CHAPTER – II
REVIEW OF LITERATURE

This chapter presents a brief review of the literature relevant to the study. There were only limited research studies, which were directly relevant to the study concerned. The review of literature facilitated the researcher to have a comprehensive knowledge of the concepts used in earlier studies which help to formulate conceptual framework and draw meaningful conclusion.

2.1 INDIAN STUDIES
Doctoral Studies

Thatchinamurthy, M. (1993)³ in his doctoral research thesis titled “A study on statutory reliefs’ for oppression and mismanagement in Indian Companies Act 1956” with the objective of presenting a clear picture of avenues available to the affected minority members under common law, examined the powers of the Company Law Board (CLB) and the Central Government for preventing oppression and mismanagement in joint stock companies and with an objective to offer suitable suggestions in order to overcome the obstacles in granting relief to the unfairly oppressed minority.

Ravichandran, K.S. (2002)⁴ in his doctoral research thesis titled “A study on the effectiveness of the present system of trial of offences under the Companies

³ Thatchinamurthy, M. “A study on statutory reliefs’ for oppression and mismanagement in Indian Companies Act 1956” Alagappa University, 1993.
Act, 1956 in protecting public interest” has made an attempt to study the existing procedure for prosecution of offences under the Act as well as to ascertain as to what extent the existing machinery has protected public interest. Further, the study aimed to suggest ways and means for improvement of the existing system for the prosecution of offences and punishment of offenders under the Act in such a way that the public interest is best served. A special feature of the study is that the law and practice prevailing in UK in respect of companies functioning there has been compared with the law and practice prevailing in India.

Gayatri.R. (2003)\(^5\) in her doctoral research thesis entitled “Revamping of the Companies Act 1956 – A Critical Analysis” has concluded that the Amendment Act has reduced the total number of Sections significantly from 658 to 594 Sections which provides greater safeguards and new procedures to offer support to shareholders, depositors and creditors and would strengthen the corporate governance alongside the regime of liberalisation and simplification.

**Studies on Company Law Reforms in India**

Swati Mehta Mehta (2009)\(^6\) in the paper entitled “The Companies (Amendment) Act, 2000: Whether cure or curse to investors vis-à-vis corporate governance” states that the law exists to serve the needs of the society which is governed by it. As the society change the law cannot remain immutable. It is in


these circumstances the Companies (Amendment) Act, 2000 was enacted to introduce more workable provisions for organising and managing the companies smoothly and efficiently. In spite of the amendments it is felt that the provisions of the Companies Act are still lacking behind the march of time. Further in view of the importance of the corporate sector which is being realized now the amendment made vide in the Companies (Amendment) Act 2000 and now in the year 2009–10 have already become stab.


Prahlada Rao, D.K. (2004)⁸, in his article “A critical appraisal of attempt to re-codify Company Law” emphasized the need for a through vetting of the proposals before these are transformed into the law.

Israni, S.D. (2007)⁹ states that Company Law in India is predominantly procedure oriented and the procedures are indeed numerous and defaults in

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corporate compliances attract penal consequences. According to him a company should not be satisfied with bare minimum compliance under the Act. Instead, every company should endeavour to pay special attention to compliances under the Act and for that to have systemic approach so that no room is left for any delinquency on the part of any of the concerned employees. Such a pro-active approach will help the company to minimize the risk of failure and also earn the respect of various stakeholders.

Swarup, B. (2005)\textsuperscript{10} in his article expressed that in recent years several Committees have gone in to simplification and reform of Company Law and in such a scenario, when the Irani Committee was constituted the expectation level from the Government, corporate sector and others was indeed very high. The Irani Committee has sought to provide a valuable input for creating a simple and sustainable legal framework, which is essential to unleash creative energies of our people through the corporate structures. Now, the stage is set for the new Company Law to be legislated consistent with the best international practices. The new law, it is expected, would enable development of institutional structures to address new requirements driven by changing economic environment.

Agrawal, G.D. (2001)\textsuperscript{11} in his article explains some of the important amendments of the Companies (Amendment) Act, 2000 as the investor friendly and helps to ensure transparency of corporate affairs and better corporate governance should lead to corporate culture in the new millennium.

Prahalada Rao, D.K. (2003)\textsuperscript{12} states that the Companies (Amendment) Bill, 2003, seeks to bring about further amendments to the Companies Act 1956 which was amended in 1999, 2000 and 2002. Some of the proposals are indeed trend setting provisions. However, some worthwhile recommendations of the Naresh Chandra Committee and other recent Committees have not been fully reflected.

**Studies on the constitution of the Audit Committee**

According to Venugopalan, S. (2004)\textsuperscript{13} the setting up of audit committee has enhanced the credibility of financial statements, promoted transparency in financial reporting, and has ensured the independence of statutory auditors, thereby playing a very useful role in the corporate governance framework.

Tuteja, S.K. (2004)\textsuperscript{14}, the existence of an audit committee would undoubtedly have a statutory effect on the working of a company in a variety of ways. They should advise, question management and approve or reject its policies.

He also opines that audit committee would prove extremely beneficial if company boards accept them voluntarily as a measure of self regulation.

