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# CHANGING RULES FOR APPOINTMENT OF INDEPENDENT DIRECTORS: WITH GREATER INDEPENDENCE COMES GREATER LIABILITY?

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## ABSTRACT

The concept of introducing independent directors emerged when various corporate governance scams were noticed. Independent directors are only involved in the decision-making process and not in the day-to-day functions of the company. They check whether the company is adhering to the law and is engaging in ethical practices. Due to this reason, it is important that independent directors have the power of independence. A person appointed as an independent director should not be influenced by the likes of the promoter. This may threaten the overall betterment of the company and the minority shareholders. To strengthen the provisions and law relating to independent directors and their functioning, SEBI has proposed changes from time to time since the initial law which was laid down with this respect can be considered weak.

The rules for appointment and the eligibility criteria of independent directors can be found in section 149 of the Companies Act, 2013. SEBI decided to bring about changes to these provisions. Firstly, the appointment, reappointment, or removal of independent directors of listed companies shall be done through a special resolution of shareholders. Secondly, the candidate selection process to be followed by the Nomination and Remuneration Committee (NRC) will be made more transparent. Thirdly, the constitution of the NRC will be changed from majority independent directors to 2/3rd independent directors. Fourthly, the approval of shareholders for appointing independent directors will be ascertained at the next general meeting or within 3 months of the appointment of the Board (the earlier period will be considered). Fifth, a Key Managerial Personnel or the employees can only become the Independent Directors after three years of cooling periods. Sixth, the eligibility requirement for relatives of employees has been changed and they can be applied for the role of Independent Directors without the cooling-off period.

This paper focuses on analysing the importance and need to appoint an independent director; the rules and procedures for appointing independent directors; the analysis of the changing rules and the liability and independence of an independent director.

**KEYWORDS:** Corporate Governance, Companies Act, Independent Director, Listing Agreement, SEBI

## **INTRODUCTION**

Every company has multiple stakeholders which include, its employees, investors, customers, the government, and the society in which it functions. To ensure that the company runs by keeping in mind the interests of all the stakeholders, a board of directors is appointed.

The Board should carry out the activities in a transparent manner to be accountable to its stakeholders. This is the tipping moment for those on the Board to act independently for the greater benefit. In the past, it has been noted that members of the Board of Directors made choices that were detrimental to the welfare of its stakeholders, and they managed companies for the materialistic advantage of gaining profits. This necessitated the appointment of independent members to the Board of Directors as part of the process of implementing open and equitable business processes.

The Nirav Modi Scam and the Satyam Scandal made the authorities re-furnish the corporate laws. It was due to the Satyam Scandal that the Companies Act, 2013 (hereinafter referred to as the “Act”) was introduced. The main change brought through this Act was the requirement to appoint independent directors. Prior to the Companies Act, there was no law regulating independent directors.

Further, the Tata-Mistry case, the verdict of which was given on 26th March 2021 saw the need for changing the rules for the appointment of independent directors along with their remuneration and removal.

Therefore, it is fair to say that though the laws have significantly changed since the Satyam scandal there still seems to be issues that keep arising, which causes the need for continuously changing laws regarding independent directors.

## **WHO IS AN INDEPENDENT DIRECTOR?**

The Kumar Mangalam Birla Committee defined an independent director as, “an entity who does not have a material pecuniary relationship or transactions with the company, its promoter, its managements or its subsidiaries, which in judgment of the Board, may effect the independence of the judgment.”<sup>1</sup>

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<sup>1</sup> Kumar Mangalam Birla Committee Report.

Clause 49 of the Equity Listing Agreement defines an independent director as a “a non-executive director, other than a nominee director of the Company who fulfills the criteria of independence as laid down in the LA which is similar to the Companies Act”<sup>2</sup>.

An independent director should not be linked to the company financially since it may influence their independence.

### **Origin of Independent Directors**

The concept of the appointment of independent directors has emerged from the UK and the US. This has further been adopted by other countries.

There is no universally followed definition of who an “independent director” is. However, the term and the concept are used in most countries.

