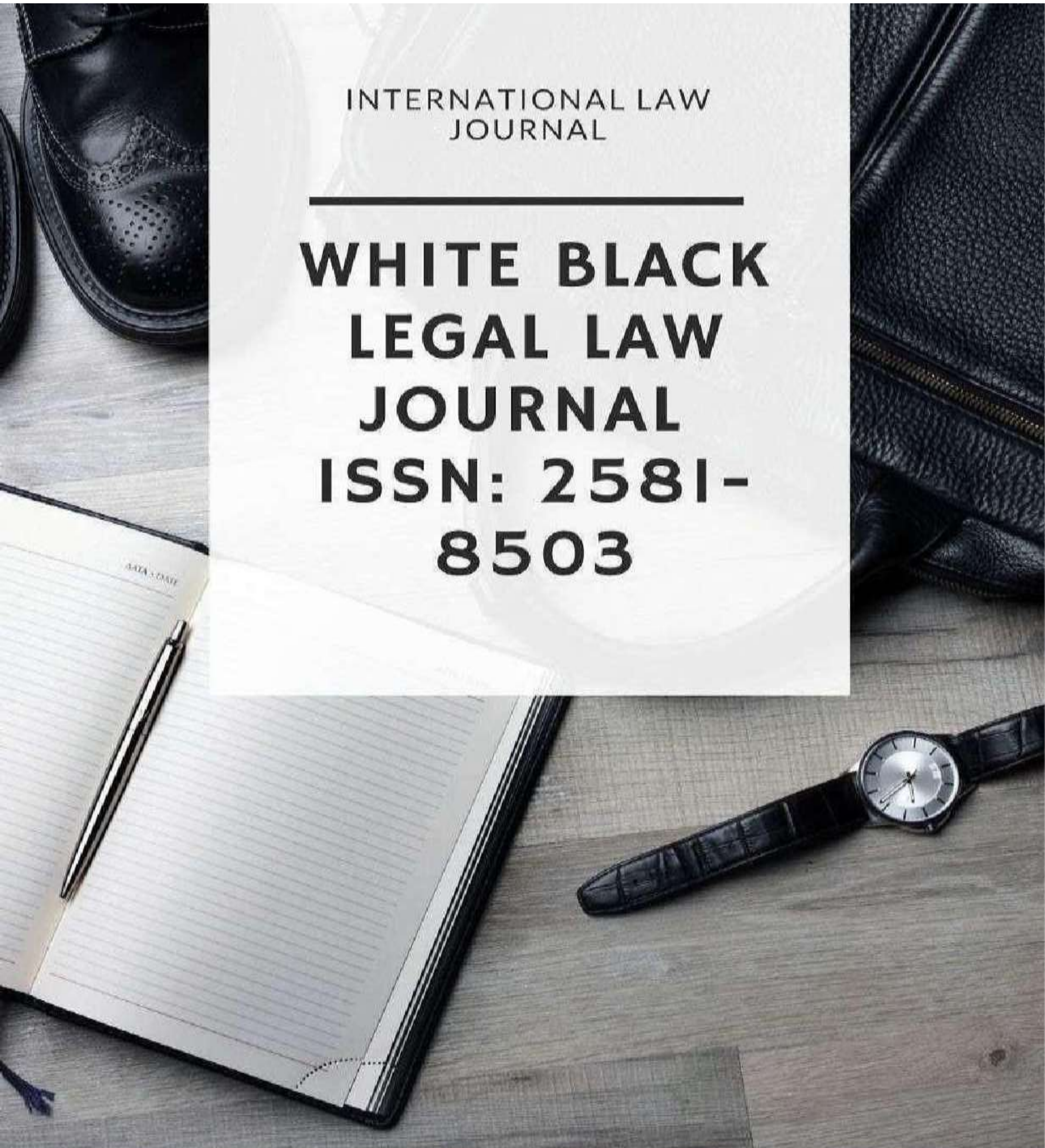

INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer

Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.

Senior Editor

Dr. Neha Mishra

Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi, Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.

Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in ‘Intercountry adoption laws from Uttranchal University, Dehradun’ and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM
Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.
More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

INDEPENDENT DIRECTORS' INFLUENCE ON CORPORATE GOVERNANCE IN INDIA

AUTHORED BY – PURVAYIA MISKEEN,

LLM Student, UILS Chandigarh University, Punjab

CO-AUTHOR - DR. NIRMALA DEVI,

Associate Professor, UILS Chandigarh University, Punjab

Abstract

The crucial role that independent directors play in influencing corporate governance procedures in the Indian business environment is examined in this article. The paper explores the legal frameworks, issues encountered by independent directors, and historical background against the backdrop of changing regulatory regimes and elevated demands for openness and accountability. It also looks into how these directors affect important areas of company governance including supervision, risk management, and decision-making procedures. The paper also explores the future course of independent directors in India, taking into account new developments, prospective legislative changes, and international viewpoints. Moreover, the research offers suggestions for bolstering the function of independent directors, stressing the necessity of better training and education, stronger reporting procedures, and higher independence standards. This paper adds to the current discussion on corporate governance in India by providing a thorough analysis of the research.

Keywords: *Independent Directors, Corporate Governance, Companies Act, 2013, SEBI Listing Regulations, Fiduciary Duties, Board Composition*

Introduction

The foundation of smooth operations and long-term corporate success is corporate governance, which is an essential framework that supports responsibility, ethics, and openness in organizational structures. The central function of independent directors is at the core of this governance structure; understanding the intricacies and importance of this phrase requires close examination. In the Indian business scene, independent directors stand out as influential individuals who can bring a neutral and objective viewpoint to the boardroom. Because they do not have the same managerial obligations as their executive counterparts, these directors are positioned as impartial overseers who are responsible for providing necessary checks and balances. Their vital function in protecting stakeholders' interests highlights their relevance in the business ecosystem. In contrast to executive directors who oversee daily operations, independent directors serve as stewards of equity, impartiality, and commitment to the fundamentals of sound governance. Independent directors have a fundamental duty that goes beyond just being in boardrooms; they are integral to the procedures used by corporations to make decisions. Independent directors play a crucial role in fostering a decision-making environment that is characterized by due diligence and sufficient representation of the interests of varied stakeholders.[1] This is achieved by utilizing their autonomy and impartiality. In addition, independent directors serve as a crucial conduit for trust and efficient communication between the business and its owners. Their independence from the management group enables them to offer an unbiased assessment of the business's performance, offering insightful opinions and suggestions to improve the company's overarching business plan.

Strong corporate governance plays a crucial role in the complex web of the Indian economy, which is characterized by a multitude of company entities and a constantly changing market environment. Corporate governance serves as a vital compass that directs firms along a path of long-term expansion, risk reduction, and investor confidence building. This importance is further highlighted by the fact that, in the wake of several financial crises and cases of corporate wrongdoing, the need for a governance structure that guarantees responsibility while simultaneously fostering trust has become more important than ever. Effective corporate governance no longer just meets legislative requirements in the modern world of intense scrutiny and rising demand for moral business conduct; it is now essential to the success of organizations. Its implications go beyond safeguarding the interests of investors; it serves as a stimulant for promoting the country's general economic well-being. Robust corporate governance becomes a pillar of sustainable economic growth by fostering an investment- and innovation-friendly company environment. In light of this, the function of independent directors becomes imperative in maintaining the core principles of openness, equity, and

---

[1] Anjani Tewary, "Reforming the Institution of Independent Directors in India", 4, *Indian Journal of Law and Legal Research*, 1 (2022-2023).

ethical corporate governance in the context of India. The duty of impartial advice and supervision is placed on independent directors, who are charged with upholding the highest standards of honesty. Their independence from the company's daily activities establishes them as unbiased arbiters, guaranteeing that the processes of decision-making are free from conflicts of interest.

Research Questions

- How much do independent directors affect decision-making and help ensure good corporate governance in Indian businesses? What particular procedures or policies strengthen their influence on board dynamics?
- What are the ways in which conflicts of interest and limited liability affect independent directors' capacity to carry out their fiduciary duties, and what policies or initiatives might be put in place to deal with these issues and enhance the position of independent directors in India's corporate governance system?

Research Objectives

- To evaluate how independent directors affect corporate governance procedures in Indian businesses by looking at how they function in risk management, decision-making, and board effectiveness as a whole.
- To look into the difficulties independent directors, have in carrying out their fiduciary responsibilities, with a particular emphasis on the dynamics of power on corporate boards in India, conflicts of interest, and accountability concerns.

Research Methodology

This paper's research methodology uses a doctrinal research technique, which is based mostly on a thorough evaluation and analysis of laws, relevant literature, and current legal and regulatory frameworks. The goal of the study is to clarify the function and significance of independent directors on corporate governance in India by methodically examining and synthesizing legislative rules and legislation.

