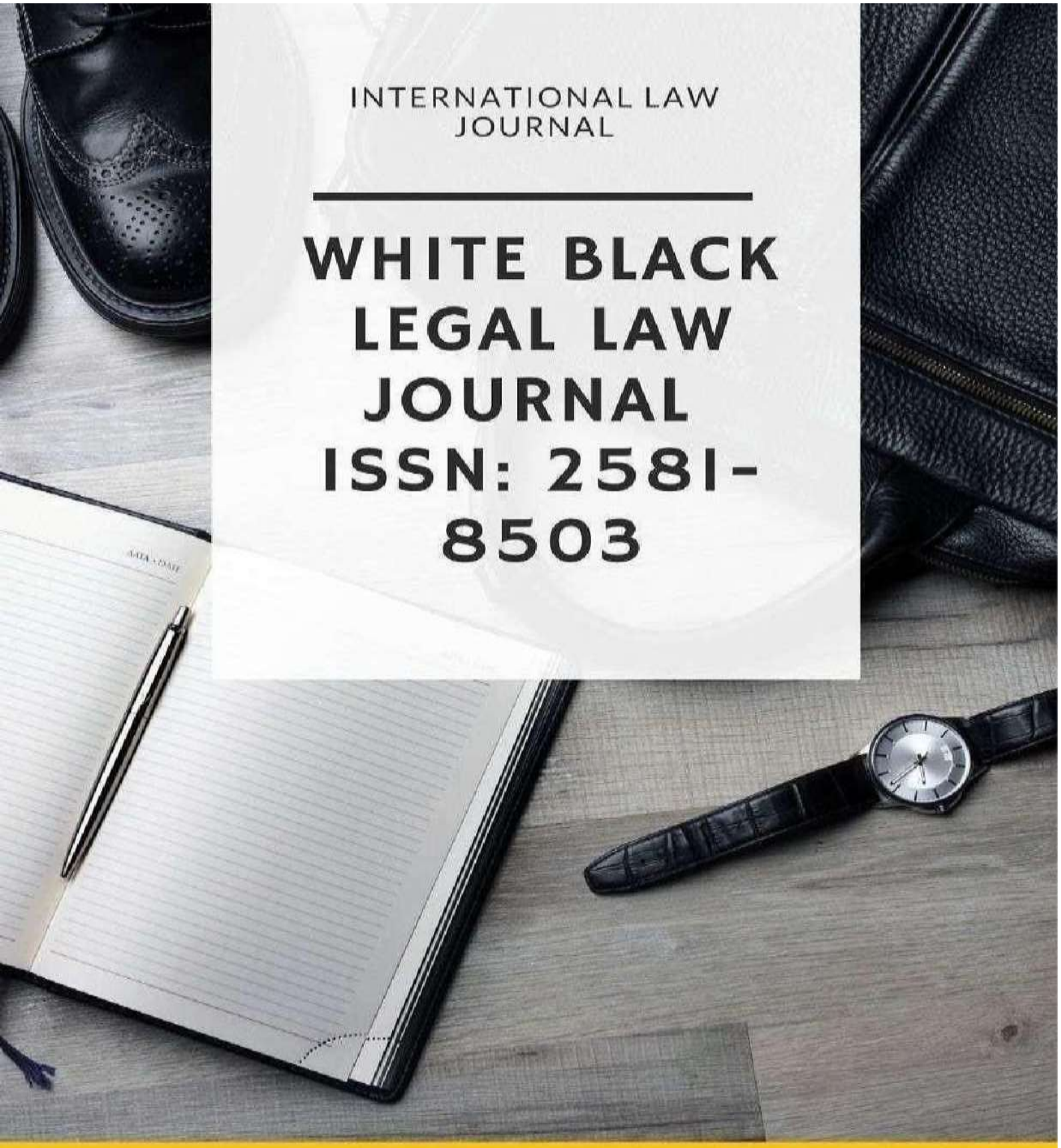

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THE EFFICACY OF MANDATORY CORPORATE SOCIAL RESPONSIBILITY (CSR) IN INDIA

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ABSTRACT

This paper provides a comprehensive analysis of the legal and regulatory framework governing corporate governance in India, which has evolved into a hybrid model characterized by statutory mandates, market-driven disclosures, and competitive oversight. It examines the statutory foundation established by the Companies Act, 2013, highlighting critical reforms such as the codification of directors' fiduciary duties, mandates for board diversity and independence, enhanced minority shareholder protections, and the globally unique requirement for mandatory Corporate Social Responsibility (CSR) spending.

