

**Topic: The Evaluation of the OECD Principles of Corporate Governance in Promoting  
Good Governance Practices in Emerging Markets: Case From Brazil and India**

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## Abstract

With an emphasis on how well they adhere to the OECD Principles of Corporate Governance, this research thoroughly examines the corporate governance practises of Brazil and India. It examines the corporate governance environments of these two economically major countries, including their historical development, legal and regulatory frameworks, fundamental ideas, comparative assessments, current changes, and prospects and problems. The analysis shows that legislative changes and regulatory actions have led to development in Brazil in areas like transparency and the protection of shareholder rights. The report emphasises governance strengths with regard to minority shareholder rights protection and board composition in India, a vibrant and quickly expanding economy. Brazil, India, and the OECD Principles are compared to highlight the distinct advantages and disadvantages of each nation's governance systems. The effect of recent changes on accountability, transparency, and shareholder protection are highlighted, with particular attention paid to Brazil's Novo Mercado and India's Companies Act, 2013. These reforms are evaluated in relation to international norms. Academicians and practitioners are given recommendations that recognise the limits of this study, embrace worldwide best practises, encourage stakeholder interaction, and encourage further research. The importance of corporate governance in developing nations' capacity to maintain economic stability, draw in foreign capital, and support long-term development is highlighted by this research.

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## 1 Chapter 1: Introduction

### 1.1 Background

The Organisation for Economic Co-operation and Development (OECD) is comprised of 34 member countries and 6 partner countries, which are among the most affluent nations globally. Given that these 40 nations collectively represent 80% of global trade and investment, the Organisation for Economic Cooperation and Development (OECD) perceives its position as crucial in tackling the various issues confronting the global economy. Significantly, a considerable portion of the recommendations provided by the report are targeted towards legislators in emerging markets and underdeveloped nations, as well as towards businesses operating within these contexts.<sup>1</sup> The OECD Principles of Corporate Governance serve as a guide for governments, stock exchanges, investors, and private corporations to enhance their corporate governance structures.<sup>2</sup> The primary objective of this study is to gain a deeper understanding of the how countries are adopting the OECD Principles within emerging markets.<sup>3</sup> The text also examines the extent to which they can be regarded as an effective networked mode of governance that transcends traditional hierarchical mechanisms of legislative and regulatory processes. A concise elucidation is necessary to comprehend the term and extent of 'emerging markets' particularly Brazil and India.

The term "intermediate economies" pertains to nations that do not fall into the categories of developed or developing countries. These countries are occasionally referred to as newly industrialised countries or rapidly developing economies. This dissertation centres on

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<sup>1</sup> Talaat Abdel-Malek, 'The Global Partnership for Effective Development Cooperation: Origins, Actions and Future Prospects' (www.econstor.eu2015) <<https://www.econstor.eu/handle/10419/199213>> accessed 4 September 2023.

<sup>2</sup> Ruth V Aguilera and Rafel Crespi-Cladera, 'Global Corporate Governance: On the Relevance of Firms' Ownership Structure' (2016) 51 Journal of World Business 50 <<https://www.sciencedirect.com/science/article/pii/S1090951615000826>>.

<sup>3</sup> Guler Aras, 'The Effect of Corporate Governance Practices on Financial Structure in Emerging Markets: Evidence from BRICK Countries and Lessons for Turkey' (2015) 51 Emerging Markets Finance and Trade.

examining case studies of emerging markets within the BRIC (Brazil, Russia, India, and China) countries keeping focus on India and Brazil only and how these countries are adopting OECD principles of corporate governance. The countries in question are members of the BRIC, a group widely recognised as having the potential to become highly influential economic actors in the future. The BRIC countries refer to a group of four prominent emerging national economies, collectively accounting for approximately 40% of the global population, which amounts to around 3.6 billion individuals. These countries hold significant influence in the world economy due to their substantial trade activities and access to valuable natural resources. In terms of nominal GDP, the combined output of these nations stands at approximately US\$16.6 trillion, representing roughly 21% of the total gross world product.<sup>4</sup> These four nations exhibit common characteristics of both centralised and pro-market economic systems, demonstrating substantial economic growth and a high level of attractiveness for foreign direct investment (FDI). However, in many other aspects, particularly in relation to political regimes and the strength of institutions, they exhibit significant differences. These differences have important implications for the patterns of corporate governance and make their cross-national comparison an intriguing subject of study. Indeed, it is evident that significant distinctions exist among the cohort of emerging economies. Notably, it is important to acknowledge that while certain members of this group may also be classified as 'transition economies,' they encounter distinct challenges pertaining to the reform of corporate governance. However, it was widely held that a significant portion of the discoveries could be relevant to the entirety of the burgeoning economies.

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<sup>4</sup>Melsa Ararat, Stijn Claessens and B Burcin Yurtoglu, 'Corporate Governance in Emerging Markets: A Selective Review and an Agenda for Future Research' [2020] Emerging Markets Review 100767.

## ***1.2 Aim and Objectives***

The aim of this study is evaluating how Brazil and India have adopted OECD principles with a specific emphasis on identifying and analysing their shared characteristics and divergences.

The objectives of the study are

- To assess the main aspects of corporate governance in Brazil and India
- To identify country-level features influencing corporate governance keeping in light Brazil and India.
- To compare the OECD Corporate Governance Guidelines in Brazil and India

## ***1.3 Research Question***

What are the corporate governance laws in Brazil and how its compare to OECD Principles of Corporate Governance in Promoting Good Governance Practices?

What are the corporate governance law in India and how its compare to OECD Principles of Corporate Governance in Promoting Good Governance Practices?

## ***1.4 Rationale of the Study***

A closer look at the Organisation for Economic Co-operation and Development's (OECD) impact on emerging markets, particularly the in Brazil and India, is warranted given the OECD's growing influence in determining global economic policies and governance practises.

It is important to explore how well these principles apply in these situations since the OECD plays a significant role in resolving issues facing the global economy and because its instructions are directed at both lawmakers and companies in developing nations. The purpose of the research is to give insight on the evaluation of the OECD Principles of Corporate Governance in comparing with developing economies and their potential success as a

networked form of governance outside of hierarchical legal systems.<sup>5</sup> The success of the OECD standards in developing economies has yet to be determined, even though its major goal is to help governments, stock exchanges, investors, and private companies improve corporate governance structures.

The decision to concentrate on the BRIC nations particularly India and Brazil, which account for a sizeable share of the global population and economy, is justified by their tremendous economic significance and potential as important developing national economies. These nations have had rapid economic development and are attractive to foreign direct investment, and they display varied degrees of centralised and pro-market economic characteristics. A cross-national comparison is fascinating and pertinent due to the different corporate governance patterns created by their disparate political systems and institutional capacities. Additionally, the phrase "emerging markets" itself has to be clarified since it refers to nations that are not yet completely developed but are growing quickly or have just industrialised.<sup>6</sup> With a focus on the Brazil and India,<sup>7</sup> understanding how the OECD Principles operate in such settings may provide important insights into the dynamics of corporate governance reform and its application in other economies throughout the globe. This research aims to add to the body of knowledge on corporate governance in developing economies by examining the application and effects of the OECD standards. It will offer significant lessons for policymakers, corporations, and other stakeholders striving to strengthen corporate governance practises in comparable economic environments and provide insight on the difficulties and possibilities experienced by these nations in embracing global governance norms. The study's conclusions

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<sup>5</sup> Jingchen Zhao, 'Promoting a More Efficient Corporate Governance Model in Emerging Markets through Corporate Law' (2016) 15 Washington University Global Studies Law Review 447 <<https://heionline.org/HOL/LandingPage?handle=hein.journals/wasglo15&div=20&id=&page=>>>.

<sup>6</sup> Nobuyuki Demise, 'OECD Principles of Corporate Governance' [2006] Corporate Governance in Japan 109.

<sup>7</sup> Sanjay Peters, Mariah Miller and Sophia Kusyk, 'How Relevant Is Corporate Governance and Corporate Social Responsibility in Emerging Markets?' (2011) 11 Corporate Governance: The international journal of business in society 429.



may ultimately help formulate policies and make educated decisions to strengthen corporate governance systems and advance sustainable economic growth in developing economies.

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## 2 Chapter 2: OECD Principles and Corporate Governance

### 2.1 Corporate Governance

On the Corporate Governance (CG) of developed markets, notably the USA and the UK as well as nations in Continental Europe, there is substantial conceptual and empirical study. The key theoretical contributions have been developed and tested in this setting. Shareholder-oriented and stakeholder-oriented are the two primary CG models.<sup>8</sup> Although there has been improvement in how various CG dimensions fit together to form various governance configurations or kinds in recent years. Due to the early lack of interest in CG research and the absence of accessible, trustworthy data experimentally, CG research in EMs is shorter and began later. This pattern is evolving quickly. From the perspective of investors, CG in EMs enterprises is crucial because strong CG might compensate for country weaknesses in the entire national governance framework, such as the implementation of minority shareholder protection rights.

Khanna and Zyla<sup>9</sup> provide supporting evidence in an IFC survey that highlights the phenomenon of firms addressing institutional holes at the business level. It is intriguing to discover that investors who participated in the survey placed a significant value on well-governed firms in emerging markets, and were willing to pay higher premiums for such companies. However, the authors of this study highlight the existence of considerable ambiguity surrounding the specific threshold of corporate governance (CG) that is deemed suitable for investment, as well as the governance practises that hold the greatest significance for well-governed firms in emerging markets. The survey respondents proposed changes in the field of corporate governance that primarily focused on enhancing and ensuring the effective

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<sup>8</sup> Ruth V Aguilera and Gregory Jackson, 'Comparative and International Corporate Governance' (2010) 4 The Academy of Management Annals 485.

<sup>9</sup> Khanna, Vikramaditya Singh and Zyla, Roman, 'Survey Says : Corporate Governance Matters to Investors in Emerging Market Companies' (*Policycommons.net*2017) <<https://policycommons.net/artifacts/1519040/survey-says/2198732/>>.

implementation of investor protection laws and contracts, with an emphasis on achieving more consistency and reliability (2017: 14).<sup>10</sup> Specifically, the authors mentioned that decreased judicial and bureaucratic inefficiencies in India and a decrease in the prevalence of different class systems in Brazil. It is important to emphasise from the beginning that governance practises that are often seen as essential and efficient in developed nations, such as the presence of independent boards, may not be applicable or given less importance in the case of emerging market (EM) enterprises. These firms are generally under the control of either the state or familial entities.

Companies operating in emerging markets (EMs) have more significant challenges related to the expropriation of minority shareholders compared to companies in more established markets. Consequently, investors in EMs must adopt self-protection strategies due to the comparatively weaker legal enforcement and institutional frameworks.<sup>11</sup> Self-protection tactics include several measures such as doing more thorough due diligence, engaging in third-party arbitration, offering bigger price reductions, or placing a stronger emphasis on governance features at the company level. Scholars in the fields of law and finance have conducted research on the correlation between evaluation of OECD principles of corporate governance, which is defined as robust legal frameworks, and the distribution of ownership structures.<sup>12</sup> The correlation between the strength of a country's legal system and its economic growth has been a subject of controversy in this theory.<sup>13</sup> Inside the realm of emerging markets (EMs), the implementation of strategies aimed at minimising tunnelling practises inside company

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<sup>10</sup> Khanna, Vikramaditya Singh and Zyla, Roman, 'Survey Says : Corporate Governance Matters to Investors in Emerging Market Companies' (*Policycommons.net*2017) <<https://policycommons.net/artifacts/1519040/survey-says/2198732/>>.

<sup>11</sup> Ilir Haxhi and Ruth V Aguilera, 'An Institutional Configurational Approach to Cross-National Diversity in Corporate Governance' (2016) 54 *Journal of Management Studies* 261.

<sup>12</sup> Palka Chhillar and Ramana Venkata Lellapalli, 'Divergence or Convergence: Paradoxes in Corporate Governance?' (2015) 15 *Corporate Governance: The international journal of business in society* 693.

<sup>13</sup> Palka Chhillar and Ramana Venkata Lellapalli, 'Divergence or Convergence: Paradoxes in Corporate Governance?' (2015) 15 *Corporate Governance: The international journal of business in society* 693.

conglomerates seems to be a very efficacious approach for enhancing corporate governance, hence leading to improved firm performance.<sup>14</sup> The consensus among management and finance researchers is mostly in favour of the notion that efficient corporate governance (CG) in emerging markets (EMs) might serve as a means of safeguarding investor interests, especially in light of the limited institutional framework and significant institutional gaps prevalent in these markets. The consensus among management and finance researchers is mostly in favor of the notion that efficient corporate governance (CG) in emerging markets (EMs) can play a pivotal role in safeguarding investor interests. This is particularly crucial in light of the limited institutional framework and significant institutional gaps prevalent in these markets. Corporate Governance (CG) can be defined as the set of principles, processes, and practices that govern how a company is managed and controlled. It encompasses the relationships between a company's various stakeholders, including shareholders, management, board of directors, and other interested parties, such as employees and creditors. Effective corporate governance serves to ensure that a company is run in a manner that aligns with the best interests of its shareholders while also taking into consideration the broader societal and ethical implications of its actions.<sup>15</sup>

## **2.2 The OECD Principles**

The OECD Principles of Corporate Governance were first approved in 1999, with a revised version being introduced in 2004. Both iterations were formulated after to financial crises, namely, the Asian financial crisis and the dot-com boom. The aforementioned objective is evident in their stated goals. As an example, the Foreword to the OECD Principles 2004 acknowledges the significant role that effective corporate governance plays in promoting

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<sup>14</sup> Anna Grosman, Ruth V Aguilera and Mike Wright, 'Lost in Translation? Corporate Governance, Independent Boards and Blockholder Appropriation' (2019) 54 Journal of World Business 258.