Literature Review

Abhishek Bhardwaj, "Independent Directors vis-a-vis Corporate Governance", 2(1), *Jus Corpus Law Journal*, 114 (2021).

The position of independent directors in the global corporate governance movement has grown in importance. A fair balance between societal, economic, and individual interests has been established as a result of the increased presence of diverse perspectives in boardrooms. Their existence is also recognized as a disincentive to inequity, fraud, poor management, wasteful use of resources, and a lack of responsibility. However, there has been criticism of the performance of independent directors, with many blaming the existence of people who are afraid to deviate from the norms and a negative "boardroom culture" for the inability of these directors to realize their full potential. This article examines the idea of independent directors and how they relate to corporate governance in the context of Indian business culture. It also covers how this idea evolved via real-world experiences and covers topics such as their appointment, responsibilities, and duties. The objective is to identify shortcomings in the existing strategy and make suggestions that involve both structural improvements and a change in corporate India's perspective.

Kritika Gupta, "Role of Independent Director in Corporate Governance", 4, *Indian Journal of Law and Legal Research*, 1 (2022).

We note that a company is an assembly of several stakeholders working together to oversee its activities. These stakeholders include clients, staff members, investors, and governmental bodies. Between them, they provide a sizable sum of money to support the business' operations. These stakeholders are crucial to the business; thus, it is essential that it adhere to fairness and openness in its interactions with them. As a result, investors seeking to deploy their capital are drawn to a firm that has a strong board of directors and good corporate governance. In order to guarantee impartial decision-making and hold management responsible for organizational results, the board's independence is essential. In practice, having Independent Directors appears to be the best option in a number of different nations. The present status of the Indian corporate sector is examined in this article, with a particular emphasis on the function of independent directors in corporate governance.

Context of Corporate Governance in India

The evolution of corporate governance standards in India throughout time is indicative of a transformational journey characterized by an increasing recognition of the importance of accountability, transparency, and ethical conduct in business operations. At first, corporate governance received less attention than other aspects of business operations. But in the latter half of the 20th century, a slew of business scandals and financial irregularities led to a paradigm change in viewpoint.[2] The awareness that strong corporate governance procedures were required to protect the interests of different stakeholders, including as shareholders, employees, and the general public, marked a turning point. As a result, corporate governance methods have changed, placing more emphasis on values like responsibility, transparency, and equity. An important turning point in India's corporate governance history was the passage of the Companies Act of 2013.[3] A wide range of measures intended to improve accountability, corporate responsibility, and openness were adopted by this comprehensive law. The clear definition and acknowledgement of independent directors, together with a description of their duties and qualifications, was one of the important clauses. The Act required independent directors to be appointed to boards in order to guarantee fair and impartial decision-making.

Corporate governance norms have been significantly shaped by the SEBI, especially for listed corporations. Corporate governance disclosure obligations are outlined in the SEBI Listing Regulations, which are subject to periodic revisions. These rules specify how independent directors should behave, how boards should be put together, and how committees like the nominating and compensation committee and the audit committee should operate. Through regulatory actions, SEBI hopes to promote investor trust and market integrity by bringing company practices into compliance with worldwide norms.[4]

The complete structure of corporate governance in India is complemented by a number of other legislations, in addition to the Companies Act and the SEBI Listing legislation. Industry associations'

---

[2] Pranav Mittal, "The Role of Independent Directors in Corporate Governance", 4(2), *NUJS Law Review*, 285 (2011).

[3] Kritika Gupta, "Role of Independent Director in Corporate Governance", 4, *Indian Journal of Law and Legal Research*, 1 (2022).

[4] Gopal Ramasubramanian; Gajraj Singh, "Independent Directors, Corpo Rate Governance and Company Performance – India", 4, *Supremo Amicus* 168 (2018).

suggestions, regulatory agencies' guidance, and sector-specific laws are a few examples of these. Sector-specific governance measures are necessary, as demonstrated by the RBI's recommendations for corporate governance in banking companies.[5] These policies together represent a deliberate attempt on the part of Indian authorities to provide a flexible and strong framework that satisfies business needs while also adhering to international norms and societal expectations. The foundation of corporate governance in India is this complex network of laws that determines how companies behave and are held accountable.