Furthermore, the study explores the elevated transparency, disclosure, and compliance standards imposed on listed entities by the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, alongside the market conduct regulations enforced under the Competition Act, 2002. The paper also evaluates the institutional infrastructure supporting this regime—comprising the Ministry of Corporate Affairs (MCA), SEBI, and the National Company Law Tribunal (NCLT) and analyses the intersection of these governance laws with Foreign Direct Investment (FDI) policies and Technology Transfer Agreements (TTAs). Finally, the analysis critically assesses systemic challenges, including jurisdictional overlaps between regulators, adjudication delays, and a prevalent "tick-box" compliance culture. The paper concludes that while India's legal infrastructure is robust and aligns with global best practices, its ultimate credibility and success rely on shifting the focus from legislative expansion to rigorous, substantive implementation.

Keywords: Corporate Governance, Companies Act 2013, SEBI LODR Regulations, Corporate Social Responsibility (CSR), Regulatory Compliance

1.1 Introduction

The architecture of corporate governance in India is a complex, multi-layered edifice that has evolved significantly from a regime of command and control to one characterised by regulation, disclosure, and market discipline. This transformation, necessitated by the liberalisation of the Indian economy in 1991 and catalysed by a series of high-profile corporate failures, most notably the Satyam Computer Services scandal, has resulted in a comprehensive legal framework that seeks to balance the ease of doing business with the protection of stakeholder interests. The current governance ecosystem is a hybrid model that combines the statutory rigidity of the **Companies Act, 2013**, the market-driven dynamism of the **SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015** ("LODR"), and the competitive oversight of the **Competition Act, 2002**.

This chapter provides an exhaustive analysis of these key laws, dissecting their provisions regarding board duties, shareholder rights, transparency, and corporate social responsibility (CSR). It further examines the institutional infrastructure supporting this framework, evaluating the roles of the Ministry of Corporate Affairs (MCA), the Securities and Exchange Board of India (SEBI), and the National Company Law Tribunal (NCLT). By examining the intersection of governance, foreign investment policies, and technology transfer regulations, the analysis highlights how India's legal regime extends beyond its borders to regulate cross-border collaborations. Finally, the chapter critically assesses the systemic challenges of regulatory overlaps and enforcement inconsistencies that persist despite legislative robustness.
The transition from the *Companies Act, 1956*, to the Companies Act, 2013, represented a paradigm shift in Indian corporate jurisprudence. While the 1956 Act was primarily focused on the administration of companies and the prevention of monopolies, the 2013 Act introduced the concept of "stakeholder governance," explicitly expanding directors' fiduciary duties to include employees, the community, and the environment.[1] Simultaneously, SEBI's progressive tightening of listing norms has created a distinct, higher tier of compliance for listed entities, driven by the need to attract global capital and ensure market integrity.[2] This dual structure, statutory baseline and regulatory premium, defines the contours of the Indian governance landscape.

1.2 The Statutory Bedrock: The Companies Act, 2013

The Companies Act, 2013 ("the Act") serves as the primary legislation governing the incorporation, management, restructuring, and dissolution of companies in India. It applies to a diverse range of entities, from small private firms to large public conglomerates, and serves as the fountainhead of corporate governance mandates in the country.

1.2.1 Codification of Directors' Duties and Liabilities

One of the most significant contributions of the 2013 Act is the statutory codification of directors' duties under **Section 166**. Before this, the director's responsibilities in India were primarily derived from common law principles and judicial precedents. The codification provides a clear "moral and legal code" for directors, transforming their role from mere agents of the shareholders to fiduciaries of the company as a separate legal entity.[3]

The Duty to Act in Good Faith and Broad Stakeholder Interest:

Section 166(2) mandates that a director "shall act in good faith to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of the environment".[4] This provision is a statutory embodiment of the "Pluralist Approach," rejecting the traditional "Shareholder Primacy" model. It legally compels the Board to consider the long-term impact of its decisions on non-shareholder stakeholders. For instance, a decision to cut costs by ignoring environmental norms would technically constitute a breach of duty under this section, even if it maximises short-term shareholder value.[5]

The Duty of Reasonable Care, Skill, and Diligence:

Section 166(3) requires directors to exercise their duties with "due and reasonable care, skill and diligence" and to exercise "independent judgment".[6] This provision directly targets the phenomenon of "passive directorship," where directors, particularly independent or non-executive directors, act as mere rubber stamps for the promoters. The law now expects directors to apply their minds, question management assumptions, and refrain from unthinkingly following the instructions of controlling shareholders.

