Review of Kotak Panel Recommendations

What is the issue?

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- Uday Kotak Panel, established by SEBI, recently released its recommendations focussing on issues with corporate governance. (Click here to know more on the panel recommendations)
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- The recommendations need a review for it to be effective in implementation.
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What are the limitations and challenges?

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- **Spirit** - The success of any law on corporate governance largely depends on the intent and spirit than the letter of law.
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- E.g. Both the Companies Act, 2013 and the SEBI regulations require a company to have at least one woman director on its board.
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- But in reality, the woman director appointed is generally a relative or a family member of the promoter. (recent recommendation - appointment of "independent" woman director)
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- Evidently, while the letter of law may have been complied with, the spirit of regulations has not been met.
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- **Ease of doing business** - For any regulation aimed to enhance corporate governance, it is equally important that it should not result in difficulties in doing business.
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- Ensuring this is essential for developing a true spirit for compliance instead of a forced one.
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- **Roles** - Listed entities with more than 40% public shareholding should now

separate the roles of a chairperson and MD/CEO.
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- Making shareholding the only criteria for separation of roles may not be correct, and this should have been left to be decided on a case-by-case basis.
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- Certainly, a profitable company would prefer sustaining the growth momentum by avoiding dual centres of power and retaining a single control.
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- **Efficacy** - Some of the recommendations, including increasing the minimum of directors from 3 to 6, could be harder for the companies to implement.
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- Six being an even number, voting on a resolution and a deadlock, if any, requires a casting vote; this could lead to operational unease.
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- Also, the proposal for separate roles of chairperson and managing director could affect family-promoted companies.
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- On the other hand, some easy to implement recommendations such as on meetings frequency, directors' attendance, liability insurance, etc, certainly may not have a big impact on corporate governance.
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What lies ahead?

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- A mere change in regulations or enhancing the punishment for violation would only yield little result.
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- Thus, change in the attitude is a more important precondition for the success of any norm on corporate governance.
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- India has significantly improved its ranking on protection of minority shareholders in the recent Ease of Doing Business index.
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- It is now for SEBI to take forward this and modify the existing norms, make changes and implement the recommendations.
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Source: Financial Express

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