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Strengthening The Pillars Of Integrity: A Comprehensive Analysis Of Corporate Governance In India

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Abstract. This research article delves into the multifaceted landscape of corporate governance in India, tracing its evolution, examining the current regulatory frameworks, and exploring the challenges and opportunities presented by technological advancements. The study is motivated by the need to understand how corporate governance practices have adapted to the dynamic economic environment in India and to identify strategies for mitigating governance-related risks, particularly in the wake of high-profile corporate frauds that have underscored governance failures.
Employing a comprehensive methodology that combines literature review, legal and regulatory analysis, and comparative studies, this article gives an in-depth examination of the definitions, principles, and theoretical underpinnings of corporate governance. It highlights the significant milestones in the development of corporate governance in India, including legislative reforms and regulatory changes aimed at enhancing transparency, accountability, and stakeholder engagement. The research further investigates the specific governance issues illuminated by various corporate scandals in India, pinpointing failures in transparency, board oversight, internal controls, and ethical standards. It assesses the impact of these scandals on regulatory practices and the broader corporate governance landscape.
A noteworthy focus of the article is on the role of developing technologies—like data analytics, artificial intelligence, and blockchain- in transforming corporate governance practices. The study explores how these technologies can address traditional governance challenges by enhancing transparency, improving risk management, and facilitating more effective compliance monitoring.
The article provides recommendations for strengthening India's corporate governance framework, emphasizing enhanced regulatory oversight, best practices in board management, ethical corporate culture, and strategic technology utilization to prevent fraud and foster sustainable success. It contributes to the ongoing discourse on governance practices in India.

Keywords: Corporate governance, Regulatory frameworks, Stakeholder engagement, Transparency and reporting, Ethical corporate culture.

1. Introduction

Corporate Governance (CG) is the general term for the set of procedures, guidelines, and policies that govern an organization's direction and management. CG is a crucial system that ensures the ethical behavior and effective operation of organizations (Tricker, 2015). CG encompasses the organizational structures, procedures, and regulations that govern and guide organizations, intending to achieve a balance between the interests of a company's various stakeholders (Freeman, 1984). The community, government agencies, lenders, suppliers, consumers, shareholders, and senior management are some of these stakeholders. Imagine CG as the intricate process where interests align, transparency prevails, and responsibility reigns. CG is the backbone of any organization, shaping its direction, ethics, and overall functioning. In this comprehensive discussion, the fundamental aspects of CG, exploring its definition, the historical context in India, and the impact of technological advancements are delved into.
Since India’s independence, the landscape of CG has evolved significantly. From the early days of state-controlled enterprises to the liberalization era, shifts in regulations, ownership structures, and board dynamics have been witnessed. The Tata Group, the Birlas, Infosys, and other iconic Indian conglomerates have left indelible marks on CG practices. The study also examines the repercussions of corporate scandals such as the Satyam case, ICICI bank fraud, etc., and consequent regulatory modifications and the significance of effective governance in companies. These milestones are explored, learning from both successes and failures. The research also establishes a correlation between the legal system of the country and its financial and economic framework, with a specific emphasis on safeguarding external financiers such as creditors and shareholders.

In the digital age, CG isn't immune to technological disruptions. Blockchain, AI-driven analytics, and smart contracts are reshaping boardroom discussions. Cybersecurity, data privacy, and ESG (Environmental, Social, and Governance) considerations are now integral. As we embrace the Fourth Industrial Revolution, corporate governance must adapt, ensuring agility without compromising integrity.
Agency theory, suggested by Jensen and Meckling, asserts that ownership and control in contemporary organizations are separate, creating agency problems like moral hazard and adverse selection. Several CG tools, like shareholder voting rights, performance-linked pay, board oversight, and others, have been put in place to address these problems (Fama, 1980; Jensen & Meckling, 1976). Nevertheless, these mechanisms have a few limitations like subjectivity, human bias, absence of transparency, as well as insufficient oversight. AI methods, which simulate human intelligence processes, could help overcome these limitations.

Corporate governance isn't a mere buzzword; it's the compass that guides organizations toward sustainable success. So, this intricate terrain is navigated, exploring the past, present, and future of corporate governance.

1.1. Research Objectives

This research work is conceptual in nature and has the primary goal of achieving the research objectives mentioned below:

1. To comprehend and elucidate the concept and constituents of corporate governance.
2. To trace the evolution and examine the development of corporate governance procedures in India in response to economic reforms and global pressures since achieving independence.
3. To understand the repercussions of corporate governance failure and the importance of effective governance in a business.
4. To elucidate the present condition of the regulatory framework governing corporate governance in India.
5. To propose actionable recommendations to strengthen corporate governance in India.

The study is motivated by the need to understand how corporate governance practices have adapted to the dynamic economic environment in India and to identify strategies for mitigating governance-related risks, particularly in the wake of high-profile corporate frauds that have underscored governance failures. Earlier studies were made immediately after the introduction of the New Companies Act and there are no further studies made after so many modifications have been made in the CG regulations in India.

The remaining portion of the work is systematized into distinct sections. The second section focuses on the literature review, which encompasses the definitions, and perspectives of corporate governance from various theories, and the historical backdrop and evolution of corporate governance since independence. The method is explained in the 3rd section. The 4th and 5th sections elucidate the role of corporate governance under the Indian constitution and regulatory framework. The sixth section shows the comparison with other countries. The seventh section of the document focuses on the different scandals that have occurred in India, while the eighth section addresses potential suggestions for change. The ninth segment elucidates the novel technologies and their influence on CG, prior to the conclusion in the tenth section. The limitations are detailed in the eleventh section.

2. Literature Review

2.1. Corporate Governance

Corporate governance is defined by different organizations and researchers have also given their own definitions. A few of them are reviewed.

Cadbury Committee: The committee's definition of CG is "*the system by which companies are directed and controlled*." This is the most succinct description of CG.