Conflict of Interest and Undue Gain:

Section 166(4) and (5) explicitly prohibit directors from involving themselves in situations where they have a direct or indirect interest that conflicts with the company's interest, or from

achieving any "undue gain" for themselves, their relatives, or associates. The term "undue gain" is interpreted broadly to include any benefit derived from the director's position that is not owed to them in their official capacity. If a director is found guilty of making such a gain, they are liable to pay an amount equal to that gain to the company.[7]

Penal Provisions for Breach of Duty:

Penal provisions back the enforcement of these duties. Section 166(7) stipulates that a director who contravenes the provisions of this section shall be punishable with a fine which shall not be less than **INR 1,00,000** but which may extend to **INR 5,00,000**.[8] While the monetary penalty might appear modest for large corporations, the reputational damage and the potential for disqualification under Section 164 make non-compliance a significant risk. Furthermore, serious breaches involving intent to deceive can be escalated to "Fraud" under Section 447, which carries non-compoundable imprisonment.[9]

1.2.2 Board Composition: Ensuring Independence and Diversity

The Act attempts to dismantle the hegemony of promoter-driven boards by mandating a composition that ensures objective oversight and diversity.

Independent Directors:

Section 149(4) mandates that every listed public company must have at least one-third of its total number of directors as independent directors.[10] For unlisted public companies, the requirement applies if they meet any of the following thresholds: paid-up share capital of INR 10 crore or more, turnover of INR 100 crore or more, or outstanding loans/deposits exceeding INR 50 crore.[11]

The independence of these directors is rigorously defined under Section 149(6). An independent director must be a person of integrity who is not related to promoters or directors of the company or its holding/subsidiary/associate companies.[12] Crucially, they must not have had any "pecuniary relationship" with the company (other than remuneration) exceeding 10% of their total income during the two immediately preceding financial years.[13] This pecuniary limit is critical to ensuring that the director's livelihood is not dependent on the company they are supposed to oversee.

Woman Directors:

To address the historical gender imbalance in corporate leadership, the second proviso to

Section 149(1) introduces a gender quota. It mandates that every listed company and every other public company having a paid-up share capital of INR 100 crore or more, or a turnover of INR 300 crore or more, must appoint at least one woman director.[14]

While this provision has successfully increased the numerical representation of women on boards, rising from roughly 6% in 2013 to over 19% in 2023 for NSE-listed companies[15] Challenges remain regarding the "quality" of compliance. In many family-run businesses, these positions are often filled by female family members of the promoters to satisfy the legal requirement without diluting control. However, the penalty for non-compliance is strictly enforced; adjudicating officers have imposed fines on companies and officers in default for delays in these appointments.[16]

1.2.3 Shareholder Rights and Protection of Minority Interest

The Companies Act, 2013, significantly enhances the rights of shareholders, particularly minority shareholders, providing them with tools to hold the management and majority shareholders accountable.

Class Action Suits (Section 245):

A novelty in the 2013 Act is the introduction of Class Action Suits under Section 245. This provision allows a requisite number of members or depositors to file a suit on behalf of all affected parties if they believe that the management or conduct of the affairs of the company is prejudicial to the interests of the company or its members.[17] This is a powerful tool against governance failures and fraud, allowing shareholders to claim damages from the company, directors, auditors, and even expert advisors involved in fraudulent conduct.

Prevention of Oppression and Mismanagement (Section 241-244):

Section 241 allows any member of a company to apply to the National Company Law Tribunal (NCLT) if the affairs of the company are being conducted in a manner prejudicial to public interest, the company, or any member(s). The NCLT has wide-ranging powers under Section 242 to grant relief, including regulating the company's conduct, removing directors, and even superseding the Board.[18] Recent judicial precedents, such as the *Tata-Mistry* case, have clarified the scope of these provisions, emphasising that "oppression" entails a lack of probity and fair dealing, not merely a disagreement over business strategy.[19]

Entrenchment Provisions:

Shareholders can now protect specific rights through "entrenchment" provisions in the Articles of Association (Section 5), requiring a higher threshold than a special resolution for altering specified provisions. This protects minority rights from being easily overridden by a supermajority.

1.2.4 Corporate Social Responsibility (CSR): From Voluntary to Mandatory

India is globally unique in having a statutory mandate for CSR spending. Section 135 constitutes a radical departure from the traditional view that social responsibility is a voluntary corporate activity.

The Mandate (Section 135(1)):

The CSR provisions apply to every company having a net worth of **INR 500 crore** or more, a turnover of **INR 1,000 crore** or more, or a net profit of **INR 5 crore** or more during the immediately preceding financial year.[20] Such companies must establish a CSR Committee comprising three or more directors, including at least one independent director.

Spending and Activities:

Eligible companies must spend at least **2% of their average net profits** made during the three immediately preceding financial years on activities listed in **Schedule VII** of the Act. Schedule VII activities include eradicating hunger and poverty, promoting education, gender equality, environmental sustainability, and contributions to the Prime Minister's National Relief Fund.