Sanjiv Agarwal (2006)\textsuperscript{15} states that the Audit Committee of any Board is like the central fulcrum of the management, while it is imperative to have Audit Committee to ensure good corporate governance, it is also true that one cannot think of corporate governance without a functional audit committee.

Jawahar Al-Mudhaki & Joshi, P.L. (2004)\textsuperscript{16}, examined the composition, focus and functions of audit committee, the effects of meetings and the criteria used in the selection of members by Indian listed companies from 73 questionnaire responses. The study revealed that so far only 56.2\% of companies have established an audit committee despite the fact that it is now mandatory. Of those companies which have audit committees, 68.3\% have between three and six members on audit committees. However, only 14.6\% of companies have independent non-executive directors on the committee, while 90.2\% have non-executive directors. This shows a lack of independent representatives on the committees. They concluded that the concept of an audit committee is not new in India but their formation is slow and their composition lacks independence.


Venugopal.S (2006)\textsuperscript{17}, discussed and explains all the aspects related to the audit committee. He concludes that audit committee can play a major role in corporate governance framework as it not only promotes transparency in financial statements but also ensures the statutory auditors.

Anil Kumar (2007)\textsuperscript{18} analysed the concept of audit committees in the context of eight major countries including US, UK, Japan and India. He points out the deficiencies on the part of audit committees to oversee the financial reporting as Enron, WorldCom and other debacles took place in spite of these companies having audit committees.

Kalidas, R. (2007)\textsuperscript{19} according to him, an effective and proactive audit set-up is an essential requirement for the effective management and growth of company and further that the internal audit function has come to stay and an effective audit system can provide the cutting edge to corporate managements.

**Studies on the Corporate Governance requirements under the Listing Agreement**

Giridharan, P.T. (2004)\textsuperscript{20} focused on the revised clause 49 of the Listing Agreement which is the result of recommendations of various committees in the wake of the rapid strides in the ‘philosophy and mantra’ of corporate governance.

He states that the listing requirements have thrown many challenges and opportunities to the professionals, personnel in the company and the entity itself; and that one has to wait, watch and see how far the wisdom of corporates and professionals prevails and whether the shareholders are really benefited.

Narayanaswamy (2006)\textsuperscript{21} states that non-compliance with the requirement of revised Clause 49 of the Listing Agreement is visited with the punishment of monetary penalty and also imprisonment. Therefore, it is essential to ensure compliance with the legal requirements.

Rajesh Chakrabarthi (2005)\textsuperscript{22} in his study established that financial development is largely dependent on investor protection in a country - de jure and de facto. While recent high-profile corporate governance failures in developed countries have brought the subject to media attention, the issue has always been central to finance and economics. The issue is particularly important for developing countries since it is central to financial and economic development. With the legacy of the English legal system, India has one of the best corporate governance laws but poor implementation together with socialistic policies of the pre-reform era has affected corporate governance. Concentrated ownership of shares, pyramiding and tunnelling of funds among group companies mark the Indian corporate landscape. Since liberalisation, however, serious efforts have

\textsuperscript{22} Rajesh Chakrabarthi (2005) “Corporate Governance in India - Evolution and Challenges” (January 17, 2005).
been directed at overhauling the system with the SEBI instituting the Clause 49 of the Listing Agreements dealing with corporate governance.

Rakesh Mohan (2009)\textsuperscript{23} in his article “Corporate Governance: Points to Ponder”\textsuperscript{23} brings out some serious shortcomings in the Companies Act 1956, in the Listing Agreement, and in the actual implementation of the corporate governance which allow enough space for scams like Satyam to engender. According to him, the message of corporate governance should reach everyone, especially to those who are not convinced about its benefits and should go loud and clear to companies for whom it is mandatory, but are complying with its requirements only ‘in form’ and ‘not in spirit’.

Dilip Kumar Sen (2010)\textsuperscript{24} made an attempt to examine whether lives in Indian Corporates have changed due to clause 49 since these norms were first introduced about 7–8 years ago. He discusses about the scam in a large IT company that was unveiled at the beginning of 2009 could not have happened if the non-executive directors were vigilant and agile and the audit committee had made a thorough review of the financial statements. The author further raises a question: Would the statutory auditors have certified the annual accounts of Satyam Computers in the manner they did if they know that next year they would not remain as auditor and some other audit firm would be engaged to do the audit, and suggests for mandatory rotation of audit firms.


Balakrishnan, R. (2006)\textsuperscript{25} made an attempt to describe duties and responsibilities of directors and their role in risk management, related party transactions, management discussions, accounting standards, etc., relating to new and revised clause 49 of Listing Agreement on corporate governance, which has thrown tremendous responsibility on the Board of Directors. He concludes that growth of any company would much depend upon the sense of direction and purpose of the Board as a whole as the well being of a company depends on the corporate governance of all its members, i.e., Board of Directors.

Mahavir Lunawat (2006)\textsuperscript{26} analysed certain changes made in the new clause 49 of the Listing Agreement and made a detailed comparison between clause 49 and Section 302 of the US Sarbanes-Oxley Act, 2002. He opined that changes made are those that were long awaited by the corporate sector. It is desired that provisions of clause should be adhered to relentlessly and adherence should not only be in letter but also in spirit.

