



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



a professional
Procurement from the World Bank.

Dr. Raju Narayana Swamy popularly known as Kerala's Anti-Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala. He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University. He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and diploma in Public

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ANALYSIS OF DIRECTORIAL DUTIES, LIABILITIES & POWERS: AN ACADEMIC COMMENT

AUTHORED BY - SHIVAM TAH,
THAKOR MOHAMAD UVESH & SACHIT ROY

The Companies Act of 2013 largely shapes the governance structure of Indian firms by outlining directors' responsibilities, authority, and liabilities. Different sorts of directors, including independent, managing, non-executive, and executive directors, each have specific tasks and responsibilities within this structure. The role of the Independent Director has been one of the most prominent of these since it was first introduced in Indian company law.

Within the corporate governance framework, the function of independent directors is especially crucial for maintaining corporate openness, encouraging moral decision-making, and strengthening responsibility. Their main duty is to protect the interests of shareholders and other stakeholders by offering an objective, independent review of the management's choices.

Nevertheless, Indian corporate law has come under fire for being unclear about the precise responsibilities of independent directors, despite their vital role. They are subject to possible prosecution and accountability in corporate malfeasance cases because, despite clearly defined rights and obligations, the mechanism for holding them accountable is unclear. The protection of independent directors from unjustified legal repercussions is seriously threatened by this legal ambiguity. The goal of this study is to examine how directors' roles have changed within the Indian corporate governance framework.

Objectives

- To determine the powers and duties of different types of directors in the company, including executive directors, non-executive directors and independent directors
- To determine the evolution and the role of independent directors across various jurisdictions
- To determine the powers, responsibilities and liability of independent directors in the current Indian legal regime

- To do a comparative analysis of the liability of independent directors in India with other jurisdictions like the UK and the US
- To contribute to the broader discourse on strengthening corporate governance structures, in alignment with Sustainable Development Goals (SDG 8 and SDG 16), by ensuring better decision-making, accountability, and institutional integrity.

Research Problem

Despite the growing importance of independent directors in improving corporate management and ensuring the interests of stakeholders, India's legal framework continues to show ambiguity regarding specific roles, responsibilities and liabilities. This lack of clarity makes independent directors vulnerable to legal risk in the case of corporate fraud or fraud. This prevents qualified people from taking on such roles. Furthermore, India's approach to director responsibility lacks a harmonious balance of accountability and protection compared to established corporate government systems like the UK and the US. This study attempts to treat these legal and structural defects by examining the development, authority and responsibilities of independent directors. It aims to strengthen institutional integrity and responsible corporate behaviour through global best practices and sustainable development objectives (SDGS 8 and 16).

Design/Methodology

The Research Study is modelled on secondary data collection through doctrinal research of domestic company law, research papers, the Indian & International judicial precedents and other literature on the topic. Thus, every facet of law-making that is, black letter law, judicial interpretations and intellectual comment on the topic can be comprehensively analysed. The methodology of this research study is emphasised on qualitative techniques as methods such as interpretation of statutes & case law analysis will be employed to derive the insights into classification, rights, duties, liabilities & powers of Directors & clarity on liabilities of Independent Directors.

Powers of the Board

The Board, under the Companies Act, 2013, holds a crucial role in acting on the duties of Corporate Governance, which ensures that Companies are responsible for their rules and practices to ensure accountability for the same. While Companies are a separate legal entity,

the Board still have a duty to exercise their Powers provided under Section 179 of the Companies Act with caution and in a manner which doesn't affect the ethical standards of the Companies Act and the interests of their shareholders. Section 179 is codified to provide the Board with powers that balance managerial discretion with strict oversight and ensure proper execution of operational decisions. Section 179(1) also doesn't merely confer privileges but also limits the powers of the Board to their Articles and Memorandum of Association and provisions within the Companies Act, 2013. Therefore, the Powers are conferred to the Board in a manner which serves as a deliberate regulatory mechanism aimed at increased transparency and accountability & enhanced fiduciary responsibility. Therefore, the Board's Statutory empowerment has emerged as a vital element which connects managerial actions with corporate goals.