Organization for Economic Cooperation and Development (OECD): The OECD standards define CG as follows:
"Corporate Governance is affected by the relationships among participants in the governance system. Controlling shareholders, which may be individuals, family holdings, bloc alliances, or other corporations, acting through a holding corporation or cross-shareholdings, can significantly influence corporate behavior. (...) Corporate Governance is only part of the larger economic context in which firms operate, which includes, for example, macroeconomic policies and the degree of competition in product and factor markets. The Corporate Governance framework also depends on the legal, regulatory, and institutional environment. In addition, factors such as business ethics and corporate awareness of the environmental and societal interests of the communities in which it operates can also have an impact on the reputation and long-term success of a corporation."

SEBI: SEBI defines "*Corporate governance as the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct, and about making a distinction between personal and corporate funds in the management of a company." (SEBI).*

CII defines *"Corporate governance deals with laws, procedures, practices and implicit rules that determine a company's ability to take managerial decisions vis-à vis its claimants—in particular, its shareholders, creditors, customers, the State, and employees." (CII 1998)*

The definitions provided above show that the "Cadbury Report" and "OECD Principles of Corporate Governance" describe CG by emphasizing the fundamental principles that organizations should follow to ensure effective governance. The SEBI Committee on CG Report emphasizes the management's responsibilities and their ability to ensure that the principles protecting shareholders' interests are followed and CII extends to other stakeholders.

2.2. Blockchain Technology

A blockchain system is a networked database that utilizes decentralized consensus mechanisms and cryptographic algorithms to facilitate secure transactions of valuable assets, eliminating the need for a central authority. This system utilizes an endless series of interconnected blocks to store transactional data. The system utilizes a decentralized time stamping technique that permits users to vote on database modifications and agree on the sequence of transactions (Hawlitschek, et al, 2018).

Principal-agent conflict is a problem that is generally addressed by two groups of applications in the blockchain literature: smart contracts and a reliable distributed ledger equipped with a transaction platform.

Smart contracts are contractual agreements that are encoded in computer code and executed without the involvement of intermediaries (Swan, 2015; Marcini et al., 2018). Smart contracts can increase shareholder transparency and reduce the power of management. (Hsieh et al., 2017).

The reliable distributed ledger is a blockchain that serves as a public record, enabling the public to view transactions without the need for a central authority. Users have the ability to download individual blockchains, which store historical transactions. To handle the register, it is crucial to make significant modifications to the global history, which in turn requires a substantial amount of computational resources (Magnier et al., 2018). This tool facilitates the creation of fundamental cryptocurrencies, such as Bitcoin. This program has a fundamental impact on corporate governance by providing full transparency in recording transactions.

The two aforementioned blockchain applications have distinct impacts on the principal-agent conflict, as one would anticipate. Although utilizing a blockchain solely as a ledger is practical and could have a positive effect in the coming future, the implementation of smart contracts holds even more promise but is expected to require more time for development (Ivaninskiy, I. 2019).

2.3. Artificial Intelligence

The goal of Artificial Intelligence (AI) research is to build machines that think like humans. It possesses the ability to perform tasks that are regarded as smart. AI technology has the ability to analyze and manipulate vast quantities of data in ways that are distinct from those of humans. The objective of AI is to possess the capability to do tasks such as pattern recognition, decision-making, and human-like judgment. In order to accomplish this, it is necessary to integrate a substantial amount of data into them.

A subfield of AI called machine learning (ML) aims to teach computers how to learn and carry out tasks similarly to how humans do.

AI has been variously defined. According to a well-known definition, AI refers to an artificial agent that has the ability to accomplish objectives in various types of settings (Legg et al 2007). Nevertheless, existing AI systems exhibit satisfactory performance only in some contexts, particularly in less complex environments where there is an abundance of data (Marcus 2019).

2.4. Theoretical framework of Corporate Governance

There are numerous varied and firmly proven theories linked to CG. They have varying approaches to CG. However, they each try to analyze the same issues but from different perspectives.

Table 1. Corporate Governance Theories.

Theory	Corporate Governance Focus	Implications
Agency theory emphasizes the dynamic relationship between principals (shareholders) and agents (business executives) through a contract. Conflicts of interest may arise between managers and shareholders owing to managers' potentially prioritizing personal objectives over the shareholders' best interests. Conflicts may also arise due to different attitudes towards risk.	Corporate governance techniques including performance-based compensation, board monitoring, and external audits are utilized to align managers' interests with shareholders. These procedures help reduce conflicts.	Monitoring expenses and costs associated with enforcing discipline on the agent to avoid misuse leads to agency costs (Shleifer & Vishny, 1997).
Stewardship theory offers a substitute model in contrast to agency theory. Management involves managers acting as good stewards who will work in the best	Under this theory, the role of CG is to provide support and empowerment to managers, rather than to monitor and control	Fulop (2011) proposes that a board of directors should include corporate interns since they are more capable of handling

