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Challenges and Concerns in the Progressive Regulatory Structure for Corporate Governance in India

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Abstract:- In light of the volatile securities market, investors have now recognized the crucial significance of corporate governance as a decisive factor in their investment decisions. The assurance of strong corporate governance practices is perceived as instrumental in inspiring, reinforcing, and preserving investor confidence, while also ensuring a company's commitment to achieving higher growth and profitability. The global economy, particularly transitional economies, has increasingly prioritized corporate governance as a vital concern. In emerging economies, the growth of the private sector is vital for advancing towards a laissez-faire economic system. For this reason, competent corporate governance is essential. It does this through encouraging efficient use of financial resources, fostering the development of capital markets, and drawing in investments from other countries, all of which contribute to the expansion of the economy. Due to the increasing significance of private business entities in the country and their increased involvement with multi-national organisations and global structures, the discipline of corporate governance has emerged as a topic of increasing importance in recent years. The present condition of India's corporate governance framework, the transforming regulatory structure, and the difficulties and obstacles associated with it have been highlighted in this paper and must be faced in order to establish a strong and successful system of corporate governance in the nation. Specifically, the paper focuses on the legal structure that has been recently developed.

Keywords:- *Corporate Governance, Board of Directors, Ownership Control.*

I. INTRODUCTION

Due to the growing importance of separating ownership and control, corporate governance has gained significant attention among companies. Investors now view corporate governance as a crucial factor when making investment decisions, particularly in the face of volatile securities markets. Numerous empirical studies demonstrate that effective corporate governance fosters long-term trust between shareholders and companies. (Ayuso & Argandoña, 2009).

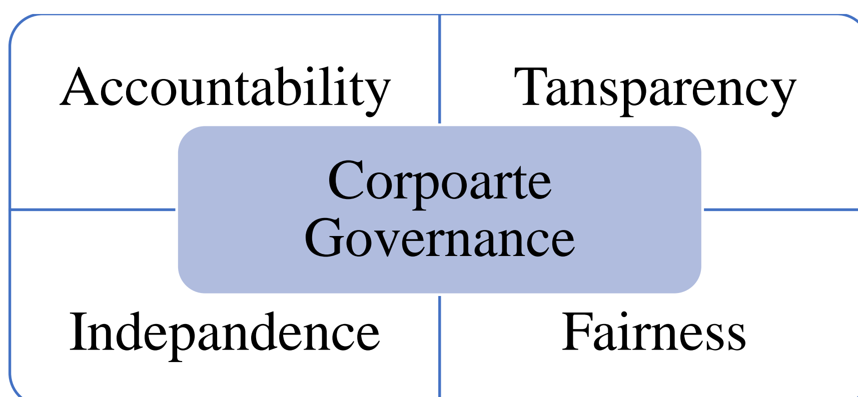
The challenge of corporate governance arises from the management of companies, where ownership lies with one group while another group is responsible for day-to-day operations. This situation raises concerns about trust. Corporate governance would be unproblematic if all stakeholders had equal access to information at the same time. Shareholders are becoming more involved because they feel that good corporate governance leads to better returns. Recent scandals involving companies like WorldCom, Enron, and Satyam Computers have contributed to increased awareness among executives, shareholders, and regulatory bodies worldwide. As a consequence of this, a number of nations are working towards the development of quantitative measurements of ownership along with governance in order to investigate the influence these metrics have on the value of businesses and the processes through which decisions are made. The importance of corporate governance in India has increased in tandem with economic liberalization, industrial deregulation, and an increase in the number of corporate scandals. This has created a need for new organisational principles and values.

Research indicates that the long-term viability of India's capital market relies heavily on the effectiveness of its corporate governance system. For better resource efficiency and accountability in management, a good governance framework is necessary. Over the past two decades, various factors such as government initiatives, shareholder activism, and increasing demands from mutual funds and institutional investors have led to significant changes in corporate governance practices. The Indian government has established several influential committees tasked with examining corporate governance practices, offering recommendations for codes and guidelines that can be implemented. However, challenges such as multifaceted company ownership structures, unclear relationships between the government and the financial sectors, lacking legal and judiciary structures, inadequate institutions, and limited human resources have hampered the development of a strong corporate governance system in the aftermath of crises. As a result, our goal is to examine the present condition of the corporate governance issue within India, with a special focus on its legal structure, to identify the major obstacles and issues that require to be resolved. Top of Form Bottom of Form