The Board consists of directors who are appointed to the board under Section 152, who are responsible for the working of the company, whether day-to-day activities like the Managing Director of the company or Executive Nominee Directors who partake in important corporate decisions during the Board Meetings. The role of the Board in a Company is important as the Company cannot act on its own and has to act through its board of directors. Section 179, therefore, defines the power of the Board to act and exercise its rights judiciously. The Powers of the Board can be divided into its Strategic Powers, Operational Powers and other words which are as follows: -

1) Strategic Powers

a) Policy Formulation

Section 179(1)(a) gives the Board the power to make calls on shareholders when money is unpaid, showing that the Board plays a role in formulating policy, which affects strategies and operations of the Company. Therefore, the Board is responsible for formulating policies which ensure that there is consistent decision-making within the company. However, the Board has certain restrictions on its powers through Section 180 of the Companies Act, such as misconduct of a director, etc.

b) Investment Decisions

The Board has the power to decide on how to invest the funds of company and where to invest the said funds. Allocation of funds is important as it decides the workings of the business, increases the growth of the business, as well as helps remain competitive in the market by keeping a steady flow of income and is critical in ensuring sustainable growth of the business. This power is provided under Section 179(3)(i).

c) Mergers and Acquisitions

Section 179(3)(j) provides the Board to exercise its powers in regards to mergers and acquisitions, through resolutions passed at the Board meetings, enabling the Company to strive for further market opportunities and increase its market reach. The Board also ensures due diligence and risk assessment plans to ensure that the interests of the stakeholders and the company's goals align. Therefore, the company achieves innovation and value creation in their market sphere.

d) Business Diversification

Every company aims to diversify its activities and portfolios to prevent stagnation of business in a very competitive market. Section 179(3)(h) allows the board to diversify the business, which will provide the company with different revenue streams and aim at mitigating various business risks which affect the working of the business.

e) Other strategic powers include formulating the vision and mission of the Company, issuing securities, and buy-back of securities.

2) Operational Powers

a) Delegation of Powers under Section 179(3)(d), Section 179(3)I, Section 179(3)(f)

Delegation of Powers related to borrowing of monies, investment of funds and granting of loans allows the Board to make informed decisions based on expert views of the committee and maintain efficiency in important decisions. The board, however, maintains oversight over the Committee, which is accountable to the Board for its decisions.

b) Oversight over the day-to-day management of the company

Day-to-day activities, including management and operational decisions, are decided by the Board, which allows smooth business operation and ensures high company standards. This allows any problem to be nipped in the bud as soon as possible by strategies and overall planning of the Company.

c) Policy Implementation

The Board is responsible for implementing policies which were formulated as part of the Company's strategic plans. The board is the best judge of whether the policy being implemented is having the desired effect as intended, and monitoring the implementation of the policy at the initial stages allows the board to judge the effectiveness and its compliance. This systematic approach reinforces accountability and enhances performance standards.

d) **Budget Approval**

Section 179(3)(g) grants the power to approve the financial statement and the board's report, which are essential documents in understanding the fiscal health of the company and facilitating informed decision-making. Using these documents, the board can create corrective actions for previous problems to prevent the same, thus ensuring robust operational oversight and continuous improvement in corporate performance.

- 3) **Other Powers** provided under Rule 8 of the Companies (Meeting of Board and its Powers) Rules allow the Board to make political contributions not exceeding 7.5% of the company's net worth during three immediate preceding Financial Years, appoint or remove KMP's which ensures new ideas flow into the company and also give power to appoint auditors which ensure transparency and accountability of the Board in complying with corporate governance.

Duties & Liabilities of Directors: Visus Generalis

It is a settled position in law that duties and liabilities are two facets of the same coin. Imposition of duty is condition precedent for liability to arise, in the domain of company law the duties of directors are divided into two classes, general duties arising out by the office and position of director & duties crystallized by law, that are, Company law, 2013 and other regulations made by Securities & Exchange Board of India. It is to be however noted that there exists no watertight separation between these two classes, and it has to be looked at and interpreted comprehensively and holistically.