<sup>15</sup> Navitha Singh Sewpersadh, 'An Econometric Analysis of Financial Distress Determinants from an Emerging Economy Governance Perspective' (2022) 10 Cogent Economics & Finance.

stability in financial markets, fostering investment, and driving economic development.<sup>16</sup> The OECD Principles were formulated by the OECD Business Sector Advisory Group and later ratified by the OECD Council, which consists of the relevant ministers from the member nations of the OECD. Furthermore, the process encompassed the involvement of several additional stakeholders. The drafting process benefitted from the contributions of the Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (TUAC) of the Organisation for Economic Co-operation and Development (OECD). The World Bank and the International Monetary Fund (IMF) participated in an observer capacity.<sup>17</sup> Moreover, consultations with non-member countries were conducted through regional roundtables and additional meetings. Lastly, a public consultation was undertaken as part of the process.

Within the existing body of research, this particular phenomenon has garnered acclaim for its exemplary demonstration of an inclusive procedural approach that effectively safeguards and advances a broader collective benefit. However, this procedural equilibrium fails to address the inquiry of whose interests have had the most influence.<sup>18</sup> One possible perspective is that the OECD's interests were primarily influential, as shown by its purportedly prevalent "expert culture." Second, the International Corporate Governance Network (henceforth ICGN), which speaks for investors controlling more than \$18 trillion in assets, is often cited as evidence that international institutional investors had a significant hand in shaping the OECD Principles. The hope that legal unification would make it cheaper to invest in multinational corporations may possibly be a factor. The 2015 G20/OECD Principles of Corporate Governance encompass several chapters, each addressing essential aspects of corporate governance in publicly listed

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<sup>16</sup> OCDE OECD, 'The OECD Principles of Corporate Governance' [2005] Contaduría y Administración.

<sup>17</sup> OCDE OECD, 'The OECD Principles of Corporate Governance' [2005] Contaduría y Administración.

<sup>18</sup> Randall Morck, 'A History of Corporate Governance around the World' [2005] NBER Books.

corporations. These chapters, organized in chronological order, provide a structured framework for understanding corporate governance.<sup>19</sup>

The chapters of OECD Principles' cover the meat and potatoes of most nations' business laws as they pertain to publicly listed corporations. In order, they are as follows: (1) laying the groundwork for good corporate governance; (2) shareholders' rights and key ownership functions; (3) shareholders' fair treatment; (4) stakeholders' roles in corporate governance; (5) disclosure and transparency; and (6) the board's duties.<sup>20</sup> There are, of course, other cases when decisions have been taken. A common practise in Anglo-Saxon nations is to have a "sufficient number of non-executive board members capable of exercising independent judgement," for instance. In contrast, it seems that the importance of stakeholders' interests in corporate governance is a product of continental European models rather than the prevailing attitude in those nations. One example is the 'one share, one vote' concept, on which no consensus could be established.

The OECD Principles are stated in a broad, overarching way. This is on purpose, since they are not intended to be a standardised "code," but rather to provide a range of options for implementing sound business practises. The OECD Principles serve as voluntary guidelines for several international organisations.<sup>21</sup> They are first directed towards legislators in developing countries and emerging markets. This also applies to stock markets as far as the regulations for corporate governance of listed firms are concerned. Second, the Principles' voluntariness may be weakened in actual use. This, on the one hand, is an effect of global bodies. The OECD Principles are one of the worldwide norms that nations are advised to

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<sup>19</sup> Mathias M Siems and Oscar Alvarez-Macotella, 'The OECD Principles of Corporate Governance in Emerging Markets: A Successful Example of Networked Governance?' [2013] *Networked Governance, Transnational Business and the Law* 257.

<sup>20</sup> Abdussalam Mahmoud Abu-Tapanjeh, 'Corporate Governance from the Islamic Perspective: A Comparative Analysis with OECD Principles' (2009) *20 Critical Perspectives on Accounting* 556.

<sup>21</sup> Abdussalam Mahmoud Abu-Tapanjeh, 'Corporate Governance from the Islamic Perspective: A Comparative Analysis with OECD Principles' (2009) *20 Critical Perspectives on Accounting* 556.

embrace by the Financial Stability Board (FSB), the World Bank, and the worldwide Monetary Fund. However, governments that wish to attract foreign investment are the ones that have pushed themselves to adopt the OECD Principles. Third, at the company level, it may be that the OECD Principles simply need to be applied. The OECD Principles also serve as recommendations for firms to follow insofar as they are permitted discretion under company law.<sup>22</sup> Businesses may care about adhering to the Principles if doing so would increase their chances of attracting investments by, for instance, making investors feel safer or decreasing the overhead associated with complying with many sets of laws. This is bolstered by the fact that rating-agencies evaluate corporate governance at the business level in accordance with the OECD Principles.

### ***2.3 Corporate Governance and the OECD Principles***

Several authors have linked the Organisation for Economic Cooperation and Development (OECD) to the idea of networks. However, there is no unified approach to this. Take the term "catalyst" to describe the OECD's role in the development of "transgovernmental regulatory networks." In this sense, OECD initiatives like the OECD Principles may be seen as networks. The OECD has been called "an important institutional network" and "part of the evolving global political superstructure" by its proponents, who seem to view the organisation in network terms.<sup>23</sup> Finally, some statements address the OECD's connections to other groups, describing it as a crucial "node in the growing networks of transnational governance" and noting that the networks' expanding membership "includes other international organisations, appointed experts, and representatives of civil society associations." What it means to be a

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<sup>22</sup> Andrew Baker, 'The "Public Interest" Agency of International Organizations? The Case of the OECD Principles of Corporate Governance' (2011) 19 *Review of International Political Economy* 389.

<sup>23</sup> Victor Zitian Chen, Jing Li and Daniel M Shapiro, 'Are OECD-Prescribed "Good Corporate Governance Practices" Really Good in an Emerging Economy?' (2010) 28 *Asia Pacific Journal of Management* 115 <<https://link.springer.com/content/pdf/10.1007%2Fs10490-010-9206-8.pdf>>.

"modern state" may be defined by such a network, it is worth noting. Better comprehension requires linking networks to the idea and difficulties of government.

The increasing interconnection of policy levels and sectors throughout the globe is a major concern for modern policymakers. This is a difficult task because it necessitates addressing a number of interrelated issues all at once, including the growing desire for less top-down interventions, the public's demand for greater accountability towards citizens, and the general expectation of seeing policies that are technically feasible and acceptable to a new generation of stakeholders that is actively participating in the policymaking processes.<sup>24</sup> These forces push researchers to find new ways of governing that may effectively harness the power of networks inside a society. The various methods of leading huge human groups do not always allow for efficient use of the shared resources. Policy networks, vertical organisations, and market-based organisations have all been crucial to the scholarly discussion on networked governance. The 'vertical' model implies that actors successfully coordinate by self-interest, but this relies on required incentives for all participants; the 'market' model assumes that actors effectively coordinate by self-interest, but this depends on necessary incentives for all participants.<sup>25</sup>

When we talk about "networks," we're referring to a web of friendships and associations where people treat one another as equals and work together on common goals based on mutual trust and allegiance. These processes occur simultaneously and rely on one another. Since their complementarities and conflicts lead to more or less fruitful consequences, the mix of those modalities is vital. The concept of networked governance rests on three pillars: (1) the interaction between actors at the national and international levels and in the public and private sectors; (2) shifts in power relationships, in which individuals and new organisations are

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<sup>24</sup> Kerstin Martens and Anja Jakobi, 'Mechanisms of OECD Governance: International Incentives for National Policy-Making?' (RePEc - Econpapers2010) <<https://econpapers.repec.org/bookchap/oxpobooks/9780199591145.htm>>.

<sup>25</sup> Torben R Christensen and Per Læg Reid, *The Ashgate Research Companion to New Public Management* (Informa 2016).



increasingly tasked with communicating and coordinating with stakeholders and wielding influence in areas that were traditionally handled by well-established hierarchical levels; and (3) the increasing importance of cooperative models of governance.<sup>26</sup>

As a result, the study of networks provides a path towards politically viable strategies to enhance domestic activity by cooperating with nations that are becoming more interconnected. Despite its many benefits, networked governance may not fare well in companies with strongly dominating hierarchical cultures and, consequently, vertical structures, like large, powerful governments, which may be relevant to the OECD Principles.<sup>27</sup> It's also less useful in situations when the parties involved have different cultural values and don't share any overt objectives. Trust is largely a spontaneous occurrence that takes time to establish, and this is important since coordination in this system of government is based on trust and loyalty rather than administrative directives (hierarchy) or pricing (markets).

#### ***2.4 The Substantive Fit of the OECD Principles***

There is no common paradigm of corporate governance reflected in the OECD Principles. The absence of a common paradigm means that the OECD Principles do not advocate for a uniform set of rules or practices that all nations must adhere to. Rather, they provide a flexible and adaptable framework that can be customized to align with a particular country's legal, cultural, and economic context. This approach recognizes that corporate governance is influenced by various factors, including historical precedents, legal traditions, and societal norms. They do not work in economies where weak formal institutions have been the norm in the past. Investors, traders, and other market participants have varying expectations on company and securities law based on their personal traits and the reasons they participate in the stock market

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<sup>26</sup> Tony Porter and Michael Webb, 'The Role of the OECD in the Orchestration of Global Knowledge Networks 1' (2007) <<https://cpsa-acsp.ca/papers-2007/Porter-Webb.pdf>>.

<sup>27</sup> Tony Porter and Michael Webb, 'The Role of the OECD in the Orchestration of Global Knowledge Networks 1' (2007) <<https://cpsa-acsp.ca/papers-2007/Porter-Webb.pdf>>.

and other business activities. There is a significant divide between "insiders," or economic agents who recognise themselves as part of a group whose market dealings are critically supported by personal connections as the source of reciprocal trust, and "outsiders," or agents who do not benefit from such personal ties.<sup>28</sup> As a result of the law's inadequacy in protecting third parties, informal remedies have emerged to fill the void, competing with and sometimes converging with the aims of company and securities legislation. Scholarly publications and policy-reports on the implementation of international corporate governance norms in developing economies often return to the topic of the predominance of family-businesses and associated networks.

Given that these institutions are seen as detrimental to the efficient functioning of the market economy, it is possible that a mutually beneficial solution may arise via the strengthening of market governance. However, family-owned businesses could exhibit a reluctance to alter their strategy solely due to market forces.<sup>29</sup> The imposition of stricter governance requirements might result in higher costs associated with adhering to family-oriented preferences. In an alternative perspective, the enhancement of markets for corporate control might potentially enable families to engage expert managers, therefore preserving the advantageous aspects of family ownership. In a setting characterised by the absence of a prevailing rule of law, coupled with a deficiency in credible commitment pertaining to enforcement. The establishment of a family-owned firm may serve as a viable strategy to address the trust deficit within the legal system. The presence of a pre-condition does not hinder the professionalisation of corporate operations, nor does it impede openness and accountability.<sup>30</sup> Therefore, the aforementioned lack of appropriateness does not just arise from the presence of family capitalism. Concentrated

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<sup>28</sup> Tony Porter and Michael Webb, 'The Role of the OECD in the Orchestration of Global Knowledge Networks 1' (2007) <<https://cpsa-acsp.ca/papers-2007/Porter-Webb.pdf>>.

<sup>29</sup> Anne-Marie Slaughter, *A New World Order* (2005).

<sup>30</sup> Anne-Marie Slaughter, *A New World Order* (2005).

corporate ownership is a prevalent phenomenon seen in developing countries, including but not limited to South Korea, the Czech Republic, Hungary, and Poland.

Family ownership and business group connection are prevalent characteristics seen in rising economies within Latin America, including Argentina, Brazil, Chile, Colombia, Mexico, and Peru. However, it is important to note that the processes and control systems used by corporations in these various nations exhibit significant variations. In addition, in contrast to the predictions made by the literature on globalisation and convergence, the implementation of market-oriented legal and economic reforms at the country level, with the objective of enhancing investor protection, has not resulted in a decrease in the prevalence of concentrated ownership within publicly listed companies in emerging markets within the initial ten years following the adoption of the OECD Principles.<sup>31</sup> The OECD Principles are widely incorporated into contemporary business legislation in several nations, especially pertaining to publicly listed corporations. Nevertheless, there is significant variation in the extent to which these practises are practised across the prominent OECD countries and other nations characterised by informal institutions, corruption, and a lack of strong rule of law.<sup>32</sup>

The task of defining and implementing the OECD Principles in emerging countries presents a significant and noteworthy difficulty. This phenomenon may be attributed to the increasing proliferation of research endeavours and recommendations aimed at streamlining the incorporation of the Principles at a smaller, more granular level.<sup>33</sup> However, a significant challenge is in the identification of functional counterparts, whether they be formal or informal,

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<sup>31</sup> Mathias M Siems and Oscar Alvarez-Macotela, 'The OECD Principles of Corporate Governance in Emerging Markets: A Successful Example of Networked Governance?' [2013] *Networked Governance, Transnational Business and the Law* 257.

<sup>32</sup> Wesley Kaufmann and Anne Lafarre, 'Does Good Governance Mean Better Corporate Social Performance? A Comparative Study of OECD Countries' [2020] *International Public Management Journal* 1.