Balakrishnan, R. (2006)\textsuperscript{27} discussed the revised clause 49 of the Listing Agreement, particularly Whistle Blower Policy (non-mandatory). This is another step towards corporate governance; it allows employees to report irregularities, actual/suspected fraud; violation of company’s code of conduct or unethical


behaviour and ensures adequate safeguards for the employees for such reporting. Such reporting by the employees should not be malicious, vexatious or for personal gain.

Bhuwaneshwar Mishra (2005)\textsuperscript{28} in his article states that the Whistle Blower Policy (WBP) encourages employees to report questionable accounting matters, any reporting of fraudulent financial information to the shareholders, the government or the financial markets or any conduct that result in violation of the law. But this policy has both its merits and demerits. The early reporting of unethical or improper practices shall provide an opportunity to the company to take corrective measure before the damage or violations increases. On the other side there is always a fear of the whistle blower being subject to suspension loss of job or prevented from the privileges available to the other employees.

**Studies on the role of Independent Directors for good Governance**

Ravimohan, R. (2005)\textsuperscript{29}, in his article “Independent Directors: Are they the watchdogs for good Governance?” emphasized the responsibility of the entire board to make sure that the company is being run in accordance to the best corporate governance practices. The members, whether independent or executive, need to bring to the board their professional expertise, and work with the goal of improving shareholder wealth over the long term.

Jyoti Dhawan (2006)\textsuperscript{30} identified the role of the Board of Directors in the corporate governance of the large listed firms of India. Various aspects of corporate governance have been extensively examined, covering the diverse facets of the Board like its qualities, size, initiatives, responsibilities, age of members and core competencies. He made an attempt in his exploratory study to encompass numerous Board-related issues. It is based on the primary data collected from 89 large listed firms in India with the help of a personally administered structured questionnaire. The impact of some of the company-specific financial and non-financial variables and respondent-related parameters on various issues has also been analyzed. It is hoped that the observations of the study would be useful to the management, investors, creditors and other stakeholders in the corporate sector.

Venugopalan, S. (2006)\textsuperscript{31} in his article discussed about the concept and role of independent directors which have assumed significant importance particularly during the last 5 years, conforming to the global developments in the area of good corporate governance. The Kumaramangalam Birla Committee, Nareshchandra Committee, Narayanamurthy Committee, the Companies (Amendment) Bill, 2003, the Concept Paper on Company Law (2004) and the expert Committee on Company Law with Dr. J.J. Irani, as its Chairman, have all made certain recommendations on refining the definition of ‘Independent Director’ and the changing role of independent directors.


Ranjan Mukherjee (2006)\textsuperscript{32} in his article discussed about Clause 49 of the Listing Agreement, which is now made mandatory on the part of the listed companies to induct adequate number of non-executives directors at the time of the induction to see that they are properly guided about their companies, and it is also expected that the non-executive directors should also go for a due diligence and understand various documents, written procedures, and common practices being followed by the company. No guidance note is available yet from any institution in this regard in India (though ICSA UK has done some commendable job in this regard) for the non-executive directors. Obviously, a guidance note cannot cover an exhaustive list of issues, neither it can simply forward a set of documents to the newly inducted non-executive directors for his records. However, a guidance note perhaps from a professional body may be a helpful tool as a guidance for the newly appointed non-executive director, to function him effectively immediately after induction.

Prasanna P. Krishna (2006)\textsuperscript{33} made an attempt to investigate whether the board independence has any influence in maximizing the firm value. After 2000, the corporate boards have become more independent and active in pursuing shareholders interests. Corporate governance reformers strongly believe that Independent directors can be effective monitors. Nevertheless, there is still intense


debate over the extent an independent board contribute to the value maximisation. The empirical analysis did not produce evidence to confirm this relationship between independent board and value maximisation. However, this finding can not be taken to conclude the relationship at the moment as further robustness checks are needed which need to include other related controlling variables such as shareholding pattern, market presence, industry growth, etc.

Ravichandran, K.S. (2007)\textsuperscript{34} in his article explained how Company Secretaries, by virtue of their knowledge and training are eminently to fit in the role of independent directors. Independent Directorship is a coveted post. One must understand the nature of the job and train his thoughts accordingly. Company Secretaries who have the ability to visualize the complete ramifications of any arrangement or proposal or transaction would be able to function effectively, original application of mind is needed to occupy such positions. One should be stopping with going through reports containing strengths, weakness, opportunities and threats of projects place for approval before the Board. In order to be independent directors they have to be courageous and confident and their approach should be broad. They should not pursue independent Directorship as a career opportunity. If a situation demands him to compromise, he should put his foot down and if necessary step down.

Chaudhary, U.K. (2008)\textsuperscript{35}, in his article “Role of Independent Directors in corporate governance practices”, has made a clear distinction between corporate performance and corporate governance. It is also imperative to note that these terms cannot be used interchangeably, i.e., requiring more Independent Directors on audit committee or boards is being done in order to ensure better governance, not better performance and better governance could be considered a value in itself, irrespective of its effect on corporate performance. Finally, it was concluded that the proposals relating to Independent Directors should go a long way in ensuring increased investor confidence vis-à-vis protection of rights of minority shareholders coupled with the principles of good governance.

