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CORPORATE GOVERNANCE AND DIRECTORS' DUTIES IN INDIA: A CRITICAL ANALYSIS OF FIDUCIARY OBLIGATIONS, ACCOUNTABILITY MECHANISMS, AND EMERGING CHALLENGES UNDER THE COMPANIES ACT 2013

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ABSTRACT

This research paper undertakes a comprehensive and critical analysis of corporate governance frameworks and directors' fiduciary duties under Indian corporate law, with particular emphasis on the transformative provisions introduced by the Companies Act 2013. Corporate governance, as a system of rules, practices, and processes by which companies are directed and controlled, occupies the centrepiece of modern commercial jurisprudence. The paper examines the doctrinal foundation of the corporate personality, the evolving standards of fiduciary conduct expected of directors, the mechanisms for shareholder protection, and the interplay between regulatory obligations and managerial autonomy. Drawing on landmark judicial precedents from India and comparative jurisdictions including the United Kingdom and the United States, the paper argues that while the Companies Act 2013 represents a significant legislative stride, the enforcement mechanisms and adjudicatory infrastructure remain inadequate to fully realise the statute's reformative objectives. The paper further evaluates mandatory corporate social responsibility under Section 135, the role of independent directors, class action suits, and the insolvency framework as it intersects with corporate accountability. The analysis reveals systemic lacunae in minority shareholder protection, inadequate deterrence for white-collar corporate misconduct, and the persistent agency problem between ownership and management. The paper concludes with concrete legislative and policy suggestions aimed at strengthening India's corporate governance architecture in alignment with international best practices. The paper is approximately twenty pages in length and employs OSCOLA citation style throughout.

KEYWORDS: *Corporate Governance, Directors' Fiduciary Duties, Companies Act 2013, Minority Shareholder Protection, Corporate Social Responsibility, Agency Problem, Independent Directors, NCLT, Corporate Personality, Insolvency and Bankruptcy Code, OSCOLA, Salomon Principle.*

I. INTRODUCTION

The corporation, as a legal institution, stands at the intersection of private ordering and public regulation. Since the seminal pronouncement of the House of Lords in *Salomon v Salomon & Co Ltd*[1] which firmly established the principle of separate corporate personality, the law has grappled with reconciling the autonomy of the corporate entity with the need for accountability of those who control its affairs. The modern corporation defined under Section 2(20) of the Companies Act 2013 as a company incorporated under the Act[2] is no longer merely a vehicle for private wealth creation. It is a social institution whose functioning has profound implications for shareholders, creditors, employees, consumers, and the broader public.[2] The corporate form has become the dominant vehicle for economic activity in India, with over 1.7 million active companies registered as of 2023, collectively accounting for the majority of India's formal sector output and employment.[3]

India's corporate law has evolved through successive legislative phases from the Joint Stock Companies Act 1850 and the Companies Act 1913 through the landmark Companies Act 1956, which was modelled largely on the United Kingdom's Companies Act 1948, to the present Companies Act 2013. The 2013 Act was enacted in the aftermath of high-profile corporate scandals, most notably the Satyam Computer Services fraud of 2009, which exposed deep structural weaknesses in India's corporate governance framework. The Satyam affair described at the time as India's Enron revealed that a company with impeccable external credentials could sustain a massive accounting fraud over several years while its board, auditors, and regulators remained oblivious or complicit. The 2013 Act introduced sweeping reforms encompassing corporate governance standards, board composition, audit requirements, related party transactions, and mandatory corporate social responsibility. Yet, the questions that animate this research paper persist with considerable urgency: Are directors adequately held to their fiduciary obligations? Do minority shareholders have meaningful recourse against majority oppression? And does the existing regulatory and judicial infrastructure support effective corporate accountability?

The significance of these questions is underscored by the empirical reality that India's corporate sector, while growing rapidly, is characterised by promoter-dominated ownership structures, weak institutional investor activism, concentrated equity ownership among founding families,

[1] Salomon v Salomon & Co Ltd [1897] AC 22 (HL).
[2] Ministry of Corporate Affairs, *Annual Report 2022–23* (Government of India 2023).
[3] Companies Act 2013, s 2(20).

and an overloaded National Company Law Tribunal (NCLT). These structural features create fertile ground for governance failures that harm minority investors and erode public trust in capital markets. The collapse of major corporate groups such as Infrastructure Leasing and Financial Services (IL&FS) in 2018 and the Amtek Auto insolvency, among others, have demonstrated that governance failures continue to inflict severe economic harm despite the 2013 Act's reforms.