The duties of a general nature comprise of duty of good faith, the duty of reasonable care & duty not to delegate. The office and position of director are such that trust, confidence and interest are vested in it by shareholders of the company. Thus, directors are bound to exercise their functions and act with honesty and diligence only in the interest of the company and shareholders. The directors are duty-bound to exercise their functions being cognizant of the fact that they exercise them with reasonable and due care and skill. The test to determine due care and skill should be based on the degree of care expected from a person of their knowledge, skill and status.

The Company law envisages the structure of a company in a manner that shareholders of the company delegate their powers and duties to the board and its directors. Thus, directors are

agents and trustees of the company and its members. The directors are appointed as agents and trustees because of the skill, competence and integrity they possess; thus, the duty not to delegate, which imbibes in itself the spirit of the Latin maxim, “**Maximum Delegatus Non Potest Delegare.**”¹, puts bars on directors who are agents to further delegate their functions and powers. However, certain functions which are permitted by the company act or articles can be delegated.

The Statutory duties are explicitly stated and crystallised in the Company Act and SEBI regulations. Section 166² of the Company Act directly deals with the duties of directors. It makes directors duty-bound to exercise their functions by and consistent with the act and articles to advance and further the interests of the company and shareholders. The exercise of functions and actions should be out on due diligence, care and independent judgment. The exercise of functions should be out of any ulterior interest, and while such exercise of function director should be cognizant of the community and environment. More or less, the general duties are codified in this section.

The other duties provided by company law and SEBI regulations makes director duty bound to conduct and attend annual general meetings and extraordinary general meetings, to disclose interest, to attend meetings of board, duties concerning appointment of auditor and key managerial persons, to place financial statements with auditor’s report with its authentication, filing of annual returns, maintenance of books and registers to be compulsory maintained by law and others. It is to be noted that the above-mentioned is not an exhaustive list of statutory duties of directors, and it attempts to provide a general view.

The established jurisprudence suggests that liabilities are co-extensive with duties imposed. Liabilities of directors under company law can be succinctly and generally classified into five classes, that is, criminal liability, collective liability (vicarious liability), liabilities arising out of breach of statutory duties & liabilities arising out of duties owed to third parties and the company.

¹ (Iilsindia) <https://www.iilsindia.com/study-material/801554_1632470006.pptx> accessed 6 April 2025

² ‘Section 166. Duties of Directors: Companies Act Integrated Ready Reckoner: Companies Act 2013: Cairr’ (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) <<https://ca2013.com/166-duties-of-directors/>> accessed 6 April 2025

♣ Liability towards the company:

The liability³ accrues towards the company when such actions are undertaken by directors which is not interest of the company and its shareholders; on the contrary, such actions favour the interest of directors, their relatives or other parties. It amounts to a breach of fiduciary interest and trust. It is a wrongful and dishonest exercise of powers, which in no manner is related to the interests of shareholders and the company. It is true that on behalf of shareholders and the company, directors exercise exclusive powers; however, such powers are not unfettered. The said power is circumscribed by limits placed on it by articles of company, the Act and shareholders' approval in certain matters. If any directors act beyond such limits, liability will be imposed. The exercise of such power should be inclusive of required care, caution and skill. It shall not be based on whims and fancies but should be out of prudence and wisdom. Directors are bound to exercise their functions and act with honesty and diligence only in the interest of the company and shareholders. The directors are duty-bound to exercise their functions being cognizant of the fact that they exercise them with reasonable and due care and skill. The test to determine due care and skill should be based on the degree of care expected from a person of their knowledge, skill and status. If such is not complied with, liability will be imposed on the director.

The management of resources, property and money is burdened upon directors. They play a key role in decision-making and management of such resources. While exercising such functions, they have to ensure that it is void of any dishonest or mala fides and is only exercised in the interest of the company and its shareholders, in consistent with the objectives of the company with a high degree of skill, care and caution. Any action which runs contrary to any of the laid principles and duties owed will amount to the accrual of liability.

