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Moving towards Better Corporate Governance in India: An Analysis of the Uday Kotak Committee on Corporate Governance

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ABSTRACT

Corporate governance is the involvement of different stakeholders such as shareholders, the board of directors, and the company's management in determining the performance of the company and direction. In a business, the relationship between the owners and, as a result, the managers must be strong, and there should be no conflict between the two. This paper seeks to summarize the recommendations of the report submitted by the committee on corporate governance to SEBI. The committee's report nominated by the Securities and Exchange Board of India under Uday Kotak's chairmanship represents a significant milestone in Indian corporate governance. On 5 October 2017, the SEBI Committee on Corporate Governance, headed by Mr. Uday Kotak, formed on 2 June 2017, recommended major changes to existing regulations. Coming almost two decades after India's first corporate governance initiative, in the form of the CII Code released in 1998, the committee's recommendations have upped the governance ante. They also built on the strong foundation laid by the efforts of previous committees entrusted with the issue, as well as the legislative and regulatory changes that resulted. The primary objective of this paper is to analyze the Uday Kotak Committee Report on Corporate Governance in India. For the purpose of the research work, secondary data was used to explain the committee report on corporate governance. This paper also explains the basis concept of corporate governance. The board's composition, its independence and functioning, the involvement of auditors, shareholder engagement and improvement of corporate reporting are the subject of several recommendations. Some of the most important reforms include an increase in the size of the board of listed companies to six members, ensuring that at least half of the listed boards of directors be independent.

KEYWORDS: *Corporate Governance, Uday Kotak Committee, Independent Directors, Stakeholders, Board of Directors, Sarbanes-Oxley Act*

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I. INTRODUCTION

Corporate governance is the system of laws, procedures, and processes that guide and regulate an organization (Li, S., & Nair, A. 2007). Corporate governance includes effectively balancing the needs of the many stakeholders of a business, such as shareholders, management, consumers, suppliers, financiers, government, and society (Singh. 2013). Since corporate governance also provides the mechanism for achieving a company's goals, it covers almost every management domain, from action plans and internal controls to performance assessment and corporate disclosure (Bhasin, M. 2012).

Upon the development of corporate organizational structure, the corporate governance framework gained broad acceptance and, very peculiarly, it was prevalent throughout the world in various manifestations (Bhardwaj, MN., & Rao. 2014). The concept of corporate governance has been recognized through the establishment and creation of various committees and the formulation of various regulations throughout the world. As for India, after the 1991 economic reforms, the Govt. India found it fit to respond to changes taking place around the world, and the initiatives suggested by the Cadbury Committee Report became popular accordingly. To give due prominence to the Confederation of Indian Industry (CII), the Associated Chambers of Commerce and Industry (ASSOCHAM) and the Securities and Exchange Board of India (SEBI) set up committees to suggest corporate governance measures (Bhardwaj, MN., & Rao. 2014) (Sanan, N., & Yadav, S. 2011). The study of different committees helped a lot to streamline the organization worldwide.

Table1. Committees on Corporate Governance

	Committee	Country	Date of Submission
1	Cadbury	England	1992
2	King Committee	South Africa	1994 & 2002
3	CII	India	1996
4	Hampel	England	1998
5	Kumar Mangalam Birla	India	2000
6	SEBI	India	2000
7	Narayana Murty	India	2003

In India, however, the suggestions of the Naresh Chandra Committee, the Dr. J. R. Irani Committee appointed by the Ministry of Corporate Affairs, the Kumar Mangalam Birla Committee, and the N. R. Narayana Murthy Committee are more significant. Aside from these committees, there are OECD guidelines and reviews by other business organizations such as FICCI, KPMG, and ICSI on corporate governance.