This paper situates these concerns within a broader theoretical framework, drawing on agency theory, stakeholder theory, and comparative corporate law scholarship to propose a more robust normative model for Indian corporate governance. The paper engages critically with the major provisions of the Companies Act 2013 that bear upon governance and accountability, evaluating their doctrinal coherence, practical effectiveness, and alignment with international standards. The analysis draws on the OECD Principles of Corporate Governance, the UK Corporate Governance Code, and comparative case law to benchmark India's framework against the best international practice.[4]

The paper proceeds as follows: Part II sets out the hypothesis. Part III outlines the research methodology. Part IV contains a review of the relevant literature. Part V constitutes the main body of analysis, examining in turn the corporate personality doctrine, directors' fiduciary duties, board composition and the independent director regime, minority shareholder protection and class action suits, mandatory corporate social responsibility, the interface with the Insolvency and Bankruptcy Code, enforcement infrastructure, and comparative perspectives. Part VI presents conclusions and suggestions for reform. The bibliography and footnotes follow in OSCOLA style throughout.

HYPOTHESIS

This paper proceeds on the following central hypothesis: *The Companies Act 2013, despite its reformative aspirations, fails to provide a sufficiently robust framework for ensuring director accountability and minority shareholder protection in India, primarily due to structural weaknesses in enforcement mechanisms, the persistence of the agency problem in promoter-dominated companies, and the inadequacy of remedial jurisprudence.*

[4] Organisation for Economic Co-operation and Development, *G20/OECD Principles of Corporate Governance 2023* (OECD Publishing 2023).

The sub-hypotheses which flow from this central thesis are as follows. First, that the fiduciary duties codified under Section 166 of the Companies Act 2013 are insufficiently precise and inadequately enforced compared to comparable common law jurisdictions, in particular because of the absence of a statutory business judgment rule and the lack of clarity on the prioritisation of competing stakeholder interests. Second, that the mandatory independent director regime, while laudable in principle, is rendered ineffective in practice by the absence of genuine independence in selection processes and the inadequacy of oversight capacity. Third, that minority shareholders continue to face substantial barriers to effective legal recourse despite the introduction of class action suits under Section 245, owing to procedural complexity, high costs, and NCLT capacity constraints. Fourth, that mandatory corporate social responsibility under Section 135, though representing a significant policy innovation, introduces theoretical and practical tensions into the normative structure of corporate law that the statute does not satisfactorily resolve. Fifth, that enforcement of corporate governance norms in India suffers from a structural deficit arising from the fragmentation of regulatory authority, inadequate investigative capacity, and prolonged adjudicatory timelines.

RESEARCH METHODOLOGY

This paper adopts a doctrinal and comparative legal research methodology. The doctrinal analysis involves a systematic examination of the statutory provisions of the Companies Act 2013 and its amendments, subordinate legislation including the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 and the Companies (Appointment and Qualification of Directors) Rules 2014, and judicial decisions of the Supreme Court of India, High Courts, the National Company Law Tribunal, and the National Company Law Appellate Tribunal. The analytical framework is augmented by secondary legal scholarship comprising monographs, law review articles, working papers, and policy reports from Indian and international sources.

The comparative dimension draws upon the corporate law frameworks of the United Kingdom, principally the Companies Act 2006 and the UK Corporate Governance Code 2018, the United States, particularly the Delaware General Corporation Law, the Revised Model Business Corporation Act, and the extensive case law of the Delaware Court of Chancery, and the international standards articulated by the OECD Principles of Corporate Governance 2015 and the G20/OECD Principles of Corporate Governance 2023. The comparative approach enables the identification of best practices and points of divergence that illuminate the specific

challenges facing Indian corporate governance.