Naresh Kumar (2008)\textsuperscript{36} discussed the role of Independent Directors and analyzed the salient features of clause 49 of the listing agreement, present scenario, and recent modifications and offered suggestions to improve the quality of governance in the Indian Companies. In the ultimate analysis, what is important is the role of the Board rather than the number of Independent Directors.

Israni, S.D. (2003)\textsuperscript{37} corporate governance has become one of the most widely discovered topics in the business world, as stated by the Narayana Murthy Committee Report, “corporate governance is beyond the realm of law. It stems

from the culture and mindset of management and cannot be regulated by legislation alone.”

Bhoomika Verma & Priyanka Rathi (2009)\textsuperscript{38} discussed the significant role of Independent Directors and further examines the provisions relating to independent directors under clause 49 of the SEBIs’ Listing Agreement, and the Companies’ Bill, 2009, emphasizing the need for a comprehensive legislation so as to achieve the ultimate objective of this novel concept. However, mere incorporation of certain provisions relating to independent directors under the law is not enough, unless the same are effectively implemented. The lack of clarity and comprehensiveness of the law relating to independent directors, gives a chance to the companies to evade the law.

**Studies on National Company Law Tribunal**

Chandratre, K.R. (2004)\textsuperscript{39} in the paper entitled “National Company Law Tribunal: An overview” examined the creation of the NCLT and transfer of power presently being exercised by High Courts would open the doors to practicing company secretaries in a by-way. Company secretaries should prepare themselves well to seize the opportunities.


Studies on Corporate Governance

Balakrishnan, R. (2009)\(^{40}\) in his article briefly discussed about the corporate governance and induction of Directors. Before the Director accepts the appointment, the Company Secretary should ensure that Director is fully aware of his responsibilities, duties and potential liabilities. There are several books available which could be provided to the Director. It would be also a good idea; the company could prefer to produce its own in-house guidance note. In UK, ‘Directors and Secretaries guide’ is made available free of charge by Registrar of Companies. Induction programme for the newly appointed Directors would go a long way to have a better contribution by the Director and the efficient working of the board of directors as a whole and also by the individual director.

Pandey, T.N. (2006)\(^{41}\) states that like the Ministry of Company Affairs, SEBI should publish an annual report regarding corporate governance. The reports regarding corporate governance published in the annual reports of the listed companies and those emanating from the multiple certificate prescribed by SEBI in some cases must be having valued information in regard to the strength and weaknesses noticed concerning corporate governance. These should be highlighted in the annual reports of the SEBI so that corporate world may be benefited by following the good practices mentioned and avoid the lapses highlighted in their future working.


\(^{41}\) Pandey, T.N. (2006) “SEBI needs to publish Annual Reports to show how its efforts have improved Corporate Governance?” Chartered Secretary, Vol. III, No. 8, pp 755–759.
Prahalada Rao, D.K. (2007)\textsuperscript{42} in his article discussed about the provisions relating to disclosure of information by interested directors seek to provide for good corporate governance principle. With the globalisation of Indian economy and de-regulation of economic laws, there is gradual decrease in the Government’s regulatory control over certain activities of corporate organisations. There is now greater need for the Government to create a level playing field for the Indian corporate vis-à-vis their counter parts in other countries in the context of increasing competition. He concludes that related party transactions, should be share-holder based approval for contracts above the prescribed turnover. At the best, the government may lay down certain statutory guidelines for observance by the corporate sector which can be verified independently and reported to the shareholders by the auditor and other professionals.

Kethan H. Shaw (2005)\textsuperscript{43} in his article states that “Company Secretary being a key functionary in the corporate hierarchy his role, functions and responsibilities have been widened over the years. With increasing emphasis on the principles of good governance and introduction of various provisions relating to corporate governance, he has added responsibilities for safeguarding the interests of the stakeholders.


Dilip Kumar Sen (2005)\textsuperscript{44} in his article states that despite robust corporate governance regulations that prevail in India, the compliance level is far from being satisfactory since an effective system of implementation of these regulations seems to be missing. The report of the World Bank – IMF country assessment made in 2004 show the areas where the Indian corporate have been found to be observant and where partially observant. He concludes that no amount of regulation can guarantee improvement of corporate governance in our country. This is basically a matter of attitude and approach. As an essentially top down process responsibility of CEO in this regard is paramount. If the CEO believes whole heartedly in improving corporate governance he can drive the same effectively throughout the organisation. After all corporate governance is nothing but the system by which corporate are directed, controlled and operated. If, therefore, the governance improves overall corporate performances is bound to improve.

Rajkumar Adukia (2005)\textsuperscript{45} in his article discussed about Company Law provision relating to accounts are significantly important to the investors in view of the disclosures contained therein. Therefore, it is not surprising that the Irani Committee has devoted considerable attention on aspects relating to accounts and audit. This committee does not prophesise that it has a solution for every issue or

problem that may arise. There will be situations where the matter howsoever foolproof the law or the systems maybe, there would be breakdowns. It is, therefore, the duty of both the company as well as the auditors to ensure that they are guided by the spirit and intent and not by the form.

Shirish Dabir (2006)\textsuperscript{46} in his article states that the introduction of Clause 49 in the Stock Exchange Listing Agreement based on corporate governance Philosophy, the legislative changes in various enactments like SEBI Act, SEBI (Disclosure and Investor Protection) Guidelines and some recent landmark judgements by the High Courts and the Supreme Court based on the above have cast onerous responsibilities on the Corporate functionaries, especially the Directors and key officers of the company.