"Comply or Penalise":

Initially, the CSR regime operated on a "comply or explain" basis; companies that failed to spend the required amount merely had to disclose the reasons in their Board Report. However, amendments in 2019 and 2020 shifted this to a mandatory "comply or penalise" regime.

- **Ongoing Projects:** Any unspent amount relating to an ongoing project must be transferred to a special "Unspent CSR Account" within 30 days of the end of the financial year and spent within three financial years.[21]
- **Other Cases:** If the unspent amount does not relate to an ongoing project, it must be transferred to a Fund specified in Schedule VII within six months of the end of the financial year.

Penalties for Non-Compliance:

Section 135(7) prescribes stringent penalties for non-compliance with these transfer provisions. The company is liable for a penalty of twice the amount required to be transferred or **INR 1 crore**, whichever is less. Every officer in default is liable for a penalty of one-tenth of the amount needed to be transferred or **INR 2 lakh**, whichever is less.

1.2.5 Audit Independence and Integrity

The statutory auditor is the primary gatekeeper of financial information. The 2013 Act introduced several reforms to bolster auditor independence and accountability.

Auditor Rotation and Prohibited Services:

Section 139(2) mandates the mandatory rotation of auditors; individual auditors must be rotated every 5 years, and audit firms every 10 years.[22] This prevents the development of overly cosy relationships between auditors and management that could compromise objectivity. Furthermore, **Section 144** explicitly prohibits auditors from providing certain non-audit services (such as internal audit, investment banking, or management services) to their audit clients, directly addressing the conflict of interest.

Removal and Resignation:

The removal of an auditor before the expiry of their term is a rigorous process requiring a special resolution and Central Government approval (Section 140(1)).[23]

- **Tribunal-Monitored Removal (Section 140(5)):** A critical provision for governance is Section 140(5), which empowers the NCLT to remove an auditor either *suo motu* or on application by the Central Government if it is satisfied that the auditor has acted fraudulently or colluded in fraud. An auditor removed under this section is disqualified from being appointed as an auditor for any company for five years and faces liability under Section 447.[24]
- **Resignation Penalties:** If an auditor resigns, they must file a statement (Form ADT-3) detailing the reasons. Failure to do so attracts a penalty of INR 50,000 or the auditor's remuneration (whichever is lower), up to INR 5 lakh for continuing failure.

Director Liability for Fraud (Section 447):

The ultimate deterrent under the Act is Section 447, which addresses punishment for fraud. Fraud is defined comprehensively to include any act, omission, or concealment with the intent

to deceive or gain undue advantage.

- **Penalties:** If the fraud involves public interest, the minimum imprisonment is **3 years** (extendable to 10 years), and the fine can extend to **three times the amount involved in the fraud**. Even if no public interest is involved, fraud of at least INR 10 lakh or 1% of turnover is punishable by imprisonment for 6 months to 10 years. This provision pierces the corporate veil, holding directors and officers personally and criminally liable.

2.3 SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

While the Companies Act sets the baseline for all companies, the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR") establish a robust governance framework for listed entities. The LODR consolidates various listing agreement clauses into a unified regulation, thereby conferring statutory force and enabling SEBI to enforce them directly.[25]

2.3.1 Transparency and Disclosure: The Core of Market Integrity

Transparency is the antidote to information asymmetry in capital markets. **Regulation 30** of the LODR is the central pillar of SEBI's disclosure regime.

Materiality and Disclosure (Regulation 30):

Listed entities are required to disclose "material" events to stock exchanges promptly. The regulation classifies events into two categories:

1. **Deemed Material Events (Para A, Schedule III):** These events must be disclosed without applying any test of materiality. Examples include acquisitions, the issuance or forfeiture of securities, rating revisions, promoter fraud, and proceedings of the Annual General Meeting (AGM).[26]
2. **Discretionary Material Events (Para B, Schedule III):** Events such as product launches, capacity additions, or litigation need to be disclosed only if they meet the company's "Policy for Determination of Materiality".

Quantitative Thresholds:

Recent amendments have introduced quantitative criteria for determining materiality. An event

is considered material if the omission is likely to result in a discontinuity of information or significant market reaction, or if its value exceeds the lower of:

- 2% of turnover;
- 2% of net worth; or
- 5% of the average absolute value of profit or loss after tax.[27]

Strict Timelines:

The LODR enforces strict timelines to ensure real-time information flow:

- **30 Minutes:** The outcome of Board Meetings, considering dividends, financial results, buybacks, or fund-raising, must be disclosed within 30 minutes of the meeting's closure.[28]
- **12 to 24 Hours:** Other material events generally require disclosure within 24 hours. Recent amendments have shortened the timeline to 12 hours for events originating within the listed entity (e.g., a decision to acquire a company), recognising that internal decisions should be communicated more quickly than external events (e.g., a natural disaster affecting a plant).[29]

Verification of Rumours:

A significant addition to the disclosure regime is the requirement that top-listed entities (Top 100 and subsequently Top 250 by market capitalisation) confirm, deny, or clarify market rumours that result in material price movements.

