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CONTENTS

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STATEMENT OF THE PROBLEM
OBJECTIVES
HYPOTHESIS (ES)
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ISSUES IN CORPORATE GOVERNANCE

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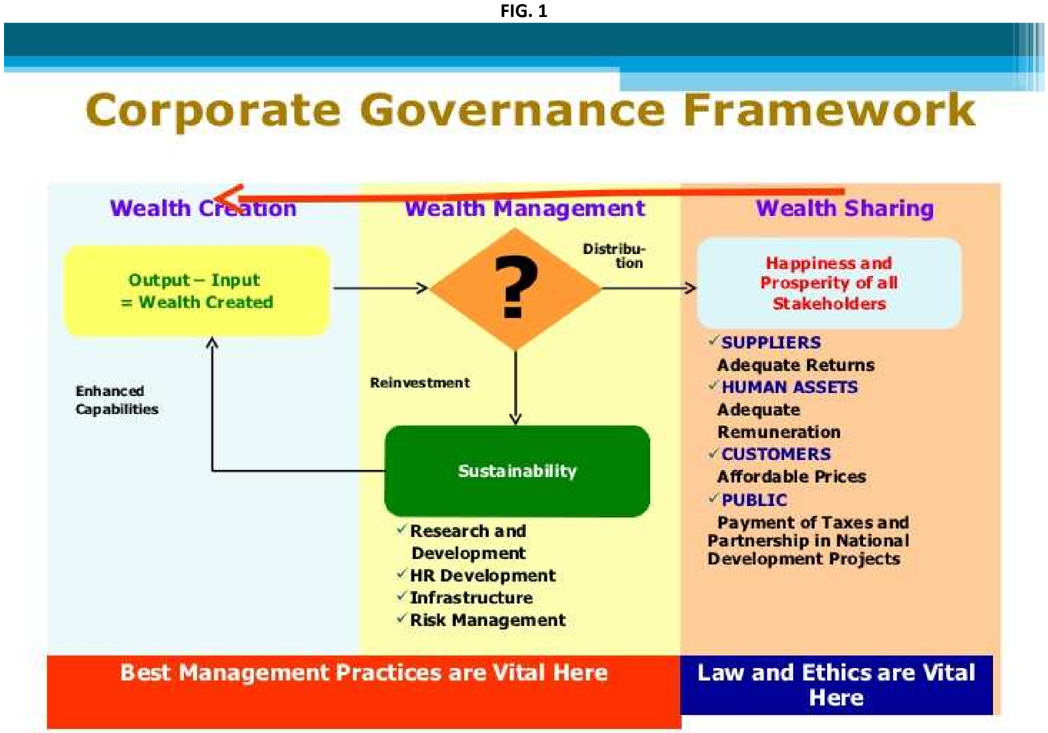
ABSTRACT
The present study finds that the new companies Act as it brings in sweeping lot of note in the new Companies Act as it brings in sweeping changes in the way the corporate is governed in India. The 2013 act enhances significantly the role and responsibilities of the board of directors by making them more accountable for their actions while protecting shareholder interest, also by mandating a woman director on the board, the intent of the 2013 act is to improve gender diversity and increase transparency. The 2013 Act clearly sets an example in corporate governance for other economies to emulate.

KEYWORDS
corporate governance, woman director.

INTRODUCTION
Corporate governance broadly refers to the mechanisms, relations, and processes by which a corporation is controlled and is directed; involves balancing the many interests of the stakeholders of a corporation Corporate governance is intended to increase the accountability of the company and to avoid massive disasters before they occur. The new act has brought in significant changes in several aspects of corporate organization such as appointment of directors and key management persons, appointment of auditors, corporate governance and financial reporting requirements.

NEED FOR THE STUDY
Well-executed corporate governance deals with determining the ways to take effective strategic decisions, it gives ultimate authority and complete responsibility to the board of directors, in today's market-oriented economy the need for corporate governance has arisen and should weed out and eliminate problems with extreme prejudice.

FIG. 1



OBJECTIVES OF CORPORATE GOVERNANCE
1. Gain and maintain the trust of all stakeholders-trust in the way business is managed and supervised, trust in the company as a whole (financial and non financial reporting, risk control, etc)
2. To set management's policies which all employees must adhere, the policies established by the board are designed to create a transparency in an organization and allow individuals within or outside the company to hold the board, senior executives or other employees accountable for inappropriate behaviors or activities.
3. A corporation's founders or directors will draft bylaws that fall under the business's articles of incorporation to outline the manner in which the company should be run.
4. Objectives are set and pursued in the context of the social, regulatory and market environment.
5. Organizations should clarify and make publicly known the roles and responsibilities of board and management to provide stakeholders with a level of accountability. They should also implement procedures to independently verify and safeguard the integrity of the company's financial reporting. Disclosure of material matters concerning the organization should be timely and balanced to ensure that all investors have access to clear, factual information.