interest of the owners (Donaldson & Davis 1991). Stewardship theory posits that managers play a vital role in the development of the organization by safeguarding and enhancing shareholder wealth through firm performance.	them. It emphasizes the importance of trust and the alignment of interests between shareholders and managers.	everyday company issues and reacting quickly. Solomon (2007) asserts that external directors are limited to overseeing short-term business performance in contrast to internal directors.
Stakeholder theory is an outgrowth of the agency theory. The concept of corporate responsibility in relation to various stakeholder categories is central to Freeman's (1984) conceptualization of stakeholder theory. The shareholders' paradigm, originally established by Milton Friedman (1970) that the principal aim of a company should be to optimize financial returns for its shareholders, has been substantially altered by Stakeholder Theory. The term 'stakeholders' is referred to all entities, including individuals, groups, and organizations, that possess the ability to exert influence over the operation of the organization or are impacted by its operations.	It is the liability of corporate governance mechanisms to make sure that all stakeholders' interests are balanced and considered during the decision-making process. This may encompass initiatives pertaining to corporate social responsibility, stakeholder engagement, and ethical business conduct.	The stakeholders consist of the proprietors, Business associates, shareholders, investors, customers, and suppliers; communities; adversaries, governmental bodies, local authorities, non-governmental organizations; pressure groups, as well as the media. Each of these components is, in some sense, interdependent and influences the functioning of a given organization.
Resource Dependence Theory The influence of external resources and the environment on CG is the focus of this theory. The premise of resource dependence theory is that there must be environmental interdependencies between the external resources and the organization. According to this viewpoint, directors facilitate the firm's interaction with external factors by choosing the necessary resources for its survival and expansion (Pfeffer and Salancik, 1978). Frequently, these resources originate from stakeholders.	The theory emphasizes the significance of cultivating connections with pivotal stakeholders and capitalizing on the composition of the board in order to obtain essential information, resources, and support. Strategic decisions and governance practices may be impacted as a result.	This idea supports the appointment of directors to several boards as a result of the variety of networking and information-gathering opportunities they provide.
Transaction Cost Theory The concerns of transaction cost theory pertain to the expenses that are linked to economic transactions. It suggests that the organization's governance procedures and organizational structure may be impacted by these expenses.	According to the theory, the rationale behind the adoption of corporate governance structures is to reduce transaction costs that are linked to contracting, monitoring, and governance. This includes the use of contracts to regulate relationships and the determination of whether to centralize or decentralize decision-making.	The objective, in accordance with this theory, is to reduce the transaction and bureaucratic costs of the environment. A company can only achieve growth by carrying out its operations with less expensive resources as opposed to investing in expensive resources that would lead to the failure of operations and obligations.
Political theory of corporate governance examines the impact that power dynamics and political forces have on an organization. It investigates the influence of politics and authority on corporate governance and decision-making.	Assemblies of governance mechanisms are regarded as instruments for achieving a balance of power among the board of directors, executives, and shareholders, among other groups within the corporation. Furthermore, the influence of external political and regulatory environments on governance practices is taken into account.	Extensive research has been undertaken by numerous authors in this regard (Roe, 1994; Thomsen (2008) and demonstrated that the policies implemented by the administrations of nations have become increasingly significant in elucidating the evolution of corporate administration of national systems and are also intimately associated with sociological issues that are unique to that nation, such as its religion or culture.

Each of these theories presents an alternative perspective on corporate governance, shedding light on the effective governance of corporations and the means by which the interests of diverse stakeholders can be safeguarded and balanced. With the purpose of ensuring effective CG, it is preferable to employ a combination of established theories of CG as opposed to relying solely on one theory. (Yousoff et al., 2012;)

2.5 Previous Studies

According to Wu (2021), blockchain technology can address information asymmetry, foster trust, enhance corporate transparency, lower agency costs, as well as enhance CG through a 'technical rational' approach. Lou (2021) suggested that blockchain technology might fundamentally transform corporate governance. With a decentralized organization, the issue of separation of powers can be fully resolved. To improve executive compensation policies and procedures, as well as their enforcement, in order to make directors more accountable for their activities. David Yermack (2017) said that blockchain is a novel use of encryption and information technology to address the longstanding issue of financial records, potentially leading to significant transformations in CG. Wang (2019) argued that blockchain systems' distributed storage and automatic execution features could lead to more efficient functional expansion and perhaps replace traditional contracts and business organizations in governance processes.

AI in corporate management promotes transparent behavior among managers and enhances the stimulation of human goodwill (Gao and Liu, 2018). Zhao and Duan (2020) found that intelligent data mining, knowledge extraction, and the provision of substitute governance solutions and systems are made possible by the application of 4 AI technologies—ML, heuristic search, expert systems, and human-computer interaction—in internal governance. AI has significantly impacted the economy and industry, promoting innovation and improving corporate governance. A study analyzing Chinese A-share listed companies from 2011-2020 discovered that Applications of AI can considerably enhance governance levels. A higher level of AI application leads to higher governance levels. Artificial Intelligence (AI) technology enhances information symmetry, offering advantageous technical situations and decision assistance for better corporate governance. (Cui et al 2022).

2.6 Historical background and evolution of Corporate Governance in India

After independence and before liberalization : Upon gaining independence, India, despite its poor economy, had a factory sector contributing to ten percent of the national product, four operational stock exchanges, a strong equity culture among the wealthy urban population, and a banking system with advanced lending standards and recovery processes. The 1956 Companies Act and other legislation concerning joint-stock firms and safeguarding investors' interests were developed based on this foundation. However, the turning in the direction of socialism in the decades after independence led to corruption, nepotism, and inefficiency in the corporate sector.

The 3 all-India DFIs (Development Finance Institutions) were the primary sources of long-term loans for enterprises in the absence of a mature stock market. Government-owned mutual fund UTI held large shareholding in the companies they financed. It resembled bank bank-based German model and was expected to keep them in proper perspective. However, their nominated directors were mute spectators and acted as mere formalities supporting the then management, enabling business owners to maintain control with a little financial commitment. This resulted in an unethical, sordid corporate governance system and companies defaulted on their financial obligations. BIFR (Board for Industrial and Financial Reconstruction) to which it was referred under India's bankruptcy reorganization system driven by the 1985 Sick Industrial Companies Act , was utilized for safeguarding creditors' rights for a minimum of four years.

Financial disclosure standards in India have historically been better than in most Asian nations but have not reached the level of the USA and other advanced nations. Failure to comply with disclosure regulations and auditor's reports in accordance with the law results in small fines with few punitive consequences. Minority shareholders frequently experience inconsistencies in share transfers and registrations, while boards of directors have been mostly unsuccessful in overseeing management's conduct.

After liberalization : The Indian economy underwent significant reforms in 1991, moving towards liberalization, privatization, and globalization. This period marked the beginning of a shift in corporate governance, driven by the need to attract foreign investment and improve the competitiveness of Indian companies. Since liberalization, India has seen significant changes in corporate governance laws and regulations. The SEBI (Securities and Exchange Board of India) was established in the year 1992 to regulate as well as monitor stock trading, playing a crucial role in establishing minimum guidelines for corporate conduct. The 1992 Harshad Mehta stock market scam and instances of corporations giving preferential shares to promoters at a discount set off concerns regarding corporate governance. These concerns led to investigations into improving corporate governance in India.

