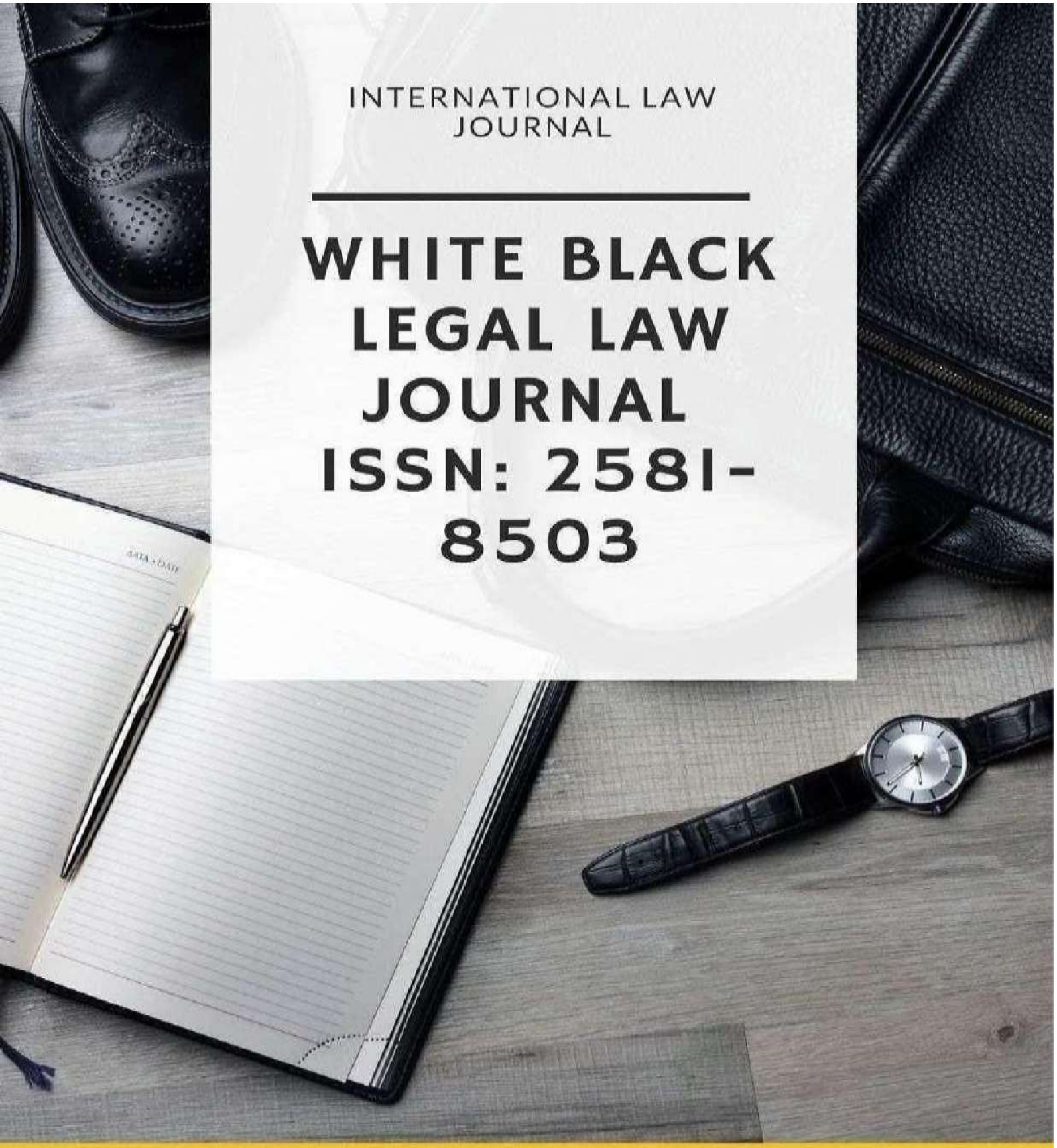

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JUDICIAL RESPONSES AND REFORMS IN CORPORATE GOVERNANCE MECHANISM

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Corporate governance in India has traversed a long and contested arc of development. What began as an exceptional mechanism for ensuring state accountability has, over successive decades, transformed into a routine instrument deployed across the full spectrum of social, environmental, commercial, and digital concerns. Originally conceived to provide recourse to those lacking the financial or social capacity to approach courts through ordinary channels, the governance framework has been progressively extended in scope, with courts adopting an increasingly interventionist posture in matters touching upon the conduct of corporate entities and the obligations of regulatory institutions.[1]