II. OBJECTIVES OF THE STUDY

Currently, India's corporate governance reforms are at a fork in the road, where, while the intentions behind the changes are admirable, there is a need to find a comprehensive solution that addresses country-specific issues in the Indian context. India enacted changes to improve corporate, social, and environmental disclosures, keeping up with worldwide advancements (Goel, P. 2018). The report of the committee, which was appointed by the Securities and Exchange Board of India under the chairmanship of Uday Kotak, is a breakthrough in Indian corporate governance. The purpose of this research is to look at the recommendations made by the Uday Kotak Committee report. The main objectives of the study are:

1. To study the concept and role of corporate governance
2. To clearly indicate the recommendations of the Uday Kotak Committee on Corporate Governance

III. RESEARCH METHODOLOGY

This research is qualitative in nature. Qualitative research is concerned with qualitative phenomenon, i.e., phenomenon relating to or involving quality or kind. In this study, secondary sources are used mainly for collecting data to analyze the concept of corporate governance and the Uday Kotak committee report on corporate governance. The data for the study was collected from various sources such as Companies Act 2013, SEBI (listing obligation and disclosure requirements) regulations 2015, SEBI official report of the Uday Kotak committee on corporate governance.

IV. CONCEPT OF CORPORATE GOVERNANCE

Corporate governance is gaining traction as a result of a variety of causes, including the changing business environment (Li, S., & Nair, A. 2007). The EEC, GATT, and WTO standards have also aided in raising awareness and forced us to consider in terms of following good governance principles. Corporate governance, by its very nature, is impossible to define precisely. Effective responsibility to all shareholders is the essence of corporate governance, nevertheless, there can be no disagreement. The definition that follows should help us better understand the notion. Corporate governance is more than just corporate management; it is a far broader concept that encompasses a fair, efficient, and transparent administration in order to achieve specific well-defined goals (Zala, D S. 2018). It is a method of constructing, operating, and governing a business with the objective of satisfying shareholders, creditors, employees, customers, and suppliers while also adhering to legal and regulatory obligations, as well as meeting environmental and community concerns (Li, S., & Nair, A. 2008). It leads to the construction of a legal, commercial, and institutional framework and demarcates the boundaries within which these activities are conducted when it is practiced under a well-defined system Kulkani, R., &Maniam, B. 2014).

Objectives of Corporate Governance

The evolution of the corporate governance concept is intimately connected to the "objectives of corporate governance", and it's worth noting what the "Introductory framework" says about this: "Good governance is fundamental to a company's very existence." It instils and builds investor trust by demonstrating the company's commitment to increased revenue and profits. It aims to achieve the following goals:

1. At the helm of affairs, there is a properly formed Board capable of making independent and impartial judgments;
2. The Board is balanced in terms of the representation of nonexecutive and independent directors who will look out for the interests and well-being of all stakeholders;
3. The Board follows transparent procedures and practices and makes decisions based on adequate information.
4. That the Board has effective machinery in place to respond to stakeholder concerns;
5. That the Board keeps the shareholders up to date on important company developments;
6. The Board effectively and routinely monitors the management team's performance.

Evolution of Corporate Governance

Over the last two decades, the investing industry has witnessed a slew of scandals involving corporations that have been linked to governance failures (Kumar, J. 2004). These were caused by a multitude of circumstances, and the result was that a need for Corporate Governance arose. The transparent and modern system of corporate governance has lately evolved in such a manner that it maximises shareholder profit while also benefiting all other stakeholders and, eventually, the entire society (Rajharia, P., & Sharma, B. 2014.) Self-regulation and compliance with external rules have only lately emerged as a result of modernity and intricacy, as well as numerous business scams and frauds in global economies during the previous century. Governments, via different committees, business and investor associations, get laws and legislation that urge corporations to govern properly and enhance their company operations. The global response to these corporate wrongdoings was huge, leading to the creation of laws and standards to improve corporate governance (Malik, S., & Nehra, VS. 2014).

Corporate Failures in the Recent Past

A lot of variables contributed to business scandals, and some of these reasons include:

- Boards were ineffectual in general, playing into the hands of executive directors by accepting false financial statements and tolerating unethical business practices.
- At the cost of other stockholders, executives gave themselves large bonuses and stock options.