♣ Liability towards third parties:

While issuance of a prospectus, if due to insufficient disclosure of information, misstatement or untrue statement, any party because of such information published, acts upon it and suffers damage, should be compensated by the director as he is personally liable. It is to be noted, however, that liability will not accrue in cases where such publication was in the absence of the consent of the director, or it was withdrawn before publication, and the director has reason

³(Law corporate law directors, their appointment, ...)
<https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/04.corporate_law/12._directors,_their_appointment,_qualifications,_position,_powers,_duties_and_liabilities/et/5674_et_12_et.pdf> accessed 6 April 2025

to believe in such information.

Company law holds a director personally liable where a director has committed fraud and dishonesty in its exercise of their functions & same is held by the tribunal under section 339⁴, on allotment made before the minimum subscription is reached or delay in returning application money within the prescribed time.

It is settled law that powers conferred on directors are not unfettered. The said power is circumscribed by limits placed on it by articles of company, the Act and shareholders' approval in certain matters. If a third party suffers loss due to such directors' acting and exercising powers beyond the limits imposed, then the third party can claim damages & liability for breach of warranty will be accrued against the director.

♣ **Liability for breach of statutory duties:**

The Company Act, 2013, is the parent law operating in the field of company law. It is supplemented by rules and regulations made by the Securities and Exchange Board of India. These statutes impose duties on the office of directors and the board; if the board or directors act inconsistently or do not comply with such duties, liability for breach of statutory duties will be incurred against such directors. These duties are generally discussed above in this paper. Such liabilities range from civil damages to criminal fines and imprisonment. Such liability is known as criminal liability. Failure to maintain register and records, non-filing of annual return, issuance of prospectus containing untrue statement and dishonest alteration or mutilation of books or papers are certain instances where directors are criminally liable.

♣ **Collective Liability:**

The liability is a complex theory⁵. Directors exercise their powers through the board. Board, in its essence, is a collective body. The same is inferred from the definition of the "board", which is defined as "a collective body of directors". The collectiveness and jointness of actions stem from the definition of the board. Thus, unless any duty was imposed specifically on the director, for every action of the board, directors are held vicariously or collectively liable even if such action was undertaken by one director. Unless specified expressly, board, fly and fall, and sink

⁴ (Acadpubl) <<https://acadpubl.eu/hub/2018-120-5/1/19.pdf>> accessed 6 April 2025

⁵ (Unit 13 directors) <<https://egyankosh.ac.in/bitstream/123456789/67955/1/Unit-13.pdf>> accessed 6 April 2025

and swim together. Various tests of liability are discussed further in this paper.

The Legal Framework and Judicial Approach to Independent Directors in India

The role of independent directors is not new in the Indian company regime, but due to recent scams like the Satyam scam in India and the Enron Scandal in the USA, the role of independent directors has now become a lot more relevant. These scams resulted from a lack of transparency from the board of directors and even ulterior motives. This is where the role of independent directors became a lot more important cause they bring objectivity, fairness, and accountability to the decision-making process. Independent directors are those who are members of the board of directors but are not involved in the day-to-day work of the company. They ideally don't have any personal or financial connections with the company and hence bring an unbiased and fresh perspective devoid of any ulterior motives, which in turn helps to improve the overall structure of corporate governance. There are a lot of allegations against the IDs, as they are often chosen by the promoters and are often found engaged in full-time work. Moreover, there is a lot of debate surrounding the liability of IDs and their specific role in the company under the Companies Act 2013.

Evolution of the Concept of Independent Directors

Before understanding the evolution of independent directors in various countries, it becomes imperative to understand the structure of shareholders and directors in those countries. According to the outsider model in the USA and the UK, shareholding is very diverse and not limited to a few individuals, and as a result, all the major decisions are taken by the managers reates a potential conflict of interest (agency problem) because managers might act in ways that benefit themselves rather than the shareholders. As a result, the concept of IDs saw a rise in the early 1950s, where a group of people could oversee the decision-making of the managers. After the scams, like corporate scandals like Enron and WorldCom, the Sarbanes-Oxley Act (2002) was passed, which required audit committees (which review a company's finances) to be fully made up of independent directors. Afterwards, the stock exchange made it compulsory for public companies that most of the board members in a public company would be made up of ID holders.⁶