Post liberalization era can be discussed in different phases for the introduction and reformation of CG in India. The first phase began in 1996, the second phase after the Satyam scam till 2013, and the third latest phase after the introduction of the Companies Act 2013.

First phase from 1996 to 2008 : This stage was referred to as the initial stage of India's CG, emphasizing the establishment of audit committees and ensuring that boards are more focused, independent, and influential in supervising management and leading shareholders, including institutional and foreign investors or investors involved in the management.

The CII Code for Desirable Corporate Governance (1998) : In 1996, CII initiated the 1st institutional initiative in the Indian industry to promote and develop a Corporate Governance code, addressing public concerns about investor interest, transparency, and international standards. A National Task Force, led by Chairman Rahul Bajaj, presented the draft guidelines in 1997 and the final draft came into force in April 1998.

Kumar Mangalam Birla Committee on Corporate Governance (1999): SEBI established a committee by appointing Mr Kumar Mangalam Birla as the chairman to improve corporate governance standards. The Committee suggested amendments to stock exchange listing agreements, drafted a code of corporate best practices, and suggested safeguards for insider information and trading. The Committee's suggestions were included into Clause 49 of stock exchange listing agreements. The Committee addressed insider trading concerns. Companies were required to disclose annual reports and comply with committee recommendations.

Study committee by DCA (2000): The DCA (Department of Company Affairs) of the GoI (Government of India) introduced numerous legislative revisions to The Companies Act 1956. In May 2000, a study committee was established to develop and implement the concept of CG in India.

Report of Advisory Group on Corporate Governance in Banks (2001): The Reserve Bank observed the directors of banks and financial institutions to review corporate governance and the supervisory role of boards. The aim was to assess compliance, audit committees, and transparency, and give ideas to enhance the efficiency of the board of directors in mitigating risks.

Naresh Chandra Committee on Corporate Audit and Governance (2002): The DCA, Government of India established the Naresh Chandra Committee to investigate different CG issues in response to the corporate scandals in the US. This committee was responsible for examining and recommending changes in various areas like the relationship between the statutory auditor and the company, the process for appointing auditors, setting audit fees, and imposing restrictions on non-audit fees. The safeguards ensured that the company's management received an accurate and unbiased statement of its financial issues. Several suggestions from the study were included in the Companies (Amendment) Bill 2003.

SEBI Report on Corporate Governance (2003) (Narayana Murthy Committee): SEBI formed a Committee headed by Mr N R Narayana Murty to assess corporate governance performance and investigate how companies should handle market rumors and sensitive information to improve market transparency and integrity. Also to examine the responsibilities of independent directors, related parties, risk management, directorship, and director compensation in relation to governance standards, codes of conduct, and financial disclosures.

Dr. J.J.Irani Report (2004/05)*:* The committee's proposals focused on revising the Companies Act of 1956 to make it more concise, eliminating unnecessary sections, and making it easier to read by rephrasing the legal provisions. This allowed for increased flexibility in creating rules to promptly address changing company models and safeguard the interests of shareholders and investors.

Amendments to Clause 49- Murty Committee*:* In 2004, SEBI made several amendments to Clause 49 based on the suggestions of the Murthy Committee. The introduction of these changes was delayed until January 1, 2006, owing to unpreparedness and industry resistance to extensive reforms. The Murthy report directly caused multiple alterations in clause 49. The governance rules for Indian corporations have undergone a significant transition, particularly in relation to corporate boards, audit committees, shareholder transparency, and CEO certification of internal

Second Phase of Corporate Governance Reforms after the Satyam Scam: India's business organizations faced a major disruption in January 2009 due to discoveries of board failure and massive scam in Satyam's financials. The Satyam controversy prompted the CII, NASSCOM, SEBI, and Indian government to reassess corporate governance, disclosure, and accountability measures.

Confederation of Indian Industry (CII): CII promptly began investigating the CG issues stemming from the Satyam incident. In 2009, a CII task group was established to propose proposals for corporate governance reform (Naresh Chandra 2009). The CII highlighted the distinctive nature of the Satyam crisis in its study, saying that it is an isolated incidence and that the bulk of corporate India operates in a well-managed, well-regulated, and lawful manner.

National Association of Software and Services Companies (NASSCOM): In addition to the CII, the chamber of commerce representing IT BPO industries in India, in collaboration with the NASSCOM, established a CG and ethics committee. This committee was led by N.R. Narayana Murthy, a co-founder of Infosys and a prominent figure in Indian CG reforms. The committee released its recommendations in 2010. The committee primarily concentrated on the whistleblower policy as well as the audit committee.

Securities and Exchange Board of India: A discussion paper titled "Appointing the CFO (Chief Financial Officer) by the audit committee, rotating audit partners every five years, voluntary adoption of IFRS (International Financial Reporting Standards), half-yearly interim disclosure of balance sheets, and mandatory submission of multiple financial statements within the specified time frame as per the Listing Agreement" was released by the SEBI Committee on Disclosure and Accounting Standards in September 2009.

Ministry of Corporate Affairs (MCA): In late 2009, the MCA issued a series of voluntary guidelines on CG. The optional recommendations cover key topics like the independence of the board of directors, the roles of the board, the audit committee, secretarial audits, auditors, as well as methods to promote and safeguard whistleblowers. Other significant necessities are as follows:
a. Sending an official appointment letter to directors.
b. Division of the roles of CEO and Chairman.
c. Establishment of a nominating committee to choose directors.
d. Imposing a restriction on the maximum number of companies an individual can serve as a director.
e. Tenure and compensation of the directors.
f. Director training.
g. Evaluating the performance of directors.