In the 1950s, prior to being made mandatory by law, independent directors were adopted informally as an initiative for good corporate governance in the United States. Subsequently, independent directors gained more importance due to the constant attempts made by the courts of Delaware and the continued efforts of the stock market to surrender to the choices of an independent board. India adheres to the “insider model” of corporate governance. This means that there exist a few “insiders” who have a direct and lasting connection with the company.<sup>3</sup> The insiders are the group that consists of the majority shareholders. In which case, the minority shareholders are at a disadvantage since they cannot “outvote or veto”<sup>4</sup> the choices of these insiders. Hence, they possess control over the management of the company, which appears as a drawback for the minority shareholders.

The Confederation of Indian Industry (CII), set up a task force that suggested a code for “Desirable Corporate Governance”. This was accepted by some companies. Upon the recommendation of the Birla Committee, SEBI added Clause 49 to the Equity Listing Agreement. According to this, the requirement for a board to comprise independent directors

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<sup>2</sup> Piyush Goel, *Clause 49 - Corporate Governance and Company Law Provisions*, TAXGURU, (Nov 19, 2015), <https://taxguru.in/company-law/clause-49-corporate-governance-and-company-law-provisions.html>

<sup>3</sup> Stilpon Nestor & John K. Thompson, *Corporate Governance Patterns in the OECD Economies: Is Convergence Under Way?*, <http://www.oecd.org/dataoecd/7/10/1931460.pdf>.

<sup>4</sup> Umakanth Varottil, *Evolution and Effectiveness of Independent Directors in Indian Corporate Governance*, 6 HASTINGS BUS. L.J. 281 (2010).

was made a compulsion in 2000 by SEBI. Further, Clause 49 was amended in 2004 which defined an independent director.

### **RULES FOR APPOINTING INDEPENDENT DIRECTOR**

Independent directors were not given much significance before the Companies Act, 2013. In the Companies Act, 1956, there was no meaning of an independent director. Section 2(47) of the Companies Act, 2013 mentions that an independent director is one which is mentioned in section 149(6) which gives the meaning of who an independent director is and their eligibility requirements.

Listed public companies must have at least 1/3rd independent directors and according to Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014, a minimum of two independent directors are required in case of a public company with, a paid-up share capital of greater than or equal to Rs. 10 crores; a turnover of greater than or equal to Rs. 100 crores; and with aggregate outstanding loans, debentures, and deposits, greater than Rs. 50 crores.

Independent directors are not required in some cases. First is in the case of a private company. Second is when a company fails to comply with the conditions provided in Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 for three years in a row. Third is in the case of a joint venture.

Section 149(6) provides the rules and eligibility criteria for appointing independent directors; their remuneration; resignation and even re-appointment.

### **ROLE OF AN INDEPENDENT DIRECTOR**

The Independent Director of the Company acts as a consultant, mentor, and advisor to the company. The role comprises acting as an inspector and aiding with risk management, as well as improving business credibility and corporate governance requirements. Independent directors are responsible for better governance by actively engaging in the company's multiple committees.

As per Rajeev Dubey, the founder of N South Advocates, “they [independent directors] would have two jobs: to protect the minority shareholders and drive governance, risk and compliance.”<sup>5</sup>

Independent directors play a pivotal role in good corporate governance to fend off corporate scams and promoters’ mismanagement.

### **Corporate Governance**

Customers, employees, investors, shareholders, and other stakeholders form the foundation of a company. It is the duty of the company to be open and accountable to its stakeholders with respect to all transactions. In today’s globalised corporate world, when firms must acquire sources of finance, recruit the greatest human resources, work with suppliers on massive projects from across the globe, and live in peace with society, it has become imperative that a company will not be able to prosper until it accepts and exhibits moral behaviour.

Corporate governance is concerned with ethical behaviour while carrying out business. Management makes judgment based on a set of standards impacted by the company’s objectives, environment, and culture in this regard. In India, firms appoint promoters’ representatives to their boards of directors. Instead of working for the betterment of the organization, these Directors would profit themselves. This has caused significant issues in the company’s operations and is contrary to corporate governance norms. The Board’s autonomy and independence are essential to guarantee that it performs its supervisory duty fairly and keeps managers accountable to shareholders.

### **Providing Protection to Minority Shareholders**

Independent directors who ensure openness in the company’s workings and nurture consistency in addressing dispute matters are preferred by shareholders, more specifically the minority shareholders. Independent directors are crucial for safeguarding the needs of stakeholders by examining the actions of the management or the board regarding personnel, lenders, and others who deliver service suppliers.

