## CONTENTS

Declaration .................................................................................................................................i
Certificate..................................................................................................................................ii
Acknowledgment ....................................................................................................................iii
Table of Contents ....................................................................................................................iv

Chapter 1 Introduction ............................................................................................................. 1

1.1 History of Company Legislation in England ................................................................. 1
1.2 History of Company Legislation in India .................................................................... 5
  1.2.1 Company .................................................................................................................. 8
  1.2.2 Definition of a Company ......................................................................................... 9
  1.2.3 Characteristic Features of a Company ................................................................. 10
    1.2.3.1 Incorporated association ................................................................................. 10
    1.2.3.2 Legal entity distinct from its members ......................................................... 10
    1.2.3.3 Artificial person .............................................................................................. 13
    1.2.3.4 Limited Liability ............................................................................................. 13
    1.2.3.5 Separate Property ........................................................................................... 14
    1.2.3.6 Transferability of Shares .............................................................................. 14
    1.2.3.7 Perpetual Succession ....................................................................................... 15
    1.2.3.8 Common Seal .................................................................................................. 15
  1.2.4 Lifting the Corporate Veil ....................................................................................... 15
  1.2.5 Company vis-a-vis Body Corporate .................................................................... 17
  1.3 Statement of problem ................................................................................................. 20
  1.4 Research Questions ..................................................................................................... 21
  1.5 Aims and objective of study ....................................................................................... 21
  1.6 Hypothesis ................................................................................................................... 22
  1.7 Scope and Limitations of Study .................................................................................. 22
  1.8 Literature Survey ........................................................................................................ 23
  1.9 Research Methodology ............................................................................................... 23
  1.10 Significance of Study ................................................................................................ 24
  1.11 Contribution of study to the knowledge ................................................................ 24

Chapter 2 Theoretical and Historical Perspective of Independent Directors .................. 25