2.3.2 Related Party Transactions (RPTs): Regulation 23

Related Party Transactions are a classic vector for tunnelling assets out of a company. SEBI's Regulation 23 is more stringent than the Companies Act's Section 188.

Expanded Definition:

SEBI defines a "related party" broadly to include any person or entity belonging to the promoter or promoter group and holding 20% or more of the shareholding in the listed entity.[30] This captures entities that might not be strictly "related" under the Companies Act but exert significant influence.

Approval Mechanism:

- **Audit Committee Approval:** *All* RPTs require prior approval of the Audit Committee.

Only independent directors on the committee may vote to approve such transactions, thereby giving them veto power over RPTs.

- **Shareholder Approval:** "Material" RPTs require approval from shareholders through a resolution. A transaction is considered material if it exceeds **INR 1,000 crore** or **10% of the annual consolidated turnover** of the listed entity.
- **"Majority of Minority" Rule:** Crucially, *no related party* can vote to approve such resolutions, whether they are a party to the specific transaction or not. This ensures that the majority of promoters cannot use their voting weight to push through transactions that benefit them at the expense of minority shareholders.

2.3.3 Board Composition: Higher Standards for Listed Firms

SEBI mandates higher governance standards for board composition to ensure robust oversight.

- **Independent Directors (Regulation 17):** While the Companies Act requires 1/3rd independent directors, SEBI LODR goes further. If the Chairperson of the Board is a non-executive director but is a promoter or related to promoters, at least **half** of the Board must comprise independent directors.[31]
- **Woman Director:** The top 1000 listed entities by market capitalisation must have at least one **independent** woman director. This ensures that gender diversity also brings independent oversight, preventing the token appointment of female family members.

2.4 The Competition Act, 2002: Governance and Market Conduct

Corporate governance is not isolated from market conduct; internal failures often manifest as external anti-competitive behaviour. The **Competition Act, 2002**, enforced by the Competition Commission of India (CCI), serves as a complementary governance framework.

Anti-Competitive Agreements (Section 3):

The Act prohibits agreements that cause an "appreciable adverse effect on competition" (AAEC). This includes horizontal agreements (cartels) in which competitors fix prices, limit output, or rig bids.[32] Governance frameworks must ensure that boards have oversight mechanisms to prevent management from engaging in such illegal collusion. Participation in a cartel is a severe governance failure, exposing the company and its directors to heavy penalties (up to three times the profit or 10% of turnover).[33]

Abuse of Dominant Position (Section 4):

Enterprises holding a dominant position are prohibited from abusing their position through predatory pricing, denial of market access, or the imposition of unfair conditions. This provision requires the boards of dominant firms to exercise higher diligence in their strategic decisions to ensure they do not violate competition norms.

Regulation of Combinations (Mergers and Acquisitions):

The CCI regulates mergers and acquisitions (combinations) to ensure they do not harm competition. This creates a governance checkpoint for M&A activity. Boards must ensure that due diligence for mergers includes an assessment of competition law risks, as a blocked merger represents a significant strategic and financial failure.

2.5 Institutional Framework: Oversight, Enforcement, and Adjudication

The efficacy of India's corporate governance laws relies on a tripod of institutions: the Ministry of Corporate Affairs (MCA), the Securities and Exchange Board of India (SEBI), and the National Company Law Tribunal (NCLT).

2.5.1 Ministry of Corporate Affairs (MCA)

The MCA is the administrative custodian of the Companies Act. It oversees the incorporation, regulation, and compliance of all companies through the Registrar of Companies (RoC) and Regional Directors.

- **MCA21 and Data Analytics:** The MCA operates the **MCA21** electronic registry, which serves as the backbone for corporate filings. The Ministry increasingly uses data analytics and AI to flag non-compliance (e.g., shell companies, discrepancies in financial filings).[34]
- **Adjudication Mechanism:** To unclog courts, the MCA has established an in-house adjudication mechanism. Adjudicating Officers (RoCs) can impose penalties for technical and procedural non-compliances (e.g., failure to appoint KMPs or file returns) directly, thereby expediting enforcement.[35]

2.5.2 Securities and Exchange Board of India (SEBI)

SEBI is the regulator for the securities market and listed entities. It possesses quasi-legislative, quasi-judicial, and quasi-executive powers.