### **Managing risks and ensuring adherence:**

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<sup>5</sup> *More liability on the cards for independent directors*, INDIA BUSINESS LAW JOURNAL, (April 20, 2021) <https://law.asia/more-liability-cards-independent-directors/>

The role of an independent director is to identify, analyse and control all such risks which pose a threat to the resources and revenue of a company. The risks can be either financial or strategic. The independent director must safeguard the resources of the company and guarantee that these resources and the revenue proceed in the correct direction whilst looking over the matters of decision making. They need to check whether the decisions made are in conformity and the rules are adhered to.

### **Duties on the board**

The function of the independent directors on the Board is identical to that of any other director. They provide their opinions on all critical decisions relating to the entity, such as strategy, progress review, and assessing risk. Independent directors play an important role in resolving issues pertaining to committees on which they are appointed. They are required to guarantee that the Board of Directors handles any concerns about the company's operations and assists them in tackling the problems in a balanced manner. Independent directors and executive directors have identical responsibilities and roles in the eyes of law. However, independent directors dedicate lesser time to the management of the matters of the company. Subsequently, the standard of supervision, expertise and perseverance that the independent directors are presumed to have is lesser than what is expected of the non-executive directors. Independent directors are required to initiate, execute, and oversee the compliance of the code of conduct by others in the management.

### **Prevent mismanagement and provide control**

The ultimate necessity of a company is to have coordinated and controlled internal management. This guarantees that the policies and rules of the management are not impractical. The control of the management starts from the adoption of any new policy by the board and extends to the bottom level of the management. An independent director is required to serve as a supervisor and to administer the control by the management. An independent director is also required to present remedies before the board in case an issue arises.

### **Adherence with the law**

Unerring adherence to legal requirements is essential for the organization to keep relatively high criteria and an outstanding image among the people and investors. The principles of efficient corporate governance demand that businesses uphold the compliant with regulations,

norms, and restrictions in place. This helps to achieve the main goal of protecting investors' interests. The independent director is required to ensure that the adherence with the law is followed.

## **PROCEDURE FOR APPOINTMENT OF INDEPENDENT DIRECTORS**

The procedure for appointing an independent director<sup>6</sup> can be found explained below:

1. The method of appointing independent directors must be separate from that of the administration. When choosing independent directors, the Board must guarantee that they have the right mix of expertise, insight, and wisdom to facilitate it to operate efficiently and perform duties effectively.
2. The appointment must be accepted by the shareholders.
3. A statement of explanation is affixed to the notice of the shareholder's meeting which mentions that the person to be chosen as the independent director has the necessary skillset and meets the requirement. It should also state the independence of the to-be-appointed independent director.
4. The appointment is confirmed through an appointment letter.
5. Any member may review the criteria for the appointment of an independent director.
6. These criteria will be uploaded to the website of the company.

## **ANALYSIS OF CHANGING RULES**

Changes are to be brought by the SEBI Board Meeting PR No. 22/2021 with respect to independent directors. The board has given the go-ahead to the amendments to be brought to the Securities and Exchange Board of India (listing Obligations and Disclosure Requirement) Regulations, 2015. The amendments were enforced from 1st January 2022.

*“The board also agreed to make a reference to the Ministry of Corporate Affairs (MCA), for giving greater flexibility to companies while deciding the remuneration for all directors (including IDs), which may include profit linked*

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<sup>6</sup>Shivani Jain, *Appointment of Independent Director: A Concept Guide on the Independent Directors in India*, SWARIT ADVISORS, (Jun 24, 2020) [https://swaritadvisors.com/learning/appointment-of-independent-director/#Appointment\\_of\\_Independent\\_Director\\_Procedure](https://swaritadvisors.com/learning/appointment-of-independent-director/#Appointment_of_Independent_Director_Procedure)

*commissions, sitting fees, ESOPs, etc., within the overall prescribed limit specified under Companies Act, 2013.”<sup>7</sup>*