Krishnamurthy, J. (2006)\textsuperscript{47} states that whistle blowing in a company is a tool for containing economic crimes in corporate sector (including allies like the Depositories, Share Registrars, etc.) and, thus, promote ethical behaviour among the rank and file. It is time for the India Inc. to introduce a whistle-blowing mechanism among its employees to provide muscle to the on-going corporate governance measures being put in place by the Government and SEBI.

\textsuperscript{46} Shirish Dabir (2006) “Directors and Officers Liability vis-à-vis adequacy of protection under the provisions of the Companies Act, with focus on Corporate Governance” Chartered Secretary, Vol. III, No. 12, pp 1163–1165.

Venugopalan (2006)\textsuperscript{48} in his article, states that although the present law requires listed companies to constitute Committees for directors for remuneration, audit, grievance, etc, there is no such requirement for constitution of Nomination Committee. Still, companies have voluntarily resorted to this practice in recent times. He concludes saying that a sub-committee of the main board made up wholly, or mainly, of Independent outside directors, to make recommendations on new appointments to the board is an attempt to prevent the board being seen as a cosy club, in which incumbent members appoint like-minded people to join their ranks.

Madan Bhasin (2007)\textsuperscript{49} states that, it is time for the application of ‘dharma’, as stipulated in ancient Indian Shastras, to improve corporate governance. India can be proud of what it has achieved so far in corporate governance practices but of course, much more need is to be done and he pinpoints how to increase corporate governance transparency in the Asian countries is emerging as a major problem.

Muthupandian, K.S. (2007)\textsuperscript{50} analysed the impact of Sarbanes-Oxley Act on corporate culture over the last 5 years, and its importance in the present as well as in future. In the last 5 years since corporate enforcement activity, the tally of

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convictions stands at 1236, including 214 chief executives, 53 chief financial officers, 23 corporate counsels or attorneys and 129 Vice-Presidents.

Bimal R. Bhatt (2007)\textsuperscript{51} discussed in brief the concept of corporate governance, its relevance at regulatory mechanisms. Corporate governance is a big challenge to the Indian economy including professionals involved in the administration and management processes of any establishment including social and political organisations. It is more desirable to have voluntary adoption rather than box-ticking approach for having long term benefits to all concerned.

Krishnamurthy, T.S. (2001)\textsuperscript{52}, points out that the recent amendments constitute a good step towards improving corporate governance in this country in the Company Law (Amendment) Bill, 1997, coupled with these changes, if appropriate improvements in administration, especially in the attitude of officials and computerisation of records are brought about, India can really boast of having conducive condition for good and sound corporate governance, which will no doubt attract large investments both from within the country and abroad.

Vijaykumar Gaba (2004)\textsuperscript{53} in his article, examined the international trends in corporate governance with special reference to corporate governance in USA, UK, Singapore and India. The effectiveness with which the corporate boards discharge their responsibilities determines the country’s competitive position.

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They must be free to drive their companies forward, but they must exercise that freedom within a framework of effective accounting. He further explains the background against which the codes of corporate governance evolved in these countries and the salient features of such codes.

Delep Goswami (2003) highlights on the recommendations of the Naresh Chandra Committee which is expected to play an important role in strengthening the effectiveness of the regulatory framework for good corporate governance and will have tremendous impact on the role; functioning and effectiveness of the professionals like Chartered Accountants, Company Secretaries, Cost and Works Accountants, Legal practitioners, Chief Executive Officers and Chief Financial Officers of Indian companies. The Committee has recommended drastic changes in corporate disclosures; corporate responsibility and corporate governance which will have significant ramifications for the future of Indian Economy, corporate sector, investors, and professionals. The report seems to be revolutionary in its approach and a step in the right direction which will usher in an era of meaningful corporate governance and should be welcomed by all. It is hoped that the recommendations of the Committee would be implemented soon by the Government and will strengthen the functioning and standards of corporate governance in the country and restore investor’s confidence in the corporate sector.

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54 Delep Goswami (2003) “Naresh Chandra Committee’s wake up call for prevention of fraud in Indian Companies and prescription for better Corporate Governance” Chartered Secretary, Vol. XXXIII, No. 1, pp 40–46.
and the much needed respect and confidence in the regulatory systems of the country.

Pandey, T.N. (2003) states that a good accounting system is a strong indicator of the management’s commitment to governance. Good accounting means that it should ensure optimum disclosure and transparency, should be reliable and credible and should have comparability. He concludes that the recommendations are basically sound and well thought of. However, how their implementation is possible is more important and should be the prime concern of regulatory and professional bodies.

Amit K. Vyas (2003) in his article discussed on corporate governance in India and states that while adoption and proper implementation of corporate governance in letter and spirit cannot be a guarantee that corporate scams will never recur and that investors will never suffer, it definitely acts as an eye opener and instils a sense of realisation in the management of the duty of the corporate towards its investors and the country at large.