- Company executives (particularly the executive directors) have lost their business or corporate ethical sense.
- Earnings became the most important indicator of a company's success. Low earnings or losses are not acceptable to directors. As a result, unethical activities (such as creative accounting, book falsification, and so on) were used to enhance or portray bigger earnings.
- Companies have focused on short-term gains and present earnings, frequently at the expense of long-term goals.
- The pay gap between higher and lower-level employees reached uncomfortably high levels. Senior executives fostered a culture of greed. The majority of small investors have lost interest in long-term investing and have instead focused on short-term benefits from share price fluctuations.
- Auditors conspired or did not intervene to prevent the Executive Directors from employing incorrect accounting practices. They lost their independence in the process, which they gave up in exchange for greater audit fees.

Major Corporate Tragedies Due to Poor Governance

1. The United States of America

A. WorldCom: This phone and communications business employed an age-old strategy of misallocating $ 3.8 billion in expenses and treating them as assets by employing erroneous accounting rules.

B. Enron: This energy corporation formed an outside partnership to conceal its financial difficulties. Its revenues and assets are frequently misrepresented.

C. Tyco: The business's CEO, Dennis Kozlowiski, was accused with evading sales tax on artwork purchased for his own house by passing it via corporate books.

2. United Kingdom

A. Mirror Group of Newspapers: Robert Maxwell was declared bankrupt in 1991 when it was discovered that he had stolen hundreds of millions of pounds from his many enterprises, including the Mirror Group's pension fund.

B. Polly Peck International: a substantial number of inconsistencies in payments were discovered. When the firm went bankrupt, Asil Nadir was legally prosecuted with 70 charges of fraud.

3. India

A. Tata-Mistry fallout: Since 2006, Cyrus Mistry has been a director of Tata Sons Ltd. The Tata family's trusts owned the bulk of the stock. This was done to guarantee that the family maintained power even when Cyrus Mistry joined. Mistry's judgments were repeatedly criticised by the Board, and he was fired during one of these meetings. The nominated directors of the trust, including Ratan Tata, were the "shadow directors" of Tata Sons Ltd, according to Mistry.

B. ICICI Bank: Videocon bribery case According to the Enforcement Directorate, Videocon Industries wired Rs. 64 crore to Nupower Renewables Pvt Ltd (NRPL) on September 8, 2009, out of a loan amount of Rs. 300 crore sanctioned by a panel of ICICI Bank led by Chanda Kochhar (wife of Deepak Kochhar). The funds were sent the next day after the loan was disbursed. Deepak Kochhar owns NRPL, which was previously known as NupowerRenewbles Limited (NRL).

C. PNB-Nirav Modi Scam: In February 2018, the Punjab National Bank (PNB), one of the country's top public-sector lenders, was caught up in a Rs. 11,400 crore transaction fraud scandal. The bank discovered and reported $1771.69 million in "fraudulent and illegal transactions" at one of its Mumbai branches to the Bombay Stock Exchange (approx.).

D. The Satyam scandal: Satyam was a publicly listed firm with an excellent reputation, and had even won the Golden Peacock Global Award for corporate governance at one time. Satyam's attempt to invest Rs. 7,000 crores in Maytas Properties and Maytas Infrastructure sparked the controversy. These businesses were owned by Raju's relatives. The investments were approved by the board on December 16, 2008, but the investors were against them. Assets such as cash and bank deposits were exaggerated, while debts were downplayed, causing the firm's records to be falsified. As a result, the investors sued Satyam in a variety of ways.

E. YES Bank: In March 2020, the Reserve Bank of India (RBI) seized control of YES Bank in the lack of a realistic recovery strategy and in the interest of YES Bank's depositors. YES Bank's narrative is straight out of a John Grisham novel. It began as a non-bank financial corporation (NBFC) in 1999 and expanded into a full-fledged bank in 2003. Former Managing Director and CEO Rana Kapoor was known for propping up the market by agreeing to distribute loans to corporate borrowers rejected by other banks, and his board members were continuously fighting for the top slot. The bank would levy a hefty upfront cost, and most borrowers were willing defaulters.