2.1 Introduction to Theories ............................................................................................... 25
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1.1 Berle and Means</td>
<td>25</td>
</tr>
<tr>
<td>2.1.2 Contractarian Analysis of the Agency Problem</td>
<td>27</td>
</tr>
<tr>
<td>2.1.3 Team Production Analysis of agency problem</td>
<td>29</td>
</tr>
<tr>
<td>2.2 Historical Insight</td>
<td>30</td>
</tr>
<tr>
<td>2.2.1 Historical Mapping of Independent directors in US</td>
<td>31</td>
</tr>
<tr>
<td>2.2.1.1 Conceptual Insertion</td>
<td>31</td>
</tr>
<tr>
<td>2.2.1.2 Regulatory Response</td>
<td>33</td>
</tr>
<tr>
<td>2.2.1.3 Judicial Reinstatement</td>
<td>34</td>
</tr>
<tr>
<td>2.2.2 Historical Mapping of Independent Directors in UK</td>
<td>37</td>
</tr>
<tr>
<td>2.3 Conclusion</td>
<td>39</td>
</tr>
<tr>
<td>Chapter 3 Indian Concept of Independent Directors</td>
<td>40</td>
</tr>
<tr>
<td>3.1 Introduction</td>
<td>40</td>
</tr>
<tr>
<td>3.2 Models of Corporate Governance</td>
<td>42</td>
</tr>
<tr>
<td>3.3 Comparative Definition of Independent Directors</td>
<td>44</td>
</tr>
<tr>
<td>3.3.1 US Concept</td>
<td>44</td>
</tr>
<tr>
<td>3.3.2 Indian concept</td>
<td>48</td>
</tr>
<tr>
<td>3.4 Conclusion</td>
<td>54</td>
</tr>
<tr>
<td>Chapter 4 Role of Promoter and Regimes of Directors</td>
<td>55</td>
</tr>
<tr>
<td>4.1 Promoter</td>
<td>55</td>
</tr>
<tr>
<td>4.1.1 Legal position of a promoter</td>
<td>57</td>
</tr>
<tr>
<td>4.1.2 Duties of Promoters</td>
<td>58</td>
</tr>
<tr>
<td>4.1.2.1 Duty to disclose secret profits</td>
<td>59</td>
</tr>
<tr>
<td>4.1.2.2 Duty of Disclosure of interest</td>
<td>60</td>
</tr>
<tr>
<td>4.1.3 Promoter’s duties under the Indian Contract Act</td>
<td>60</td>
</tr>
<tr>
<td>4.1.4 Termination of Promoter’s duties</td>
<td>61</td>
</tr>
<tr>
<td>4.1.5 Remedies available to the company against the promoter for breach of his duties</td>
<td>61</td>
</tr>
<tr>
<td>4.1.6 Liability of Promoters</td>
<td>63</td>
</tr>
<tr>
<td>4.1.7 Remuneration of Promoters</td>
<td>64</td>
</tr>
<tr>
<td>4.2.1 Meaning of Director</td>
<td>65</td>
</tr>
<tr>
<td>4.2.1.1 Deemed Directors i.e., Shadow Directors</td>
<td>66</td>
</tr>
<tr>
<td>4.2.1.2 Independent Directors</td>
<td>67</td>
</tr>
</tbody>
</table>
4.2.1.3 Full time V. Part time Director .......................................................... 67
4.2.1.4 Nominal Director .................................................................................. 69
4.2.1.5 Interested Directors ............................................................................. 69
4.2.1.6 Managing Director ................................................................................ 69
4.2.1.7 Appointment of managing director ....................................................... 71
4.2.1.8 Whole time director .............................................................................. 71
4.2.1.9 Non-executive directors ........................................................................ 72
4.2.1.10 Appointment of Director ...................................................................... 72
4.2.2 Qualification for Directors ....................................................................... 73
4.2.3 Disqualification of a Director ................................................................... 74
4.2.4 Undischarged insolvent not to manage companies ................................... 75
4.2.5 Legal Position of Directors ...................................................................... 75
  4.2.5.1 Directors as agent ................................................................................ 76
  4.2.5.2 Directors as trustees ............................................................................ 77
  4.2.5.3 Directors as managing partners ............................................................ 79
  4.2.5.4 Directors employees of the company ................................................... 79
4.2.6 Appointment of Directors ......................................................................... 80
  4.2.6.1 First Directors ..................................................................................... 81
  4.2.6.2 Appointment at general meeting ........................................................... 81
  4.2.6.3 Reappointment i.e., deemed reappointment ......................................... 83
  4.2.6.4 Fresh appointment ............................................................................... 84
  4.2.6.5 Appointment by nomination ................................................................. 84
  4.2.6.6 Appointment by voting on individual basis .......................................... 84
  4.2.6.7 Appointment by proportional representation ....................................... 85
  4.2.6.8 Casual Vacancies ................................................................................ 86
  4.2.6.9 Additional Directors ........................................................................... 86
  4.2.6.10 Appointment by Board ..................................................................... 87
  4.2.6.11 Appointment by Central Government ................................................ 88
  4.2.6.12 Appointment by Company Law Board .............................................. 88
  4.2.6.13 Right to increase number of directors ................................................. 88
4.2.7 Number of Directorships: ......................................................................... 89
5.6 Register of director’s shareholdings .......................................................... 125
5.7 Register of contracts, companies and firms in which directors are interested ................................................................. 126
5.8 Loans to Directors .................................................................................. 126
5.9 Position of Promoter, Directors and Independent Directors in Companies Act 2013 ................................................................. 127
5.9.1 Promoter .............................................................................................. 127
5.9.2 Manner of selection of independent directors and maintenance of databank of independent directors ................................. 128
5.9.3 Appointment of director elected by Small shareholders .................. 129
5.9.4 Appointment of directors .................................................................... 129
5.9.5 Application for allotment of Director Identification Number ........... 131
5.9.6 Allotment of Director Identification Number ...................................... 132
5.9.7 Prohibition to obtain more than one Director Identification Number .. 132
5.9.8 Director to intimate Director Identification Number ............................ 132
5.9.9 Company to inform Director Identification Number to Registrar ...... 132
5.9.10 Obligation to indicate Director Identification Number ....................... 133
5.9.11 Punishment for contravention ............................................................. 133
5.9.12 Right of persons other than retiring directors to stand for directorship .......................................................................................... 134
5.9.13 Appointment of additional director, alternate director and nominee director .................................................................................... 134
5.9.14 Appointment of directors to be voted individually ............................. 136
5.9.15 Option to adopt principle of proportional representation for appointment of directors ................................................................. 136
5.9.16 Disqualifications for appointment of director ...................................... 136
5.9.17 Number of directorships ..................................................................... 138
5.9.18 Duties of directors ................................................................................ 139
5.9.19 Vacation of office of director .............................................................. 140
5.9.20 Resignation of director ...................................................................... 141
5.9.21 Removal of directors ......................................................................... 142
5.9.22 Register of directors and key managerial personnel and their shareholding ................................................................. 144
5.9.23 Members’ right to inspect .................................................. 144
5.9.24 Punishment ........................................................................ 145
5.10 Duties Prescribed in Clause 49 of Listing Agreement .......................... 146
5.11 Liabilities ........................................................................... 147
5.12 Comparison between appointment and qualification of directors ......... 149
5.13 Judicial determination of independent directors duties ...................... 159
5.14 Conclusion ........................................................................ 163