II. FOUNDATIONAL STRUCTURE OF CORPORATE GOVERNANCE - A CONCEPTUAL OVERVIEW

The term "Corporate Governance" refers to the framework comprising regulations, principles, and procedures that govern the direction and management of a company. Simplified by Sir Adrian Cadbury, “Corporate Governance is the system by which companies are directed and controlled.” (Cadbury, 1993) The fundamental concept of corporate governance revolves around achieving a harmonious equilibrium among diverse stakeholders within a company. This balance is reached by the efficient allocation of company resources that benefits all parties involved (shareholders, managers, customers, suppliers, lenders, the state, and the public at large). Corporate governance not only creates the framework for achieving a company's goals, but it also incorporates numerous facets of management, such as strategic planning and internal controls, as well as assessing performance and guaranteeing transparent communication. The agent (management) operates the business to serve the interests of the principal (stakeholders). Such stakeholders may cover shareholders, creditors, vendors, clients, employees, and other parties with which the firm conducts its business transactions. (Goergen & Renneboog, 2006).

A set of rules, policies, and procedures that govern a company can be termed as corporate governance. These mechanisms outline the ways in which a company should be directed and controlled, enabling it to achieve its objectives and enhance its overall value. Moreover, effective corporate governance ensures long-term benefits for all stakeholders involved, including the board of directors, management, shareholders, customers, employees, and society at large. The Organisation for Economic Cooperation and Development (OECD), a major worldwide promoter of corporate governance, described it as the framework through which corporations are operated and regulated. The framework of corporate governance prescribes the rules and methods for making corporate decisions, as well as the distribution of rights and obligations among the various parties within the organisation, such as the board of directors, management, shareholders, and other stakeholders. In addition, the corporate governance structure outlines who is responsible for what rights and duties inside the company. (OECD, 1999) J. Wolfensohn, President of the World Bank, defines corporate governance as "promoting corporate fairness, transparency, and accountability." (Wolfensohn, 1999) As per the World Bank, good corporate governance is achieved through "a mix of law, regulation, and appropriate voluntary private sector practises" that help businesses attract human and financial resources, allowing them to operate effectively and position themselves to create prolonged value addition for their equity investors while also safeguarding the stakeholder’s interest and the interest of society at large. (World Bank, 2005) Likewise, the International Finance Corporation (IFC) perceives corporate governance as the organizational frameworks and procedures that oversee the management and oversight of corporations. Effective corporate governance encompasses both business performance and responsible adherence to standards. The committee established by the Confederation of Indian Industry (CII) provides a definition for corporate governance as “corporate governance deals with laws, procedures, practices and implicit rules that determine a Company’s ability to take informed managerial decisions vis-à-vis its claimants–in particular, its shareholders, creditors, customers, the State and employees.” The goal of "good corporate governance" is universally recognised as "maximising long-term shareholder value." (CII, 1998) ICSI provides the following definition of corporate governance: Corporate governance is the use of best management practices, compliance or conformity of law in both substance and letter, and commitment to principles of ethics for successful wealth management and distribution, as well as the fulfilment of social duty for the long-term growth of all stakeholders. (ICSI, 2019) In addition, as articulated by Wilson, corporate governance is the mechanism by which corporations are directed, controlled, and held accountable, with a particular focus on effective corporate leadership to ensure that corporations deliver on their promise as the wealth-creating organ of society in a manner that is sustainable. This is to ensure that corporations deliver on their promise as effectively as possible. (Wilson, 2006) On the topic of corporate governance, Wright, Keasey, Thompson, and Mayer, in addition to Shleifer and Vishny, all share similar perspectives. (Mayer, 1997) (Keasey, Wright, & Thompson, 1997) (Shleifer & Vishny, 1996).



The committee established by SEBI (Securities and Exchange Board of India) in 2003, led by N.R. Narayana Murthy observed the following about corporate governance: Corporate governance is management's acknowledgment of shareholders' inalienable rights as the genuine owners of the firm, as well as their own position as trustees on their behalf. It is about values commitment, ethical business conduct, and distinguishing between personal and corporate finances in company administration. (Murthy, 2003) Furthermore, according to the findings of the SEBI-appointed Kumar Mangalam Birla Committee, sound corporate governance is not only necessary for the operation of robust and dynamic capital markets, but it is also an important instrument for the protection of investors. Transparent business practices and high-quality accounting practices are like blood in the veins. It is the impetus for a long-term and facile to use financial reporting structure. (Birla, 1999)

The global perspective on corporate governance can be examined through the lens of two distinct models: the Anglo-American or "outsider" model, and the German and Japanese or "coordinated" model. The Anglo-American model prioritizes the interests of shareholders and separates management control from shareholder ownership to maximize shareholder value. On the other hand, the German and Japanese model, also known as the coordinated or multi-stakeholder model, views the company as a social institution and acknowledges the interests of various stakeholders such as workers, managers, suppliers, customers, and the community. This model is predominantly followed in continental Europe and Japan.