**Investor Protection**

Sudheendhra Putty (2006) discussed about investor protection. He states that the buoyancy, versatility and resilience of a capital market are directly linked

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to the investors dealing with it. The multi-pronged approach suggested by the Irani Committee, would surely go a long way in safeguarding the interests of the investors and maintaining the buoyancy of the markets.

Ravichandran, K.S. and Madhusudhanan, C.V. (2002)\(^{58}\) in their article with regard to the appointment of small shareholders directors’ have stated that the provisions appear to have created an oasis in the drought hit shareholders democracy, in reality it is only a mirage. Instead of depending on the law to provide for sops in the matter of shareholders democracy, if the professionals and the regulatory authorities do their part sincerely, then the interests of the stakeholders will certainly be protected and their expectations and that of other interested parties will certainly be met to a large extent.

Krishna Kishore, N. (2006)\(^{59}\) states that shareholder activism is an authoritative way by which shareholders can claim their rights as owners to improve the governance of the company and help raising the value of the company over a period of time. Shareholder activism involves any action taken by shareholders to improve the governance of the companies, ensure fair treatment of all the shareholders and raise the value of the company overtime.

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Iyer, V.L. (2002)\textsuperscript{60} in his article “Passing of resolution by postal ballot” points out that Section 192A of the Companies Act, 1956 and the Companies (Passing of Resolution by Postal Ballot) Rules, 2001 as amended provide for voting by postal ballot on the resolutions of the Company by its shareholders. This helps to expand the concept of “Shareholders Democracy” by enabling a large number of the members to participate.

Studies on New Company Law

Sharma, J.P. (2006)\textsuperscript{61} highlighted on the recommendations of the Irani Committee and points out that the Expert Committee has sought to make India globally competitive with a new Company Law that encourages growth. He also emphasized on self-regulation and shareholders democracy with lesser bureaucratic controls, stringent penalties commensurate with the size of company, nature and seriousness of the offence are being recommended for accountability.

Venugopalan, S. (2006)\textsuperscript{62} highlighted on how a board meeting can be organised and conducted through video conferencing system. He has given a list of matters which cannot be transacted at such meetings and also gives a list of technological requirements for video conferencing. In his opinion, once video conferencing meeting becomes a reality, there may not be any need for companies

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to appoint alternate directors and that it will promote transparency in corporate affairs and will become popular in due course after the new Company Law is enacted by the Government.

Venugopalan, S. (2006)\textsuperscript{63} states that after the new Company Law comes into force, the details about training requirement for independent directors will be finalized by the Government.

Sridhar, J. (2008)\textsuperscript{64} points out that most of the proposals in the new Bill relating to directors are more or less the same as at present. But there are some new provisions on the role and responsibilities of directors.

Israni, S.D. (2008)\textsuperscript{65} states that the new Bill has tried to achieve the objectives by keeping a blend of a large number of the old provisions and by adding some new innovative provisions as well and termed the Companies Bill, 2008 as blended wine in new bottle.

Pandey, T.N. (2009)\textsuperscript{66} analysed the position of directors under the existing Companies Act, 1956 and the changes that are proposed to be made concerning

them by the Companies Bill, 2009. He has concluded that much imagination has not been shown in the drafting of the new provisions and the same are more or less on the lines of the existing ones. Except some drafting changes and some new concepts, the pattern in the Bill is almost on the same lines as in the existing Act. Regarding the duties aspect, he has expressed the view that instead of making it a part of the Act, this could have been taken care of by a code of conduct, to be prescribed by the rules.

**Studies on Board of Directors**

Sharma, M.L. (2006)\(^{67}\) elaborated upon the legal position, functions, scope of powers, division of powers and the restrictions on the exercise of powers of the board of directors under the Companies Act, 1956 and certain other Acts. In his view, directors of a company act on behalf of a company in a fiduciary capacity which enjoins upon them to act with utmost good faith, skill and due diligence in the interest of the company, and the board of directors is a compendium name for all the directors taken together.

Iyer, V.L. (2006)\(^{68}\) states that the role of the board is very crucial to the success or otherwise of a company but then who is to be held responsible when a company fails? He points out that there is no mandatory provision compelling the

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management to place before the board all the matters that affect the company. He also suggests that the Government should make it mandatory for all companies to have an independent chairman and to strengthen the impartial functioning of the board, a statutory provision should be made in the new Companies Bill for appointment of a non-executive director as chairman of the board.

Pavan Kumar Vijay (2002)¹⁶⁹ states that Information Technology Act, 2000 has provided legal recognition to transactions, carried on by adoption of means like electronic data interchange and other means of electronic communication referred to as electronic commerce. As a result of on-going electronic revolution, information has become a part and parcel of our lives and the paper documents are fast being replaced by electronic documents. The electronic revolution has speeded up the process of information interchange and has thus made the boundaries and distances irrelevant. Therefore, the need of the day is that law should keep pace with the latest developments in the field of information technology.

Balasubramanian, N. (2005)⁷₀, in his article “Corporate Law reforms in India; Management & Board Governance-Two and a half cheers to the Dr. J.J Irani Committee” Critiques chapter IV of the Report, dealing with Management and Board Governance and complicated the substantial improvements suggested

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in the recommendation of the Committee, and also pinpointed the areas of improvement still required to reach levels comparable to international best practices in this regard.