- **Surveillance and Enforcement:** SEBI mandates stock exchanges to set up surveillance mechanisms to monitor price movements and disclosures.[36] It investigates insider trading, market manipulation, and disclosure lapses.
- **Powers:** SEBI has the power to issue "desist" orders, levy monetary penalties (up to INR 25 crore or three times the profit), suspend trading of securities, delist companies, and debar promoters/directors from accessing the capital markets.[37] The regulator's ability to freeze bank accounts and assets of promoters during investigations acts as a potent deterrent.

2.5.3 National Company Law Tribunal (NCLT)

The NCLT is a specialised quasi-judicial body that adjudicates corporate disputes.

- **Dispute Resolution:** It handles cases related to oppression and mismanagement (Sections 241-242), mergers and amalgamations, and insolvency (under the Insolvency and Bankruptcy Code).
- **Protecting Minority Rights:** The NCLT is the primary forum for minority shareholders to seek redress against the tyranny of the majority. Under Section 242(4), the court may pass interim orders to regulate the conduct of the company's affairs and to prevent asset stripping or prejudicial decisions during the pendency of a dispute.[38]
- **Fraud Adjudication:** The Supreme Court has clarified that the NCLT has the jurisdiction to examine complex questions of fraud when they are integral to a claim of oppression and mismanagement, ensuring that shareholders are not bounced between civil courts and the tribunal.[39]

2.6 Investment and Foreign Collaboration: Governance in Tech Transfers

In an increasingly globalised economy, corporate governance in India interacts closely with Foreign Direct Investment (FDI) policies and laws governing technology transfers.

2.6.1 FDI Policy and Governance Compliance

FDI in India is regulated under the **Foreign Exchange Management Act (FEMA), 1999**, and policies issued by the Department for Promotion of Industry and Internal Trade (DPIIT).

- **Entry Routes and Governance:** Investments can enter via the **Automatic Route** (notification to RBI) or the **Government Route** (approval required).[40] Specific sectors carry governance riders. For instance, in the insurance sector (FDI cap 74%), regulations

previously mandated that the majority of directors and KMPs be resident Indians, linking foreign ownership directly to board composition requirements.[41]

- **National Security Governance (Press Note 3):** Since 2020, FDI from countries sharing a land border with India (e.g., China) requires government approval. This imposes a governance obligation on boards to strictly scrutinise the beneficial ownership of incoming investors to ensure compliance with national security norms.

2.6.2 Governance of Technology Transfer Agreements (TTAs)

Technology Transfer Agreements involve the transfer of intellectual property (IP), know-how, and technical services. These agreements are critical for Indian companies to upgrade capabilities but are also fraught with governance risks, particularly with respect to valuation and related-party payouts.

- **Board and Audit Committee Oversight:** A TTA with a foreign parent or related entity is a Related Party Transaction. Under the Companies Act and SEBI LODR, such transactions require Audit Committee approval to ensure they are at "arm's length" and in the "ordinary course of business".[42] Boards must ensure that royalty payments for technology are not merely a mechanism to siphon profits to a foreign holding company.
- **Regulatory Limits:** While payment of royalties and technical fees is generally permitted under the automatic route, specific caps exist (e.g., previously 5% on domestic sales and 8% on exports; now liberalised but monitored). Excess payments may require government approval, and failure to comply constitutes a violation of FEMA.[43]
- **IP Governance:** Governance of TTAs also involves ensuring that the agreement clearly defines ownership rights (licensing vs. assignment). Directors must exercise due diligence to ensure that the deal does not contain restrictive clauses that violate the Competition Act.[44]

2.7 Comparative Analysis: Companies Act 2013 vs. SEBI LODR

The following table highlights the critical differences in enforcement and stringency between the statutory (Companies Act) and regulatory (LODR) frameworks. The SEBI LODR generally imposes a greater compliance burden, reflecting the heightened public accountability of listed firms.

Aspect	Companies Act 2013	SEBI LODR Regulations 2015
Applicability	All Companies (Private, Public, Listed, Unlisted)	Listed Entities only
Board Composition	**Requires independent directors** for listed & specified unlisted public companies (S.149).	Stricter norms: If the Chair is a non-executive promoter, 1/2 of the Board must be Independent; otherwise, 1/3 of the Board must be Independent (Reg 17).
Women Directors	**Specifies quotas for women directors** (at least one for listed & large public companies).	At least one *Independent* Woman Director for the top 1000 listed entities (Reg 17).
Disclosure	**Annual reports mandatory** (MGT-7, AOC-4 filed annually).	**Real-time stock exchange filings** required. Board outcomes within 30 mins; Material events within 12-24 hours (Reg 30).
Related Party Transactions	Board approval required. Shareholder approval for large transactions. Interested directors cannot vote.	Audit Committee approval for *all* RPTs. Shareholder approval for *material* RPTs. No related party can vote (Reg 23).
CSR	Mandatory "Spend or Transfer" model (S.135). Unspent funds transfer to the Schedule VII fund.	Disclosure in Annual Report. High scrutiny on ESG reporting (BRSR) for top-listed firms.
Penalties	**Fines up to INR 5 crore** (e.g., for fraud S.447, breach of director duties).	**Delisting for non-compliance**, suspension of trading, and fines up to INR 25 crore (for insider trading/fraud).