<sup>33</sup> Victor Zitian Chen, Jing Li and Daniel M Shapiro, 'Are OECD-Prescribed "Good Corporate Governance Practices" Really Good in an Emerging Economy?' (2010) 28 *Asia Pacific Journal of Management* 115 <<https://link.springer.com/content/pdf/10.1007%2Fs10490-010-9206-8.pdf>>.

among nations that possess divergent perspectives and principles. It is important to ensure that the implementation of the Principles provides enough motivation for stakeholders in developing markets and facilitates the development of strategies to address the unique characteristics of corporate governance in these areas. The OECD Principles may not align with institutional environments whereby informal institutions, such as corruption and strategies to foster opacity in corporate operations and evade responsibility, have significant influence, in addition to family ownership. The OECD Principles operate on the premise that the aforementioned detrimental factors are often absent inside the member nations of the OECD.<sup>34</sup> However, it is worth noting that many Brazilian entrepreneurs may not see the transparency requirements placed on public corporations as appealing due to totally realistic factors. One significant practical factor is the burden of compliance and reporting that accompanies stringent transparency standards. Brazil, like many emerging markets, may have unique economic and regulatory challenges. These challenges could include complex tax systems, bureaucratic hurdles, and a historically unstable business environment.<sup>35</sup>

Since the 1990s, there has been a notable presence of entrepreneurs in Brazil's social strata who are potentially eligible to take their firms public. It is worth noting that this specific group has been targeted by organised crime. This argument has significant explanatory capacity, particularly throughout the period spanning from 1998 to 2013, when the disclosure of information by public corporations has facilitated the acquisition of sensitive data pertaining to affluent Brazilian families.<sup>36</sup> In this context, there exists a conflict between corporate and securities regulations and the social landscape in Brazil, characterised by the prevalence of

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<sup>34</sup> Abdussalam Mahmoud Abu-Tapanjeh, 'Corporate Governance from the Islamic Perspective: A Comparative Analysis with OECD Principles' (2009) 20 *Critical Perspectives on Accounting* 556.

<sup>35</sup> Lars Hallén and Finn Wiedersheim-Paul, 'Psychic Distance and Buyer-Seller Interaction' (1979) 16 *Organisasjon, Marked og Samfunn* 308.

<sup>36</sup> Bernard S Black, Antonio Gledson de Carvalho and Érica Gorga, 'What Matters and for Which Firms for Corporate Governance in Emerging Markets? Evidence from Brazil (and Other BRIK Countries)' (2012) 18 *Journal of Corporate Finance* 934 <<https://www.sciencedirect.com/science/article/pii/S0929119911001088>> accessed 23 December 2019.

abduction and violent robberies that mostly impact persons belonging to the high and medium socioeconomic strata of society. Notwithstanding the varying level of appropriateness of the OECD Principles for developing countries, it is imperative for policymakers to address the wider transformations in governance.<sup>37</sup> There is an increasing indication of a shift in governance mechanisms occurring from the national to international domains, as well as permeating to sub-national and regional tiers. The implementation and enforcement of these emerging forms of governance are predicated upon the collaboration between international standards organisations and local authorities.

Furthermore, the question of whether it is feasible to adopt the Principles is of lesser importance when compared to the issue of whether they effectively offer enough incentives to drive a transition away from informal agendas and traditional institutions in countries that are in the process of emerging from a lack of strong official coordination, high concentration of ownership, and dominant hierarchical control structures. Within institutional settings, family enterprises have shown their effectiveness in engaging in tunnelling practises from an insider's perspective, as well as safeguarding themselves from the potential risks associated with such practises from an outsider's stance. The OECD and affiliated organisations are addressing this criticism by implementing several contextual efforts, including regional roundtables and a series of publications focused on Latin America and India<sup>38</sup>. The examination of non-OECD member developing economies raises inquiries about the pertinence of OECD participation.

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<sup>37</sup> Saul Estrin and Martha Prevezer, 'The Role of Informal Institutions in Corporate Governance: Brazil, Russia, India, and China Compared' (2010) 28 Asia Pacific Journal of Management 41.

<sup>38</sup> Nobuyuki Demise, 'OECD Principles of Corporate Governance' [2006] Corporate Governance in Japan 109.

### 3 Chapter 3: Corporate Governance Laws in Brazil and OECD Principles of Corporate Governance

#### 3.1 Overview

The cornerstone of trust and stability in both firms and economies, corporate governance is an essential component of contemporary economic systems. The way in which companies are run has a significant influence on both their internal workings as well as their connections with stakeholders and society as a whole. Brazil, one of the biggest rising economies in the world, is at a pivotal point in its corporate governance path in this situation.<sup>39</sup> The goal of this study is to examine the corporate governance environment in Brazil, clarifying background information and contextual considerations while evaluating compliance with OECD corporate governance principles. In order to determine the viability and validity of Brazil's corporate governance rules and practises in the international context, among other factors, such an investigation is essential. Brazil's corporate governance development is a story of both advancement and difficulty. Brazil's economic importance on the world scene is evident as one of the BRICS countries.<sup>40</sup> Over the last several decades, the nation has seen an astonishing change, moving from a rather closed and protectionist economy to one that is more open and market-oriented. Brazilian firms are now operating on a global scale, and as a result, their governance practises and structures are receiving more attention.

It is necessary to provide a short historical review in order to comprehend the backdrop and context of corporate governance in Brazil. A high degree of government engagement in the economy has traditionally been a defining feature of Brazil's business environment, which has led to a concentration of economic power in the hands of a small number of powerful

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<sup>39</sup> Robert W McGee, 'An Overview of Corporate Governance Practices in Brazil' [2008] Springer eBooks 239.

<sup>40</sup> Mathias Siems and Oscar Salvador Alvarez-Macotela, 'The G20/OECD Principles of Corporate Governance 2015: A Critical Assessment of Their Operation and Impact' (*Ssrn.com*2015) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3000329](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3000329)>.

companies.<sup>41</sup> Corporate governance practises were sometimes overshadowed by political agendas and the existence of strong family-owned businesses known as "Brazilian business groups." But in the early 2000s, Brazil made substantial changes to its corporate governance framework with the purpose of enhancing accountability, transparency, and the defence of shareholder interests. A turning point was reached with the launch of Novo Mercado, a unique section of the Sao Paulo Stock Exchange (B3) with more stringent governance criteria. With these modifications, Brazil hoped to both attract foreign investment and bring corporate governance into line with best practises throughout the world.

There are numerous important reasons why comparing Brazilian corporate governance regulations to the OECD Principles of Corporate Governance is important. The OECD Principles serve as a baseline for good governance practises that is widely acknowledged. They include a wide range of values that place an emphasis on justice, responsibility, accountability, and openness in business decision-making.<sup>42</sup> By making this comparison, we can determine if Brazil's corporate governance standards are up to pace with those of the rest of the world. Second, Brazil's desire to improve its economic position internationally depends on its capacity to draw foreign investment. Giving investors confidence in the nation's corporate governance system is a crucial step in this process. Brazil can demonstrate its commitment to international standards and draw capital inflows by aligning its laws and practises with the OECD Principles. Furthermore, the comparison makes it possible for us to discover particular shortcomings that must be fixed for Brazil to compete successfully on the international stage in terms of corporate

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<sup>41</sup> John William Jr Anderson, 'Corporate Governance in Brazil: Recent Improvements and New Challenges' (2003) 9 Law and Business Review of the Americas 201 <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/lbramrca9&div=19&id=&page=>> accessed 1 September 2023.

<sup>42</sup> Fianna Jesover and Grant Kirkpatrick, 'The Revised OECD Principles of Corporate Governance and Their Relevance to Non-OECD Countries' (2005) 13 Corporate Governance 127.



governance. These gaps may function as a guide for corporations and authorities looking to improve corporate governance procedures in Brazil.

### 3.2 *Theoretical Framework*

Modern organisations' operations are supported by the comprehensive idea of corporate governance, which is essential to maintaining their viability, expansion, and accountability. It stands for the system of guidelines, procedures, and controls that governs and manages a business.<sup>43</sup> Corporate governance, at its core, is concerned with how different stakeholders interact with one another and how their interests are safeguarded and balanced. It is impossible to exaggerate the significance of corporate governance.<sup>44</sup> It encompasses the procedures that make sure decision-making is transparent, ethical, and responsible, serving as the cornerstone of trust and confidence in the business world. The benefits of good corporate governance include enhanced performance, less risk, and easier access to capital. It is crucial for luring in investments, promoting economic expansion, and boosting a country's business environment's overall competitiveness. The idea of shareholder value is at the core of corporate governance.<sup>45</sup> Companies exist to create value for their owners, and corporate governance procedures are made to balance the interests of many stakeholders, most notably shareholders and management, in order to do this. Investors entrust a firm with their cash, and good governance makes sure that management acts in the best interests of investors and makes choices that will increase long-term value.

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<sup>43</sup> Jill Solomon, *Corporate Governance and Accountability* (John Wiley & Sons 2020) <<https://books.google.com/books?hl=en&lr=&id=JAX9DwAAQBAJ&oi=fnd&pg=PR7&dq=Modern+organisations%27+operations+are+supported+by+the+comprehensive+idea+of+corporate+governance>> accessed 4 September 2023.

<sup>44</sup> Carlos Henrique Kitagawa, Maisa de and Paula Carolina, 'The Responsibilities of the Board: The Level of Compliance of Latin Americans' Companies to the OECD Principles of Corporate Governance' [2009] *Research in Accounting in Emerging Economies*.

<sup>45</sup> Jill Solomon, *Corporate Governance and Accountability* (John Wiley & Sons 2020) <<https://books.google.com/books?hl=en&lr=&id=JAX9DwAAQBAJ&oi=fnd&pg=PR7&dq=Modern+organisations%27+operations+are+supported+by+the+comprehensive+idea+of+corporate+governance>> accessed 4 September 2023.



In order to build and sustain efficient corporate governance frameworks, nations and businesses may follow the complete framework provided by the OECD Principles of Corporate Governance. These guidelines were produced by the OECD, an international organisation,<sup>46</sup> to aid nations in promoting excellent corporate governance norms and serve as a worldwide benchmark for corporate governance changes. The guidelines act as a road map for boosting investor confidence and establishing trust in the business sector. The fundamental ideas and precepts that guide effective governance procedures are included in the OECD Principles. These guidelines constitute an agreement among OECD members, even though they are not legally enforceable, and several countries have used them as the basis for their corporate governance laws. The principles focus on accountability, justice, openness, and responsibility while addressing many facets of corporate governance. The OECD Principles include the safeguarding of shareholder rights as one of its core ideas. This idea contends that shareholders, who provide the funding, need to have the right to vote on significant issues, participate in significant choices, and have access to information that enables them to make educated judgements. With the help of this safeguard, management may continue to answer to shareholders and act in their best interests.

Another essential element of effective governance is transparency. It entails the prompt and correct disclosure of information about the governance, ownership, and financial performance of a firm. A company's financial health, risk profile, and investment choices may all be evaluated by stakeholders, including investors, thanks to transparency.

Transparency and accountability are interwoven concepts. It suggests that those in charge of making business choices should be held accountable for their actions. Effective accountability measures make sure that carelessness or misbehaviour is handled and that the proper sanctions

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<sup>46</sup> Heloisa B Bedicks and M Cecilia Arruda, 'Business Ethics and Corporate Governance in Latin America' (2005) 44 Business & Society 218.

are used. The use of independent audits and board-level monitoring are common accountability techniques. The idea of fairness in corporate governance also emphasises treating all shareholders fairly, regardless of their power or size. Fairness makes ensuring that conflicts of interest are handled properly and that all shareholders have access to the same opportunities and information. The OECD Principles' third pillar, responsibility, emphasises that businesses should take into account the interests of all stakeholders, not just shareholders. According to this theory, businesses should consider the interests of their workers, clients, suppliers, and the communities in which they operate since they have a greater social influence.

### **3.3 Corporate Governance in Brazil**

The story of Brazil's historical evolution of corporate governance depicts the country's transition from a state-dominated economy to one that is increasingly market- and internationally linked. To fully appreciate the environment in which Brazilian corporate governance practises have developed, it is essential to comprehend this development. Brazil's economy has always been characterised by a high degree of governmental involvement and protectionism. Large conglomerates, sometimes known as "Brazilian business groups," had significant economic clout.<sup>47</sup> Strong corporate governance practises weren't always present in conjunction with this economic power concentration. Political interests regularly affected corporate decision-making, which resulted in a lack of accountability and transparency. But in the early 2000s, substantial shifts started to emerge. Brazil started a number of changes to update its corporate governance system. One of these changes was the introduction of more strict governance standards for listed businesses with the formation of the Novo Mercado, a

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<sup>47</sup> Andreas Grimminger, 'Achieving Effective Boards: Corporate Governance Frameworks and Board Practices in Argentina, Brazil' (*Policycommons.net*2 September 2011) <<https://policycommons.net/artifacts/3810900/achieving-effective-boards/4616816/>> accessed 1 September 2023.

special listing area of the So Paulo Stock Exchange (B3).<sup>48</sup> Novo Mercado mandated that businesses implement procedures such having only one class of shares, disclosing more information,<sup>49</sup> and protecting the interests of minority owners. These adjustments marked a significant turn in Brazil's corporate governance practises towards compliance with international norms.

Brazil's legal and regulatory system, which supports corporate governance, has seen significant changes recently. The nation's corporate governance practises are based on important legislation and regulations. A crucial law that controls the formation and management of Brazilian corporations is the Brazilian Corporate Law (Law No. 6,404/76) (Brazilian Corporate Law).<sup>50</sup> In order to comply with global best practises, including the identification of independent directors and strengthened disclosure standards, it underwent considerable amendments in 2001. The Brazilian Securities and Exchange Commission (Comisso de Valores Mobiliários, or CVM), in addition to the Corporate Law, is a key player in regulating corporate governance procedures. In order to provide openness, fairness, and investor safety, CVM regulates and supervises the securities market. For instance, CVM Resolution No. 547/2014 specifies standards for corporate governance procedures that are relevant to Brazilian publicly listed corporations.<sup>51</sup> Additionally, as a crucial component of corporate governance, related-party transactions are addressed by special legislation that Brazil has implemented.

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<sup>48</sup> Kléber Formiga Miranda, Jefferson Ricardo do Amaral Melo and Orleans Silva Martins, 'Firms' Legitimation through Corporate Governance and Its Association with Risk and Return in Brazil' (2021) 56 RAUSP Management Journal 55 <<https://www.scielo.br/j/rmj/a/xf4RynQSWfLL9xrMbfjXbxH/>> accessed 1 September 2023.