Satheesh Kumar and Narayanan, T. (2006)\(^{71}\) discussed issues like the role of Board of Director’s in Indian family - Managed companies and the need to adopt ‘best’ and ‘next’ practices, will help corporations to develop better practices, policy makers to formulate pragmatic policies.

**Studies on MCA21**

Vivek Sadhale and Vikas Agarwal (2006)\(^{72}\) discussed about new provisions inserted by the Companies (Amendment) Act. They have welcomed MCA21 measure and the Amendment Act and opine that the aim of MCA21 is to generate data for cross-reference with other regulatory bodies for efficient corporate governance, evaluation of corporate bodies and policy making.

Thiagarajan, M.R. (2006)\(^{73}\) analysed the relevant clauses and the sections of the Bill and has welcomed the MCA21 e-governance measure and the Bill, even though there are some initial teething problems which, he thinks, can be overcome with continuing training in this field.

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Sudheendhra Putty (2006)\textsuperscript{74} analysed the provisions made in the companies (Amendment) Bill 2006. The Bill seeks to bring in e-governance and make on-line filing a reality in India. He opines that the enactment of the Bill is vital for the success of MCA21 project.

Chandrasekaran,S. (2006)\textsuperscript{75} the MCA21 project in its absolute terms aims at expeditious filing of documents electronically and at the same time to eliminate the wastage of time and money involved to travel to the office of Registrar of Companies. It further projects to improve the efficiency of the regulator, educating the corporate sector the need for compliance and to provide a level of comfort for investors’ protection.

Amit K. Vyas (2006)\textsuperscript{76} states that the MCA21 needs to be supported by legislative amendments in the Companies Act rather than being dependent on the provision of the Information. Technology. Act. Further, the process of e-governance under the Companies Act should not stop at only e-filing, but should also cover the maintenance of statutory documents and records by companies in e-form. Conduct of Board meetings by tele- and video-conferencing and by other e-means also remains a long standing demand of the corporate sector. If at all the Central

Government. is keen to introduce an Ordinance to give legal effect to MCA21 then this important aspect of board meetings by e-means should not be overlooked.

Navrang Saini (2006)\textsuperscript{77} states that after complete implementation of MCA21, since all the services will be available online, there will be more time for MCA employees for monitoring and supervision. It will be possible for the administration to prescribe service levels in Back Office to ensure speed and certainty. Serving the stakeholders of companies with speed and certainty coupled with timely and stricter enforcement of the various provisions of Company Law are the twin objectives of the MCA21 programme.

**Studies on the role of Company Secretary**

Kaushik Mukherji (2009)\textsuperscript{78} defines the Company Secretary as a compliance officer having fiduciary relationship with both the shareholders and the management. In his opinion, Company Secretary is the longer surviving component of the Board of Directors though not member of Board. But the fact remains that he is an employee of the company like any other employee. The Company Secretary actually is dependent for his survival and recognition on the management. In such a situation it is quite understandable why the Company Secretary is not truly independent and whether he can be made truly independent.


Sudheendhra Putty (2006)\(^79\) states that the statues relating to key corporate professions have been thoroughly amended by the Government to bring about uniformity and to keep pace with international developments. The Amendment brought forth have been long overview and should augur well for the betterment of the profession of the Company Secretaries. With greater integration coming across among professions and seamlessness being a reality, the amendments are truly the need of the hour. Indeed the amendments must make Companies Secretaries get in pursuit of professional excellence.

Kumar (2006)\(^80\) in his article highlighted on the global convergence resulting from globalisation of economies and market oriented policies of the Government have brought corporate governance into sharp focus and caste upon the professional onerous responsibilities of meeting the expectations not only of regulators, industry and share holders, but also stakeholders.

### 2.2 FOREIGN STUDIES

Katharina Pistor \textit{et al.} (2003)\(^81\) “The Evolution of Corporate Law a Cross-Country Comparison” in their article states that Corporate law as it exists in any given country today is the result of roughly 200 years of legal change and legal


adaptation. Provisions that today are hailed as indicators for good corporate governance did not exist when the first statutory corporate laws were put in place. This simple insight raises the question about the evolution of corporate law. In this paper, they have analyzed 10 jurisdictions representing the three major legal families as well as transplant countries and origin countries to explore the patterns of legal change over time. They have found that origin countries from common law and civil law families have experienced substantial legal change and adaptation over time. By contrast, legal transplants from both legal families have often retained the transplanted law for decades despite substantial economic change. The area of corporate law where they found the most significant change over time are corporate finance provisions.

They have concluded that the following factors determine the pattern of evolution of corporate law: (1) the demand for corporate law; (2) the broader institutional environment and the capacity of legal systems to develop complementary control mechanisms; and (3) external competition, including market and regulatory competition. All three factors are highly interdependent and all interact with the broader socioeconomic, political situation within a given country, as well as with the degree of external competition, including market and regulatory competition.
Bruce E. Aronson (2005)\(^{82}\) in his paper “What Can We Learn from U.S. corporate governance? A Critical Analysis” examines the views of corporate governance in light of the recent influence of U.S. corporate governance institutions on reform efforts in other countries. It suggests that the current emphasis on the roles of independent directors and institutional investors as the ‘keys’ to ‘good’ governance in the U.S. and elsewhere may be overdone. Reforms should target methods of achieving substantive improvements in actual corporate governance practices rather than focus primarily on formal structures such as board composition. In this sense, the true lesson to be learned from the American corporate governance system may lie in recognizing the importance of supporting institutions—particularly information disclosure and private enforcement—which would help to make not only U.S. corporate governance mechanisms, but presumably any corporate governance structure, more effective.