The methodology is explicitly normative in that it not only describes the state of the law but also evaluates it against the standards of accountability, transparency, investor protection, and stakeholder welfare that are broadly accepted in international corporate governance discourse. Primary legal sources are cited in OSCOLA style throughout. The paper does not rely on empirical data collection or fieldwork; however, it draws on reported empirical studies, NCLT annual reports, SEBI enforcement data, and Ministry of Corporate Affairs statistics to contextualise the doctrinal analysis and ground its normative claims in empirical reality.

The scope of the paper is limited to company law as applicable to companies incorporated under the Companies Act 2013, with particular focus on listed public companies and unlisted public companies of economic significance. The paper does not address in detail the governance of limited liability partnerships, one-person companies, or small private companies, except where comparative reference illuminates broader analytical points. The paper also does not purport to provide a comprehensive treatment of all provisions of the Companies Act 2013; the focus is on those provisions that bear most directly upon the governance and accountability themes identified in the hypothesis.

LITERATURE REVIEW

The academic literature on corporate governance and directors' duties is vast, multidisciplinary, and contested. This section reviews the most significant contributions that inform the present analysis, organised thematically into foundational scholarship, Indian corporate law scholarship, comparative corporate law, and empirical governance research.

A. Foundational Scholarship on the Corporate Form and Agency Problem

The foundational text for any discussion of corporate governance is Berle and Means' seminal work, *The Modern Corporation and Private Property* (1932),[4] which identified the separation of ownership and control as the defining structural feature of the modern corporation. Berle and Means observed that as corporations grew in size and complexity, managerial control became increasingly divorced from ownership, giving rise to the agency problem that continues to define corporate law scholarship nearly a century later.[5] Their diagnosis that dispersed

[5] Reinier Kraakman and others, *The Anatomy of Corporate Law* (3rd edn, OUP 2017).

shareholders are structurally incapable of monitoring professional managers established the intellectual foundation for the entire field of corporate governance research. Jensen and Meckling formalised this insight in their landmark 1976 article,[11] articulating agency costs as the central economic problem of corporate organisation and identifying monitoring, bonding, and residual loss as the three components of total agency costs. Their framework has proven extraordinarily durable as a lens for evaluating the efficiency of corporate law rules.[6]

Kraakman and others, in their comparative anatomy of corporate law,[10] argue that corporate law across jurisdictions primarily serves the function of constraining agency costs through a combination of regulatory, fiduciary, and market mechanisms. They identify three principal agency relationships in the corporation: between shareholders and managers, between controlling shareholders and minority shareholders, and between shareholders collectively and other stakeholders such as creditors and employees. Each of these relationships generates distinct governance problems that require distinct legal responses. Their taxonomy provides the conceptual framework within which this paper analyses the Companies Act 2013's governance provisions.[7]

B. Indian Corporate Law Scholarship

Varottil's path-breaking work on the evolution of Indian corporate law[16] traces the trajectory from colonial transplant to indigenous development, arguing persuasively that Indian corporate law has progressively developed autochthonous features that reflect local ownership patterns and governance realities. He identifies the promoter-dominated corporate structure in which a founding family or controlling shareholder group holds a majority or near-majority stake and exercises effective managerial control as the most significant variable distinguishing Indian corporate governance from Anglo-American models premised on dispersed ownership. This structural insight is critical to the present paper's analysis of the independent director regime and minority shareholder protection. Varottil argues convincingly that governance rules designed for the Berle-Means corporation of dispersed ownership produce perverse outcomes when applied to promoter-dominated companies, where the primary governance problem is not manager-shareholder conflict but rather controlling shareholder-minority shareholder conflict.[8]
Balasubramanian's empirical research on corporate boards in India provides important data on

[6] Adolf A Berle and Gardiner C Means, *The Modern Corporation and Private Property* (Harcourt 1932).
[7] Michael C Jensen and William H Meckling, 'Theory of the Firm' (1976) 3 *Journal of Financial Economics* 305.
[8] Umakanth Varottil (n 5).

the composition, functioning, and effectiveness of boards in listed Indian companies. His findings reveal significant gaps between the formal compliance with board composition requirements and the substantive quality of board oversight, particularly in companies with concentrated promoter ownership. His work informs the present paper's critique of the independent director regime and supports the hypothesis that formal compliance does not guarantee substantive governance quality.[9]