<sup>49</sup> Samantha Goins, 'Corporate Governance and Firm Valuation in Brazil' [2018] bibliotecadigital.fgv.br <<https://bibliotecadigital.fgv.br/dspace/handle/10438/20223>> accessed 1 September 2023.

<sup>50</sup> Erica Gorga, 'Culture and Corporate Law Reform: A Case Study of Brazil' (2006) 27 University of Pennsylvania Journal of International Economic Law 803 <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/upjje127&div=23&id=&page=>>> accessed 1 September 2023.

<sup>51</sup> Marcelo Paulo de Arruda, Luiz Felipe de Araújo Pontes Girão and Wenner Glaucio Lopes Lucena, 'Assimetria Informacional E O Preço Das Ações: Análise Da Utilização Das Redes Sociais Nos Mercados de Capitais Brasileiro E Norte-Americano' (2015) 26 Revista Contabilidade & Finanças 317 <<https://www.scielo.br/j/rcf/a/7qVFW4ysys4DKxnmT3qkTkx/?lang=pt>> accessed 4 July 2021.

These rules are designed to reduce conflicts of interest and guarantee impartiality. Corporate governance practises have significantly changed as a result of the Novo Mercado listing segment's launch since corporations now voluntarily adhere to stricter governance criteria in order to participate.

The Administrative Council for Economic Defence (CADE), the National Monetary Council, and the Brazilian Central Bank are among the organisations in charge of enforcing and monitoring corporate governance in Brazil.<sup>52</sup> These organisations play a part in the regulation of certain industries and the elimination of anti-competitive behaviour. Stakeholder viewpoints on corporate governance in Brazil provide insightful information on the successes and shortcomings of the current system. Diverse stakeholders, including as shareholders, investors, directors, and workers, have different perspectives on the nation's corporate governance practises. In Brazil, shareholders and investors have been more outspoken about what they want from corporate governance. There is an increasing need for openness, the defence of minority shareholder interests, and adherence to global best practises as the market develops and foreign investors become involved. Investors are scrutinising corporate governance practises more closely as a significant factor in their investment choices, creating competition among listed businesses to enhance their governance frameworks.

Additionally important stakeholders in company governance are directors and executives. Independent directors in particular are essential for monitoring business operations and guaranteeing moral conduct.<sup>53</sup> In Brazil, the idea of independent directors has gained ground as businesses want to diversify their boards by adding people with the necessary skills and a

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<sup>52</sup> Jose Inacio Gonzaga Franceschini, 'Private Competition Enforcement: Is There Room for CADE' (2005) 1 Competition Law International 17  
<<https://heinonline.org/HOL/LandingPage?handle=hein.journals/competition1&div=9&id=&page=>> accessed 1 September 2023.

<sup>53</sup> Daniel Blume and Felipe Alonso, 'Institutional Investors and Corporate Governance in Latin America' (2007) 2007 Financial Market Trends 93.

dedication to shareholders' interests. Another significant stakeholder group is the workforce, since they are affected directly by corporate governance choices. Unions and workers' councils are often used as conduits for the opinions of employees. As part of a larger worldwide movement towards corporate social responsibility, employee rights, working conditions, and social responsibility have emerged as critical components of corporate governance talks in Brazil.

### 3.4 Comparative Analysis

We may evaluate the degree to which Brazil's governance system adheres to globally accepted norms by comparing Brazilian corporate governance to the OECD Principles of Corporate Governance.<sup>54</sup> With a focus on important areas, such as the composition and operation of boards of directors, the protection of shareholder rights, transparency and disclosure, accountability and responsibility, and the fair treatment of stakeholders, this evaluation will look at specific corporate governance principles and practises in Brazil. The OECD Principles of Corporate Governance serve as the foundation for this analyses' comparative approach. These guidelines provide a thorough framework for evaluating corporate governance systems as well as a worldwide standard for good governance practises. They are founded on fundamental ideas like openness, responsibility, justice, and accountability.<sup>55</sup> We may find areas of convergence and difference between Brazil's corporate governance practises and these concepts.

The makeup and efficiency of boards of directors are an important component of corporate governance. Enhancing board diversity and independence has advanced in Brazil. The practise of choosing independent directors has been embraced by many Brazilian businesses, in line

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<sup>54</sup> Andrés Oneto and Georgina Núñez, *Corporate Governance in Brazil, Chile, Colombia, Mexico and Peru. The Determinants of Risk in Corporate Debt Issuance* (ECLAC, CAF, BID, OECD 2015) <<http://ikels-dspace.azurewebsites.net/handle/123456789/698>> accessed 1 September 2023.

<sup>55</sup> Thomas Clarke, 'The Transformation of Corporate Governance in Emerging Markets: Reform, Convergence, and Diversity' (2015) 51 *Emerging Markets Finance and Trade*.

with international norms. Independent directors are essential to a board's ability to efficiently monitor business operations and protect shareholders' interests.<sup>56</sup> A recurring worry in developing countries is the difficulty in creating a balance of power between controlling shareholders and independent directors. Another important area of concern is the protection of shareholder rights. There is still need for development, despite the fact that Brazil has achieved progress in this area, notably via legislative improvements and the Novo Mercado listing section.<sup>57</sup> Points of concern include the presence of several share classes with various voting rights and the potential erosion of minority shareholder rights. Nevertheless, it is a step forward that there are now channels for minority shareholders to voice their opinions, such as tag-along and drag-along rights.<sup>58</sup>

Corporate governance's essential tenets are openness and transparency. Brazil has achieved significant improvements in openness by mandating that businesses reveal critical information to shareholders and the general public. The completeness and consistency of disclosure practises continue to face problems, nevertheless. Some businesses may not completely follow disclosure regulations, which would affect investors' capacity to make wise choices. Corporate disclosure quality and timeliness improvement is still a top goal.<sup>59</sup> Accountability and responsibility are fundamental values that guarantee those in charge of making business choices are held accountable for their judgements. Brazilian accountability systems are

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<sup>56</sup> Thomas Clarke, 'The Transformation of Corporate Governance in Emerging Markets: Reform, Convergence, and Diversity' (2015) 51 *Emerging Markets Finance and Trade*.

<sup>57</sup> Jennifer G Hill and Randall S Thomas, *Research Handbook on Shareholder Power* (Edward Elgar Publishing 2015)

<<https://books.google.com.pk/books?hl=en&lr=&id=mqwVCgAAQBAJ&oi=fnd&pg=PA479&dq=There+is+still+need+for+development>> accessed 4 September 2023.

<sup>58</sup> Jennifer G Hill and Randall S Thomas, *Research Handbook on Shareholder Power* (Edward Elgar Publishing 2015)

<<https://books.google.com.pk/books?hl=en&lr=&id=mqwVCgAAQBAJ&oi=fnd&pg=PA479&dq=There+is+still+need+for+development>> accessed 4 September 2023.

<sup>59</sup> Robert Grosse and Klaus E Meyer, *The Oxford Handbook of Management in Emerging Markets* (Oxford University Press 2019)

<<https://books.google.com/books?hl=en&lr=&id=3BqTDwAAQBAJ&oi=fnd&pg=PA185&dq=%22corporate+governance+in+brazil%22+and+%22OECD+Principles+of+corporate+governance%22&ots=ZuiCVFZEpz&sig=WRcjukpeXMvkDaeSbVc29PljLvo>> accessed 1 September 2023.

developing, with a focus on the function of boards and auditors in monitoring corporate conduct.<sup>60</sup> However, there have been instances of corporate wrongdoing and governance blunders that have called into doubt the efficacy of these systems.<sup>61</sup> For Brazil to better comply with international norms, accountability and responsibility must be more strictly enforced.

An important concept that acknowledges the larger influence of companies on society is the equitable treatment of stakeholders. Brazilian businesses are becoming more aware of their social obligations and taking part in sustainability programmes. However, efforts made in the name of corporate social responsibility do not stop with stakeholders being treated fairly. It entails making certain that all parties involved, like as customers, suppliers, and communities, are taken into account while making decisions. In Brazil's corporate governance environment, striking a balance between stakeholder concerns and shareholder interests continues to be difficult. When the Brazilian corporate governance structure is compared to the OECD Principles, both its strengths and faults become clear.<sup>62</sup> For example, in areas like board independence and shareholder rights, Brazil has made considerable progress in bringing its corporate governance practises into compliance with international norms. Companies have been encouraged to adopt stronger governance requirements as a result of the development of the Novo Mercado and other listing sectors. However, flaws still exist. The necessity for continual changes is highlighted by issues including shareholder dilution, uneven disclosure practises, and corporate malfeasance. Critical issues needing attention include achieving a more

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<sup>60</sup> Francisco Elder Escossio de Barros and others, 'The Evolution of Corporate Governance and Agency Control: The Effectiveness of Mechanisms in Creating Value for Companies with IPO on the Brazilian Stock Exchange' (2021) ahead-of-print Corporate Governance: The International Journal of Business in Society.

<sup>61</sup> Robert Grosse and Klaus E Meyer, *The Oxford Handbook of Management in Emerging Markets* (Oxford University Press 2019) <<https://books.google.com/books?hl=en&lr=&id=3BqTDwAAQBAJ&oi=fnd&pg=PA185&dq=%22corporate+governance+in+brazil%22+and+%22OECD+Principles+of+corporate+governance%22&ots=ZuiCVFZEpz&sig=WRcjukpeXMvkDaeSbVc29PljLvo>> accessed 1 September 2023.

<sup>62</sup> Robert Grosse and Klaus E Meyer, *The Oxford Handbook of Management in Emerging Markets* (Oxford University Press 2019) <<https://books.google.com/books?hl=en&lr=&id=3BqTDwAAQBAJ&oi=fnd&pg=PA185&dq=%22corporate+governance+in+brazil%22+and+%22OECD+Principles+of+corporate+governance%22&ots=ZuiCVFZEpz&sig=WRcjukpeXMvkDaeSbVc29PljLvo>> accessed 1 September 2023.



balanced ratio of controlling owners to minority shareholders and making sure there are effective enforcement measures.

### 3.5 Case Studies

We resort to a number of case studies to throw light on real-world practises, difficulties, and success stories within the Brazilian corporate governance environment in order to obtain a better knowledge of the implementation of corporate governance in Brazil. These case studies provide useful information on the efficiency of corporate governance processes and the particular difficulties encountered by Brazilian businesses.

#### 3.5.1 Case Study 1: Petrobras Scandal

Petrobras, the state-controlled oil corporation, was embroiled in one of Brazil's most notable and extensively reported corporate governance scandals. The scandal, which surfaced in 2014, exposed a labyrinth of fraud and corruption that went all the way up to the top of the organisation. It prompted concerns about the efficiency of the supervision and governance systems.

Findings and insights: The Petrobras incident highlighted the need for strong governance frameworks and attentive scrutiny. The case revealed the possible conflicts of interest in state-controlled companies and exposed weaknesses in the board's capacity to identify and stop malfeasance.

Challenges: The case brought to light the difficulties in adopting strong corporate governance in state-owned businesses when political considerations might get in the way. It also demonstrated how crucial regulatory agencies are to upholding governance norms.

#### 3.5.2 Case Study 2: JBS Group

One of the biggest meatpacking corporations in the world, The JBS Group, offers a contrasting case study. JBS has made progress in implementing corporate governance practises that comply



with international standards while being a family-controlled company. The business announced its IPO on the B3's Novo Mercado section, demonstrating its dedication to governance improvements.

Findings and insights: The example of JBS indicates that, when openness, accountability, and shareholder rights are given top priority, even family-controlled enterprises can put in place efficient governance frameworks. The Novo Mercado listing section provided the organisation with a reason to improve its governance procedures.

Challenges: Striking a balance between family interests and those of minority shareholders is difficult for family-controlled businesses like JBS. The incident underscores the value of voluntary adherence to governance principles.

### 3.5.3 Case Study 3: Vale

Vale, a global mining company headquartered in Brazil, has faced significant corporate governance challenges in the aftermath of the Brumadinho dam disaster in 2019. The disaster resulted in significant environmental and human consequences and raised questions about the company's governance practices, risk management, and safety protocols.

Findings and Insights: The Vale case highlights the interconnectedness of corporate governance, risk management, and environmental and social responsibility. It emphasizes the need for robust oversight of risk factors and the importance of holding executives accountable for failures in risk management.

Challenges: The challenge for companies like Vale is to ensure that governance mechanisms encompass environmental and social responsibility, aligning with global sustainability goals. It also underscores the importance of strong regulatory frameworks in high-risk industries.

### 3.5.4 Success Story: Natura & Avon Merger

Avon, a global beauty corporation, and Natura, a Brazilian cosmetics company, merged in a successful example of corporate governance. Prior to the merger, Natura had a solid reputation for good governance practises, which it extended to Avon. After the merger was finalised in 2020, one of the biggest beauty corporations in the world was born.

Findings and insights: The successful merger of Natura and Avon shows how good corporate governance can provide an organisation a competitive edge by encouraging confidence among shareholders and investors. Integrating governance procedures from both businesses demonstrates how crucial it is to match standards when merging enterprises.

Challenges: Integrating company cultures and governance practises is a common source of difficulty in mergers and acquisitions. The example underscores the need of careful preparation and a dedication to upholding governance norms during integration.

Improved corporate governance practises in Brazil may have positively impacted shareholder activism, according to studies conducted in the past. In corporations with inadequate governance practises, shareholders are more inclined to speak out and ask for reforms. Increased openness and the presence of independent directors have given shareholders more authority to hold corporations responsible for their activities.<sup>63</sup> The relationship between enhanced governance and an uptick in shareholder activism emphasises how crucial governance improvements are to raising shareholder protection and involvement. There are still difficulties in ensuring that shareholder activism results in significant improvements and that businesses properly address shareholder concerns. Some stockholders can still encounter challenges when trying to exercise their rights.<sup>64</sup> These case studies provide a complex

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<sup>63</sup> Vicente Lima Crisóstomo and Isac de Freitas Brandão, 'The Ultimate Controlling Owner and Corporate Governance in Brazil' (2019) 19 *Corporate Governance: The international journal of business in society* 120.