Third Phase of Corporate Governance Reforms**:** The Companies Act of 2013 was passed on August 29, 2013, replacing the Companies Act of 1956. The Ministry of Corporate Affairs has also announced the Companies Rules 2014 on Management and Administration, Appointment and Qualification of Directors, Meetings of Board of Directors, and its powers and Accounts on 31 March 2014. The Companies Act of 2013, along with the Companies Rules, establishes a strong framework for CG.
This phase is characterized by continuous refinement and updating of corporate governance norms to address emerging challenges, such as corporate frauds, governance failures, and the increasing importance of environmental, social, and governance (ESG) factors. The rules under the Companies Act, SEBI guidelines, Listing obligations, and disclosure requirements of LODR (2015) are continuously being reviewed and modified whenever required. The latest is the seventh amendment made on 21st December 2023.
The Kotak Committee Report (2017) recommended several changes to improve governance standards, including increasing the minimum number of board meetings, enhancing the role of independent directors, and improving transparency and disclosure requirements.
The evolution of CG in India reflects a dynamic and ongoing process of reform and adaptation, aiming to balance the interests of numerous stakeholders, ensure corporate accountability, and foster a climate of trust and confidence among investors. As the business environment and societal expectations continue to evolve, corporate governance practices in India are likely to undergo further refinement.

3. Methodology

The research has been conducted using the Doctrinal (Non-Empirical) Method of Research. To achieve the goals of this conceptual/theoretical research paper, secondary data is gathered by examining a variety of sources such as research papers, articles, books, newspapers, and reports from committees on CG established by the Indian government and SEBI. A comprehensive theoretical framework has been established to comprehend the current condition of CG in India and to deliberate on the progression of CG since the country gained independence.

4. Indian Constitution – Corporate Governance

The Constitution of India, being the highest legal authority, does not explicitly cover corporate governance in the same way that corporate rules and regulations do. The document essentially establishes the structure for political administration, the basic entitlements of individuals, guidelines for state policies, and the obligations of the state towards its citizens. Various principles enshrined in the Constitution of India have an indirect impact on corporate governance practices in the country. These principles primarily aim to foster ethical business practices, establish accountability, and safeguard the interests of stakeholders. The following concepts and components of the Constitution can be connected to the culture of corporate governance:

4.1 Fundamental rights

The Right to Equality, as stated in Article 14, is a fundamental right. This might be associated with the CG philosophy of equitable treatment of all shareholders and stakeholders. Corporations are obligated to establish equitable procedures in their interactions with shareholders, employees, and other stakeholders.

4.2 The Directive Principles of State Policy

Article 39(b) and (c): These clauses pertain to the allocation of material resources within the society to promote the common good and prevent the accumulation of wealth and means of production. These principles align with the concepts of CSR (Corporate Social Responsibility) and fair economic growth.
Article 43A promotes the involvement of employees in the administration of industries, in line with the corporate governance idea of engaging stakeholders and making decisions in an inclusive manner.

4.3 Fundamental Duties

Article 51A(g) of the Indian constitution mandates that every single person has the responsibility to save as well as improve the natural environment, which includes wildlife, forests, lakes, and rivers, and also to demonstrate empathy for living beings. This responsibility is in accordance with the concepts of environmental stewardship and sustainability in CG.

Although the Constitution does not officially address corporate governance, the values of justice, equality, and the directive principles, which are designed to promote economic democracy and social fairness, establish a fundamental ethos that indirectly impacts company governance. These principles promote businesses to act not only with the goal of maximizing profit but also with a feeling of accountability towards their stakeholders and the wider community.

Moreover, the legal and regulatory structures governing CG in India, including the Companies Act, 2013, and the guidelines issued by the SEBI, are fundamentally based on the constitutional mandate. Their purpose is to augment transparency, accountability, and fairness in corporate activities, aligning with the principles of the Constitution.

5. Indian Regulatory framework

Each government must ensure security and safety for all stakeholders by enhancing corporate governance and establishing a robust legislative framework. Below are the several actions implemented by the Indian government.

5.1 The Companies Act of 2013

The Companies Act of 2013 in India aims to improve corporate governance by enhancing accountability, disclosure, as well as protection for employees and small investors. It encourages social welfare activities and aligns with global best practices. The Act addresses high-profile CG failure scams, such as the stock market scam and the Satyam scam, and introduces progressive processes for stakeholders, directors, and management. Investment advisory services and proxy firms deliver information on regulations aimed at improving corporate governance in India. Top management, including the board of directors, is responsible for governance, ensuring strict management practices and legal compliance.

The Companies Act, 2013 aims to improve CG by excluding nominee directors from the description of an independent director, requiring at least 1 woman director on the board, implementing a whistleblower mechanism, expanding the role of the Audit Committee, prohibiting stock options for independent directors, establishing a separate meeting for independent directors, and enhancing disclosure of remuneration policies. It also requires the approval of related party transactions and the formation of a Nomination and Remuneration Committee, with independent chairmen. This Act aims to promote effective corporate governance practices. The act also mandates spending of 2% of previous three-year average profits under Corporate Social Responsibility for specified companies.

A class action lawsuit allows individuals or businesses to collectively file a lawsuit for similar damages. The Companies Act 2013 provides two sections for securities class action (section 37) and specialized class action by members and depositors (section 245). Suits can be filed against the company, directors, auditors, and experts for improper or misleading statements.

An example of a class action suit in India is the one filed against Nestle India in 2015, alleging that the company's Maggi noodles

5.2 Securities Exchange Board of India

SEBI is a regulating body established by the Indian government to oversee the capital market through the SEBI Act 1992. SEBI is responsible for regulating the Indian capital market, issuing guidelines, and preventing insider trading. It also regulates financial intermediaries, such as stockbrokers, share transfer agents, and sub-brokers, and provides detailed education to investors.

SEBI also audits stock market performance, ensuring transparency in trading activities and protecting investor interests. It closely monitors mergers, acquisitions, and takeovers to prevent fraud and maintain a monopoly in the capital market.