C. International Standards and Comparative Scholarship

The OECD Principles of Corporate Governance, revised in 2015 and updated in 2023,[10] set the international benchmark against which domestic governance frameworks are measured.[11] The Principles emphasise five core pillars: ensuring the basis for an effective corporate governance framework; shareholder rights and equitable treatment; institutional investors, stock markets, and other intermediaries; the role of stakeholders in corporate governance; disclosure and transparency; and the responsibilities of the board. India's endorsement of these Principles as a G20 member creates a normative expectation of alignment that is evaluated in this paper. The comparative law scholarship of Davies and Worthington on English company law provides a rigorous doctrinal baseline for comparison with the Indian framework, particularly in relation to directors' duties and shareholder remedies.[12]

D. Directors' Duties: Doctrinal Scholarship

Lim's analytical framework for directors' fiduciary duties[13] offers a rigorous doctrinal foundation for understanding the duty of loyalty, the duty of care, and the business judgment rule as distinct but interrelated components of a comprehensive fiduciary regime. His work is particularly relevant to the analysis of Section 166 of the Companies Act 2013, which codifies directors' duties in India for the first time. The early English case of *Re City Equitable Fire Insurance Co Ltd*[14] established the common law standard of care for directors at the low threshold of subjective skill and intermittent attention, a standard that has been progressively elevated by legislative reform and judicial development in the UK to an objective standard

[9] N Balasubramanian, 'Corporate Governance and Stewardship' (2013) 38 *Economic and Political Weekly* 46.
[10] OECD, G20/OECD Principles of Corporate Governance 2023 (OECD Publishing 2023) 9.
11 OECD (n 7).
[12] Paul Davies and Sarah Worthington, *Gower's Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016).
[13] Ernest Lim, 'Directors' Fiduciary Duties: A New Analytical Framework' (2013) 129 Law Quarterly Review 242, 244.
[14] *Foss v Harbottle* (1843) 2 Hare 461.

requiring the care, skill, and diligence of a reasonably diligent person with the general knowledge, skill, and experience reasonably expected of a person carrying out the director's functions, supplemented by the director's own particular knowledge, skill, and experience. The extent to which Section 166 of the Indian Act has internalised this elevated standard is a central question examined in Part V below.[15]

MAIN BODY OF ANALYSIS

A. The Doctrine of Corporate Personality and Its Limits

The principle of corporate personality, as established in *Salomon v Salomon & Co Ltd*[1] and incorporated into the Companies Act 2013, confers upon a registered company a legal existence distinct from its members. This principle is the bedrock upon which the entire edifice of corporate law is constructed, enabling limited liability, perpetual succession, capacity to hold property, sue and be sued, and enter into contracts in the company's own name. The House of Lords' ruling in *Salomon* was revolutionary in its insistence on the strict separation of the company from its sole beneficial owner, even where the company was a mere device for the owner's business. The principle has been consistently applied by Indian courts and is now given statutory expression in Sections 9 and 11 of the Companies Act 2013.

However, the doctrine of separate corporate personality is not without its limits. Indian courts have developed the doctrine of 'lifting the corporate veil' to prevent the abuse of the corporate form for fraudulent or illegal purposes, to give effect to statutory obligations that would otherwise be frustrated by the corporate structure, and where the company is a mere sham or facade. The conditions under which the veil will be lifted remain doctrinally unsettled, with courts applying a range of tests including the agency test, the fraud or improper purpose test, and the group enterprise theory. The Companies Act 2013 contains several provisions that effectively pierce the corporate veil, including Section 339 on fraudulent trading, Section 340 on wrongful trading, and Section 447 on the offence of fraud, each of which imposes personal liability on those responsible.

The tension between the principle of separate legal personality and the demands of corporate accountability is a recurring theme in corporate law jurisprudence. A doctrinally coherent framework for veil-lifting requires a careful calibration between the need to prevent abuse and

[15] Ernest Lim, 'Directors' Fiduciary Duties' (2013) 129 *Law Quarterly Review* 242.

the imperative to preserve the commercial utility of the corporate form. Excessive veil-lifting deters legitimate business incorporation by eliminating the predictability of limited liability; insufficient veil-lifting enables the corporate form to be used as a shield against legitimate claims. Indian courts have not always achieved this balance with consistency, and there is a case for legislative clarification of the circumstances in which personal liability will be imposed on those who control companies.