<sup>64</sup> Antonio Gledson de Carvalho, Humberto Gallucci Netto and Joelson de Oliveira Sampaio, 'Corporate Governance in Brazil' [2015] *Corporate Governance, Responsibility and Sustainability* 56.

understanding of Brazilian business governance. They provide as examples of the difficulties and triumphs associated with putting governance practises into practise across various sectors and ownership structures. The situations involving Petrobras, JBS, Vale, and the merger of Natura & Avon demonstrate the complexity of corporate governance and its effects on many stakeholders, ranging from shareholders to the general public.

### **3.6 Corporate Governance Reform in Brazil**

Brazilian corporate governance rules have undergone a number of important modifications and adjustments in recent years, indicating a determined attempt to improve the nation's business climate generally and strengthen governance procedures. These changes, which have a number of drivers behind them, are anticipated to have a significant influence on Brazil's business environment. Investigating the nature and effects of these changes is crucial in order to judge their efficacy and compliance with international norms, such as the OECD Principles of Corporate Governance. The adoption of the New Brazilian Companies Act in 2019 (Law No. 13,818/2019) was one of the significant changes to corporate governance in Brazil<sup>65</sup>. The corporate governance practises used in the nation have undergone significant adjustments as a result of this law. The introduction of the "Economic Group" idea, the streamlining of corporate structures, and the lowering of the required minimum quorum for shareholder meetings were some of the major measures. These adjustments were made in an effort to increase corporate governance flexibility, cut red tape, and encourage increased shareholder engagement.

The New Brazilian Companies Act aims to bring Brazil's corporate governance practises more in line with global norms in order to modernise the legal system controlling Brazilian corporations. By streamlining administrative processes and promoting a more favourable

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<sup>65</sup> ALEXANDRE RIPAMONTI and EDUARDO KAZUO KAYO, 'CORPORATE GOVERNANCE and CAPITAL STRUCTURE in BRAZIL: STOCK, BONDS and SUBSTITUTION' (2016) 17 RAM. Revista de Administração Mackenzie 85.

business climate, it intended to increase Brazilian firms' competitiveness on the world market.<sup>66</sup> These measures were anticipated to entice international investment and boost economic growth. and the disclosure of any conflicts of interest in transactions involving linked parties Furthermore, governance improvements have been vigorously implemented by the Brazilian Securities and Exchange Commission (CVM). New regulations were established by CVM Resolution No. 588/2017 to further safeguard minority owners.<sup>67</sup> It mandated the formation of independent audit committees. These changes demonstrate an understanding of the significance of justice, openness, and shareholder protection in corporate governance. Additionally, they represent Brazil's will to harmonise its corporate governance procedures with global norms, such as those outlined in the OECD Principles of Corporate Governance.

There are a number of factors to take into account when determining how well these changes correspond with the OECD Principles. Transparency, accountability, justice, and responsibility are emphasised as the cornerstones of good governance in the OECD Principles. The New Brazilian Companies Act and CVM Resolution No. 588/2017, among other measures, show Brazil's dedication to these ideas. Greater accountability and openness are a result of the New Brazilian Companies Act's administrative load reductions and company structure simplifications. The changes' goal is to simplify corporate governance processes so that shareholders may participate in and monitor business activities more easily. This is consistent with the OECD's focus on preserving shareholders' rights and enabling their active involvement in company decision-making. The CVM Resolution No. 588/2017 addresses the idea of accountability in a similar way by mandating the disclosure of any conflicts of interest and the creation of independent audit committees. In line with the OECD's guidelines for effective

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<sup>66</sup> Maria Dolores Lozano, Félix J López-Iturriaga and Victor Hugo Braz-Bezerra, 'Regulatory Dualism as an Alternative Trust-Enhancing Mechanism for Dividends and Debt: Evidence from Brazil\*'.  
<sup>67</sup> Karine Coelho Gonçalves, 'Initial Coin Offering E a Aplicabilidade Da Instrução CVM 588/2017 Para Sua Regulação E Controle' [2018] ariel.pucsp.br <<https://ariel.pucsp.br/jspui/handle/handle/37094>> accessed 1 September 2023.

board supervision and internal controls, these rules reinforce systems for oversight and increase transparency in related-party transactions.

It's crucial to understand that problems still exist since the process of aligning with the OECD Principles is continuing. While the improvements are admirable, not all the areas where Brazil may not meet international standards have been addressed. The effective implementation of governance principles and the equitable treatment of stakeholders are still problems. Regarding the equitable treatment of stakeholders and the effective implementation of governance principles in Brazil, there are still unsolved difficulties. These problems are the result of a number of circumstances, including the shortcomings of the current Brazilian legal requirements and difficulties in their effective application. First off, despite the fact that Brazilian laws do include measures meant to protect stakeholders' interests, there are times when these protections are seen to be insufficient. For instance, Brazilian law may offer some shareholder rights, but their execution may be subject to restrictions or ambiguity. Minority shareholders in particular may feel that their rights are not sufficiently upheld, which may raise questions about how equally all owners are treated. Second, because of elements including company cultures, past practises, and regulatory enforcement, it may be difficult to put governance concepts into practise. Even in the presence of rules, their efficient application may be hampered by problems including regulatory capture, a lack of funding for supervision, and a lack of incentives for businesses to follow best practises. As a consequence, there could be discrepancies between what the law requires and what businesses really do. The implementation and enforcement of these changes will also determine how well they work in practise. To make sure that businesses abide by the new governance standards and that shareholders' interests are safeguarded, effective enforcement methods are essential. Regulatory bodies like CVM are essential in observing and enforcing adherence to governance regulations.

## 4 Chapter 4: Corporate Governance Laws in India and OECD Principles of Corporate Governance

### 4.1 Overview

In the modern global economy, corporate governance is essential to both economic progress and stability. In order to guarantee that businesses are run in the best interests of stakeholders and shareholders, a set of values, rules, and procedures govern how they are run.<sup>68</sup> Building trust, accountability, and openness are essential components of a strong corporate governance structure, and these elements support economic progress. It is impossible to overestimate the importance of corporate governance in today's business environment. Big and small corporations alike are essential to the expansion of the economy, the generation of jobs, and the development of the national and international economies.<sup>69</sup> The implementation of sound corporate governance practises guarantees that these organisations function with honesty, morality, and accountability, protecting the interests of all parties involved, including creditors, workers, shareholders, and the general public. Additionally, by strengthening the business environment's resilience, it attracts investors and promotes economic growth.

In the Indian context, corporate governance has come to be seen as essential to the nation's economic development. With its expanding economy and quickly changing business environment, India has realised how important good corporate governance is to promoting long-term prosperity.<sup>70</sup> India's corporate governance system has to take into account the intricacies of its multiple ownership structures, which include both publicly listed corporations

<sup>68</sup> Robert Ian Tricker, *Corporate Governance: Principles, Policies, and Practices* (Oxford University Press 2015) <[https://books.google.com.pk/books?hl=en&lr=&id=X4qQBgAAQBAJ&oi=fnd&pg=PP1&dq=significance+of+corporate+governance+in+global+business&ots=G2aMCfZQiY&sig=VJ6TnPwVkbKHGi3IH7Qt2vA92vo&redir\\_esc=#v=onepage&q=significance%20of%20corporate%20governance%20in%20global%20business&f=false](https://books.google.com.pk/books?hl=en&lr=&id=X4qQBgAAQBAJ&oi=fnd&pg=PP1&dq=significance+of+corporate+governance+in+global+business&ots=G2aMCfZQiY&sig=VJ6TnPwVkbKHGi3IH7Qt2vA92vo&redir_esc=#v=onepage&q=significance%20of%20corporate%20governance%20in%20global%20business&f=false)> accessed 5 October 2023.

<sup>69</sup> Akshita Arora and Chandan Sharma, 'Corporate Governance and Firm Performance in Developing Countries: Evidence from India' (2016) 16 *Corporate Governance: The international journal of business in society* 420.

<sup>70</sup> Akshita Arora and Chandan Sharma, 'Corporate Governance and Firm Performance in Developing Countries: Evidence from India' (2016) 16 *Corporate Governance: The international journal of business in society* 420.

and family-owned conglomerates, while adhering to international best practises. Previous research has highlighted India's shift from a company model that is mostly family-driven to one that places a greater emphasis on accountability, transparency, and shareholder protection as a sign of the country's dedication to good corporate governance.<sup>71</sup> This change emphasises how important it is to look at corporate governance in the Indian setting.

Beyond its boundaries, corporate governance in India has global significance. Global markets and investors may be greatly impacted by the state of a single nation's corporate governance standards in an interconnected world where cash moves freely across states. Given India's increasing prominence as a rising economic giant, it is critical to comprehend and evaluate the country's corporate governance environment<sup>72</sup>. Previous studies have shown that international investors often see corporate governance quality as a critical element when making investment choices, highlighting the significance of corporate governance in India on a worldwide scale.<sup>73</sup> Moreover, the need of harmonising Indian corporate governance practises with international norms has increased due to the incorporation of Indian enterprises into the global supply chain and their involvement in international financial markets. This has been acknowledged by the Indian government and regulatory bodies, who are attempting to improve corporate governance in the nation as a means of drawing in foreign capital and positioning India as an attractive location for investments.<sup>74</sup>

<sup>71</sup> Rajesh Chakrabarti, 'Corporate Governance in India - Evolution and Challenges' [2005] SSRN Electronic Journal.

<sup>72</sup> Alan Winters and Shahid Yusuf, *Dancing with Giants: China, India, and the Global Economy* (World Bank Publications 2007) <<https://books.google.com/books?hl=en&lr=&id=fogged2TPz8C&oi=fnd&pg=PR3&dq=Given+India%27s+increasing+prominence+as+a+rising+economic+giant>> accessed 5 October 2023.

<sup>73</sup> DAS CHANDRA SUBHASH, *CORPORATE GOVERNANCE in INDIA, FIFTH EDITION: AN EVALUATION* (PHI Learning Pvt Ltd 2021) <[https://books.google.com.pk/books?hl=en&lr=&id=yGxxEAAAQBAJ&oi=fnd&pg=PP1&dq=%22corporate+governance+in+india%22+%22OECD+principles%22&ots=7oVvGrvidw&sig=5TXNMVcd6VLOH6aZhVimhfLRk8&redir\\_esc=y](https://books.google.com.pk/books?hl=en&lr=&id=yGxxEAAAQBAJ&oi=fnd&pg=PP1&dq=%22corporate+governance+in+india%22+%22OECD+principles%22&ots=7oVvGrvidw&sig=5TXNMVcd6VLOH6aZhVimhfLRk8&redir_esc=y)> accessed 25 September 2023.

<sup>74</sup> *Ibid*



## 4.2 Historical Evolution of Corporate Governance in India

The complex historical development of corporate governance in India is a reflection of the country's social and economic change. It is characterised by a shift from a time of little regulatory supervision and the predominance of family-run companies to a time where corporate governance is more transparent, accountable, and professional. Numerous factors, including historical legacies, economic reforms, regulatory changes, and well-publicized business scandals, have influenced this development.<sup>75</sup> India's history as a colony has shaped the country's corporate governance environment.<sup>76</sup> Corporate entities were created under British colonial control, although governance practises were often biased in favour of British colonial interests. Indian shareholders' rights and safeguards were restricted. The foundation for eventual advancements in corporate governance was laid by this historical heritage.<sup>77</sup>

India saw the emergence of family-run conglomerates after independence, which were often called "business houses." These conglomerates possessed a large amount of the country's wealth and exercised considerable economic influence.<sup>78</sup> Concentrated ownership, little transparency, and little responsibility to outside investors were common characteristics of these businesses' governance.<sup>79</sup> Frequently, family interests prevailed over those of minority owners. The early 1990s economic liberalisation marked a turning point in India's corporate governance

<sup>75</sup> Mercedes Rodriguez-Fernandez, 'Social Responsibility and Financial Performance: The Role of Good Corporate Governance' (2016) 19 BRQ Business Research Quarterly 137 <<https://www.sciencedirect.com/science/article/pii/S2340943615000791>>.

<sup>76</sup> Nidhi Bansal and Anil K Sharma, 'Audit Committee, Corporate Governance and Firm Performance: Empirical Evidence from India' (2016) 8 International Journal of Economics and Finance 103.

<sup>77</sup> Jayati Sarkar and Subrata Sarkar, *Corporate Governance in India* (SAGE Publishing India 2012) <[https://books.google.com/books?hl=en&lr=&id=GRdBDwAAQBAJ&oi=fnd&pg=PT8&dq=%22corporate+governance+in+india%22+%22OECD+principles%22&ots=KBi-0k\\_F9Q&sig=UiidUxxNi0O91HdruM0lifGsmh4](https://books.google.com/books?hl=en&lr=&id=GRdBDwAAQBAJ&oi=fnd&pg=PT8&dq=%22corporate+governance+in+india%22+%22OECD+principles%22&ots=KBi-0k_F9Q&sig=UiidUxxNi0O91HdruM0lifGsmh4)> accessed 25 September 2023.

<sup>78</sup> Ashok Kumar Sar, 'IMPACT of CORPORATE GOVERNANCE on SUSTAINABILITY: A STUDY of the INDIAN FMCG INDUSTRY - ProQuest' (www.proquest.com2018) <<https://www.proquest.com/openview/91a95a5d71580c2f3652506738558f5a/1?pq-origsite=gscholar&cbl=38745>> accessed 5 October 2023.