⁶ Umakanth Varottil, 'Evolution and Effectiveness of Independent Directors in Indian Corporate Governance' (2010) SSRN http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1548786 accessed 4th April 2025

In the UK, the Cadbury Report (1992) introduced the idea of non-executive directors and independent directors to review company decisions. The Higgs Report (2003) finally recommended that at least half the board should be independent directors. This marks the beginning of the independence of a key part of corporate governance.⁷

India opened its economy to the world after liberalisation, globalisation and privatisation in 1991. SEBI set up the Birla committee in the year 1999, which made it compulsory for a listed company to have independent directors. Clause 49 of the Listing Agreement (introduced in 2000) was a turning point. It made independent directors necessary for companies listed on the stock exchange. The Narayan committee further strengthened clause 49 of the agreement. In India, opposed to the outsider model, a few individuals have the majority of the shareholding, which gives them a disproportionate amount of power against the minority shareholders, which became a point of conflict⁸. To counter these problems, the concept of ID emerges as a response that acts as a trustee who makes ethical and fair decisions that protect the interests of all shareholders, including small investors.

Roles, Powers and Responsibilities of Independent Directors

After the Companies Act of 2013 came into force, it divided the corporate structure into executive and non-executive directors. It introduced independent directors as a separate category of non-executive directors. The rationale behind this segregation is very simple that executive directors will be responsible for their actions, and IDs will act as a neutral third party in the whole system. However, section 149(12)⁹ The act sets a special threshold for when non-executive and independent directors can be held liable for the company's wrongdoing. According to Section 149(12)¹⁰ An Independent Director is liable only if:

1. They knew the wrongful act.
2. That knowledge came through board processes (like meetings, reports, or approvals).
3. They either gave consent or did not act diligently to stop it.

Now there are 2 different interpretations of this tripartite test, namely a strict interpretation according to which all three 3 conditions need to be fulfilled, and a broad interpretation where

⁷ Financial Reporting Council, The UK Approach to Corporate Governance (2010) <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/The-UK-Approach-to-Corporate-Governance.pdf> accessed 4th April 2025.

⁸ Confederation of Indian Industries, Desirable Corporate Governance: A Code (1998) http://www.nfcgindia.org/desirable_corporate_governance_cii.pdf accessed 6 April 2025.

⁹ The Companies Act, 2013, §149(12).

¹⁰ Ibid.

an Independent Director is liable if any one of these conditions is met.

Secondly, there is another question of knowledge, and there are again 2 interpretations of the same. The first said that active knowledge of the misconduct or fraud is required, while the second said that even if the ID has constructive knowledge of the fraud, then liability can be imposed upon the ID.

To avoid liability, an Independent Director must¹¹:

- Ask questions in meetings.
- Review reports and financial statements carefully.
- Ensure company policies follow legal and ethical standards.
- Do not approve suspicious transactions or agreements.
- Simply skipping meetings or saying "I didn't know" is NOT an excuse!

Now, in addition to complying with section 149(12)¹² All independent directors must comply with the general duties provided in sections 166 (2) and 166(3) of the Companies Act 2013.

Sec 166(2)¹³ Requires directors to act in good faith to promote the company's objectives while considering the interests of members, employees, shareholders, the community, and environmental protection. Sec 166(3)¹⁴ Mandates that directors discharge their duties with due care, skill, and diligence while exercising independent judgment. Schedule 4 outlines the professional duty of IDs towards the minority shareholders, regulatory bodies, and corporate governance.

The Supreme Court of India has presented a few problems with these sections and termed them a paradox.¹⁵ These questions are, namely, the following: -

- If all directors must act independently, why do we have a separate category of Independent Directors?
- What extra responsibilities do Independent Directors have?
- The law does not clarify how their duties differ from executive directors.

