Satyam Computer Services Limited (recently renamed Mahindra Satyam) is a leading information technology Services Company incorporated in India. Satyam's promoters, represented by Mr. Ramalinga Raju and his family, held about 8% shares in the company at the end of 2008, while the remaining shareholding in the company was diffused. Its securities are listed on the Bombay Stock Exchange and the National Stock Exchange. Furthermore, the company's securities are cross-listed on the NYSE. This required Satyam to comply not only with Clause 49 but also the requirements of the *Sarbanes-Oxley Act* as well as *NYSE Listed Company Manual*. Satyam took immense pride in its corporate governance practices. At the relevant time (end 2008), Satyam had a majority independent board, thus over-complying with the requirements of Clause 49. Its board consisted of the following:

Executive Directors

(a) B. Ramalinga Raju, Chairman;
(b) B. Rama Raju, Managing Director and Chief Executive Officer;
(c) Ram Mynampati, Whole Time Director;

Non-Executive, Non-Independent Directors

(a) Prof. Krishna G. Palepu, Ross Graham Walker Professor of Business Administration at the Harvard Business School

Independent

a. Dr. Mangalam Srinivasan, management consultant and a visiting professor at several U.S. universities;
b. Vinod K. Dham, Vice President and General Manager, Carrier Access Business Unit, of Broadcom Corporation;
c. Prof. M. Rammohan Rao, Dean, Indian School of Business;
d. T. R. Prasad, former Cabinet Secretary, Government of India; and
e. V. S. Raju, Chairman, Naval Research Board and former Director, Indian Institute of Technology, Madras.

The board consisted of 3 executive directors, 5 independent directors and 1 grey (or affiliated) director. Amongst the non-executives, 4 were academics, 1 was from government service and the last was a business executive. At a broad level, it can be said that very few Indian boards can lay claim to such an impressive array of independent directors.
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ii. The Maytas Transaction

iii. Fraud in Financial Statements

CONCLUSION AND SUGGESTION

Independent directors or non-executive directors of the company monitor and control the chairman/chief executive; they serve as a link with external environment and provide an international perspective. Apart from this independent directors try to improve board processes and bring in specialist knowledge, they provide continuity, help identify alliance and acquisition. It can be concluded that independent directors help maintain an ethical climate in the organization. A company should have a clearly laid out policy where there should be specified role played by him at board, their tenure and age limit, qualification required etc. The focus must be on the quality of person who is going to be appointed. Selection of independent directors by SEBI and government would be fair and bring transparency in the selection procedure as well as can secure their independence to some extend. So far as age limit is concerned which must be review, minor should not be considered eligible for the chair of independent director; the minimum age limit for an independent director must be between 30-35. The person must be well-educated with required experience so that he can justify the role of an independent director. Company must clearly laid down qualification and experience required for the post of independent director in the policy. The appointed director must be rotated periodically to ensure the transparency and fairness in their decision. Legal protection must be provided to independent directors so that they can raise their voice against the management and force their views in the interest of shareholders.

REFERENCES

1. *"Corporate Governance—Global Concepts and Practices", by Dr.S.Singh, First Edition, 2005, p.185, New Delhi, India*
2. *Committee of Corporate Governance, the Combined Code, 1998.*
3. *Corporate Governance—Critical Issues, by C.V.Baxi, First Edition: New Delhi, 2007, Excel Books, p.119-20*
4. *Effective Corporate Governance--A need of today, by Dr S.K.S.Yadav, College and 5.Priyanka Saroha, Readers Shelf, Vol 2,Issue no.3,December 2005,p.14*
5. *5.Fama, E.F. and M.C. Jensen (1983), Separation of ownership and control. Journal of Law and Economics.26,June, 301-25*
6. *Forbes, D. & Milliken, F. (1999). Cognition and corporate governance: understanding boards of*

directors as strategic decision making groups. Academy of Management Review, 24, 489-505.

7. *Indian Corporate Governance and Board Structure, by Hitesh J Shukla,The Accounting World, July 2005, p.13,Emerging Issues*