<sup>79</sup> Neeti Shikha and Rishika Mishra, 'Corporate Governance in India - Battle of Stakes' (2019) 10 International Journal of Corporate Governance 20.



history.<sup>80</sup> With the passage of the 1991 economic reforms, numerous regulatory obstacles were removed and a more market-oriented economy was established. Around this time, there was a surge in foreign investment and an increasing focus on corporate governance changes as a means of luring in foreign capital and safeguarding minority owners.<sup>81</sup>

A significant turning point was the formation of the Securities and Exchange Board of India (SEBI) in 1992.<sup>82</sup> The task of overseeing the securities market and making sure that fair and open procedures are followed fell to SEBI. In order to improve governance standards, SEBI implemented a number of changes, such as the need for disclosures, strict guidelines for listed businesses, and the appointment of independent directors.<sup>83</sup> This regulatory body was essential in forming the corporate governance structure of India. On the other hand, the Satyam affair of 2009 marked a turning point in the history of corporate governance in India.<sup>84</sup> Massive corporate fraud and governance flaws at one of the top IT businesses in the nation were exposed by the incident. It emphasised the need of stronger governance frameworks, which resulted in important modifications to laws and methods of enforcement.<sup>85</sup> The Satyam incident led to a reassessment of governance standards and revealed weaknesses in India's corporate governance system.

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<sup>80</sup> Deepak Nayyar, 'Economic Liberalisation in India: Then and Now' (2017) 52 *Economic and Political Weekly* 41 <<https://www.jstor.org/stable/44166888>>.

<sup>81</sup> Navajyoti Samanta and Andrew Johnston, 'Shareholder Primacy Corporate Governance and Financial Market Growth' (2019) 19 *Corporate Governance: The International Journal of Business in Society* 845 <<http://acle.tva.nl/binaries/content/assets/subsites/amsterdam-center-for-law--economics/conferences/celse-2016/conference-papers/session-iv/paper-samanta---2016.pdf?1466032844696>>.

<sup>82</sup> Raju, C. Udaya Kumar; Subramanyam, M.; Dasaraju, Himachalam, 'Emergence of Corporate Governance in India' (2014) 2 *EXCEL International Journal of Multidisciplinary Management Studies* 74 <<https://www.indianjournals.com/ijor.aspx?target=ijor:xijmms&volume=2&issue=5&article=007>> accessed 25 September 2023.

<sup>83</sup> *Ibid*

<sup>84</sup> Madan Lal Bhasin, 'Creative Accounting Practices at Satyam Computers Limited: A Case Study of India's Enron' (2016) 6 *International Journal of Business and Social Research* 24.

<sup>85</sup> Mrinal Aiyappa, 'SEBI's Stewardship Code, 2019 & Institutional Investors in Corporate Governance' [2021] SSRN Electronic Journal.

In India, family-run enterprises gradually gave way to corporations with professional management at the same time. The need of adding independent directors and professional management to improve governance and accountability became more apparent as organisations became larger and more globalised. Numerous Indian businesses started using international best practises, such as creating audit committees and diversifying their boards.<sup>86</sup> This change, which placed a stronger emphasis on professionalism and independence, was a crucial turning point in corporate governance. India's corporate governance standards were intended to be brought into compliance with international standards via a major legislative revision represented by the Companies Act of 2013.<sup>87</sup> The Act included a number of new measures pertaining to corporate social responsibility, shareholder rights, and independent directors, among other topics.<sup>88</sup> It demonstrated a dedication to encouraging more accountability and openness in Indian companies.

#### **4.3 Legal and Regulatory Framework in India**

The legal and regulatory structure that oversees corporate governance in India is a multifaceted, dynamic framework that aims to guarantee accountability, transparency, and safeguarding the interests of stakeholders and shareholders. It includes a number of rules, legislation, and directives that together serve as the cornerstone of the nation's corporate governance procedures. The Companies Act is the cornerstone of India's corporate governance structure. It has undergone several amendments over the years to bring it into compliance with global best

<sup>86</sup> Dr BHADRAPPA Haralayya, 'An Exploratory Investigation on Implications of Corporate Governance on Financial Performance in India' (2022) 6 Journal of Positive School Psychology 633 <<https://www.journalppw.com/index.php/jpsp/article/view/9794>> accessed 25 September 2023.

<sup>87</sup> Ministry of Company Affairs, 'THE COMPANIES ACT, 2013 ARRANGEMENT OF SECTIONS CHAPTER I PRELIMINARY SECTIONS 1. Short Title, Extent, Commencement and Application. 2. Definitions. CHAPTER II INCORPORATION of COMPANY and MATTERS INCIDENTAL THERETO' (2013) <<https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>>.

<sup>88</sup> Anjali Singh, 'Corporate Governance Regime in India: An Exigency for Reform' (2022) 5 Issue 2 International Journal of Law Management & Humanities 929 <<https://heionline.org/HOL/LandingPage?handle=hein.journals/ijlmhs16&div=84&id=&page=>> accessed 25 September 2023.

practises and evolving business realities. In this sense, the Companies Act, 2013, which included a comprehensive set of rules aimed at improving corporate governance standards, marks a watershed. The Act covers a number of corporate governance topics, such as shareholder rights, financial disclosures, audit committees, and board composition.<sup>89-90</sup> The Companies Act of 2013 has a major clause pertaining to the nomination of independent directors (Part IV clause (1) Under Section 150). In order to guarantee impartial decision-making and supervision, it requires that a certain proportion of directors on the boards of listed corporations be independent directors. The need of independent directors in preserving efficient governance is emphasised by global corporate governance norms, which are in line with this requirement.<sup>91</sup>

The Act also places stringent disclosure requirements on businesses, mandating that they provide comprehensive financial data, related-party transactions, and CSR efforts in their yearly reports (Companies Act, 2013, the Indian Accounting Standard 18, the Auditors Report Order, and Clause 49 of the Listing Agreement). These clauses improve openness and provide shareholders the ability to make wise choices.<sup>92</sup> The SEBI (Listing Obligations and Disclosure Requirements) Regulations are another essential component of India's corporate governance regulations. Corporate governance standards for listed businesses are developed and enforced in large part by SEBI, the main regulatory body in charge of the Indian securities market. The

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<sup>89</sup> Diwakar Kumar, 'Corporate Governance and Financial Performance in India's Steel Manufacturing Sector: A Conundrum of Influence' (2023) 14 Rivista Italiana di Filosofia Analitica Junior 1402 <<https://www.rifanalitica.it/index.php/journal/article/view/406>> accessed 25 September 2023.

<sup>90</sup> CAG, 'Corporate Governance CHAPTER III' (2013) <[https://cag.gov.in/uploads/download\\_audit\\_report/2018/Chapter\\_3\\_Corporate\\_Governance\\_of\\_Report\\_No\\_18\\_of\\_2018\\_-\\_Compliance\\_Audit\\_on\\_General\\_Purpose\\_Financial\\_Reports\\_of\\_Central\\_Public\\_Sector\\_Enterprises\\_of\\_Union\\_Governme.pdf](https://cag.gov.in/uploads/download_audit_report/2018/Chapter_3_Corporate_Governance_of_Report_No_18_of_2018_-_Compliance_Audit_on_General_Purpose_Financial_Reports_of_Central_Public_Sector_Enterprises_of_Union_Governme.pdf)>.

<sup>91</sup> Pratima Vishnu Barde, 'Whistleblowing Mechanism: A Positive Step towards Enhancing Corporate Governance' (2021) 4 Issue 1 International Journal of Law Management & Humanities 1613 <<https://heionline.org/HOL/LandingPage?handle=hein.journals/ijlmhs9&div=136&id=&page=>>> accessed 25 September 2023.

<sup>92</sup> Deepika Kulhari, 'Examination of Historical Advancement of Corporate Governance in India– Contemporary Issues and Way Forward' (2021) 1 Qubahan Academic Journal 14.

laws impose strict guidelines on listed firms concerning the membership of their boards, financial information disclosure, and board meeting procedures. Furthermore, related-party transaction restrictions are included in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, guaranteeing fair and transparent conduct of related-party transactions (Regulation 23, SEBI).<sup>93</sup> To improve supervision and governance, the laws also require the creation of a number of committees, such as the audit and nomination and pay committees.<sup>94</sup>

India's legal and regulatory framework consists of the Companies Act, SEBI regulations, and other pertinent rules and guidelines published by the Ministry of Corporate Affairs. A broad variety of corporate governance topics are covered by these laws, including as duties related to corporate social responsibility, board committees, and director appointments.<sup>95</sup> Enforcing compliance with the defined framework is mostly dependent on the regulatory bodies in India that are in charge of monitoring and implementing corporate governance requirements. The main regulating agency for listed firms and the securities markets is SEBI, as was previously noted. It has control over matters pertaining to disclosure, market behaviour, and company governance. SEBI's adherence to corporate governance norms is shown by the enforcement measures it has implemented, such as fines and the debarment of persons and organisations.<sup>96</sup> Another important regulatory body in charge of carrying out the Companies Act's many requirements is the Ministry of Corporate Affairs. It is in charge of managing the corporate governance facets of business filings, registration, and adherence to legal obligations.

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<sup>93</sup> George Varghese and Aghila Sasidharan, 'Impact of Ownership Structure and Board Characteristics on Firm Value: Evidence from China and India' [2020] *Research in Finance* 217.

<sup>94</sup> *Ibid*

<sup>95</sup> S Sandhya and Neha Parashar, 'An Index to Study Corporate Governance in Banks in India' (2020) 4 *Corporate Governance and Sustainability Review* 40.

<sup>96</sup> Mrinal Aiyappa, 'SEBI's Stewardship Code, 2019 & Institutional Investors in Corporate Governance' [2021] *SSRN Electronic Journal*.

Additionally, the Ministry creates and modifies corporate governance regulations to ensure that they are in line with changing economic conditions and international norms.

#### **4.4 Key Principles and Guidelines in Indian Corporate Governance**

The tenets and directives that serve as the foundation for corporate governance in India constitute an evolving structure designed to guarantee openness, responsibility, and safeguarding the interests of stakeholders and shareholders. A key component of efficient corporate governance is the makeup of the board. Regulations in India place a strong emphasis on the value of a diverse and well-balanced board of directors.<sup>97</sup> In order to provide unbiased monitoring, the Companies Act of 2013 requires some firms to appoint independent directors. It is anticipated that these independent directors would balance the power of executive directors by contributing knowledge and an unbiased viewpoint to board discussions.<sup>98</sup> It's important to remember, however, that there is still work to be done to ensure the genuine independence of these directors, since some may have long-standing ties to the businesses they are responsible for. In line with the worldwide trend towards gender inclusiveness, this effort towards gender diversity seeks to enhance board conversations and decisions.<sup>99</sup> However, in order to fully realise the potential of varied viewpoints inside boards, this move underscores the need of complete diversity initiatives that go beyond gender.

In India's corporate governance structure, independent directors play a crucial role as defenders of accountability and openness. It is required of independent directors to act impartially, provide constructive feedback, and protect the interests of minority shareholders. But there have been doubts raised over the efficacy of independent directors, especially in cases of

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<sup>97</sup> Muhammad Jahangir Ali, Kamran Ahmed and Darren Henry, 'Disclosure Compliance with National Accounting Standards by Listed Companies in South Asia' (2004) 34 *Accounting and Business Research* 183.

<sup>98</sup> Afra Afsharipour, 'Corporate Social Responsibility and the Corporate Board: Assessing the Indian Experiment' [2018] *Globalisation of Corporate Social Responsibility and its Impact on Corporate Governance* 95.

<sup>99</sup> NL Mitra, 'CORPORATE GOVERNANCE: A SOJOURN to FIND a YARDSTICK' (2014) 56 *Journal of the Indian Law Institute* 437 <<https://www.jstor.org/stable/43953724>>.

corporate wrongdoing.<sup>100</sup> Recent amendments to the law clarify the duties and obligations of independent directors in an effort to strengthen their position. It is now mandatory for these directors to participate actively in decision-making processes and attend a minimum number of board meetings. Furthermore, stronger legal recourse options have been included for them in the event of carelessness or involvement in corporate misconduct.<sup>101</sup> By highlighting the value of independent directors in maintaining good governance, these changes aim to bring India's corporate governance into line with international norms.

In terms of corporate governance, audit committees are essential to maintaining financial responsibility and openness. According to Indian rules, listed firms must establish audit committees (Section 177, Clause 1, Audit Committee). These committees have the responsibility of supervising audit processes, internal controls, and financial reporting.<sup>102</sup> Audit committees serve as defenders of financial probity and are often made up of independent directors with financial experience. More rigorous standards have been enforced by regulatory adjustments to further strengthen audit committees. These include of requiring audit firms to rotate and improving openness about the audit process and related costs. The purpose of these modifications is to increase audit committees' effectiveness and independence. But it's still crucial to make sure audit committees can effectively carry out their oversight responsibilities, especially in complicated company setups.

One core principle of corporate governance is the protection of the interests of minority shareholders. Indian laws provide fair treatment and access to important information in order

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<sup>100</sup> Shouvik Kumar Guha and others, 'Evolution of Corporate Governance in India and Its Impact on the Growth of the Financial Market: An Empirical Analysis (1995-2014)' (2019) 19 *Corporate Governance: The International Journal of Business in Society* 945.

<sup>101</sup> Dhammika Dharmapala and Vikramaditya Khanna, 'The Impact of Mandated Corporate Social Responsibility: Evidence from India's Companies Act of 2013' (2018) 56 *International Review of Law and Economics* 92 <<https://www.sciencedirect.com/science/article/pii/S0144818818301182>> accessed 10 August 2019.