### **Eligibility requirement for appointing independent directors**

SEBI has recommended broadening the extent of eligibility requirements for appointing independent directors in listed entities. The existing requirements are mentioned in section 149(6) of the Companies Act, 2013 and regulation 16(1)(b) the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. The existing provision, regulation 16(1)(b)(vi)(A), states as follows:

*“(vi) who, neither himself/herself, nor whose relative(s) —*

*(A) holds or has held the position of a key managerial personnel or is or has been an employee of the listed entity or its holding, subsidiary or associate company or any company belonging to the promoter group of the listed entity, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;*

*Provided that in case of a relative, who is an employee other than key managerial personnel, the restriction under this clause shall not apply for his / her employment.”<sup>8</sup>*

From the face of this provision, it appears to be broad enough to exempt as many individuals as possible who are linked with the company from the eligibility criteria. Nonetheless, this was deemed insufficient, and SEBI advocated broadening the area excluding the eligible condition to prove total autonomy of the individual. Furthermore, regulation 16(1)(b)(iv) states that an individual will be eligible for the position of an independent director “(iv) who, apart from receiving director’s remuneration, has or had no material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, during the immediately three two immediately preceding financial years or during the current financial year;”<sup>9</sup> It can be deduced from the two provisions that the time period is different in both the

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<sup>7</sup> SEBI Press Release, SECURITIES AND EXCHANGE BOARD OF INDIA, (Jun 29, 2021), [https://www.sebi.gov.in/media/press-releases/jun-2021/sebi-board-meeting\\_50771.html](https://www.sebi.gov.in/media/press-releases/jun-2021/sebi-board-meeting_50771.html)

<sup>8</sup> Companies Act, 2013, No. 18, INDIA CODE.

<sup>9</sup> Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, SEBI, (Sep 2, 2015), [https://www.sebi.gov.in/sebi\\_data/attachdocs/1441284401427.pdf](https://www.sebi.gov.in/sebi_data/attachdocs/1441284401427.pdf)



cases, which is, 3 years in 16(1)(b)(vi)(A) and 2 years in 16(1)(b)(iv).

As per the latest changes recommended by SEBI, the two provisions have been made uniform and the cooling-off period for both are going to be 3 years. This change has been brought in by the Securities and Exchange Board Of India (Listing Obligations And Disclosure Requirements) (Third Amendment) Regulations, 2021 as:

*“3. In the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015,—*

*1. In regulation 16, in sub-regulation (1), in clause (b),—*

*a. in sub-clause (iv), after the words during the and before the word immediately, the word two shall be substituted by the word three.”<sup>10</sup>*

However, the cooling-off period for the relatives of employees of the company has been waived. This change can be seen as benefiting the corporate governance of the company. However, it can also pose a threat since the relatives of the employees will have some personal interest in the company and might favour decisions that might not necessarily be in the best interest of the company.

### **Process for appointing and re-appointing independent directors**

SEBI has decided to make the provisions relating to appointing and re-appointing independent directors stronger. The current provision administering this is section 149(10) of the Companies Act, 2013. For appointment of independent directors an ordinary resolution needs to be passed and in case of appointing them again a special resolution needs to be passed. The concern with the current provision is that the interests of the minority shareholders might be ignored. The individuals to be appointed as independent directors are proposed by the promoters and the promoters also have a right to approve the independent director since they are also shareholders. This threatens the main factor essential for an independent director, which is his independence to act separately from the other directors and in the best interest of the company and the minority shareholders. Minority shareholders are especially disadvantaged when their views do not line up with those of the promoters. Therefore, it is essential that the minority shareholders' voices are heard in the situation of appointment and reappointment of

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<sup>10</sup> *Supra* note 7, at 10.

independent directors. For this purpose, SEBI has proposed to introduce the dual approval process since a single approval process might not be enough and would ultimately dissolve the purpose of why independent directors are appointed.

In such a situation, SEBI has suggested two steps for getting the approval of shareholders for appointment and re-appointment of independent directors. The first step is to get approval through an ordinary resolution in case of appointing and special resolution in case of reappointed by the shareholders. The second step would entail getting the approval of most part of the minority shareholders. Minority shareholders are those who are neither the promoters nor are they in alliance with the promoters. If in case, the resolution is not passed by the minority shareholder with majority approval then that person will not be allowed to take the position of an independent director.