Role and Responsibilities of Independent Directors

The legal and regulatory framework of India's corporate governance environment is closely linked to the function of independent directors. The cornerstone, which outlines the roles, authorities, and obligations of independent directors, is the Companies Act of 2013. Furthermore, by means of its Listing Regulations, the SEBI has imposed strict requirements, creating a strong regulatory framework for corporate governance. These rules place a strong emphasis on the necessity of having the ideal balance between executive and non-executive directors, with independent directors being essential to maintaining accountability, transparency, and equity in business decision-making.

Fiduciary obligations are owed by independent directors to the corporation and its stakeholders. These responsibilities include a high degree of commitment and accountability, necessitating that independent directors behave in the company's best interests. These responsibilities encompass more than just following rules and laws; they also include a duty to use reasonable caution and diligence, make wise judgments, and protect shareholders' long-term interests. In order to preserve a balance between the pursuit of profit and the moral principles that guide sustainable business operations, independent directors play a fiduciary role.[6]

A clear code of conduct is followed by independent directors, providing a structure for their professional conduct. The significance of honesty, openness, and moral behaviour in all business dealings is emphasized by this code. A set of guidelines for how independent directors should interact

---

[5] *Ibid.*

[6] Jeetendar Kumar, "Corporate Governance and Board of Directors", 2(5), *International Journal of Law Management & Humanities*, 100 (2019).

with other board members, shareholders, and other stakeholders is established by the code of conduct. Independent directors support a business culture that promotes accountability and integrity by adhering to the highest standards of ethics.

One essential component of efficient corporate governance is the independence of directors. The requirements for ascertaining the non-executive character of independent directors are established by independence standards, which are delineated in diverse regulatory structures. A review of the financial and non-financial ties that might jeopardize a director's independence is usually one of these requirements. The goal is to guarantee that independent directors make decisions free from undue influence, while maintaining their impartiality and autonomy. Strict adherence to the independence standards raises the board's stature and inspires trust in the company's governance procedures among stakeholders and shareholders.[7]

Challenges Faced by Independent Directors

Despite being essential to India's corporate governance structure, independent directors face a number of obstacles that might make it difficult for them to carry out their responsibilities effectively. Conflicts of interest, strict responsibility and accountability rules, complex board dynamics, and power dynamics are some of these difficulties.

- *Conflicts of Interest* - It's common for independent directors to have to negotiate a complicated web of possible conflicts of interest. These conflicts may result from a variety of things, including financial interests, commercial ties, or personal relationships. A careful and nuanced strategy is needed to balance the interests of the firm, its shareholders, and their personal or professional relationships. When taking into account the varied business environment in India, where interwoven ties might be deeply rooted, finding the proper balance becomes even more difficult.[8]

- *Limited Liability and Accountability* - The low liability and accountability that independent directors bear is a considerable difficulty. Although they play a crucial role in supervision and decision-making processes, they might not be as involved on a daily basis as executive directors.

---

[7] *Ibid.*
[8] Ashish Kumar Srivastava, "Independent Directors: Guarding the Guardians", 4(2), *Journal on Governance*, 12 (2021).

Due to their limited involvement, independent directors may find it difficult to completely understand the operational nuances that might result in corporate wrongdoing or to proactively address new concerns as they arise. For independent directors, finding a balance between offering strategic direction and guaranteeing responsibility is an ongoing challenge.

- *Board Dynamics and Power Dynamics* - Another set of difficulties for independent directors is the dynamics in the boardroom. It can be challenging to negotiate power relations among board members, especially when there is strong executive leadership involved. When opposing choices or questioning established standards, independent directors may encounter pushback, which might result in internal conflicts within the board. To successfully participate in the decision-making process and preserve the values of good corporate governance, independent directors must strike a harmonic balance between aggressiveness and collaboration.

Influence of Independent Directors on Corporate Governance

Within the corporate governance structure, independent directors play a vital and diverse role in providing an essential level of supervision and assistance for organizations. Their separation from day-to-day operations makes it possible to assess the business's performance objectively, guaranteeing that it is in line with both legal requirements and strategic goals. Transparency is enhanced by independent directors' regular evaluations and assessments, which promote an integrity and accountability-focused culture.[9]

The influence of independent directors is most noticeable during boardroom decision-making procedures. Their varied experiences and backgrounds provide as a counterbalance to groupthink, adding insightful viewpoints to conversations and encouraging a careful examination of suggestions. Independent directors aid in well-informed and comprehensive decision-making by raising pertinent issues and casting doubt on presumptions. In addition to making critical choices, they are essential in assessing the company's overall strategic direction and making sure it aligns with stakeholder interests and long-term viability.