<sup>102</sup> Shouvik Kumar Guha and others, 'Evolution of Corporate Governance in India and Its Impact on the Growth of the Financial Market: An Empirical Analysis (1995-2014)' (2019) 19 *Corporate Governance: The International Journal of Business in Society* 945.

to safeguard minority shareholders. The Companies Act of 2013 included provisions allowing minority shareholders to bring class action lawsuits against corporations and directors for unfair or oppressive practises (Sections 241-246 of the 2013 Act).<sup>103</sup> This gives minority shareholders the ability to file complaints about misbehaviour. Furthermore, in order to avoid conflicts of interest that might harm minority shareholders, rules demand a more thorough disclosure of related-party transactions.<sup>104</sup> However, there is still difficulty in effectively enforcing these restrictions, especially when majority stockholders have significant sway.

Mutual funds and pension funds are among the institutional investors that are gradually impacting corporate governance in India. These investors have large holdings in publicly traded corporations and may influence how decisions are made by using their voting rights. By allowing electronic voting and enhancing openness about their voting choices, regulatory changes have attempted to further empower institutional investors.<sup>105</sup> Nonetheless, there is still room for institutional investors to become more involved and actively support better governance procedures. In order to address governance challenges, some institutional investors have started using their voting rights; nevertheless, coordinated efforts are needed to hold corporations responsible and promote comprehensive governance changes.

#### ***4.5 Comparative Analysis: Indian Corporate Governance vs. OECD Principles***

There are many different frameworks and standards pertaining to corporate governance across the world, each specifically designed to meet the demands and obstacles of a particular nation. The Organisation for Economic Co-operation and Development (OECD) has become a prominent entity amongst this heterogeneity, establishing the OECD Principles of Corporate Governance as a worldwide standard for efficacious corporate governance methodologies.

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<sup>103</sup> Preeti Kumari, 'Corporate Governance in India Impact on Firm Performance' [2020] SSRN Electronic Journal.

<sup>104</sup> Sridhar, 'Corporate Governance and Institutional Investors - Law in India' (2018) 17 International Journal of Indian Culture and Business Management 139.

<sup>105</sup> *Ibid*



Internationally acknowledged rules known as the OECD Principles of Corporate Governance provide a framework for encouraging accountability, equity, and openness in corporate governance procedures. These principles, which were first presented in 1999 and later updated in 2004 and 2015, provide a thorough framework of reference for nations looking to improve their corporate governance systems.<sup>106,107</sup> The OECD Principles include a wide variety of essential ideas and important topics, such as shareholders' rights and fair treatment, stakeholders' roles, the board of directors' duties, and disclosure and openness. They are applicable to both established and developing economies as they are designed to foster trust, investor confidence, and long-term value generation.<sup>108</sup>

It is crucial to use a methodical comparison approach and techniques for evaluating how well Indian corporate governance practises correspond with the OECD Principles. In order to assess compliance with international norms, comparative corporate governance research often uses a systematic methodology that looks at business practises, regulatory frameworks, and real results.<sup>109</sup> Using certain benchmarks and indicators that are in line with the OECD Principles is a popular method for doing this kind of study. This means assessing the degree to which Indian laws and business policies conform to each of the OECD's tenets.

To maintain efficient governance, the OECD Principles place a strong emphasis on the need for a balanced board composition, with the majority of directors being independent. This notion has been integrated by Indian corporate governance legislation, namely the Companies Act,

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<sup>106</sup> Sanika Kulkarni, 'The Significance and Impact of Institutional Investors in Promoting Corporate Governance in India' (2021) 2 Indian Journal of Law and Legal Research 1 <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/injllw2&div=85&id=&page=>> accessed 25 September 2023.

<sup>107</sup> OECD, 'G20/OECD Principles of Corporate Governance' (2015) <<https://www.oecd.org/daf/ca/Corporate-Governance-Principles-ENG.pdf>>.

<sup>108</sup> *Ibid*

<sup>109</sup> Waleed M Al-ahdal and others, 'The Impact of Corporate Governance on Financial Performance of Indian and GCC Listed Firms: An Empirical Investigation' (2020) 51 Research in International Business and Finance 101083.

2013, which requires the nomination of independent directors in certain firms.<sup>110</sup> To further support the OECD's emphasis on gender diversity, the Companies Act of 2013 included the idea of a female director on the board (Section 149(1)). Ensuring that independent directors are really independent and competent to make impartial decisions is still difficult, however. To fully realise the potential of varied viewpoints inside boards, more comprehensive diversity initiatives beyond gender are required, as also advocated by the OECD Principles.

The significance of safeguarding shareholder rights and enabling their participation in corporate decision-making is emphasised by the OECD Principles (IV.A.7. Related party transactions). Certain protections for shareholders are afforded by Indian corporate governance legislation, one of which is the ability to vote on important company issues. Minority shareholder protection has raised some questions, nevertheless, especially in situations where majority owners have a lot of sway.<sup>111</sup> In India, the nature of shareholder participation has been changing, with institutional investors taking on a more proactive role in corporate governance. This is in line with the OECD Principles, which acknowledge institutional investors' contribution to the advancement of good corporate governance. However, there is still opportunity for India to adopt more comprehensive shareholder engagement strategies that are more in line with global norms.

The OECD Principles place a strong emphasis on the necessity for timely and thorough disclosure of significant information to stakeholders, and they include standards for transparency and disclosure. Strict disclosure standards have been implemented by Indian rules, such as the Companies Act, 2013 (Section 188), which mandates that firms include

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<sup>110</sup> Mrinal Aiyappa, 'SEBI's Stewardship Code, 2019 & Institutional Investors in Corporate Governance' [2021] SSRN Electronic Journal.

<sup>111</sup> Afra Afsharipour, 'Corporate Social Responsibility and the Corporate Board: Assessing the Indian Experiment' [2018] *Globalisation of Corporate Social Responsibility and its Impact on Corporate Governance* 95.

related-party transactions and comprehensive financial information in their annual reports.<sup>112</sup>

In accordance with the OECD Principles, these standards improve transparency and empower shareholders to make knowledgeable choices. Regulatory monitoring is essential to successfully implementing these norms, since it remains difficult to ensure complete compliance and uniformity of disclosure practises among organisations.

Corporate governance is centred on accountability systems, and the OECD Principles highlight how important effective accountability is to maintaining integrity and confidence. India's regulatory structure include measures for accountability, such as the creation of audit committees and the capacity for minority shareholders to bring class action lawsuits in instances of oppressive behaviour (Section 177, Audit Committee). The OECD Principles, which highlight the value of audit committees in guaranteeing financial accountability and transparency, are in line with these procedures.<sup>113</sup> The efficient application and execution of these procedures nevertheless face difficulties, especially in complicated corporate organisations where corporate malfeasance may take place. The OECD Principles promote responsible and ethical business behaviour in the field of treating stakeholders other than shareholders. Corporate social responsibility (CSR) obligations are among the rules pertaining to the treatment of stakeholders included under Indian corporate governance laws. The OECD Principles' focus on the contribution of companies to sustainable development is in line with the adoption of CSR rules<sup>114</sup>. To guarantee that CSR projects are carried out successfully and with a sincere commitment to stakeholders' well-being, however, ongoing efforts are required.

<sup>112</sup> Shigufta Hena Uzma, 'Corporate Governance Practices: Global Convergence and Indian Perspective' (2018) 10 *Qualitative Research in Financial Markets* 285.

<sup>113</sup> Neeti Shikha and Rishika Mishra, 'Corporate Governance in India - Battle of Stakes' (2019) 10 *International Journal of Corporate Governance* 20.

<sup>114</sup> Dr Sanjay R Ajmeri and Dr Samir M Vohra, *Emerging Trends in International Business and Commerce* (Allied Publishers 2019)

<<https://books.google.com/books?hl=en&lr=&id=ogg5EAAAQBAJ&oi=fnd&pg=PA23&dq=%22corporate+governance+in+india%22+%22OECD+principles%22&ots=7s7MxMPkzJ&sig=OMsAUfdBW71QLVB6RnYutCQZ1ww>> accessed 25 September 2023.

#### 4.6 Empirical Evidence and Case Studies

Case studies and empirical data are useful instruments for evaluating the effect and real-world application of corporate governance in India. They provide important insights into the efficacy of governance procedures and a peek into the difficulties encountered by Indian businesses in addition to the success stories that highlight the advantages of strong governance. The association between corporate governance practises and business performance in India has been the subject of several empirical research.<sup>115</sup> Businesses that have robust governance procedures in place, such as having independent directors, often do better financially and are valued more highly by the market. Additionally, the past research explores the function of corporate governance in reducing agency conflicts.<sup>116</sup> When managers' and shareholders' interests vary, agency conflicts occur. According to the research, organisations with strong governance practices—such as active audit committees and the participation of independent directors—are better able to balance management interests with those of shareholders.<sup>117</sup> The performance of the company is subsequently enhanced by this alignment.

Case studies give a nuanced view on corporate governance in action by providing a thorough analysis of particular organisations. An important example of corporate governance in India is the story of Infosys, a prominent provider of IT services. International acclaim has been bestowed upon Infosys due to its dedication to ethical behaviour, openness, and compliance with best practises in corporate governance. The majority of the company's board members are independent, in accordance with global governance guidelines. An excellent example of how robust governance procedures may promote confidence among stakeholders and investors is

<sup>115</sup> Varnita Srivastava, Niladri Das and Jamini Kanta Pattanayak, 'Impact of Corporate Governance Attributes on Cost of Equity' (2019) 34 *Managerial Auditing Journal* 142.

<sup>116</sup> Diwakar Kumar, 'Corporate Governance and Financial Performance in India's Steel Manufacturing Sector: A Conundrum of Influence' (2023) 14 *Rivista Italiana di Filosofia Analitica Junior* 1402 <<https://www.rifanalitica.it/index.php/journal/article/view/406>> accessed 25 September 2023.

<sup>117</sup> Shouvik Kumar Guha and others, 'Evolution of Corporate Governance in India and Its Impact on the Growth of the Financial Market: An Empirical Analysis (1995-2014)' (2019) 19 *Corporate Governance: The International Journal of Business in Society* 945.

Infosys. The company's commitment on honesty, transparency, and responsibility has strengthened its image as a reliable corporate organisation in addition to contributing to its continued development. The Satyam Computer Services affair, on the other hand, serves as a lesson in Indian business history. One of the biggest corporate scams in India was the subject of this notorious case, which exposed serious oversight and governance shortcomings. The board of Satyam faced criticism for its inability to identify and stop fraudulent activity, underscoring the vital need of strong internal controls and independent board supervision as examples of successful governance procedures.<sup>118</sup> The Satyam affair brought to light the dire effects of inadequate governance, such as diminished investor confidence, legal ramifications, and unstable financial conditions.

Improved corporate performance and investor trust are linked to efficient governance procedures, which include independent directors, well-functioning audit committees, and strict disclosure standards. These results highlight how crucial it is for Indian governance practises to match international norms in order to draw in investment and promote long-term, sustainable development. Furthermore, the case studies show that strong governance practises are necessary for businesses looking to establish and preserve stakeholder trust—they are not only desirable.<sup>119</sup> An example of how a firm commitment to governance may improve a company's standing, draw in investors, and promote long-term success is the Infosys instance. On the other hand, the Satyam affair is a sobering reminder of the terrible outcomes that might come from insufficient governance procedures, such as grave harm to one's image and potential legal repercussions.

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<sup>118</sup> Nikita Gupta and Shubhani Garg, 'Analysis of Rising Corporate Governance Issues and Challenges for Indian Companies in Covid-19' (2021) 4 Issue 2 International Journal of Law Management & Humanities 88 <<https://hejonline.org/HOL/LandingPage?handle=hejn.journals/ijlmhs10&div=9&id=&page=>> accessed 25 September 2023.

<sup>119</sup> Dr BHADRAPP A Haralayya, 'An Exploratory Investigation on Implications of Corporate Governance on Financial Performance in India' (2022) 6 Journal of Positive School Psychology 633 <<https://www.journalppw.com/index.php/jpsp/article/view/9794>> accessed 25 September 2023.

Even though India has achieved great progress in corporate governance, a number of issues still exist. The problem of related-party transactions, in which businesses deal with organisations linked to their founders or controlling shareholders, is one such difficulty.

Conflicts of interest and equity for minority shareholders may be raised by such transactions.<sup>120</sup>

In India, success stories like the Tata Group's are shining examples of sound governance procedures. One of the biggest and most established conglomerates in India, Tata Group, has a reputation for strong governance practises, which include a diverse board and a dedication to moral principles.<sup>121</sup> These actions have helped the organisation maintain its performance over time and build a solid reputation internationally.

#### **4.7 Recent Reforms and Changes in Indian Corporate Governance Laws**

In recent years, India has seen a surge of legal changes and reforms in the constantly changing field of corporate governance. Numerous factors have prompted these changes, from the need for more responsibility and transparency to the defence of shareholder rights. Since these changes aim to improve corporate practises' efficiency and integrity while bringing them into compliance with international norms, they are projected to have a significant influence on the Indian business climate. One notable modification in India's corporate governance system is the Companies Act of 2013. This thorough redesign brought about a number of noteworthy adjustments. In addition to strict disclosure guidelines, related-party transaction laws, and the creation of the National Company Law Tribunal (NCLT) (Sections 241–242) for accelerated dispute settlement, mandatory standards for independent directors were put into place.<sup>122</sup>

<sup>120</sup> Surbhi and Sandeep Vij, 'Implications of Infosys and Tata Cases for Corporate Governance in India' (*papers.ssrn.com* 21 December 2017) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3351355](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3351355)> accessed 28 April 2023.

<sup>121</sup> Jayadev Satapathy and Tattwamasi Paltasingh, 'CSR in India: A Journey from Compassion to Commitment' [2019] *Asian Journal of Business Ethics*.

<sup>122</sup> Saarang Kaushik, 'National Company Law Tribunal (NCLT) under the Indian Company Law Regime' (2020) 22 *Supremo* Amicus <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/supami22&div=11&id=&page=>> accessed 25 September 2023.