This evolution has not been without institutional costs. As governance litigation expanded in volume and variety, the risks of misuse became correspondingly more apparent. Petitions motivated by private grievance, commercial rivalry, or political calculation came to be dressed in the language of public interest, placing considerable pressure on already overburdened judicial institutions and, in the process, diluting the transformative potential of the mechanism. Superior courts in India recognised these risks early and have, through a combination of judicial guidelines, procedural innovations, and the imposition of costs, developed a set of responses designed to preserve the integrity of governance oversight while guarding against its systematic misuse.[2]

This chapter examines those judicial responses in their institutional context. It analyses the guidelines issued by the Ministry of Corporate Affairs, the standards developed by courts for balancing accountability with institutional restraint, the procedural safeguards that have been progressively introduced to screen petitions and deter frivolous filings, and the insights available from comparative jurisdictions. The chapter proceeds on the premise that effective corporate governance reform in the digital economy requires not only a well-designed legislative architecture but also robust, consistently applied mechanisms for judicial and regulatory

[1] S.P. Sathe, Judicial Activism in India: Transgressing Borders and Enforcing Limits 74 (Oxford University Press, New Delhi, 2002).
[2] State of Uttaranchal v. Balwant Singh Chaufal, (2010) 3 SCC 402.

oversight.[3]

1.1 Ministry of Corporate Affairs Guidelines to Regulate Corporate Governance

The Ministry of Corporate Affairs occupies a central position in the institutional architecture of corporate governance regulation in India. Through a combination of statutory mandates, committee recommendations, and regulatory circulars, the Ministry has progressively constructed a framework that seeks to align the internal governance of corporate entities with broader public interest requirements. This framework rests on three principal foundations: the constitutional authority of the courts to enforce fundamental rights and principles of accountability, the statutory obligations imposed by the Companies Act, 2013 and the Securities and Exchange Board of India Act, 1992, and the disclosure and conduct norms prescribed under subordinate legislation such as the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.[4]

The Report of the Committee on Corporate Governance issued by the Ministry in 2017 marked a significant moment of institutional reflection, identifying persistent gaps in board accountability, related-party transaction oversight, and the transparency of corporate financial reporting. The Committee's recommendations, several of which were subsequently incorporated into amendments to the Companies Act and the LODR Regulations, emphasised the importance of genuine board independence, robust audit committee functioning, and enhanced disclosure of material information to shareholders and the public.[5]

The Companies Act, 2013 itself constitutes the primary statutory instrument for corporate governance regulation in India. Sections 134, 149, 177, and 178 of the Act collectively establish the framework for board accountability, requiring the maintenance of internal financial controls, the constitution of audit and nomination committees, the appointment of independent directors meeting specified eligibility criteria, and the annual disclosure of governance-related information in board reports. These provisions represent a significant strengthening of the governance framework relative to the predecessor legislation and reflect a deliberate legislative choice to embed accountability requirements at the board level.[6]

[3] M.P. Jain, Indian Constitutional Law 339 (LexisNexis, New Delhi, 7th edn., 2014).
[4] S.P. Gupta v. Union of India, AIR 1982 SC 149.
[5] Ministry of Corporate Affairs, Report of the Committee on Corporate Governance 18 (Government of India, 2017).
[6] The Companies Act, 2013 (Act 18 of 2013), ss. 134, 149, 177, 178.

SEBI's regulatory authority under the SEBI Act, 1992 supplements this statutory framework in the specific context of listed companies, empowering the regulator to prescribe conduct standards, investigate violations, and impose sanctions for non-compliance. SEBI's enforcement actions in cases such as SEBI v. Sahara India Real Estate Corporation Ltd. Have reinforced the message that the governance framework carries real legal consequences and that regulatory oversight is not merely aspirational in character.[7]

In the digital domain, the enactment of the Digital Personal Data Protection Act, 2023 represents the most significant recent regulatory development. The Act establishes a consent-based framework governing the collection, processing, and transfer of personal data by corporate entities, imposing obligations on data fiduciaries with respect to data minimisation, purpose limitation, and the rights of data principals. This legislation, when read alongside the Information Technology Act, 2000 and the constitutional right to privacy recognised in Justice K.S. Puttaswamy v. Union of India, constitutes the emerging architecture of digital governance within which corporate entities must now operate.[8]

1.2 Balancing Corporate Accountability and Institutional Restraint

One of the most enduring tensions in the field of corporate governance relates to the need to maintain an appropriate equilibrium between robust accountability and due respect for institutional autonomy. The principle of accountability demands that courts and regulators remain vigilant guardians of constitutional rights and that they do not hesitate to intervene where corporate conduct violates applicable norms or causes harm to the public. This principle finds its most robust expression in the framework developed through public interest litigation, through which courts have historically addressed governance failures ranging from environmental degradation and labour exploitation to financial fraud and data privacy violations.[9]