Vives has categorized corporate governance systems into two groups: market-oriented systems and bank-oriented systems, alternatively referred to as relationship-based systems. (Vives, 2000) The United States and the United Kingdom adhere to a market-oriented system where companies have a dispersed ownership structure, involving both individuals and institutions. These companies rely on the capital market to secure funding and are susceptible to the risk of hostile takeovers. Shareholders and management are separate entities, with management possessing the authority to monitor and govern the organization, leading to potential conflicts. To address the repercussions of the Great Depression, the Glass-Steagall Act was enacted in the United States, restricting commercial banks from owning equity in other companies. Consequently, their role in directly overseeing and controlling company affairs was limited. In contrast, most European nations and Japan have a bank-oriented system with a heavily centralized ownership structure. Commercial banks play an important role in these nations' capital markets, and their voting power is regulated or restricted to prevent hostile takeovers. Banks in Germany have the flexibility to organize proxy votes in order to get general power of attorney from shareholders, allowing them to exert influence through direct ownership of shares, issuance of loans, seats on the supervisory board, and the organization of proxy votes.

According to Schlitzer, a standardized global model for corporate governance practices does not exist. (Davies & Schlitzer, 2008) Each nation adheres to and develops its own corporate governance framework Companies often use multiple approaches to corporate governance, even within the same country, since there is no universally accepted model, as reported by OECD. As the significance of corporate governance has grown, its definition and scope have expanded beyond the traditional understanding. It is now recognized that good governance should not solely focus on maximizing the wealth of shareholders or individuals closely associated with the company. Instead, each business entity's corporate mission should be aligned with the primary objective of fostering social welfare. Research indicates that market constraints serve as a reliable indicator of corporate governance quality, as evidenced by stock mispricing resulting from inadequate corporate governance practices.

Research has also affirmed a clear connection between stock prices and effective governance measures. Coombes and Watson conducted a comprehensive study involving 200 institutional investors worldwide, revealing that investors are willing to pay a premium for shares of companies with strong governance practices. (Coombes, Paul, & Whatson, 2000) Black, Jang, and Kim's research demonstrates that the value of a company and its ability to generate cash flows for investors are influenced by corporate governance practices. (Black, Jang, & Kim, 2005) Gompers and Metrick developed a "Governance Index" in the 1990s, consisting of 24 governance principles, which they applied to approximately 1500 major companies. Their research revealed that companies with more robust shareholder rights exhibited greater firm value, increased profitability, higher sales growth, reduced capital expenditures, and fewer instances of corporate acquisitions. (Gompers, Ishii, & Metrick, 2001)

Another ICRA study of domestic investment managers found that 84% saw corporate governance to be either more vital or equally significant as financial figures and development prospects. A recent study conducted by Mittal and Gupta further indicates that shares of companies with strong governance practices are less undervalued compared to those with poor governance practices. (Jain, Gupta, & Mittal, 2011)

There has been a discussion surrounding the notion that the implementation of corporate governance principles does not guarantee the prevention of corporate failures and scandals. Instances like the Enron and WorldCom cases in the United States, as well as the Golden Quadrilateral incident in India, have highlighted this ongoing debate. As a result, a new discourse has emerged regarding the essential components to be incorporated within a comprehensive corporate governance framework. There should be a significant number of independent directors, boards should have access to external knowledge, board and executive compensation should be reviewed, and the CEO's power should be constrained, according to academicians. (Monks, 2001)

The corporate governance landscape in India gained traction following government initiatives, including the appointment of independent directors, enhanced stakeholder awareness, implementation of voluntary CSR guidelines, and increased disclosure obligations. Several studies in India have explored specific aspects of governance, focusing on narrower perspectives. The research by Chakrabarti, Megginson, and Yadav supports investor protection through legal measures but highlights challenges in enforcement and prevalent corruption. ownership concentration persists in corporate India, and implementation of modern enterprise governance principles is yet to be fully adopted. (Chakrabarti & Megginson, 2008) Nevertheless, corporate governance in India holds a comparable position to major emerging economies such as Brazil, China, and Russia. KPMG's surveys conducted in 2006, 2008, and 2010 point out ongoing instances of corporate fraud and signal the existence of fraud risks within large and medium-sized organizations, including banks. it is imperative for policymakers to assess the effectiveness of the regulatory framework and government policies in fostering corporate governance, given its significant macro-economic implications.