[9] Manu Sharma, "Role of Independent Directors in Corporate Governance", 16, *Supremo Amicus,* 198 (2020).

Furthermore, independent directors have a greater effect on corporate governance since they frequently sit on important board committees including the audit, nominating, and compensation committees. Their active involvement in these committees include influencing financial reporting, board makeup, and executive remuneration rules. Their financial knowledge greatly improves the calibre and dependability of financial disclosures made by the audit committee. Independent directors enhance the overall efficacy of the governance system by participating in committees that develop and carry out governance policies.[10]

In charge of monitoring and reducing the risks the firm faces, independent directors play a crucial role in this regard. They assist in the discovery, appraisal, and management of risks that might have an influence on the performance of the company, whether by membership in risk management committees or specific risk monitoring duties. In addition to protecting the company's finances and reputation, this proactive approach guarantees a thorough and well-balanced approach to managing risks in the business environment. By adding an outsider's viewpoint to risk assessment and taking into account variables that insiders might miss, independent directors help the firm become more resilient to setbacks.

Recommendations for Enhancing Independent Directors' Role

In order to strengthen the effectiveness of independent directors, the current independence requirements need to be reviewed and strengthened. More stringent regulations may be implemented to guarantee that those nominated as independent directors continue to have a true degree of independence from the company's management and important stakeholders. This might entail a thorough examination of all monetary and interpersonal ties that could jeopardize independence. The integrity of the director's impartiality can be preserved by enforcing frequent assessments of independence, introducing clearer definitions, and strengthening enforcement measures.

Given the ever-changing and intricate nature of the corporate environment, independent directors must get ongoing education and training. This means creating educational programs that shed light on new developments in technology, emerging trends, and changing regulatory environments.

[10] *Ibid.*

Independent directors' skill set may be further enhanced by attending workshops and seminars on risk management, corporate social responsibility, and ethical decision-making. This will enable them to effectively traverse issues. It may be possible to investigate partnerships with academic institutions and business leaders to keep training programs current and strong.

Effective corporate governance requires transparency, and strengthening reporting and disclosure processes is essential. Ensuring the correct and timely disclosure of relevant information is a crucial responsibility of independent directors. A more thorough disclosure structure that explains the reasoning behind important choices and potential conflicts of interest is one of the recommendations that should be put into practice. Furthermore, utilizing technology to make sure stakeholders can be reached and to provide real-time reporting can help to strengthen confidence in the governance procedures. It is also possible to do routine audits of disclosure procedures to preserve and improve the reporting systems' credibility.

Conclusion

It is impossible to overestimate the crucial role independent directors play in creating and maintaining corporate governance norms in India. As defenders of accountability, ethics, and openness in business organizations, independent directors form the cornerstone of a strong governance structure. Stakeholder trust is fostered by their capacity to offer an objective viewpoint free from conflicts of interest. The concluding remarks about the function of independent directors highlight the necessity of ongoing attention to detail and aggressive involvement in a corporate environment that is changing quickly.

In addition to protecting the interests of shareholders, independent directors also function as the board's conscience. Their impact pervades important decision-making processes, supporting businesses' risk-reduction and strategic direction. Nonetheless, there are obstacles in the way of good corporate governance. Overcoming power dynamics, negotiating complicated regulatory frameworks, and striking the correct balance between independence and partnership are continual efforts that require persistent attention.

References

- Anjani Tewary, "Reforming the Institution of Independent Directors in India", 4, *Indian Journal of Law and Legal Research,* 1 (2022-2023).
- Ashish Kumar Srivastava, "Independent Directors: Guarding the Guardians", 4(2), *Journal on Governance,* 12 (2021).
- Gopal Ramasubramanian; Gajraj Singh, "Independent Directors, Corpo Rate Governance and Company Performance – India", 4, *Supremo Amicus* 168 (2018).
- Jeetendar Kumar, "Corporate Governance and Board of Directors", 2(5), *International Journal of Law Management & Humanities,* 100 (2019).
- Kritika Gupta, "Role of Independent Director in Corporate Governance", 4, *Indian Journal of Law and Legal Research,* 1 (2022).
- Manu Sharma, "Role of Independent Directors in Corporate Governance", 16, *Supremo Amicus,* 198 (2020).
- Pranav Mittal, "The Role of Independent Directors in Corporate Governance", 4(2), *NUJS Law Review,* 285 (2011).