F. Jet Airways: With a market share of 13.8 percent, it was India's second largest airline till 2018. Its final flight was on April 18th, 2019, as it ran out of finances to continue operations, leaving almost 15,000 staff unemployed. The firm owes banks around Rs. 8,500 crores. Jet Airways owes lessors, workers, and other businesses additional Rs. 25,000 crores in arrears. The perpetrators are Chairman Naresh Goyal's corporate governance problems.

International Initiatives on Corporate Governance

1. The United Kingdom

In the late 1980s and early 1990s, a slew of scandals and financial meltdowns in the United Kingdom spawned the notion of corporate governance.

A. Cadbury committee, 1992: Following major scandals (Mirror Group), the London Stock Exchange established the Cadbury committee on "financial elements of corporate governance" in May 1991, led by Sir Adrian Cadbury, which suggested a Code of Best Practice.

B. Green bury committee, 1995: In his report, Sir Richard Green bury reviews the compensation of directors.

C. Hampel Committee (1998): The Hampel Committee was formed to "combine a code of best practises."

D. The Combined Code of 1998: This code integrates the recommendations of the three above-mentioned committees into a single code. For the directors, it supports the notion of comply or explain.

E. Turnbull committee (1999): This committee, chaired by Nigel Turnbull, was formed to give direction to those who create or audit financial accounts. The nature and

value of audit committees were discussed in detail by the f. Smith committee in 2003.

F. Derek Higgs committee, 2003: Higgs Report on the Role of Non-Executive Directors' Effectiveness.

2. United States of America

A. The Blue Ribbon Committee, established in 1999, was charged with enhancing the performance of corporate audit committees.

B. Sarbanes-Oxley Act of 2002: The failures of ENRON and WORLDCOM prompted the creation of the SOX Act. Every area of corporate governance was changed as a result of the act.

3. Pakistan

A. Corporate Governance Code SEC, Pakistan's regulatory organisation, developed a code of corporate governance in 2002, which covered six primary categories.

4. Switzerland

A. Basle Committee Guidelines (1999): In 1999, the Basle Committee produced guidelines aimed at improving corporate governance in financial institutions.

5. France

A. OECD Corporate Governance Principles, 1999: The Organization for Economic Cooperation and Development (OECD) issued its Corporate Governance Principles in 1999.

6. Australia

A. ASX Corporate Governance Council, founded in 2003, focuses on Good Corporate Governance Principles and Best Practice Recommendations.

7. Malaysia

A. The Companies Act of 1965 was amended in response to the financial crisis of 1997-1998.

B. Finance Committee on Corporate Governance, 1997: The Finance Committee on Corporate Governance was founded in 1997, although its report was not released until 1999.

8. India

A. CII-1996: In 1996, the CII launched the first corporate governance effort in India. The primary goal was to promote and build a code of conduct for businesses, regardless of whether they were in the public or private sector, financial institutions, or all other types of businesses.

B. Birla Committee Report: Mr. Kumar Mangalam Birla, a well-known industrialist, has been selected by SEBI to offer insight into the issue of insider trading in order to protect our investors' interests. Companies were requested to present their annual reports separately, as well as a report on corporate governance that detailed the efforts taken to implement the committee's recommendations. The concern was that shareholders should be able to see which firm they have invested in and support the initiatives done to achieve good corporate governance.

C. Clause 49: The relevance of an auditing body to the committee was recognised, and numerous specific recommendations for the constitution and board audit committees were given. Clause 49, a new provision of the listing agreement that took effect in parts between 2000 and 2003, included these norms and regulations.

D. Corporate Governance Report by the SEBI (N.R Narayan Murthy) February 2003: SEBI established a Committee to examine the role of independent directors, risk management, director remuneration, code of conduct, and financial disclosure in order to strengthen governance standards. Clause 49 – Murthy Committee Amendment SEBI changed Clause 49 in 2004 in response to the Murthy Committee's recommendations.

E. The Companies Act of 2013: It specifies the regulations governing the formation of the board of directors, board meetings, board processes, the Audit Committee, general meetings, party transactions, and financial statement disclosure obligations, among other things.