### **Removing independent directors**

The provision governing the removal of an independent director is section 169(1) of the Companies Act, 2013. An independent director may be removed by passing an ordinary resolution. However, if he has been removed after being reappointed then a special resolution needs to be passed.

In this case, the removal of independent directors is also controlled by the promoters. The minority shareholders will again be at a disadvantage. An independent director must be removed only when there is a major concern with his performance or other factors which do not involve the whims and fancies of the promoters.

Therefore, to make this provision stronger and to ensure that promoters do not abuse their control, SEBI has introduced the removal of an independent director only through a dual approval process.

### **Approval for Appointing**

As per section 161(1) of the Companies Act, 2013,

*“the articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office*

*up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.”<sup>11</sup>*

It can be derived from the above that the approval for the appointment of an independent director can only be sought from the shareholder at the annual general meeting. Therefore, when the position of an independent director is vacant, it is filled by an additional independent director appointed by the board until the shareholders approve at the annual general meeting. The concern raised with this provision is that the time period from when the additional independent director will be functioning to the appointment of the independent director at the annual general meeting can be very huge. As a result, the individual who is appointed as the additional independent director may not be the one favourable by the minority shareholders or even the majority shareholders. This, once again, is primarily controlled by the promoters which wasn't the reason why the provision was initially formulated.

To address this issue, SEBI has come up with a potential solution. Firstly, the independent director should be appointed by the shareholders themselves. Secondly, the vacant position should be filled up within three months.

## **Resignation**

The provision relating to the resignation of an independent director is section 168(1) of the Companies Act, 2013. It states as follows:

*“(1) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company:*

*Provided that a director may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.”<sup>12</sup>*

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<sup>11</sup> *Supra* note 8, at 11.

<sup>12</sup> *Id.*

The concern with this provision is that in practicality, the independent directors stand down from their position in one entity and join as an executive director in another entity. There is currently no provision that governs an individual's shift from independent director to executive director.

Therefore, SEBI has proposed the following to tackle this issue:

*“The entire resignation letter of an ID shall be disclosed along with a list of her/his present directorships and memberships in board committees.*

*A cooling-off period of one year has been introduced for an ID transitioning to a whole-time director in the same company/ holding/ subsidiary/ associate company or any other company belonging to the promoter group.”<sup>13</sup>*

### **Audit Committee**

The audit committee consists of at least two-thirds independent directors. Section 177(2) of the Companies Act, 2013, pertaining to the audit committee states that “The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority:

Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.”<sup>14</sup>

The remaining one-third can be either the executive or non-executive directors, while the two-thirds, must be independent. Where relevant, an audit committee is charged with analysing financial accounts, scrutinising inter-corporate borrowing, and estimating the company's undertakings and holdings. Furthermore, explicit consent of the audit committee is required in the case of “related party transactions”.

Therefore, SEBI has suggested that the remaining one-third must be non-executive directors in order to stir away from the control of the promoters and safeguard the interests of the minority shareholders.

### **Significance of NRC**

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<sup>13</sup> *Supra* note 7, at 10.

<sup>14</sup> *Supra* note 8, at 11.

NRC stands for Nomination and Remuneration Committee which is concerned with the suggesting names of potential individuals who could be appointed for the position of independent directors. The current provision, section 178 of the Companies Act, 2013 requires that the committee comprise 50 per cent, independent directors.

The concern with this provision is that the rest of the committee still holds leverage and can still impact the selection. Prior to suggesting a name for the position of an independent director, the NRC is required to assess how the proposed individual is the suitable candidate with respect to their skills and qualifications.

As per the changes recommended, the NRC is first supposed to identify the qualities and skills that a candidate needs to possess and then it should be ensured that the person suggested as the independent director is the right match.

Furthermore, SEBI has also decided that “the composition of NRC [should] include 2/3rd IDs instead of the existing requirement of majority of IDs”<sup>15</sup>.