For example, to improve the governance in a public school, a separate class of independent teachers is appointed, but their liabilities and responsibilities are not clearly defined. In this situation, at the end of the day, the condition of the school will not at all improve, and the

¹¹ Shuai Qin and others, 'Does the Attendance of Independent Directors at Shareholder Meetings Matter? The Case of Risk Taking' (2023) 11(4) China Journal of Accounting Studies 3.

¹² Ibid.

¹³ The Companies Act, 2013, §166(2).

¹⁴ The Companies Act, 2013, §166(3).

¹⁵ Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd., (2021) 9 SCC 449; 2021 SCC OnLine SC 272, ¶217

purpose for which they are appointed will not be served.

These are a few of the challenges faced by the IDs in the current Indian regime: -

- Independent Directors must balance shareholder interests (profits, stock price) with the interests of employees and society, which often leads to a conflict of interest.
- While shareholder interests are measurable (e.g., stock performance), stakeholder concerns are more abstract, which is of subjective discretion.
- The Companies Act does not provide remedies for scenarios where stakeholder concerns are ignored.

Thus, the lack of clarity in the legal framework makes it difficult for independent directors to navigate their responsibilities without ambiguity.

Role of Judiciary in interpreting section 149(12) of the companies act 2013

There are 2 theories associated with ascertaining the liability of the independent directors adopted by SEBI and SAT, and have been applied in various cases by various courts.

1. Day-to-Day Functioning Test

This theory is also known as ignoring the diligence test and is liberal. The core idea behind this theory is that if the ID is not involved in the day-to-day operations of the company, then they should not be held liable even if he/she participated in the board which approved such decisions leading to loss or misconduct.

In the case of **MPS Infotech Ltd. v. SEBI**¹⁶ The Company passed a Board resolution (involving the independent director) to issue GDRs (Global Depository Receipts). The real nature of these GDRs was not disclosed, which ultimately led to investors being misled. The SEBI, after analysing the overall circumstances, observed that the independent director wasn't involved in day-to-day affairs, and neither had enough knowledge about the fraud through the Board processes. The ID was not held liable for his actions despite being a part of the resolution which enabled the fraud.

In the case of **Svam Software Ltd. v. SEBI**¹⁷ Related party transactions and loans were improperly disclosed. The audit committee, which includes the independent director, discussed the transactions afterwards and did not point out such disclosure. The SEBI held that even if

¹⁶ S.N. Sharma v. MPS Infotech Ltd., 2021 SCC OnLine SEBI 736, ¶¶1, 5(c)

¹⁷ Svam Software Ltd v Securities and Exchange Board of India [2022] SCC OnLine SAT 15 (SAT) [20].

the ID was present in the audit committee, he was not a part of the daily transactions and decision-making, and hence, no liability can be imposed upon him.

In the case of **Karvy Stock Broking Ltd**¹⁸ SEBI Portfolio Management violations took place, which led to the appointment of an unqualified Principal Officer, improper client agreements, and misleading disclosure documents. The independent directors in their defence stated that “We didn’t know – we weren’t told about this at Board meetings and we weren’t involved in day-to-day management. SEBI accepted this contention of the ID and did not hold them liable.

2. Diligence-Based Approach

As opposed to the day-to-day functioning test, this theory proposed that IDs are not supposed to keep an eye on every matter of day-to-day affairs but must still exercise due diligence. They are not supposed to blindly trust management and can be held accountable if they fail to fail to investigate red flags.

In the case of **Dish TV India Ltd. v. SEBI**¹⁹ The Company didn’t disclose the AGM voting results as per the requirement. The independent directors claim that they were not informed about such a meeting. SEBI first time emphasised on due diligence and said they should have acted on what they knew and not what they heard. SEBI ultimately did not hold the IDs liable for their act, but discussions on the due diligence approach became imminent.

In the case of **Bombay Dyeing & Manufacturing Co. Ltd**²⁰ The Company faked revenue through transactions with a related party (SCAL). The audit committee did not point this out, and IDs were part of the audit committee. SEBI held that Blind reliance on the Chartered Accountant was not enough and held the IDs responsible for not exercising due diligence on their part.