F. SEBI Guidelines: SEBI may be thought of as a governmental organisation that has control over listed firms and publishes regulations, rules, and laws to guarantee investor safety. Stock exchange standard listing agreements are prepared for corporations whose shares are listed on stock exchanges.

III. UDAY KOTAK COMMITTEE ON CORPORATE GOVERNANCE

SEBI established a committee to advise on corporate governance concerns, which is chaired by Shri Uday Kotak, Executive Vice Chairman and Managing Director of Kotak Mahindra Bank. Representatives from Corporate India, stock exchanges, professional bodies, investor organizations, Chambers of commerce, law firms, academicians and research specialists, as well as SEBI, make up the rest of the committee.

SEBI appointed a 25-member panel committee on corporate governance in June 2017, led by banker Uday Kotak. It had four months to make its recommendations. Its recommendations include a comprehensive revision of corporate governance standards for publicly traded companies (Zala, D S. 2018).

Terms of Reference of the Committee:

The Committee made recommendations to SEBI on the following issues with the aim of improving standards of corporate governance of listed companies in India:

1. Ensuring independence in spirit of Independent Directors and their active participation in functioning of the company;
2. Improving safeguards and disclosures pertaining to Related Party Transactions;
3. Issues in accounting and auditing practices by listed companies;
4. Improving effectiveness of Board Evaluation practices;
5. Addressing issues faced by investors on voting and participation in general meetings;
6. Disclosure and transparency related issues;
7. Any other matter, as the Committee deems fit pertaining to corporate governance in India. The committee shall endeavor to submit the report within a period of four months.

Excess debt is weighing heavily on many Indian businesses. Almost every bank's balance sheet is stacked high with problematic loans. Few of the preceding decade's high-priced acquisitions have paid off for shareholders. Most corporate boards have been deafeningly silent on these

matters. The current challenges in the Indian economy are as much about corporate governance as they are about the economic cycle's whims. In this context, the suggestions made to the Securities and Exchange Board of India (SEBI) on October 5th by a committee led by Uday Kotak should be considered. The committee had proposed significant measures that will increase corporate transparency and improve the standard of corporate governance in publicly traded corporations. The method to achieve this, according to committee member Krishnamurthy Subramanian, is to strengthen the three gatekeepers—the board, the auditors, and the regulator (Zala, D S. 2018).

The committee has looked into issues such as the board's size and composition, the number of independent directors and their roles, and information disclosure and dissemination. The committee, for example, states that because the board of directors plays such an important role in the operation of a publicly traded firm, it should have a sufficient number of directors. It has been recommended that a publicly traded firm have at least six directors, at least one independent woman director, and at least half of the directors be non-executive. Independent directors on the board play a critical role in protecting the interests of all stakeholders, particularly small investors. The committee has prepared the path for independent directors to have a larger presence and responsibility. Without the presence of an independent director, no board meeting can be held. At least half of the board members should be independent directors, according to the committee. It has also proposed measures to ensure that newly appointed independent directors are actually independent.

Remarkably, the committee recommends that the number of board meetings be expanded from four to five each year, and that topics such as succession planning, strategy, and wide evaluation be considered at least once a year. This appears to have been prompted by previous boardroom squabbles, although it's unclear whether another board meeting would genuinely help avoid similar issues. The accuracy of financial statements is critical, and auditors play a critical role in this regard. The committee also feels that if an audit firm leaves before the end of its contract, the company should explain why, as this could lead investors to be concerned. SEBI should also have the authority to take action against auditors if the necessity arises, according to the report.

Overall, the Kotak committee's proposals will improve the transparency and efficacy of the way boards of publicly traded firms operate. It has specified dates for execution because some of the suggested modifications are structural in nature (Zala, D S. 2018). However, there is still a problem with effective implementation and regulation. To successfully oversee listed businesses and protect the interests of small shareholders, the securities market regulator will need to improve competencies.