Note on Penalties: While the Companies Act prescribes specific fines (e.g., up to INR 5 lakh for Section 166 breach), the "Fine up to INR 5 crore" reference in the comparative context often highlights the upper ceiling of certain compounding offences or specific liabilities for fraud, which can range even higher (3x the amount of fraud). In contrast, SEBI's power extends to "Delisting" and barring entities from the market, which is a "death penalty" for a public company, representing a different qualitative tier of enforcement.

2.8 Challenges: Regulatory Overlaps and Enforcement Inconsistencies

Despite a robust legal infrastructure, the Indian corporate governance landscape faces systemic challenges arising from the interplay among multiple regulators and the gap between legislative intent and enforcement practice.

2.8.1 Regulatory Overlaps

The dual jurisdiction of the MCA and SEBI creates friction, particularly with respect to unlisted public companies and the issuance of securities.

- **The Sahara Case Precedent:** The conflict was most visibly illustrated in the *Sahara* case. The company claimed that its issuance of Optionally Fully Convertible Debentures (OFCDs) to millions of investors was a "private placement" under the Companies Act (then the 1956 Act) and thus fell within the MCA's jurisdiction. SEBI argued that an offer to 50 or more persons constituted a "public issue," falling under its jurisdiction. The Supreme Court ruled in favour of SEBI, establishing that investor protection in "securities" takes precedence, thereby expanding SEBI's jurisdiction to unlisted companies that attempt to circumvent listing norms.[45]
- **Operational Friction:** Listed companies often face dual compliance burdens. For example, a Preferential Issue of shares requires compliance with both Section 62 of the Companies Act (monitored by MCA) and SEBI's ICDR Regulations. Discrepancies in definitions or timelines between the two can lead to inadvertent non-compliance.[46]

2.8.2 Enforcement Inconsistencies and the "Tick-Box" Culture

- **Form vs. Substance:** While compliance metrics (e.g., 100% appointment of women directors) have improved, the *substance* of governance often lags. The phenomenon of "tick-box" compliance is prevalent, whereby independent directors are appointed solely to satisfy legal requirements but are excluded from substantive decision-making. In family-controlled firms, "independent" directors are often friends or associates of the promoter, undermining the spirit of independence.
- **Adjudication Delays:** The NCLT, designed to be a speedy tribunal, is burdened with a massive backlog, primarily due to the influx of insolvency cases under the IBC. This delays the resolution of oppression and mismanagement cases (Section 241-242), leaving minority shareholders without timely remedies and weakening the deterrent effect of the law.[47]

- **Inconsistent Penalty Application:** There is often a disparity in how penalties are levied. While the MCA's automated system sends notices for minor filing delays, significant governance lapses in large unlisted firms may go undetected until a crisis erupts. Conversely, SEBI is perceived as more aggressive, but its high-value penalties are frequently challenged and stayed by the Securities Appellate Tribunal (SAT), delaying final accountability.

2.9 Conclusion

The legal and regulatory framework for corporate governance in India is comprehensive, aligning with global best practices while retaining unique features such as mandatory CSR and the appointment of women directors. The **Companies Act, 2013,** provides a solid statutory foundation, codifying fiduciary duties and empowering shareholders. **SEBI's LODR Regulations** build upon this to create a high-transparency regime for listed entities, while the **Competition Act** and **FEMA** provide necessary checks on market conduct and foreign collaboration.

However, the efficacy of this framework is tested by the realities of enforcement. The overlap between MCA and SEBI jurisdictions requires constant judicial clarification, and the "tick-box" approach to compliance remains a cultural hurdle. For the framework to truly succeed, the focus must shift from legislative expansion to practical implementation, ensuring that the "spirit" of the law is enforced as rigorously as its "letter." As India integrates deeper into the global economy, the ability of its institutions to implement these laws swiftly and consistently will determine the credibility of its corporate governance regime.

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Statutes and Acts

- **The Companies Act, 2013**: The primary legislation governing the incorporation, management, restructuring, and dissolution of companies in India.
- **The Companies Act, 1956**: The predecessor to the 2013 Act, primarily focused on company administration and monopoly prevention.
- **The Competition Act, 2002**: Enforced by the Competition Commission of India (CCI), governing market conduct and prohibiting anti-competitive agreements and abuse of dominant positions.