A. *Reasoning Behind the Practice of Corporate Governance*

Effective corporate governance cultivates and upholds investor trust by demonstrating a company's dedication to long-term growth and profitability. It is widely acknowledged that sound corporate governance practices optimize shareholders' wealth and significantly impact the stability and development of both individual companies and the overall economy. Upholding high standards of corporate governance is vital to maintain the integrity of corporations in the present landscape, ensuring that the diverse needs and interests of all stakeholders are fairly and openly addressed. Such practices should be deeply ingrained in the organizational culture, starting from the leadership and permeating throughout the entire company. "In India, the growing participation of Foreign Institutional Investors (FIIs) over the years in the Indian stock market can be viewed as enhancing stakeholder trust in Indian firms. To have their shares listed on domestic stock exchanges, companies are required to adhere to corporate governance (CG) practices. Additionally, to be listed on foreign stock exchanges, companies must comply with the corporate governance standards specific to those respective countries. Corporate governance offers the following advantages:

- An educated board of supervisors, comprising mainly independent directors who actively participate in formulating progressive policies, overseeing and guiding the company's executives.
- Prioritizing the shareholders' best interests over the undue influence of dominant shareholders or CEOs.
- Preserving the credibility of plans, operating systems, and controls.
- Creating transparent institutional frameworks and business procedures, as well as transparency in the making of business decisions.
- Considering all shareholders' interests in order to maintain investor trust, facilitate efficient and effective fundraising, positively affect share prices, and maximise the value of shareholders over the long run.
- Ensuring accountability of decision-makers within the company.
- A dedication to the production and maintenance of value for shareholders, but also meeting the needs of other stakeholders and taking into account their perspectives.
- Effective corporate governance is a tool for promoting business and economic development by limiting exposure to risk and reducing errors in management.

The need for effective corporate governance in developing nations like India can be broken down into four main causes: the emergence of private enterprises as a central institution that facilitates the economy's transition to a market-based system; the efficient deployment of capital and the expansion of financial markets; the attraction of foreign investment alongside the promotion of national growth.

The authors highlight that addressing stakeholder conflicts of interest has elevated the importance of corporate governance. (Goergen & Renneboog, 2006) Approaches to managing these conflicts encompass various processes, customs, policies, laws, and institutions, all of which impact the manner in which a company is governed.

B. *Corporate Governance Landscape in India*

At the time of independence, India received an economy that was among the most impoverished in the world. However, it also inherited four operational stock markets, predating even the Tokyo Stock Exchange. These marketplaces had fixed listing, trading, and settlement rules. Furthermore, India had a sophisticated equity culture, although confined to the urban affluent elite, as well as a banking system with strict lending requirements and debt recovery processes. (Goswami, 2002).

Indian companies did not consider corporate governance as a priority until the early 1990s. It was only after globalization and liberalization that the significance of corporate governance gained recognition. In 1991, when the government sought assistance from the IMF following a fiscal crisis, reformative measures for economic stabilization through liberalization were recommended. As part of this liberalization process, the Companies Act of 1956 was amended by the government in 1999, followed by subsequent amendments in 2000, 2002, and 2003. Several actions were taken, including strengthening the rights of shareholders, enabling SEBI (Securities and Exchange Board of India) the authority to prosecute inconsistent companies, imposing harsher penalties on directors who fail to fulfil their duties, limiting the number of directorships, and enhancing reporting requirements.