Major Recommendations of the Committee

➢ Separation of the roles

At publicly traded firms, the chairmanship and managing directorship should be separated, and chairmanship should be limited to non-executive directors alone. Listed firms with more than 40% public shareholding will have different chairperson and MD/CEO positions starting in April 2020. SEBI may propose extending criteria to all designated entities after 2020, with effect from 2022.

➢ Minimum board strength

Number of board should be expanded to six members, with at least one woman as an independent director. At least five board meetings for listed companies will be held throughout the year, up from the current standard of four. Companies' boards of directors will meet at least once a year to address succession planning and risk management.

➢ Independent directors

At least half of board members at publicly listed companies must be independent directors, and all directors must attend at least half of board meetings. For non-executive directors above the age of 75, public shareholders are not required.

➢ Shareholder meeting and cash flow statement

All publicly traded companies should produce a cash flow statement every six months, and the top 100 companies by market size should webcast shareholder meetings. The disclosure of quarterly aggregate sales by publicly traded companies will be required.

➢ Credit rating

Investors and other stakeholders would benefit greatly from having an up-to-date list of all credit ratings obtained by the listed firm in one place.

➢ Minimum remuneration

Independent directors must be paid a minimum of 5 lakhs per year in pay and a sitting fee of Rs 20000-50000 for each board meeting. If the yearly salary of executive directors from the promoter family exceeds Rs 5 crore, or 2.5 percent of the company's net profit, businesses will be required to seek public shareholder approval. When there are multiple such directors, the same criterion will apply if the total yearly salary reaches 5% of net profit. Shareholders must approve any yearly remuneration paid to a single non-executive director that exceeds 50% of the total annual remuneration paid to all non-executive directors.

➢ Risk management and IT committee

For cyber security, the top 500 listed companies should have a risk management committee of the board of directors. As a result, the organizations listed above must form an information technology committee that will focus on digital and technological elements.

On paper, the Companies Act of 2013 and SEBI's following modifications to its rules to bring them in line with the legislation have improved India's governance standards to among the finest in the world. To that regard, the committee led by Kotak had the benefit of starting from a higher ground. It was understandable that it adopted the motto "evolution, not revolution." The majority of the committee's proposals are gradual in character, although a handful are far-reaching, in keeping with this strategy. These, coupled with proposals to further tighten related party transaction monitoring, reflect India's current business structure, which is peppered with enterprises with concentrated shareholdings and dominating promoters. Several additional proposals include the board's composition, independence, and functioning, as well as the role of auditors, shareholder involvement, and improved corporate disclosures. Among the most major reforms include increasing the board size for publicly traded businesses to six members and requiring that at least half of the boards of publicly traded businesses be made up of independent directors, including at least one-woman director. Process-related issues are also given a lot of

attention in the study. Apart from the tangible alterations, the majority of the suggestions are made in little increments.

IV. CONCLUSION

The demand for corporate governance arose as a result of growing concerns about non-compliance with financial reporting and accountability norms by business boards of directors and management, resulting in significant losses for investors. The failure of worldwide behemoths such as Enron, World Com, and Xerox in the United States is attributed to a lack of sound corporate governance and unscrupulous activities by management and their financial consulting firms. On the 5th of October, an Indian market regulator-appointed group suggested a host of new measures aimed at boosting corporate governance, ranging from boosting the role of independent directors to boosting financial disclosures. Following many high-profile business tussles, the regulator, the Securities and Exchange Board of India (SEBI), established the 25-member panel led by Uday Kotak, managing director of Kotak Mahindra Bank, in June. Its proposals include requiring boards to include at least six members, half of whom must be independent. The number of independent directors may vary depending on whether the chairman is a member of the main shareholder group, according to current regulations. The group also advised conducting at least five board meetings each year, up from four presently, with at least one set aside to consider problems like as board assessment, risk management, and succession planning. Companies with a public ownership of at least 40% should be required to split the roles of chairman and chief executive starting April 1, 2020. In order to increase openness, the group recommended that publicly listed corporations publish consolidated financials every quarter rather than annually as is now required. Businesses that contribute for at least 80% of a group's consolidated income, assets, and earnings should also be audited, according to the report.

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