IMPLICATIONS OF STUDY

- Increasing the maximum limit of directors would bring in more flexibility and enable companies to get more experienced and competent personnel at the Board level.
- The prescribed minimum women representation on company board, is a step towards making the top deck more gender sensitive.
- The 2013 Act makes directors' disqualification more stringent, including more scrutiny around related party transactions.
- The 2013 Act intends to provide the Board sufficient time to prepare for the meeting.

FIG. 2

COMPANIES ACT 2013: GREATER EMPHASIS ON GOVERNANCE THROUGH THE BOARD AND BOARD PROCESSES

1. CA 2013 for the first time codifies the duties of directors
2. Every company is required to appoint 1 (one) resident director on its board.
3. Nominee directors shall no longer be treated as independent directors.
4. Listed companies and specified classes of public companies are required to appoint independent directors and women directors on their boards.

Corporate sector must necessarily turn to good governance in its pursuit of competitive excellence in a challenging business environment. There are already some corporates in our country which have taken up the cudgels and have been facing challenges in implementing corporate governance in their organizations

There are many provisions in statute book to penalize those who violate the norms of Corporate Governance but are hardly acted upon, either because of lack of will or due to political interference India has witnessed with an unfailing regularity corporate scams in

which millions of investors have lost their money. There are instances of vanishing companies who have duped unwary investors of their hard earned money yet market regulators have hardly penalized them either because they don't have the manpower or resources to investigate and go to courts of law.

1. INSIDER TRADING

With the adoption of the Companies Act, 2013, the Parliament has passed a law outside the purview of SEBI to regulate insider trading. The Companies Act had attempted to incorporate some of the provisions the SEBI (Prohibition of Insider Trading) Regulations, 1992, but SEBI has notified the SEBI (Prohibition of Insider Trading) Regulations, 2015, which changes the law on insider trading considerably. Therefore, there now exists two different regimes that regulate the offence of insider trading.

2. GOVERNANCE OF PUBLIC CORPORATIONS CONTINUES TO MOVE IN A MORE SHAREHOLDER-CENTRIC DIRECTION

It remains unclear whether, over the long term, greater shareholder influence will prove beneficial for shareholders, corporations and the economy. In the near term, however, there is reason to question whether shareholder influence is the panacea that some posited, or whether the current focus on shareholder value and investor protection is at the expense of other values that are central to the sustainability of healthy corporations. While the Companies Act provides clear instructions for maintaining and updating share registers, in reality minority shareholders have often suffered from irregularities in share transfers and registrations – deliberate or unintentional.

3. SHORT-TERM RETURNS Vs. LONG-TERM INVESTMENT

Significant pressures to focus on short term results in investment are necessary to position the corporation for long term success. Boards always support management in taking a long term view and help balance competing interests must also focus on short term results

4. INDEPENDENT DIRECTORS

Independent directors are expected to be independent from the management and act as the trustees of shareholders, this implies that they are obligated to be fully aware of the question of the conduct of organizations on relevant issues, the new concept of having Independent Director is a welcome step for corporate governance in India. The Act, 2013 has conferred greater empowerment upon Independent Director's to ensure that the management & affairs of a company is being run fairly and smoothly. But, at the same time, greater accountability has also been placed upon them but the critical issue is whether there are number of qualified individuals to fulfill the demand, chances are companies may find it difficult to satisfy the requirement of the act,

5. REMUNERATION AND REWARD OF DIRECTORS

Directors being paid excessive bonuses and salaries have been identified as significant corporate abuses for a large number of years. It is, however, unavoidable that the corporate governance codes have targeted this significant issue. Just as profits drive business, incentives drive the managers of business. Not surprisingly then, in a fiercely competitive corporate environment, managerial remuneration is an important piece in the management puzzle. While it is important to incentiize the workforce performing the challenging role of managing companies, it is equally important not to go overboard with the perks and the pay to keep a check on unnecessary profit squandering by companies and at the same time, to ensure adequate and reasonable compensation to managerial personnel, the law intervenes to do the balancing act.

6. DUTIES OF THE DIRECTOR

The new Indian Companies Act of 2013 is certainly a very innovative and landmark legislation in respect of the duties and responsibilities of the directors (of companies) also. Both broad categories of directors, namely, the directors having pecuniary relationship with the company, and the independent directors, have been properly considered under this mature legislation for directors. It is quite obvious from above illustrations that the CA-2013 sincerely seeks to make the corporate management and governance in India rather efficient, fully accountable, transparent, and maximally beneficial to all stakeholders and related professionals, through this intelligent legislation over duties and responsibilities of directors in Indian companies.