At the same time, the doctrine of separation of powers, which is a foundational element of India's constitutional architecture, imposes meaningful constraints on the extent to which courts may displace the judgment of democratically elected institutions or technically competent regulatory bodies. Where complex questions of economic policy, technology regulation, or market design are at issue, courts must be particularly alert not to exceed the legitimate boundaries of supervisory jurisdiction. This concern has been articulated with clarity in a line of Supreme Court judgments cautioning against the expansion of judicial power into domains

[7] SEBI v. Sahara India Real Estate Corporation Ltd., (2013) 1 SCC 1.
[8] The Digital Personal Data Protection Act, 2023 (Act 22 of 2023), ss. 4, 8, 10.
[9] M.C. Mehta v. Union of India, AIR 1987 SC 1086.

more appropriately governed through legislative or executive action.[10]

The challenge has become significantly more acute in the context of the digital economy, where the rapid development of artificial intelligence systems, algorithmic decision-making platforms, and data-intensive business models has generated governance risks that existing legal doctrine has not fully resolved. Issues such as platform liability for third-party content, algorithmic discrimination in credit and employment decisions, and the concentration of digital market power raise questions that courts are often ill-equipped to resolve through adjudication alone, and that require the sustained engagement of technically competent regulatory institutions.[10]

Courts have generally responded to this challenge by adopting a facilitative rather than prescriptive approach, articulating constitutional principles and identifying regulatory gaps while leaving the detailed elaboration of governance requirements to Parliament and to specialist regulatory bodies such as SEBI, the Competition Commission of India, and the proposed Data Protection Board of India. In Competition Commission of India v. Bharti Airtel Ltd., the Supreme Court examined the boundaries between the jurisdiction of general and sector-specific regulators in the digital and telecommunications space, providing important guidance on institutional coordination in a complex multi-regulator environment.[11]

Effective governance of the digital economy thus demands not merely a calibrated judicial posture but also the sustained strengthening of non-judicial regulatory institutions, ensuring that the accountability function is discharged effectively even in domains where judicial restraint is appropriate. A well-functioning governance ecosystem requires a robust multi-layered architecture in which legislative mandates, regulatory enforcement, judicial supervision, and market discipline operate in a complementary and mutually reinforcing manner.[12]

1.3Procedural Safeguards and Screening Mechanisms

The growing incidence of petitions lacking genuine public interest prompted both the Supreme Court and the High Courts to develop a range of procedural safeguards designed to preserve the integrity of writ jurisdiction and to prevent its systematic misuse. These mechanisms reflect a judicial recognition that the same procedural openness that had historically enabled courts to address the grievances of the disadvantaged could equally be exploited by well-resourced actors to harass adversaries, delay regulatory action, or extract settlements from

[10] UNCTAD, Digital Economy Report 14 (United Nations, Geneva, 2021).
[11] Competition Commission of India v. Bharti Airtel Ltd., (2019) 2 SCC 521.
[12] OECD, Corporate Governance in the Digital Age 31 (OECD Publishing, Paris, 2021).

corporate defendants who wished to avoid the reputational costs of prolonged litigation.[13]

The most visible of these safeguards has been the judicial practice of imposing costs on petitioners who file frivolous or vexatious petitions. In Ashok Kumar Pandey v. State of West Bengal, the Supreme Court imposed costs on a petitioner who had filed a public interest petition without any genuine public purpose, affirming that the power to impose costs is an essential component of the court's supervisory jurisdiction and must be exercised decisively to maintain the dignity and efficiency of judicial processes. Subsequent decisions have reinforced this approach, establishing a deterrent framework for the abuse of writ jurisdiction.[15]

A second significant safeguard relates to preliminary scrutiny of petitions prior to their admission and service on respondents. Several High Courts have formalised internal procedures for the initial assessment of petitions, designed to identify those that raise genuine questions of public interest and to filter out those that are primarily motivated by personal, political, or commercial considerations. This gatekeeping function, when exercised consistently and in accordance with principled criteria, reduces the burden on courts and on respondent institutions that would otherwise be required to defend themselves against groundless allegations.[14]

The requirement of petitioner disclosure constitutes a third procedural safeguard of significance. Courts have increasingly insisted that petitioners disclose their identity, institutional affiliation, and any personal or financial interest in the outcome of the litigation. This requirement serves to deter anonymous or pseudonymous filings and enables courts to assess more accurately the credibility and motivation of those who approach them in the claimed public interest. The Law Commission of India's recommendations on procedural reform have endorsed these requirements and called for their more uniform adoption across jurisdictions.[17]

In the corporate governance context specifically, procedural safeguards have also been developed to address the risk of strategic litigation — the deployment of judicial process as a weapon to disrupt legitimate business activity, delay regulatory approvals, or impose collateral costs on corporate adversaries. Courts have become increasingly attentive to the need to distinguish between petitions that genuinely advance the public interest and those that cloak private grievances in the language of governance accountability.[15]

[13] Ashok Kumar Pandey v. State of West Bengal, (2004) 3 SCC 349.
[14] Law Commission of India, 229th Report on Reforms in Guardianship and Custody Laws in India 12 (Law Commission of India, 2009).
[15] Sathe, supra n. 1 at 102.