B. Directors' Fiduciary Duties: Codification and Its Challenges

Section 166 of the Companies Act 2013 codifies for the first time a statutory statement of directors' duties.[12] Prior to 2013, directors' duties in India were governed entirely by common law principles inherited from the English courts and by equitable principles implied from the director's fiduciary relationship with the company. The codification represents a significant jurisprudential step that brings India closer to the approach adopted in the UK Companies Act 2006, Part 10 of which codified the general duties of directors following the Law Commission of England and Wales' extensive review. The decision to codify reflects the legislature's judgment that the common law duties were insufficiently accessible and predictable for directors and companies, and that a clear statutory statement would strengthen the governance framework.

Section 166 imposes a range of duties on every director. The director must act in accordance with the articles of association of the company; must act in good faith in order to promote the objects of the company for the benefit of its members as a whole; must act in the best interests of the company, its employees, the shareholders, the community, and for the protection of the environment; must exercise duties with due and reasonable care, skill, and diligence, and exercise independent judgment; must not involve in a situation in which they may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company; must not achieve or attempt to achieve any undue gain or advantage either for themselves or for their relatives, partners, or associates; and must not assign their office to any other person.

This formulation raises several significant analytical problems. First, the multifaceted duty to act in the best interests of the company, its employees, shareholders, the community, and the environment introduces an inherently pluralistic conception of the director's obligations that sits uneasily with the predominantly shareholder-centric structure of the rest of the Act. When the interests of shareholders, employees, and the community diverge as they frequently do in

decisions about plant closures, environmental expenditure, or dividend policy Section 166 provides no guidance on the order of priority that directors should observe. This creates uncertainty that may lead to inconsistent judicial application and may, paradoxically, reduce rather than enhance director accountability by enabling directors to justify almost any decision by reference to one or another of the multiple interests they are required to serve.

Second, and most critically, Section 166 does not articulate a business judgment rule that would protect directors who make informed, good-faith, disinterested business decisions from personal liability for adverse outcomes. The business judgment rule, well established in Delaware corporate law and progressively developed in English courts, reflects the judicial recognition that courts are poorly placed to second-guess complex business decisions made under conditions of uncertainty, and that excessive judicial intervention would deter the entrepreneurial risk-taking that drives economic growth. The early common law standard in *Re City Equitable*[16] was already relatively permissive of managerial error; the business judgment rule makes this permissiveness explicit and principled. The absence of such a rule in the Companies Act 2013 creates the risk of judicial hindsight bias, where courts evaluate the quality of a business decision by reference to its outcome rather than the information and process available to the director at the time of the decision. This is a significant structural weakness of the Indian statutory framework.[17]

Third, the enforcement of Section 166 in practice is heavily dependent on the willingness and capacity of the NCLT to adjudicate complex fiduciary duty claims. The NCLT's caseload is heavily dominated by insolvency proceedings under the IBC, leaving limited bandwidth for the adjudication of fiduciary duty claims. As a result, breaches of directors' duties often go unaddressed, and the deterrent effect of the statutory codification is substantially diminished. The paper argues that dedicated corporate governance benches within the NCLT, staffed by members with specialist expertise in company law, are essential to translate the normative aspirations of Section 166 into practical accountability.

C. Board Composition and the Independent Director Regime

The Companies Act 2013 mandates that listed public companies and specified other categories

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[16] *Re City Equitable Fire Insurance Co Ltd* [1925] Ch 407 (CA).
[17] Umakanth Varottil, 'The Evolution of Corporate Law in Post-Colonial India: From Transplant to Autochthony' (2016) 31 American University International Law Review 253, 259.

of companies appoint independent directors constituting at least one-third of their board.[18] The SEBI LODR Regulations[19] go further, requiring that the proportion of independent directors rise to at least one-half where the chairperson is a non-executive director who is not a promoter or related to promoters, and to at least one-half in all other cases. The Act also mandates the establishment of audit committees, nomination and remuneration committees, and stakeholder relationship committees with specified compositions that include independent directors. These requirements reflect the international consensus that independent board oversight is a necessary condition for effective corporate governance.