Suggestions

- Appointment and Removal: The process of appointing and removing independent directors should be made more democratic by mandating approval from minority shareholders, hence limiting the influence of promoter groups.

¹⁸ Karvy Stock Broking Ltd., In re [2022] SCC OnLine SEBI 1658 (SEBI)

¹⁹ Dish TV India Ltd. v. SEBI, 2022 SCC OnLine SAT 929, ¶1(viii).

²⁰ Bombay Dyeing and Mfg. Co. Ltd. In re, 2022 SCC OnLine SEBI 1616

- There must be robust safeguards against the arbitrary initiation of criminal proceedings against independent directors. As per *Sunil Mittal vs CBI*²¹ Summons for criminal misconduct should be sent only when there is a prima facie case of such criminal breach of trust, and proper application of judicial mind is the norm to be followed here.
- Keeping in mind the current scenario of the overlapping jurisdictions of enforcement bodies like SEBI, SFIO, ED, and ROC, it is required that there should be an institutionalised mechanism, such as a joint committee, to streamline investigations involving independent directors.
- Directors serving on audit committees must be subject to differentiated liability based on the degree of control they had over information and their actual involvement in decision-making processes.
- Mechanisms should be instituted to ensure the timely redressal of grievances raised by independent directors, especially when they dissent or highlight irregularities.

Judicial Insights on Liability of Independent Directors: A Comparative Study across Jurisdictions

Independent Directors play an important role within the corporate structure as they are not involved with the company for drawing any material or pecuniary relationship but rather protect the interests of the shareholders, uphold corporate integrity and standards of Corporate Governance. However, Independent Directors are also subject to liabilities so that they do not overstep their responsibilities of oversight. Various jurisdictions such as India, the UK, the US and Australia have grappled with understanding the extent to which their responsibilities and liabilities extend.

India

In the case of *Chintalapati Srinivasa Raju Vs Securities and Exchange Board of India*, the Supreme Court emphasised that for an Independent Director to be liable for their action, they must play a substantive role in the decision-making process. The court also held that merely being associated with the decision-making power doesn't translate into personal liability, but the Independent Director has to have an active participation in board decisions and impact said decisions. Further, the Supreme Court emphasised that liability should be imposed if there is clear evidence of negligence or a breach of fiduciary duty. Criminal Intent, along with an active

²¹ *Sunil Bharti Mittal v Central Bureau of Investigation* (2015) 4 SCC 609.

role in decision making, are the two important pieces of evidence required to show proof of corporate misconduct. Otherwise, if certain laws, such as labour law or environmental laws, impose certain liability on directors, the Independent Directors will be expressly held liable. India's developing legal precedents are indicative of a broader trend that prioritises preventative oversight over punitive actions. Independent directors are not required to have all of the knowledge or specialised skills that executive directors do, according to judicial rulings. Rather, they are seen as having an oversight responsibility, making sure that management choices are thoroughly examined. As a result, the capacity of independent directors to make decisions on their own in situations when full information may not be accessible is frequently used to evaluate their culpability.

United Kingdom

The significance of a strict codified legal framework has long been underlined by British court rulings, especially as it is presented in the Companies Act and related regulatory guidelines. Given their critical role in preventing conflicts of interest and supervising management choices, independent directors are required by the law to exercise a high degree of care and diligence. The Courts have underscored the importance of the principle of Duty of Care towards the Company and shareholders. The same was held in the case *Roberts v Frohlich*, wherein the Court decided on the accountability of Directors, especially Mr. Frohlich and his co-director at ODL. In this case, the court closely examined both directors' actions, paying particular attention to how involved they were with key documents and their decision-making processes as a whole. The court concluded that due to their failure to manage the company's operations with the necessary level of skill and care, both directors were found liable for violating their obligations as directors. Due to their failure to meet the required level of competence, they were found guilty of misfeasance. In addition, the directors were found guilty of wrongful trading by the court. It was concluded that, starting in the fall of 2004, they either knew or should have known that ODL was going to go bankrupt. Furthermore, the significance of contextual analysis is frequently emphasised in British legal commentary. Courts have stated that each case's unique circumstances should be taken into consideration when assessing an independent director's responsibility. Whether a director has fulfilled their duty of care depends on several factors, including the complexity of the decision at hand, the availability of qualified assistance, and the general business atmosphere. By avoiding a one-size-fits-all norm that may otherwise deter competent experts from acting in independent capacities, this case-by-case approach guarantees that court rulings remain fair and balanced.