To evaluate portfolio management activities, SEBI periodically evaluates reports from registered portfolio managers in India. By sending letters to them, SEBI helps in evaluating and regulating capital market performance in India. Overall, SEBI plays an essential role in the Indian capital market.

5.3 Securities and Exchange Board of India (SEBI) Listing Obligations and Disclosure Regulations (LODR) 2015

The SEBI (LODR) Regulations, 2015, is a crucial regulation aimed at ensuring transparency and fair disclosures by all listed entities in India. Non-compliance can lead to financial penalties, market impact, suspension of trading, legal action, debarment, and public disclosure. The penalties depend on the severity of the violation, and non-compliance can negatively impact a company's reputation, stock price, and investor confidence. It is essential for listed entities to adhere to these regulations to maintain trust and transparency.

5.4 National Financial Reporting Authority (NFRA)

It is a body formed under the Companies Act of 2013 to make recommendations in accounting and auditing standards and supervise the quality of service provided by these professions. It has the power to investigate professional misconduct by chartered accountants or CA firms, impose penalties, and debar them for up to 10 years. The NFRA's functioning is expected to improve domestic and foreign investments, and economic growth, and support globalization through compliance with international practices. The ICAI (Institute of Chartered Accountants of India) will continue its advisory role and quality audit with public companies and listed companies. The NFRA's benefits include India's eligibility for IFIAR (International Forum for Independent Audit Regulators), enhancing the confidence of foreign and domestic investors, economic growth, and further development of the auditing profession.

5.5 Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI)

According to Section 118 (10) of the Companies Act 2013, each company must adhere to secretarial standards set by the ICSI and approved by the central government for general and board meetings. ICSI is an autonomous institution that establishes secretarial standards. ICSI has released a secretarial standard for the board of directors' meetings and another one concerning general meetings. The secretarial standards became effective on July 1, 2015. Recently revised standards have been released. The revisions will take effect on April 1, 2024.

5.6 The Securities Contracts Regulation Act (SCRA) 1956

The SCRA 1956 is a crucial Indian legislation aimed at regulating the securities market. Its primary objective is to prevent malpractices and protect investor interests, ensuring healthy growth. The SCRA regulates securities contracts, defines securities, establishes a legal framework for stock exchanges, licenses brokers and sub-brokers, and prevents manipulative and fraudulent practices. Non-compliance renders contracts void, and the Act ensures a regulated environment. The SCRA aims to foster trust, integrity, and investor confidence in India's securities market.

More than 39000 compliances were reduced for ease of doing business. The government has also decriminalized minor economic offenses under the Companies Act, 2013. (Economic Survey 2023). India was placed 63rd in the ease of doing business by the World Bank in 2022, an improvement from its 142nd position in 2014, out of 190 nations.

The most recent study in the annual series assessing the rule of law on the basis of the experiences and opinions of the public, as well as national legal practitioners and experts in the world, is the WJP (World Justice Project) Rule of Law Index® 2023. It presents a representation of the rule of law in 142 nations and regions, with the rankings determined by eight distinct criteria. India’s global rank is 79/142. Under the factor ‘Regulatory enforcement’ the rank is 83/142.

5.7 Protecting the minority investors

The World Bank assessed the effectiveness of minority shareholder protections in preventing directors from misusing business assets for personal benefit. It also examined shareholder rights, governance safeguards, and transparency standards that help mitigate the danger of abuse. The latest data collection for the research concluded in May 2019 was given on their website and is reproduced in Table 2.

Table 2. India Score in various indices by World Bank.

Index	India Score
Extent of disclosure index	8/10
Extent of Director Liability Index	7/10
Ease of shareholder suits index	7/10
Extent of shareholder rights index	6/6
Extent of ownership and control index	6/7
Extent of the corporate transparency index	6/7

Source: https://archive.doingbusiness.org/en/data/exploretopics/protecting-minority-investors accessed on” 5th March 2024

The country's legal system offers excellent investor protection but faces challenges in enforcing these laws due to increasing corruption and overburdened judicial systems (Chakrabarti 2005).

5.8 Technology adopted in the regulatory framework currently

Regulatory bodies in India, like SEBI and the MCA, actively encourage the adoption of technology in CG.

- The Companies Act of 2013 in India allows directors to take part in board meetings through video conferencing or audiovisual means, removing restrictions on the approval of annual financial statements, board reports, and prospectus.
- Companies can also convene Annual General Meetings and Extraordinary General Meetings through these methods.
- SEBI regulation no 44 requires listed companies to provide remote electronic voting for shareholder resolutions.
- The adoption of virtual general shareholder meetings encourages shareholder involvement and may become a permanent feature of corporate governance.
- Companies must send full annual reports to shareholders registered with their email IDs (LODR 36) and use electronic payment methods approved by the Reserve Bank of India. (LODR 12)
- MCA's MCA21 system is an e-Governance initiative that enables electronic filings of company documents, compliance reports, etc., enhancing transparency and ease of doing business

While significant progress has been made, the full potential of these technologies in enhancing corporate governance is yet to be realized. Continuous regulatory encouragement, combined with investments in technology and skills development, will be key to further adoption and innovation in corporate governance practices

6. Comparison with other countries

An additional area of CG research is international comparisons. (Howson, 2010) Despite their qualitative nature, some of these studies emphasize the significance of structurally distinct CG models with regard to the national markets, governments, and cultural norms of those nations

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Table 3. CG features comparison among different countries.