The independent director regime is, however, beset with structural weaknesses that undermine its effectiveness in the Indian context. The most fundamental problem is that the selection of independent directors is in practice controlled by promoter shareholders, who use their voting power to ensure the appointment of directors who are personally or professionally connected to them and unlikely to challenge their authority. The statutory definition of 'independence' in Section 149(6) focuses on formal criteria absence of financial relationships, commercial relationships, and family connections with the company and its promoters within a specified period but does not capture the full range of social, professional, and relational ties that may compromise genuine independence in the Indian corporate context. Research on Indian boards consistently finds that independent directors are frequently former colleagues, friends, or business associates of the promoter family, nominally satisfying the formal independence criteria while lacking substantive independence.

The Satyam scandal[20] powerfully illustrated these weaknesses. Despite having a board that formally complied with all applicable independent director requirements, including independent directors of national and international distinction, Satyam Computer Services was able to sustain a massive accounting fraud involving the fabrication of cash balances exceeding Rs 7,000 crore for several years. The independent directors either failed to detect the fraud or, if they were aware of irregularities, failed to act upon them. This case demonstrates that formal compliance with board composition requirements is not sufficient to guarantee substantive governance quality, and that the independent director regime requires both structural reform and a change in the culture of board oversight.

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[18] Companies Act 2013 (India), s 149.
[19] SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, reg 17.
[20] *Satyam Computer Services Ltd v Union of India* WP No 7347/2009 (Andhra Pradesh High Court).

The Companies Act 2013 introduced the concept of the 'Data Bank' for independent directors and mandatory online proficiency self-assessment tests, steps in the right direction but insufficient to address the fundamental problem of promoter-controlled selection. International best practice, as reflected in the UK's Nomination Committee guidance, the Singapore Code of Corporate Governance, and the OECD Principles, increasingly favours institutional investor participation in director nomination processes, skills matrix-based selection, and formal board evaluation as mechanisms for ensuring that boards have both the independence and the competence to exercise meaningful oversight.

D. Minority Shareholder Protection and Class Action Suits

The protection of minority shareholders is a central concern of corporate law, arising from the structural reality that the majority controls the company's decision-making machinery. The traditional rule in *Foss v Harbottle* held that the proper claimant in an action in respect of a wrong alleged to be done to a company is the company itself, and that individual shareholders have no standing to bring a claim on the company's behalf. While this rule serves important policy functions preventing a multiplicity of suits and preserving the majority's right to make commercial decisions for the company it can leave minority shareholders without effective remedies against the majority's abuse of corporate power, particularly in companies where the majority also controls the decision whether to bring proceedings on the company's behalf.

The Companies Act 2013 provides several remedies for minority shareholders. Section 241 enables any member of a company to apply to the NCLT for relief against the conduct of the company's affairs in a manner prejudicial to the interests of the company or its members. Section 242 empowers the NCLT to make wide-ranging orders including regulation of the company's affairs, restriction on transfer of shares, termination of agreements, purchase of shares by other members or by the company, and removal of directors. These provisions represent a significant evolution from the Companies Act 1956's oppression and mismanagement remedy. The most innovative addition is Section 245, which introduces class action suits for the first time in Indian corporate law,[9] enabling a minimum number of members or depositors to seek orders against the company or its management, including orders restraining the company from acting contrary to the memorandum or articles, orders declaring any resolution void, damages or compensation, and orders for audit of the company's accounts. Despite its normative significance, Section 245 has been rarely invoked in practice since the Companies Act 2013 came into force. Several factors explain this underutilisation. The

threshold for bringing a class action requiring application by at least one hundred members or members holding at least ten percent of the paid-up share capital for companies other than banking companies is high by international standards, particularly for retail investors in large listed companies. The costs of litigation before the NCLT are substantial, the delays are long, and the outcome uncertain. Unlike in the United States, where plaintiff class action attorneys have a strong financial incentive to pursue securities and corporate governance litigation on a contingency fee basis, India's legal profession does not yet have a well-developed plaintiff bar with the resources and expertise to pursue complex class actions on behalf of minority shareholders. Furthermore, retail investors in India remain largely uninformed about their legal rights and remedies, and investor protection organisations lack the financial and human resources to provide effective support.