United States of America

The business judgment rule, a pillar of American company law, has long been upheld by U.S. courts. Gives independent directors some protection when they make decisions with due diligence and in good faith. This principle emphasises that directors are supposed to make well-informed and responsible decisions rather than ensure the success of the company. Further, a profound understanding of the dynamic interaction between state and federal rules is reflected in American jurisprudence. State courts have frequently been at the forefront of interpreting directors' duties, creating a rich body of case law that is still developing today. Court rulings frequently stress the significance of context, recognising that independent directors' choices must be evaluated in the context of the facts at hand and the dominant company culture. U.S. corporate governance is characterised by this context-sensitive approach, which weighs the need to defend shareholder interests against the protection of directors.

Even if shareholders subsequently disagree with the choice, the duty of care is met if a director makes a good-faith attempt to stay informed and to allow for the exercise of proper judgment, as the courts have explained. The landmark case *Derivative litigation in In re Caremark International Inc. Derivative litigation* emphasises that shareholders who disagree with a board's choices should choose to elect new directors instead of pursuing legal action. But in theory, accountability for a breach of monitoring oversight may occur in two distinct circumstances. First, liability may result from a board decision that causes a loss because the decision was negligent or ill-advised. Second, liability may emerge from an unconsidered failure to act in circumstances where timely attention might have prevented a loss. The Caremark standard essentially negates liability for the first scenario when the decision-making process is conducted in good faith. Liability under the Caremark prong only arises when a board willfully ignores the necessity of monitoring and supervising any reporting or control systems, or completely fails to install any such systems.

Australia

The case of *Australian Securities and Investments Commission v Healey* (ASIC v Healey) has provided the approach by which the Court decides on the liability of the Independent Director through the core principles of duty of care, skill, and diligence, which are expected of company directors. The case recognised that the approval of financial statements is not a mere formality. The court emphasised that directors still have a personal responsibility to carefully consider the information that is provided to them, even if they rely on auditors or expert consultants. This

ruling establishes a clear position: delegation of responsibility does not equate to a delegation of liability.

The case sets a dual-limbed test for the discharge of the duty of care. Firstly, the directors must act with the reasonable diligence and competence that is expected of a reasonable man, and secondly, directors are not privy to being exempt from examining the financial statements but are rather required to stay aware of any potential error which may harm the interests of the company. The ruling also takes into account broader policy concerns about upholding accountability and openness in corporate governance. Investor confidence and the smooth operation of the financial markets depend heavily on accurate financial disclosure. The accuracy of financial reporting is jeopardised when boards disregard their oversight duties, which might have significant economic repercussions.

Conclusion

In a nutshell, a transparent, accountable, and harmonious corporate governance structure is largely shaped by the constantly evolving framework controlling the duties, liabilities, and powers of directors. Relevant judicial interpretations and comprehensive statutory provisions under the Companies Act, 2013 highlight that although directors have extensive power to shape corporate strategy, this independence is always limited by fiduciary duties and the need for due diligence. As curators of objective oversight, independent directors are thereby protected against arbitrary legal proceedings, strengthening an ethical governance culture. The project clarifies the complex matrix of categorisation, rights, duties, liabilities, and powers of directors, therefore strictly aligning with SDGs 8 and 16—Decent Work & Economic Growth and Peace, Justice, and Strong Institutions, respectively. Such analytical clarity promotes a balanced regulatory framework that combines strong accountability with strategic adaptability and reduces the possibility of arbitrary prosecutions. The ensuing business environment promotes steady economic expansion and thorough stakeholder participation, guaranteeing that the decision-making procedure stays open, fair, and just. Stronger institutional structures and sustainable business practices are made possible by the dynamic interaction between judicial wisdom and legislative purpose.