With this greater responsibility instilled on the directors comes greater accountability and liability as well. CA, 2013 is filled with such stringent penal provisions which did not feature in the earlier Act. While from the view of protecting the interest of the stakeholder's tighter vigilance is welcomed but from the provisions of CA, 2013 it seems it shall be more of a burden for directors to hold office.

7. RISE OF MINORITY SHAREHOLDERS

Democratic decisions are made in accordance with the majority decision and are deemed to be fair and justified while overshadowing the minority concerns. The corporate world has adopted this majority rule in decision making process and management of the companies. Statutory provisions in this regard have been provided under the Companies Act, 1956 ("**CA 1956**"), which is being replaced by the Companies Act, 2013 ("**CA 2013**").

CA 2013 has sought to invariably provide for protection of minority shareholders rights and can be regarded as a game changer in the tussle between the majority and minority shareholders. Various provisions have been introduced in CA 2013 to essentially bridge the gap towards protection and welfare of the minority shareholders under CA 1956.

Shareholders are the owners of a company and have the right to disagree with the management if they feel that it is not acting in the best interest of the company. However, what normally happens is that instead of contesting the management, which runs the company on shareholder's behalf, the minority shareholders prefer to sell their shares if they think that company is not on the right track.

8. WOMEN DIRECTOR

Section 149(1) of Companies Act, 2013 deals with women director. It states that every company shall have board of directors who are individuals with minimum number of three directors in case of a public company and two directors in case of a private company and one in case of One Person Company, a maximum of fifteen directors, further it is also stated that such class or classes of companies as mentioned above shall have at least one women director, but the issue is only 4% of the Indian companies directors are women, India has two companies in Fortune 500 Reliance Industries and Indian Oil but only one of their total of 30 directors is a women, the scarcity of women in the boardroom is not unique in India- nearly one-fifth of the world's 200 largest companies have no women directors

9. BUY-BACK OF SHARES

Under the 1956 Act, companies could do multiple buy-backs of shares in the same financial year except in certain specific facts where there was a cooling off period of one year. However, now the 2013 Act requires a mandatory one-year time period between any type of buy-back, even if the buy-back was achieved through a scheme approved by an Indian court. The 2013 Act also stipulates that a buy-back is not possible if the company has made any default in the repayment of deposits or interest, or redemption of debentures, or preference shares, or payment of dividend, or in the repayment of a term loan to a bank or financial institution. However, the buy-back may be possible if the defect is remedied, and a three-year time period has elapsed.

The earlier common practice of a back-to-back shareholder-approved buy-back following a board mandated buy-back is no longer possible under the 2013 Act, and this is likely to significantly delay and adversely impact investor exit options. It is noteworthy that with the introduction of a non-creditable tax on buy-back distributions under tax law, this route had already become less attractive

10. DECISION-MAKING POWER OF THE BOARD

Unlike under the Indian Companies Act 1956 ("1956 Act"), where an ordinary resolution (requiring a simple majority of shareholders) was sufficient, under the 2013 Act, certain powers of the board of directors can now only be exercised subject to a favourable special resolution (requiring a three-fourth majority of shareholders) being passed. These include important subjects such as the right to sell a substantial part of the undertaking or borrow money above certain specified thresholds. Special resolutions may also include conditions and the applicability of the provision has been extended to private companies as well. Further, there have been several important additions to the list of powers which are to be exercised by board of directors only at a meeting of the board, and cannot therefore be delegated. These include things such as the approval of financial statements, diversification of business and the approval of mergers and takeovers. Additionally, although the 2013 Act recognizes and permits board meetings to be conducted via video conference, certain decisions, including those relating to the approval of financial statements and mergers, cannot be made via video conference. Foreign investors ought to be wary of these changes, as they significantly curtail the decision-making power of the board and require increased shareholder support for positive company outcomes.

But, the critical issue will be if there are enough number of qualified individuals to fulfill the demand. Chances are companies may find it difficult to satisfy the requirement of the Act. Though the Act provides one-year period for companies to implement the provision, it would still be difficult task until sufficient persons with requisite skill sets are developed in India. Accordingly, it will become necessary to conduct and organize appropriate training sessions by recognized organizations/associations for suitable persons to develop the required skill sets for performing their entrusted responsibilities.

CONCLUSION

The 2013 act enhances significantly the role and responsibilities of the board of directors by making them more accountable for their actions while protecting shareholder interest, also by mandating a woman director on the board, the intent of the 2013 act is to improve gender diversity and increase transparency. Corporate governance is an area where the goalposts are always on the move and so there is always a need for advice." Good Corporate Governance may not be the engine for growth, but is essential for transparent and proper functioning of the Corporate Sector. With directors today much more attuned to their responsibilities and liabilities, top corporate governance lawyers are highly sought after by individuals and boards seeking counsel. The 2013 Act clearly sets an example in corporate governance for other economies to emulate.

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