## **INDEPENDENCE OF INDEPENDENT DIRECTORS**

Since the entities in India are highly centralized where the power is with owners, the interests of the minority shareholders need to be safeguarded. However, currently the boards cannot be considered as independent. When it comes to boards, independence allows them to be impartial and assess the functioning and success of the firm without being influenced unfairly by interested parties or facing any conflicts of interest. Independent directors can contribute experience and impartiality, reassuring shareholders that the company is operating to their greatest advantage and in accordance with the law and ethical standards. Independent directors will examine problems objectively and without bias or ulterior motives.<sup>16</sup>

To guarantee seamless and appropriate board operation, the board’s composition must be made up of independent directors. It has been established that the board’s independence and the performance of the firm are linked in the aspect that an independent board with superior corporate transparency standards contributes to higher investor interest in the company, better company identity, and greater shareholder value. Many incidents, from Enron and WorldCom

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<sup>15</sup> *Supra* note 7, at 10.

<sup>16</sup> Meenu Gupta, *Independency of Independent Directors*.  
<https://www.icsi.edu/Portals/86/Independent%20Directors.pdf>

scams to PNB and Satyam scams in India, have resulted in the distrust of the board of directors. These scams have shown that shareholders are not committees and were perturbed that the actions of the independent directors are not aligned with the interest of the company.

Independent directors' independence will help to align management's goals with those of shareholders, as well as raise the efficiency of decision-making expertise. Furthermore, because independent directors would be people unfamiliar with management, an impartial appraisal of the company results will guarantee excellent corporate behaviour and governance procedures all over the world. The independence of the board is something which is of paramount importance due to its role in corporate governance.

### **LIABILITY OF AN INDEPENDENT DIRECTOR AND PROTECTION GIVEN TO THEM**

An independent director is solely accountable for those acts which he has committed or omitted in a board process with his permission and awareness or where he has failed to perform his duties and roles properly or sensibly. When a case is filed against a company for committing an offence with the Chief Metropolitan Magistrate or the NCLT, the independent director is given immunity under Section 149(12) of the Companies Act, 2013. Section 149(12) states the following:

*“(12) Notwithstanding anything contained in this Act, -*

*(i) an independent director;*

*(ii) a non-executive director not being promoter of key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board process, and with his consent or connivance or where he had not acted diligently.”<sup>17</sup>*

This section is only considered to give an illusion of “protection” and not actual protection in practicality. To prove that the independent director has not committed an offence and if an act was committed without his consent, they must go through the trial procedure and are not allowed to be heard when the summons is issued by the Metropolitan Magistrate. There is no

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<sup>17</sup> *Supra* note 8, at 11.

legal mechanism that allows an accused individual to be listened to before a Metropolitan Magistrate after receiving a summons and to prove that he is innocent. Post the completion of the trial is when it will be determined if the independent director has committed the crime.

The main aim of SEBI changing the rules is to ensure more independence to the independent director. Consequently, with this independence, the independent directors should also be liable and responsible for the acts they commit. Otherwise, the independent directors may also start misusing their position and power. Therefore, it can be said that with more independence comes more liability because the independent directors are fully responsible for their decisions as there is no involvement from the side of other directors or people.

## **CONCLUSION**

All shareholders of an entity can vote for the appointment of an independent director. However, since the promoters of the company may hold the majority shares, the independent directors proposed by the promoters will have an undue advantage and get the position. This can be considered as an unfair election since it is imperative that the promoters and majority shareholders will be advantaged, and the minority shareholders' interests will be ignored. This means the independent character which is expected to be the critical feature for the independent directors may be at threat. In the absence of independence, the independent directors will not be able to express their views freely and may not act as independent directors in a true sense. To avoid the above anomaly, SEBI has gradually been changing the rules of appointing the Independent Directors and is now even considering disallowing promoters from casting their vote on resolutions appointing the independent directors.

The rules regarding the appointment of independent directors have evolved significantly and are now far fairer than they were in the initial period. As per the press release of SEBI on 29th June 2021, multiple changes were proposed. The Securities and Exchange Board of India (Listing Obligations And Disclosure Requirements) (Third Amendment) Regulations, 2021 was also passed. As per this, major changes with respect to the appointment, removal, resignation, eligibility requirement, audit committee and NRC were introduced.

The changing rules for the appointment of independent directors only make their independence stronger. Since the purpose of introducing independent directors was for the betterment of corporate governance, it will be counterproductive if their appointment is based on the majority

interest of the promoters. This will prevent the independent directors from taking actions and making decisions which are in the greater interest of the company.