III. LEGAL FRAMEWORK OF CORPORATE GOVERNANCE

A. *The Code of Corporate Governance by CII*

The Confederation of Indian Industry (CII) established committees to examine matters related to corporate governance and propose a set of best practices for adoption by various types of Indian companies, including those in the private sector, public sector, banks, and financial institutions. This endeavour culminated in the publication of a CII code entitled "Desirable Corporate Governance," the Indian

industry's first organised effort. The committee was motivated by the belief that Indian businesses couldn't succeed without excellent corporate governance, which is crucial if they want to attract domestic and international investors at reasonable rates. The first draught of the code was formulated in April 1997, and the final version, named "Desirable Corporate Governance: A Code," was made public in April 1998. The code, which focused on publicly traded corporations, was voluntary and featured extensive rules. It emphasized the requirement of certain disclosures, and its key features encompassed the following:

- Listed corporations are required to disclose information concerning the highest and lowest monthly average stock prices on a major stock exchange where the company is listed. Furthermore, companies should disclose more detailed information on business segments that account for up to 10% of total revenue, such as sales revenue share, operational evaluation, market analysis, and outlook for the future.
- Major Indian stock exchanges should over time mandate a certificate of corporate governance conformance signed by both the CEO and the CFO.
- In the event that a company seeks ratings from multiple credit rating agencies, it is obligated to disclose all the ratings obtained from these agencies in the prospectus and issue document. These ratings must be displayed in tabular form, demonstrating the company's respective position in relation to higher and lower ranks.
- Companies that fail to meet their obligations regarding fixed deposits should be prohibited from accepting further deposits, engaging in inter-corporate loans or investments, or declaring dividends until the default has been rectified. (CII, 1998).

B. *The Report of the Kumar Mangalam Birla Committee and Clause 49*

Despite the CII code getting an excellent response and being embraced by several forward-thinking organizations, it was recognised that a legally binding code, rather than a voluntary one, would be more successful and appropriate in India. As a consequence, the Kumar Mangalam Birla committee, constituted by SEBI, provided guidelines that led to the insertion of Clause 49 in the Listing Agreement. The required compliance with Clause 49 rules was widely accepted by listed firms. The committee's recommendations focused on corporate governance from the perspective of stakeholders, particularly shareholders and investors. It proposed including a corporate governance section in annual reports to tell shareholders about particular actions done to achieve good corporate governance. The committee highlighted three key traits of corporate governance: transparency, accountability, and treating every stakeholder evenly. The recommendations were divided into two categories: compulsory and voluntary.

Compulsory suggestions contain: (a) holding the board of directors responsible to shareholders; and (b) forming the board with a balanced mix of executive and non-executive members, with at least half of the board comprised of non-executive directors. In the event, a corporation has a non-executive chairman, independent directors should make up at least one-third of the board. While a corporation appoints an executive chairman, at least fifty percent of the board of directors must be independent. Furthermore, any non-executive directors' financial links or transactions needs to be mentioned in the yearly report. (c) a nominee directors should be appointed by the institution to the corporate boards only where such nominations are required under the terms of loans or are judged appropriate to defend institutional interests. The committee also recommended that the company provide the non-executive chairman with an office and repay any expenses incurred by the chairman in the performance of his duties. One meeting should take place before the annual accounts are finalised, and another one should take place every six months. Two members, or one-third of the audit committee, whichever is larger, are required to constitute a quorum, and these must include at least two independent directors. The audit committee's powers, obligations, and compensation were further defined by the committee.

In terms of voluntary suggestions, the audit committee emphasises the need of implementing progressive governance norms, which are applicable to the board, and also to the audit committee. Additionally, a company's board of directors should form a qualified and independent audit committee. (Birla, 1999).

C. *The Report of Naresh Chandra Committee*

On August 21, 2002, the Department of Company Affairs in India established a high-level committee, commonly referred to as the Naresh Chandra committee, with the purpose of examining different issues related to corporate governance and proposing amendments to the law. The committee's The interaction between auditors and clients, as well as the function of independent directors, were among the committee's primary concerns. In its recommendations released in December 2002, the committee focused primarily on two topics: more financial and non-financial transparency, and enhanced independent audits and board oversight of management. Various elements of corporate governance were discussed in the committee's report, such as the role, compensation, and training of independent directors, the functioning of the audit committee, and the relationship between auditors and the company. The committee strongly emphasized the belief that a robust accounting system serves as a significant indicator of management's commitment to good governance. (Chandra, 2002).

D. *The Report of Narayana Murthy Committee*

The Narayana Murthy committee recommendations represent the fourth step towards enhancing corporate governance in India. After evaluating compliance data of listed companies with Clause-49, the Securities and Exchange Board of India (SEBI) concluded that it was essential to go beyond mere systems and procedures to effectively safeguard investor interests. SEBI formed the committee, led by Mr. N. R. Narayana Murthy, with the goal of examining listed companies' compliance with the corporate governance code (Clause 49) and suggesting actions to enhance corporate governance standards. The committee's principal recommendations included board composition and compensation, audit reports, related party transactions, independent directors, risk management, audit committees,

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director responsibilities, and financial information disclosure. (Murthy, 2003).