1.4Comparative Perspectives on Fraudulent Corporate Practices and Regulatory Reform

An examination of the approaches adopted by other jurisdictions reveals both the diversity of available regulatory models and the existence of certain common principles that transcend national boundaries. In the United States, the Sarbanes-Oxley Act of 2002, enacted in the aftermath of the Enron and WorldCom corporate scandals, significantly strengthened board accountability and auditor independence, introduced criminal liability for the falsification of financial statements, and required the personal certification of annual financial reports by chief executive and financial officers. The Dodd-Frank Act of 2010 extended this framework by addressing systemic risks in the financial system and strengthening whistleblower protection mechanisms.[16]

The European Union has adopted a comprehensive approach to digital corporate governance through the General Data Protection Regulation, the Digital Markets Act, and the Digital Services Act. The GDPR establishes a consent-based data governance regime applicable to all entities processing the personal data of EU residents, regardless of their place of establishment, and imposes significant sanctions for non-compliance. The Digital Markets Act introduces ex ante behavioural obligations on designated digital gatekeepers, addressing concerns about the accumulation of market power by large technology platforms that existing competition law instruments were unable to address effectively.[20]

The United Kingdom's Corporate Governance Code operates on a 'comply or explain' basis, permitting listed companies to depart from code provisions where they have genuine reasons to do so while requiring transparent explanation of such departures to shareholders. This principles-based approach preserves corporate flexibility while maintaining accountability through market discipline and disclosure. Recent reforms to the UK framework have focused on strengthening auditor independence and the accountability of directors for the accuracy of corporate reporting, following a series of high-profile corporate collapses that exposed weaknesses in existing oversight arrangements.[21]

India's regulatory framework draws on elements from each of these international models. The Companies Act, 2013 and the SEBI regulatory framework broadly align with international standards on board composition and disclosure, while the Digital Personal Data Protection Act, 2023 reflects principles drawn from the GDPR. The OECD's guidelines on corporate governance

[16] European Commission, Artificial Intelligence and Corporate Responsibility Report 9 (European Commission, Brussels, 2020).

in the digital age, which call for the integration of cybersecurity risk management into board responsibilities and the development of accountability mechanisms for algorithmic decision-making, provide a useful external benchmark against which the adequacy of India's framework may be assessed.[22]

The comparative evidence consistently suggests that effective governance of the digital economy demands not merely an adequate legislative framework but also well-resourced regulatory institutions, meaningful inter-agency coordination, and a culture of compliance within the corporate sector. India's participation in multilateral forums including the G20, the OECD, and the United Nations provides important channels through which it can contribute to and learn from the development of international governance standards, particularly in the area of cross- border data flows and platform regulation where unilateral national action is inherently constrained.[17]

CONCLUSION

The analysis presented in this chapter demonstrates that judicial responses to corporate governance challenges in India have been multifaceted and evolving. Courts have sought to preserve and enhance the protective function of governance oversight mechanisms while simultaneously developing safeguards against their misuse. The guidelines developed by the Ministry of Corporate Affairs, the procedural innovations adopted to screen petitions and impose costs on frivolous filings, and the sustained effort to calibrate judicial intervention appropriately collectively reflect a sophisticated institutional engagement with the governance challenges of the contemporary period.[18]

Significant gaps remain, particularly with respect to the governance of digital enterprises, the management of data-related risks, and the accountability of algorithmically driven corporate decisions. Addressing these gaps will require sustained legislative, regulatory, and judicial effort. The comparative experience of other jurisdictions, which demonstrates that effective digital governance requires both appropriate legislative frameworks and the institutional capacity to implement them, underscores the importance of concurrent reforms across all dimensions of India's governance ecosystem.[19]

The trajectory of judicial and regulatory responses to corporate governance challenges in India reflects a broader process of institutional learning and adaptation. As the digital

[17] Jain, supra n. 3 at 387.
[18] Ministry of Corporate Affairs, supra n. 6 at 24.
[19] Baxi, supra n. 5 at 112.

economy continues to grow in scale and complexity, the demands placed on all elements of the governance architecture will intensify correspondingly. Meeting these demands effectively will require a sustained commitment to institutional development, inter-agency coordination, and the cultivation of a governance culture that places compliance and accountability at the centre of corporate practice in India's rapidly expanding digital economy.