Promoting corporate governance improvements has been the proactive regulatory focus of the Securities and Exchange Board of India (SEBI). The Listing Obligations and Disclosure Requirements (LODR) Regulations were implemented by SEBI in 2015 with the intention of improving listed businesses' corporate governance practises.<sup>123,124</sup> These rules uphold accountability, openness, and disclosure requirements, guaranteeing that shareholders' interests are safeguarded and they are well-informed. The 2016 bankruptcy and Bankruptcy Code is essential to the timely resolution of bankruptcy cases, even if it is not only a corporate governance reform. Protecting the interests of creditors and shareholders requires the prompt settlement of bankruptcy proceedings since it guarantees the distribution of resources in a way that maximises value. These changes have a variety of reasons, all of which are indicative of the changing demands of India's business environment. One of the main motivators is the need to improve transparency. Establishing trust with creditors, stakeholders, and investors starts with transparency. Significant progress was made in this area by the Companies Act of 2013, which imposed strict transparency requirements. The Act sought to improve openness, which is essential for building confidence in corporate India, by making corporations record related-party transactions and provide financial information.

Accountability is also another important factor driving these changes. It is ensured by a strong corporate governance system that executives and directors are held responsible for their activities. The Companies Act of 2013 mandates the appointment of independent directors, who are essential in providing unbiased monitoring and ensuring management is held responsible. In addition, safeguarding the interests of shareholders has been a top priority.<sup>125</sup>

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<sup>123</sup> SEBI. Securities and Exchange Board of India, 2015. [https://www.sebi.gov.in/sebi\\_data/meetingfiles/sep-2021/1631782376088\\_1.pdf](https://www.sebi.gov.in/sebi_data/meetingfiles/sep-2021/1631782376088_1.pdf).

<sup>124</sup> Ankita Agarwal, 'SEBI (LODR) (Amendment) Regulations, 2018: A Route to Achieving a Global Level Corporate Governance Structure in India' (2018) 7 *Supremo Amicus* 32 <<https://heionline.org/HOL/LandingPage?handle=hein.journals/supami7&div=8&id=&page=>>> accessed 25 September 2023.

<sup>125</sup> Rupjyoti Saha and Kailash Chandra Kabra, 'Does Corporate Governance Influence Firm Performance? Evidence from India' (2019) 5 *Economics and Business Review* 70.



The legislative amendments in India aim to protect minority shareholders from management or majority owners who act in an abusive manner. One important step in defending shareholder rights is the creation of class action lawsuits for minority shareholders in instances of unfair behaviour. Reform has also been significantly fueled by the desire to draw in foreign investment and global integration. India is attempting to entice foreign investors by bringing its corporate governance rules into line with global best practises.<sup>126</sup> Following international norms fosters trust and makes regulatory frameworks familiar, which in turn attracts foreign investment.

The latest improvements in corporate governance are anticipated to have a revolutionary effect on the business climate in India. Increased capital inflows may result from improved investor trust fostered by more accountability and transparency. Funds are more likely to be allocated to economies with strong corporate governance frameworks by foreign investors in particular. It is predicted that the mandated nomination of independent directors and the strict disclosure requirements would enhance corporate governance practises in businesses. Particularly, independent directors provide a variety of viewpoints and serve as watchdogs, lowering the possibility of corporate wrongdoing. The integrity and reputation of Indian companies are expected to benefit from this on a national and international level.<sup>127</sup> Class action lawsuits have also given minority shareholders the ability to defend their rights and serve as a deterrent to unfair behaviour. This action encourages fairness in business interactions and strengthens shareholder protection. Delayed resolution of bankruptcy proceedings is a persistent concern in the Indian corporate climate that is addressed by the bankruptcy and Bankruptcy Code, 2016.

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<sup>126</sup> Raju, C. Udaya Kumar; Subramanyam, M.; Dasaraju, Himachalam, 'Emergence of Corporate Governance in India' (2014) 2 EXCEL International Journal of Multidisciplinary Management Studies 74 <<https://www.indianjournals.com/ijor.aspx?target=ijor:xijmms&volume=2&issue=5&article=007>> accessed 25 September 2023.

<sup>127</sup> Shigufta Hena Uzma, 'Corporate Governance Practices: Global Convergence and Indian Perspective' (2018) 10 Qualitative Research in Financial Markets 285.

This reform ensures that resources are allocated effectively and unviable enterprises are reorganised or liquidated in a timely way by speeding up the resolution process, which benefits the corporate sector as a whole.

#### **4.8 Alignment of Reforms with OECD Principles**

An important step towards strengthening governance practises in the nation is represented by the recent corporate governance changes in India. It is crucial to closely examine whether these changes successfully close the gaps found in the comparative study in order to assess their compliance with the OECD Principles of Corporate Governance. It is also crucial to discuss the potential and difficulties that come with the effort to bring Indian practises into compliance with these international standards. The OECD Principles of Corporate Governance function as a worldwide standard for promoting good governance practises, placing a premium on protecting shareholder rights, treating shareholders fairly, and acknowledging the input of stakeholders in business decision-making. These guidelines also emphasise responsibility, openness, and the crucial role that the board of directors plays in managing a company's operations.

A number of important OECD Principles are significantly aligned with recent legal changes in India, most notably the Companies Act, 2013, and the SEBI Listing Obligations and Disclosure Requirements (LODR) Regulations. For example, the OECD Principle highlighting the preservation of shareholder rights is clearly reflected in India, where the establishment of class action suits allows minority shareholders to take legal action against oppressive behaviour. By guaranteeing that the interests of minority shareholders are adequately protected, this reform advances equality in corporate governance. The Companies Act of 2013's need for the nomination of independent directors improves the fair treatment of shareholders. In order to ensure that the interests of all shareholders are respected and to provide impartial monitoring,

independent directors are essential. This promotes fair treatment in accordance with the OECD Principle and fortifies India's governance structures.

Furthermore, India's disclosure and transparency requirements have been strengthened by the SEBI LODR Regulations, bringing them closer to global norms. In order to ensure openness in corporate dealings, these rules mandate that corporations provide shareholders with timely and thorough information. By improving shareholder access to essential information for well-informed decision-making, these measures demonstrate a clear connection with the OECD Principle of transparency. Furthermore, the National Company Law Tribunal's (NCLT) creation for quick dispute settlement is in line with the OECD Principle that highlights the significance of accountability frameworks. By facilitating the prompt settlement of business conflicts, this tribunal helps hold organisations and people accountable for their deeds. It offers a quick and efficient way to make businesses answerable for their actions.

A few of the deficiencies found in the comparative research have been greatly addressed by the recent corporate governance changes implemented in India. Corporate governance practises in the nation have been greatly reinforced by the appointment of independent directors, strict disclosure laws, class action lawsuit protection for shareholders, and effective dispute resolution procedures. However, there are several possibilities and obstacles in the way of bringing Indian corporate governance practises into compliance with global norms. Reform implementation is difficult since it requires constant enforcement and monitoring to make sure businesses follow regulations and governance standards. Since adhering to strict disclosure and transparency rules may be resource-intensive and may need changes to company practises, firms may see the compliance burden as a problem.

Aligning with the OECD Principles also necessitates proactive involvement with stakeholders outside of shareholders. It may be difficult to strike a balance between the interests of several

stakeholders, including creditors, workers, and the larger society. For India's business scene, striking this balance while upholding global governance norms poses both a problem and an opportunity. Adopting global norms may make India more appealing to foreign investors and more globally competitive. To completely comply with these requirements, nevertheless, the organisational environment may also need to undergo cultural changes. When India moves forward with promoting good governance practises, it will need to strike a balance between upholding international norms and resolving local circumstances. Stability, steady economic development, and the nation's ongoing efforts to enhance corporate governance will all depend on this balance.

By Brain writes

Exports

## 5 Chapter 5: Conclusion and Recommendations

### 5.1 Conclusion

To sum up, this dissertation examined the complex field of corporate governance with a particular emphasis on Brazil and India, two distinct but important nations from an economic standpoint. Examining these nations' corporate governance legislation and determining how well they complied with the widely accepted OECD Principles of Corporate Governance was the main goal. A more sophisticated knowledge of corporate governance practises, their historical development, legal and regulatory frameworks, fundamental principles, comparative assessments, and current changes in Brazil and India have been made possible by this research. In the instance of Brazil, the investigation started by exploring the history and setting of corporate governance in the nation. Brazil is a fast expanding market with significant economic potential, which emphasises the relevance of comprehending its corporate governance environment. Through legislative changes and regulatory actions, Brazil has significantly advanced in areas like transparency and the protection of shareholder rights, according to a comparison with the OECD Principles. A historical history of corporate governance in Brazil was outlined, emphasising the transition from family-run companies to corporations with professional management. Important laws, rules, and organisations that control corporate governance in Brazil were examined, including the functions of the Brazilian Institute of Corporate Governance (IBGC) and the Brazilian Securities and Exchange Commission (CVM). Stakeholder viewpoints provide insightful information on the potential and difficulties facing Brazilian corporate governance.

After that, the research turned its attention to India, a vibrant and quickly expanding nation with a unique corporate governance environment. The historical transition of India's business climate from one dominated by families to one that is more varied and regulated was looked at. A thorough analysis of the legislative and regulatory framework controlling corporate

governance in India was conducted, with a focus on important statutes such as the Companies Act of 2013 and the function of regulatory bodies including the Ministry of Corporate Affairs and SEBI. The research examined the fundamental ideas and directives found in Indian corporate governance laws, with a focus on the makeup of boards, the function of independent directors, and the changing role of institutional investors.

Comparing the corporate governance practises of Brazil and India with the OECD Principles was a crucial aspect of the research. Both nations' strengths and shortcomings were identified by this examination. India performed very well in terms of board composition and minority shareholder rights protection, while Brazil demonstrated advancements in areas including as transparency and shareholder rights. The analysis then focused on more recent changes made to both nations. The Novo Mercado, which aims to improve corporate governance practises among publicly listed corporations, was emphasised in Brazil. Corporate governance standards were reinforced in India by the Companies Act, 2013 and the SEBI LODR Regulations. The desire to improve accountability, transparency, and shareholder protection while adhering to global norms drove these changes. One important factor to take into account was how these changes aligned with the OECD Principles. Both nations showed significant convergence, filling up the gaps found in the comparative study. The objective of the changes was to improve accountability, transparency, and shareholder protection in order to boost investor trust and facilitate effective corporate governance.

The research highlighted obstacles and prospects linked to harmonising corporate governance methodologies with global norms. Achieving a balance between local reality and global competitiveness, stakeholder participation, regulatory constraints, and successful execution were among these issues. As Brazil and India progressed towards promoting good governance practises, addressing these obstacles would be essential. In summary, this study offered a comprehensive picture of corporate governance practises in Brazil and India, encompassing

their historical evolution, current reforms, and conformity with international norms. It emphasised how important corporate governance is to maintaining economic stability, drawing in outside capital, and advancing long-term prosperity. Although both nations demonstrated advancements in a number of corporate governance-related areas, they also encountered particular difficulties in their efforts to synchronise with global norms. In the end, the research highlighted how important strong corporate governance procedures are to rising economies like Brazil and India's ability to prosper and expand internationally.

## **5.2 Recommendations**

Scholars have to carry out more thorough analyses that contrast corporate governance practises in developing nations like Brazil and India with international norms like the OECD Principles. A broader variety of variables, such as cultural influences and the effects of historical and economic circumstances on corporate governance, has to be taken into account in these research. Studies that follow the effects of recent changes to corporate governance over a long length of time in Brazil and India might provide important insights into the efficacy and durability of these changes. This would make it possible for researchers to evaluate whether the changes result in long-lasting enhancements to corporate governance procedures. Scholars have the option to examine particular case studies that highlight how corporate governance is used in practise in both nations. These case studies may shed light on the difficulties that businesses really encounter in the real world and teach professionals how to handle tricky governance issues. It is essential to comprehend the behavioural and cultural facets that impact corporate governance procedures in Brazil and India. Scholars may explore the cultural aspects that influence governance and decision-making in these nations in more detail, offering a more nuanced perspective of the dynamics at work. Research collaborations across sociology, psychology, and economics may provide a comprehensive knowledge of corporate governance



in developing economies. The larger social and economic ramifications of governance practises may be clarified by using these multidisciplinary techniques.

It is recommended that practitioners in Brazil and India aggressively adopt global best practises in corporate governance. This involves implementing OECD guidelines and other international norms to improve accountability, transparency, and shareholder protection. Programmes for ongoing education and training should be funded by boards of directors, executives, and governance specialists. Through these programmes, stakeholders may keep informed about changing governance standards and get the tools necessary to successfully implement changes. Beyond only shareholders, practitioners should understand the significance of stakeholder involvement. Developing relationships with staff, creditors, and the community at large may strengthen a company's reputation and foster trust. It is crucial to promote diversity in the makeup of boards and in leadership roles. Decision-making processes become more robust as a result of encouraging a diversity of viewpoints and lowering the possibility of groupthink. It is imperative that practitioners not only conform to international norms but also modify governance practises to suit the specific local environment. This calls for taking into account the unique cultural, legal, and economic aspects of Brazilian and Indian government. Given the growing significance of corporate social responsibility, practitioners need to take an active part in these activities. CSR not only advances a company's brand and stakeholder confidence, but it also corresponds with global environmental objectives.

### **5.3 Limitations**

It is critical to recognise the study's limitations. First off, the study's scope was limited to a general analysis of corporate governance in Brazil and India, which means that some of the subtleties of these nations' governance practises may not have been fully captured. Subsequent studies need to go further into certain industries and sectors. Secondly, the research was dependent on pre-existing literature and material that was made publicly accessible, which may

not provide a comprehensive view of corporate governance practises. Deeper insights may be obtained via practitioner and stakeholder surveys and interviews. Last but not least, although the research concentrated on the legal and regulatory aspects of corporate governance, it did not fully explore the actual application and enforcement of these laws. Future study must focus on understanding how these restrictions are implemented in real-world situations.

By Brain writes EXPERTS

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