E. The Report of Uday Kotak Committee

The Kotak Committee, chaired by Mr. Uday Kotak and established in June 2017, presented its findings on October 5th of the same year, outlining various recommendations regarding corporate governance. After seeking feedback from the public and stakeholders, the Securities and Exchange Board of India (SEBI) accepted many of the recommendations, albeit with some modifications, during a meeting on March 28th, 2018.

Among the approved recommendations were the following:

- Statutory Auditors' Fees and Qualifications: For the appointment or reappointment of statutory auditors, the Annual General Meeting should include the following information in the Explanatory Statement: a) Proposed fees for the statutory auditor(s), along with the terms of appointment. In the case of a new auditor, any significant changes in fees compared to the outgoing auditor must be explained.
- The basis of recommendation for appointment, including details and qualifications of the proposed statutory auditor(s) (Insertion of Clause 5 to regulation 36). These provisions aim to ensure that shareholders are well-informed when making decisions about the appointment of statutory auditors for listed companies. It is now mandated that the proposed fees be disclosed in the notice, and if there is any deviation from the current audit fee, a justification for the change must be provided. However, it is important to note that this requirement may contradict the guidelines set by the Institute of Chartered Accountants of India (ICAI) or other corporate firm Code of Ethics, as they prohibit firms from marketing their credentials, be it client-wise, industry-wise, or in any other manner. (Kotak, 2017).

IV. CHALLENGES AND CONCERNS

The primary obstacle to corporate governance in India is the traditional influence exerted by prominent stakeholders, primarily family members. These promoters, who hold significant shares, often distribute their ownership among acquaintances and relatives. This dominant shareholder position allows them to transfer assets between affiliated companies and allocate shares preferentially to themselves. Although the Companies Act of 2013 includes provisions to address minority interests, there is a lack of robust legislation to effectively regulate these concerns.

An important concern in the Indian corporate landscape revolves around independent directors. Independent directors play a critical role in various corporate governance reform committees. However, in India, where a significant portion of the largest corporations are owned by individual or family shareholders, the appointment of independent directors often follows a conventional pattern. (Rujitha, 2012) These dominant shareholders tend to appoint friends or associates as independent directors. Numerous studies have demonstrated the ineffectiveness of independent directors in Indian corporations, as companies frequently deviate from the established corporate governance guidelines, leading to frequent instances of misgovernance. Recent scams provide concrete evidence of this trend.

Several empirical investigations have revealed that the success of numerous industrial and business establishments can be attributed to their adoption of unethical methods. Following India's independence, the country experienced industrial growth and the establishment of corporate culture. The governance of industrial and business organizations in India, similar to many other Asian countries, has thrived on unethical practices prevalent in the market. However, it is noteworthy that the deficiencies in Indian corporate governance are not significantly worse than those observed in other Asian nations. Furthermore, the banking sector in India demonstrates a relatively low proportion of non-performing assets, indicating that corporate fraud and unethical practices are not rampant or beyond control in the country. (Chakrabarti & Megginson, 2008)

In certain companies, the CEO assumes the dual role of being both the chairman of the Board of Directors, which significantly undermines the board's oversight function. This creates the possibility for the management to utilize corporate resources for personal gain, rather than prioritizing the interests of the shareholders. As a result, minority shareholders suffer from a disadvantage. Therefore, it is crucial to establish shareholder control in the board of directors' selection process. The primary problem lies in the inefficiency of shareholder meetings and the lack of cohesive communication among dispersed owners.

V. CONCLUSION

According to the results of our investigation, one of the most important challenges facing efforts to improve corporate governance in India is the power enjoyed by dominant owners of companies, which gives these individuals the ability to exercise influence on the governing political system of the country. Despite investments in advanced governance systems, tangible benefits are not evident, although they do aid in valuation and resource mobilization for those implementing them. However, the positive impact of good governance is observable in developed nations. India's monitoring system is weak, characterized by multiple regulators, as evidenced by recent corporate fraud cases. In addition, there is a dearth of experienced professionals and entrepreneurial leaders who are qualified to sit on boards of directors in the capacity of independent directors. Even though there has been a growth in the number of research papers on corporate governance, and even though organisations like the ICSSR and the Ministry of Finance have made efforts to encourage research on this subject, empirical inquiry has remained relatively restricted.

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