CG Feature	India	China	United Kingdom (UK)	USA
Legal Framework	Companies Act, SEBI guidelines	Company Law, Securities Law, Guidelines by CSRC	Companies Act, UK Corporate Governance Code	Sarbanes-Oxley Act, Dodd-Frank Act, state laws
Regulatory Bodies	Securities and Exchange Board of India (SEBI)	China Securities Regulatory Commission (CSRC)	Financial Reporting Council (FRC)	Securities and Exchange Commission (SEC)
Ownership structures	Mix of family-owned, state-owned, and public companies Liberalized FDI policy with sector-specific caps	Predominantly state-owned and private companies Restricted Foreign ownership	Mostly public companies, with some family influence. Relatively open to foreign ownership	Predominantly public companies, with some private. Venture capital and private equity is high
Board Composition	Dual structure (board of directors and mandatory audit committee)	Dual structure (board of directors and supervisory board)	Unitary board structure with separation of roles	Unitary board, with a separation of CEO and chairman, recommended
Shareholder rights	Strong minority rights, mandatory voting on certain issues	Shareholder rights evolving, minority rights issues	Strong protection of shareholder rights	Strong protection of shareholder rights, proxy voting

India's corporate governance standards, guided by SEBI Regulations, do not strictly follow a 'comply or explain' model, but some aspects, like CSR spending, do. China's governance practices are more prescriptive, with strict rules set by the China Securities Regulatory Commission. The UK's Corporate Governance Code encourages flexibility, while the USA has a rule-based system based on federal securities laws. Stock exchanges like NYSE and Nasdaq may have their own listing requirements.

In summary, the "comply or explain" approach is distinctive to the UK and represents a balance between mandatory compliance and flexible adaptation of corporate governance practices. Other countries, including India, China, and the USA, tend to have more prescriptive regulatory frameworks with less emphasis on this principle.

Chakrabarti, Megginson, and Yadav's study (2008) on corporate governance in India reveals that the country's legal system offers investor protection, but enforcement is slow and courts are overburdened. Small and medium-sized enterprises are concentrated, with family and business groups dominating the market. Despite these challenges, corporate governance in India does not compare negatively with major economies globally. The researcher feels that this is still relevant as of date.

7. Corporate Governance failures

India has witnessed several high-profile corporate frauds and scandals over the last three decades, which have had significant implications for its business landscape, regulatory environment, and governance practices. These incidents have led to increased regulatory scrutiny and reforms aimed at strengthening corporate governance and protecting investor interests. A few important incidents are given in Table 1 with brief details of the incident, corporate governance failures, and the remedial consequences that have been implemented.

Table 4. CG failures in India and remedial measures taken.

Incident details	Corporate governance failure	Consequent remedial measures
Harshad Mehta scam (1992)		
The scam, orchestrated by stockbroker Harshad Mehta, involved manipulation of the stock market using fraudulently obtained funds from the banking system. It exposed vulnerabilities in the Indian banking and stock market systems.	Weaknesses or failures in internal control mechanisms, and non-reconciliation of important accounts allow fraudulent transactions to occur without detection. Vulnerabilities in the regulatory and banking systems.	The scam led to major reforms in the Indian financial sector, including the introduction of the SEBI Act of 1992 to regulate securities markets.
Ketan Parekh Scam (2001)		
Similar to the Harshad Mehta scam but on a smaller scale, Ketan Parekh used bank funds to artificially inflate stock prices of select companies, known as the 'K-10' stocks.	Failure of internal control mechanisms and vulnerabilities in the regulatory and banking systems.	The scam prompted reforms in market regulations, including stricter audit norms and better corporate governance practices.
Satyam Computer Services Ltd Scam (2009)		

Termed 'India's Enron,' the founder of Satyam Computer Services, Ramalinga Raju, confessed to manipulating the company's accounts and inflating profits over several years.	Manipulation of financial statements and nondisclosure of critical financial information. Auditors either failed to detect financial irregularities or were complicit in concealing them.	This scandal led to significant changes in corporate governance and auditing standards in India, including amendments to the Companies Act and the strengthening of the SEBI guidelines.
Saradha Group Financial Scandal (2013)		
A major Ponzi scheme run by the Saradha Group collapsed, defrauding thousands of investors who were promised high returns on their investments in the company's schemes.	Conflicts of interest, where decision-makers benefit personally at the expense of the company or its stakeholders. Diversion of funds to benefit certain individuals or entities connected to the group.	The scandal highlighted the need for stricter regulation of non-banking financial companies (NBFCs) and collective investment schemes.
Punjab National Bank Fraud (2018)		
One of India's largest public sector banks, PNB, was defrauded of approximately $1.8 billion. The fraud was perpetrated by jewelers Nirav Modi and Mehul Choksi, who used fraudulent letters of undertaking to attain credit from overseas branches of Indian banks.	Weaknesses or failures in internal control mechanisms allow fraudulent transactions to occur without detection.	The scam led to a renewed focus on banking sector reforms, including tighter controls on lending and improved monitoring of financial transactions.
ICICI Bank Fraud (2018)		
The core of the allegations was that a quid pro quo arrangement was made to benefit a company owned by the husband of the then ICICI MD financially in exchange for the big loan granted to an industrial group.	Conflict of interest. Lack of transparency. Inadequate board oversight. Failure of internal controls. Audit failures.	
IL&FS Financial Crisis (2018)		
Infrastructure Leasing & Financial Services Limited (IL&FS), a major infrastructure financing and construction company, defaulted on several debt obligations, revealing severe financial mismanagement and triggering a liquidity crisis in the Indian financial markets.	The board of directors failed to exercise adequate oversight over the company's management and operations. This lack of effective oversight allowed fraudulent activities to go undetected or unchallenged. Inadequate risk management practices and the failure to identify or mitigate financial risks.	The crisis prompted the government to overhaul the governance structure of IL&FS and led to increased scrutiny of non-banking financial companies (NBFCs) by regulators.
Dewan Housing Finance Corporation Ltd Fraud (2019)		
DHFL, a leading housing finance company, was accused of financial irregularities and fraud involving billions of rupees, including siphoning off funds and creating shell companies for illegal transactions.		The scandal further stressed the NBFC sector and led to calls for stricter oversight and governance reforms for financial institutions.

These scandals often resulted in significant losses for shareholders, particularly highlighting the vulnerability of minority shareholders who may not have the power to influence governance practices or prevent fraud. Although not directly related to financial fraud, the neglect of CSR principles and the pursuit of profit at any cost can also be seen as a governance failure, reflecting poorly on the company's commitment to broader societal and stakeholder responsibilities. These scandals underscore the critical importance of continuous review of robust corporate governance practices – including- conflict of interest policies, board oversight, transparency, and internal controls, to prevent misconduct and maintain stakeholder trust.

