**SYNOPSIS –**

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***Listing Agreement – Clause 49***

In order to enforce the law of Corporate Governance the ‘Listing Agreement Clause – 49 plays an important role.

The fact is that if any Limited Company wants to raise fund from the general public at large, it needs to issue share through getting enlisted from the SEBI authorized or recognized like BSE, CSE etc.

**HISTORY OF CLAUSE 49**

The reason why it is called Clause 49 because it is not any section of any Act but a provision of an agreement which was first referred in the year 1992 the CII or Confederation of Indian Industry brought the concept that the corporate governance should follow an ethics. While the Corporates wants to get enlisted in the recognized stock exchanges, it needed to sign an agreement with the Stock Exchanges. In the agreement there it contains a clause which is better known as the ‘Clause – 49 Listing Agreement’.

Thereafter in the year 2006 Mr. Narayana Murthy of INFOSYS revised the Clause – 49 Listing Agreement when the USA just passed few years back the SOX Act (Sarbanes-Oxley Act, 2002), which influenced the whole corporate sectors very much. The principles behind the Act were readily very much accepted by the Corporate Fraternity.

Afterwards around the year 2015-16 the SEBI – LODR Regulations came, which uplifts the Corporate Governance more than before stated in the Companies Act. The clauses of the Listing Agreement are now has been a part of the SEBI –LODR Regulations and the beforehand Clause – 49 which uses to be around 20-25 pages reduced into only 2 pages after the enactment.

So, if we analyze the corporate from the view point of stakeholders than it gives an implication as the diagram depicted in the form of a Triangle Preferential Hierarchy here under also known as 3 Ps:

So we see that a corporate governance do not limit itself to administration of the business but also signifies ethics which kept profit at the last and give emphasis to People and Philanthropy. The philanthropy or better known as the CSR or Corporate Social Responsibility, which the Companies Act laid down in Schedule VII. But the contents therein are illustrative, not exhaustive and hence not limited to that. Therefore the Cos. which are engaged into the recent ‘Swach Bharat Abhijan’ are also doing their Corporate Social Responsibility.

The Companies Act makes it mandatory for the Co. to expense 2% of their three years profit which makes: –

* Making profit of Rs 500 Cr.
* Making profit of Rs 100 Cr.
* Making profit of Rs 5 Cr.

***Shareholder’s Activism***

To begin with the Shareholder’s Activism, we will, first of all, know the meaning of Activism and shareholders.

The shareholders are the owner of the Co. They engaged the Directors to run the business and to look that the business ethics is not infringed. Business ethics not only mean the Statutory Compliances but beyond that, mean to say the right moral duty of the Directors, responsibility, accountability and Fairness. In a company where there are many shareholders, it becomes necessary to protect the interest of all the stakeholders. The shareholders are considered as the owner of the company, the managers control the company and the Directors give them direction on the administration of the Company. As the shareholders are unable to participate in decision making or nevertheless practically it is not possible to monitor or supervise the daily activity of the Co. also may be due to collective action problems. In such a case, the lack of minority shareholders participation augurs to the benefit of controlling shareholders, and managers appointed with their concurrence.

Activism, on the other hand, means the awareness, the fight against any odds or wrongs, participation, interference in the activities with an intention to prevent wrong. Since the cost of coordination among minority shareholders is high, these shareholders are either abstain from voting or merely vote in favour of management (or controlling shareholders as the case may be). The continuous oppression of the rights of shareholders (especially minority shareholders) evolved the concept of Shareholders Activism in India.

So, we find that where there is any wrong or fraud, activism plays it own role of action. And when in any Co. the members are divulged into frauds, the other shareholder can prevent it through active protest in any form in accordance with the law.

The famous Fraud case in the Indian Corporate history is the Satyam Fraud Case, where one Mr Raju the promoter of the Co. made some financial frauds. He showed that the finance were been utilized whereas in actual terms there was not finance invested or utilized. The PWC Audit firm, one of the most renowned audit firms in India did the audit and actually encouraged the fraud by not highlighting that in the audit. In consequence, the share price of Satyam which use to be somewhere Rs 120/- got reduced to Rs 12/- within 10-15 minutes. It actually shocked the shareholders of the Co. For this reason not only Mr. Raju was criticized and faced trial but also the famous Audit Firm PWC was roughly criticized and penalized.

Here would like to say that if the Satyam had followed the Business ethics or the Govern the Corporate in its true ability neither he nor the shareholders would had faced so much trouble and ashamed.

***Modes of Shareholder’s activism***

***Participation of the Shareholders in the management of the business*** :-

Though it sound impossible, but the shareholders can easily make a sense by self awareness, like through inspection of the audit report, the balance sheet. Where it is doubted that any funds were used for personal gain, the shareholders can blow the whistle and inform other shareholders for its prevention and putting pressure.

***Exercise of the Voting right***

This has been a wonderful mechanism to preclude the wrongs or whims of the Directors in the hand of Shareholders. The Companies Act 2013 enumerates the e-voting rights. S.108 of the Act states that the Central Government may prescribe the ways towards e-voting. Generally the shareholders, who are based far from the Co. where it is situated, will find more comfortable if the vote are casted via email or any other electronic form.

***SEBI E-voting right recognition***

Even the SEBI makes it mandatory through its 2012 amendment and states that where in cases of the listed Cos. it will be mandatory for them to make arrangements for e-voting rights and ensure that no shareholders are deprived of their voting rights.