- **Foreign Exchange Management Act (FEMA), 1999**: The act regulating Foreign Direct Investment (FDI) in India.
- **Insolvency and Bankruptcy Code (IBC)**: The framework governing insolvency resolution, handled by the National Company Law Tribunal (NCLT).

Rules, Regulations, and Guidelines

- **SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR)**: The unified regulatory framework established by the Securities and Exchange Board of India (SEBI) governing the governance and disclosure standards for listed entities.
- **FDI Policy / Press Note 3 (2020)**: Policies issued by the Department for Promotion of Industry and Internal Trade (DPIIT), specifically including the 2020 mandate requiring government approval for FDI from countries sharing a land border with India.

Judicial Precedents and Key Cases

- ***Satyam Computer Services* Scandal**: A high-profile corporate failure that catalyzed the transformation of India's corporate governance framework.
- ***Tata-Mistry* Case**: A recent judicial precedent clarifying the scope of Sections 241-244, emphasizing that "oppression" requires a lack of probity and fair dealing.
- ***Sahara* Case (Supreme Court)**: A landmark Supreme Court ruling that resolved a jurisdictional overlap between the MCA and SEBI, establishing that investor protection in "securities" takes precedence and falls under SEBI's jurisdiction even for unlisted companies making public issues.

[1] *The Companies Act, 2013*, No. 18 of 2013, Section 166.
[2] *See generally* SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
[3] Corrida Legal, *Corporate Governance in India: Best Practices, Legal Framework & Board Responsibilities*, CORRIDA LEGAL (Oct. 3, 2025), https://corridalegal.com.
[4] *he Companies Act, 2013*, Section 166(2).
[5] *See* Call My CA, *Section 166 of the Companies Act, 2013: The Silent Rules Directors Can't Ignore*, CALLMYCA.
[6] *The Companies Act, 2013*, Section 166(3).
[7] *The Companies Act, 2013*, Section 166(5).
[8] *The Companies Act, 2013*, Section 166(7).
[9] *The Companies Act, 2013*, Section 447; *see also* RegisterKaro, *Section 447 of the Companies Act, 2013: Punishment for Fraud*.
[10] *The Companies Act, 2013*, Section 149(4).
[11] *The Companies (Appointment and Qualification of Directors) Rules, 2014*, Rule 4.
[12] *The Companies Act, 2013*, Section 149(6).

[13] *The Companies Act, 2013*, Section 149(6).
[14] *The Companies Act, 2013*, Section 149(1); *The Companies (Appointment and Qualification of Directors) Rules, 2014*, Rule 3.
[15] ICSI, *Independent Director under Companies Act 2013* 19 (2023); *see also*.
[16] *In the matter of TPI India Limited* (Adjudication Order, Ministry of Corporate Affairs).
[17] *The Companies Act, 2013*, Section 245
[18] *The Companies Act, 2013*, SectionSection 241-242.
[19] *Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd.*, (2021) 9 SCC 449; *see.*
[20] *The Companies Act, 2013*, Section 135(1) & Schedule VII.
[21] *The Companies Act, 2013*, Section 135(5)-(7); *see* TaxGuru, *Penalty for CSR Breaches u/s 135*.
[22] *The Companies Act, 2013*, SectionSection 139(2), 144.
[23] *The Companies Act, 2013*, Section 140(1)-(2); *see* SetIndiaBiz, *Auditor Removal Legal Provisions*.
[24] *The Companies Act, 2013*, Section 140(5).
[25] SEBI LODR Regulations, *supra* note 2.
[26] SEBI LODR Regulations, Reg. 30, Schedule III.
[27] SEBI LODR Regulations, Reg. 30(4)(i)(c).
[28] SEBI LODR Regulations, Reg. 30(6), Schedule III, Part A.
[29] JSA Law, *SEBI Board Meeting - December 17, 2025: Outcome*.
[30] SEBI LODR Regulations, Reg. 23.
[31] SEBI LODR Regulations, Reg. 17(1)(b).
[32] *The Competition Act, 2002*, No. 12 of 2003, SectionSection 3, 4, 5, 6.
[33] *The Competition Act, 2002*, Section 27.
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[35] *The Limited Liability Partnership (Amendment) Act, 2021* (introducing In-House Adjudication Mechanism similar to Companies Act).
[36] *See* (referencing SEBI's surveillance mechanism).
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[38] *The Companies Act, 2013*, Section 242(4).
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[45] *Sahara India Real Estate Corp. Ltd. v. SEBI*, (2012) 10 SCC 603; *see.*
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