8. Recommendations for potential improvement in corporate governance

In view of the corporate scandals mentioned, there are several potential improvements in CG that could be suggested to enhance transparency, accountability, and risk management. However, the law has already been taken care of under various regulations and hence strict implementation of the same is very essential. Further here are some general recommendations.

- Independent directors are essential in offering objective monitoring and challenging decisions regarding management.
- Conduct regular corporate governance audits to assess the effectiveness of governance practices. This can be done internally or through third-party assessments to identify areas for improvement.
- Encourage credit rating agencies to conduct thorough due diligence on companies, especially those in sensitive sectors, to provide more accurate assessments of creditworthiness.

- Strengthen regulatory oversight and enforcement mechanisms to ensure that companies adhere to governance standards. Prompt and effective regulatory intervention is essential to address governance lapses and protect the interests of stakeholders. Here leveraging new technology is very important for timely intervention.
- Improve communication with shareholders through regular and transparent reporting. This includes conducting regular shareholder meetings, addressing concerns, and seeking feedback on governance practices.
- Provide regular training programs for board members to keep them updated on the latest governance practices, regulatory changes, and industry standards.
- Statutory Auditors have to play their role very effectively

a. Maintain independence and objectivity
b. Adopt a skeptical mindset
c. Enhance fraud detection techniques
d. Stay informed about industry trends
e. Focus on high-risk areas
f. Communicate effectively with the audit committee and independently with the audit committee chairman.

The ICSA's (Institute of Chartered Secretaries and Administrators UK) 2009 report on boardroom behaviors reveals that the effectiveness of the company governance system is undermined by a failure to observe suitable boardroom behaviors. The report concludes that the nonappearance of guidance on these behaviors signifies a structural weakness in the present system. This report was submitted to Walker Review (The Walker Review 2009). BY observing the various scandals that happened in India it can be concluded that this is true even today and in India. All independent directors are to be given training in behavioral science for appropriate reactions in the board rooms.

9. Future Trends in Corporate Governance

New technology has the potential to improve corporate governance in India by promoting transparency, accountability, efficiency, and stakeholder engagement. Here are some ways technology can be utilized:

- ***Blockchain technology* –** the decentralized ledger- can create immutable records of transactions, shareholdings, and board decisions, enhancing trust among shareholders and stakeholders. Smart contracts automate contracts for compliance and reduce friction.
- ***AI and ML*** can analyze vast amounts of data predicts risks and aids strategic choices. This helps to ensure compliance with regulatory requirements and internal policies, enhancing compliance and risk management. Also aids the board with predictive analytics, risk assessment, etc.
- ***Digital platforms*** for board management facilitate secure communication, scheduling, document sharing, and decision-making processes.
- ***Big data analytics*** can provide insights into market trends, customer preferences, and competitive dynamics, permitting informed strategic decision-making and better risk management.
- ***Robotic Process Automation*** (RPA) can automate routine tasks in financial reporting, increasing operational efficiency.
- *Social media* and online platforms can enhance stakeholder engagement, while e-voting for shareholder meetings can increase shareholder participation and democracy.
- ***Cloud computing*** can host corporate governance and compliance software, reducing IT costs and improving governance systems' resilience.

Incorporating these technologies into corporate governance processes can greatly improve the governance environment in India. It is essential to tackle issues like digital literacy, and cybersecurity threats, and guarantee the ethical utilization of AI and big data. As data breaches haunt headlines, cybersecurity is non-negotiable. Boards must grasp cyber risks, invest in defenses, and foster a cyber-aware culture. Governance extends beyond boardrooms to firewalls. Technology may significantly enhance corporate governance standards in India with appropriate regulations and stakeholder education.

10. Conclusion

Indian corporate governance has a strong regulatory framework, including the Companies Act, of 2013, and SEBI regulations. It mandates independent directors on boards to ensure transparency and protect shareholders' interests. India was among the 1st countries to mandate Corporate Social Responsibility (CSR) spending for companies meeting specific criteria. Digitalization of compliance has improved transparency and made it easier for stakeholders to access information. However, the enforcement and effectiveness of corporate governance practices can be inconsistent due to resource constraints and regulatory oversight capacity. Related party transactions (RPTs) remain contentious, leading to conflicts of interest and governance lapses.

There is a lot of history of CG in India well before independence and after independence. Yet, history isn't all glory. The country witnessed corporate collapses, ethical breaches, and governance failures. The Satyam scandal**,** ILFS scam, ICICI bank scam, and other high-profile corporate frauds and scandals highlight the need for stronger oversight and ethical business practices. These debacles underscore the importance of robust checks, transparency, and fiduciary responsibility. Each failure etches lessons into the corporate memory, forcing it to fortify governance frameworks.

In the present, corporate governance isn't a static blueprint; it's a dynamic process. Boards deal with diverse interests: shareholders' returns, employee welfare, environmental impact, and societal well-being. The triple bottom line—profits, people, and the planet—guides decision-making. Independent directors, audit committees, and whistle-blower mechanisms play pivotal roles. Yet, challenges persist proxy battles, executive compensation, and the subtle balance between short-term gains and long-term sustainability.

Good corporate governance isn't just about ticking boxes; it's about fostering trust, resilience, and long-term prosperity. Within the complex framework of corporate governance, elements of robustness, responsibility, and flexibility can be discovered. The custodians of organizations have to construct a storyline that harmonizes ambition with ethics and innovation with accountability.

11. Limitations and future research

The major limitation here is that the research heavily depends on theoretical frameworks and lacks strong empirical evidence to substantiate the arguments. The analysis could be affected by the researchers' subjective interpretation and the sources of information utilized. Future research shall examine the impact of technology and digitalization on improving transparency and accountability in corporate governance.

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