Chao Xi (2006)\(^{83}\) in his article “Search of an Effective Monitoring Board Model: Board Reforms and the Political Economy of Corporate Law in China” states that The board governance system is a major corporate governance difference between jurisdictions. While functional convergence and hybrid convergence of national board systems now seem prevalent, China's board reforms present a unique pattern of change in formal board governance rules.


On the one hand, the new institution of independent directors was "codified" and made mandatory for all Chinese listed companies, regardless of their size or ownership structures. On the other hand, the traditional management-supervisory dual structure was preserved and the supervisory board as a monitoring organ strengthened.

The article explores what factors may have shaped the trajectory of board governance reform in China by addressing the following questions: (1) why the new institution of independent directors was chosen in 2001 and then ‘codified’ in the new 2005 Company Law amid stiff opposition; (2) why the existing institution of supervisory board has persisted, despite its ineffectiveness and inefficiency in monitoring; and (3) why China has adopted its unique mandatory approach to board reforms.

The article argued that the trajectory of China's board reforms has been shaped by the intricate interaction between globalisation, local interest group politics and the official ideology in China. China’s board reforms, the article suggests, support the proposition that despite the powerful forces of globalisation and efficiency, substantial differences in corporate law systems will persist.
Afra Afsharipour (2009) in his paper “corporate governance Convergence: Lessons from the Indian Experience” examined that recent corporate governance reforms in India as a case study for evaluating the competing claims on global convergence of corporate governance standards currently polarizing the field of corporate law. This article seeks to make a fresh contribution to the convergence debate by examining the implications of India’s corporate governance reform efforts. It contends that the Indian experience demonstrates that traditional theories predicting convergence, or a lack thereof, fail to fully capture the trajectory of actual corporate governance reforms. India’s reform efforts demonstrate that while corporate governance rules may converge on a formal level with Anglo-American corporate governance norms, local characteristics tend to prevent reforms from being more than merely formal. India’s inability to effectively implement and enforce its extensive new rules corroborates the argument that comprehensive convergence is limited, and that the transmission of ideas from one system to another is highly complex and difficult, requiring political, social and institutional changes that cannot be made easily.

Troy A. Paredes (2005) in his article “Corporate governance and Economic Development” examined that when considering corporate governance reforms in developing countries, attention shifts to the U.S. The U.S., after all, has

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the world’s thickest stock markets, even after the scandals at Enron, WorldCom, and elsewhere. But is transplanting U.S. corporate governance to developing countries likely to promote equity markets and economic growth there? Put differently, to what extent should the government displace private ordering with more substantive regulation of corporate governance in developing countries? He concludes that in most instances, developing countries should adopt a mandatory model of corporate governance, as compared to the enabling market-based approach that the U.S. (i.e., Delaware) has opted for.

Arad Reisberg (2010) in his article “Corporate Law in the UK after Recent Reforms: The Good, the Bad and the Ugly” states that the UK’s Companies Act 2006 (CA 2006) is the most all-encompassing piece of corporate legalisation that has ever come out of Parliament. It contains 47 Parts with 1,300 sections and is followed by 16 Schedules. There are also over 70 statutory instruments made under the CA 2006. It holds the somewhat dubious record of being the largest Act of Parliament ever enacted (certainly outside the tax area). It represents the first attempt since the 1850s (arguably, ever) to comprehensively re-examine and substantially modernize the whole of the existing UK legislation and significant parts of the case law on commercial companies. That said, although the vast majority of companies in the UK are small private companies, Company Law had traditionally been written with public companies in mind. The provisions that apply to private companies were frequently expressed in UK legislation as a tailpiece to the provisions that apply to public companies. However, as much as

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99.6% of the companies on the register in the UK in 2008/9 are, in fact, private companies. A target that the Labour government set itself was for the UK to become ‘the best place in the world to start and run a business’.

Dalton, D.R. and Daily, C.M. (1999)\textsuperscript{87} “Corporate governance is the process by which corporation is made responsive to the rights and wishes of stakeholders.

In India, Confederation of Indian Industry (CII) has stated that “Corporate governance deals with laws, procedure, practices and implicit rules that determine a company’s ability to take managerial decisions vis-à-vis its claimants in particular, and its shareholders creditors. There is a global consensus about the objective of good corporate governance maximizing shareholders’ value.”

Sheifer and Vishney, (1997)\textsuperscript{88} “Corporate governance is a control mechanism through which supplier of finance to corporations assures themselves of getting returns on their investments.”

It is clear from the foregoing discussion, that only a few researchers made an attempt to study the intricacies of Company Law provisions. The present study is aimed to study not only the recent developments in Company Law but also various amendments made in Companies Act, so far. It differs from the earlier studies in the sense that, it has gone through in detail the key aspects of management and administration of Company Law. Further, the study analysed the


opinion of respondents about the Company Law reforms pertaining to management and administration of companies.