Chapter 6 Emerging Role of Independent Directors in India ................. 164
6.1 The Satyam Saga .................................................................... 164
6.2 Post-Satyam reforms and responses ........................................... 166
6.3 Redefining duties and liabilities ..................................................... 170
  6.3.1 Real and not tokenistic involvement ........................................ 171
  6.3.2 Vigilance ........................................................................... 171
  6.3.3 Act as Sounding Board ............................................................ 172
  6.3.4 Attendance to the Meeting and Performance appraisal ................ 173
  6.3.5 Declaration of Independence .................................................. 174
  6.3.6 Protecting interest of stakeholders .......................................... 174
  6.3.7 Oversight to Corporate Social Responsibility .......................... 175
  6.3.8 Liabilities ............................................................................ 176
6.4 Comparative Analysis under the Companies Act 1956 and 2013 .......... 177
  6.4.1 Section 2(69) of the 2013 Act: Promoter and Corresponding to Section 62(6) (a) of 1956 Act .................................................. 177
  6.4.2 Section 149 of the 2013 Act: Company to have Board of directors- Corresponding to Section 252 and 253 of 1956 Act .................. 177
  6.4.3 Section 150 of the 2013 Act: Manner of Selection of Independent Directors and maintenance of data bank of Independent Directors ........ 178
  6.4.4 Section 151 of the 2013 Act: Appointment of Director Elected by small shareholders – Corresponding to Section 252 of 1956 Act .......... 178
  6.4.5 Section 152 of the 2013 Act: Appointment of Directors- Corresponding to Sections 254, 255, 256 and 264 of 1956 Act .......................... 179
6.4.6 Section 153 of the 2013 Act: Application for allotment of Director Identification Number- Corresponding to Section 266A of 1956 Act

6.4.7 Section 154 of the 2013 Act: Allotment of Director Identification Number- Corresponding to Section 266B of 1956 Act

6.4.8 Section 155 of the 2013 Act: Prohibition to obtain more than one director identification number- Corresponding to Section 266C of 1956 Act

6.4.9 Section 156 of the 2013 Act: Director to intimate director identification number- Corresponding to section 266D of 1956 Act

6.4.10 Section 157 of the 2013 Act: Company to inform director identification number to registrar- Corresponding to section 266E of 1956 Act

6.4.11 Section 158 of the 2013 Act: Obligation to indicate director identification number- Corresponding to section 266F of 1956 Act

6.4.12 Section 159 of the 2013 Act: Punishment for Contravention- Corresponding to section 266G of 1956 Act

6.4.13 Section 160 of the 2013 Act: Right of persons other than retiring directors to stand for directorship- Corresponding to section 257 of 1956 Act

6.4.14 Section 161 of the 2013 Act: Appointment of Additional Director, Alternate Director and Nominee Director- Corresponding to Sections 260, 262 and 313 of 1956 Act

6.4.15 Section 162 of the 2013 Act: Appointment of Directors to be voted individually- Corresponding to Section 263 of 1956 Act

6.4.16 Section 164 of the 2013 Act: Disqualification for appointment of Director- Corresponding to Sections 202, 274 and 283(2) of 1956 Act

6.4.17 Section 165 of the 2013 Act: Number of Directorships- Corresponding to Section 275, 276, 278 and 279 of the 1956 Act

6.4.18 Section 166 of the 2013 Act: Duties of Director- Corresponding to Section 312 and 388 of 1956 Act

6.4.19 Section 167 of the 2013 Act: Vacation of office of Director- Corresponding to Section 283 of 1956 Act

6.4.20 Section 168 of the 2013 Act: Resignation of Director