E. Mandatory Corporate Social Responsibility

Section 135 of the Companies Act 2013 mandates that companies meeting specified thresholds of net worth (INR 500 crore or more), turnover (INR 1000 crore or more), or net profit (INR 5 crore or more in the immediately preceding financial year) spend at least two percent of their average net profits over the preceding three financial years on corporate social responsibility activities.[21] India is among the very few countries in the world to impose mandatory CSR expenditure by statute; most jurisdictions treat CSR as a matter of voluntary corporate commitment or regulatory disclosure. The provision has attracted significant academic debate about its theoretical foundations, its relationship with directors' fiduciary duties, and its effectiveness as a mechanism for social welfare delivery.

The theoretical objection to mandatory CSR draws on the shareholder primacy tradition and Milton Friedman's famous argument that the only social responsibility of business is to increase its profits within the rules of the game. On this view, mandatory CSR expenditure constitutes an illegitimate tax on shareholders, introduces political and social considerations into the domain of business management, and potentially reduces the efficiency of both business and welfare provision by diverting resources from their highest-value uses. The counter-argument, more consistent with stakeholder theory and the social licence to operate concept, holds that corporations benefit from the social, environmental, and institutional infrastructure in which they operate and are therefore appropriately required to contribute to its maintenance and

[21] Companies Act 2013 (India), s 135(1).

enhancement. On this view, mandatory CSR is not a tax on shareholders but a reflection of the corporation's incomplete internalisation of the costs it imposes on society and the environment.[22]

The Companies (Amendment) Act 2017 strengthened the disclosure and compliance requirements for CSR, introducing mandatory disclosure of CSR policy in the Board's Report and on the company's website, and requiring the composition of a CSR Committee.[23] The Companies (Amendment) Act 2020 further amended the CSR provisions to require that unspent CSR amounts be transferred to specified funds within defined timelines, addressing the problem of widespread non-compliance that had been observed in the early years of the mandate. Despite these strengthening measures, monitoring the quality and impact of CSR expenditure remains a significant challenge, and there is limited evidence that mandatory CSR has produced better social welfare outcomes than voluntary CSR in comparable economies.

F. Corporate Governance and the Insolvency and Bankruptcy Code 2016

The Insolvency and Bankruptcy Code 2016 constitutes a landmark reform in Indian commercial law, introducing a time-bound corporate insolvency resolution process (CIRP) designed to maximise the value of distressed assets and resolve insolvency in a predictable and efficient manner.[24] The IBC has significant corporate governance implications, as it fundamentally alters the incentive structure facing directors of financially distressed companies. Under the pre-IBC regime, directors of insolvent companies had limited incentive to initiate insolvency proceedings promptly, as doing so would result in the loss of control. The IBC retains the suspension of the board's powers upon initiation of the CIRP, replacing the board with a resolution professional, but introduces the concept of the moratorium and the committee of creditors as mechanisms for preserving asset value during the resolution process.[25]

The IBC's governance implications extend beyond the insolvency process itself. The possibility of being subjected to the CIRP, and the prospect of personal liability for fraudulent trading, wrongful trading, and preferential transactions, creates an incentive for directors to maintain

[22] Milton Friedman, 'The Social Responsibility of Business is to Increase its Profits' (1970) *NYT Magazine*.
[23] Companies (Amendment) Act 2017 (India), s 21.
[24] Insolvency and Bankruptcy Code 2016 (India), s 53.
[25] Insolvency and Bankruptcy Code 2016.

governance standards even in anticipation of financial distress. The IBC's framework for investigating the conduct of directors prior to insolvency, including through the powers granted to resolution professionals and the NCLT, represents a significant extension of director accountability that complements the ex ante governance framework of the Companies Act 2013.[26]

However, the interaction between the Companies Act 2013 and the IBC raises complex questions of jurisdictional priority and normative coherence. Where a corporate resolution plan under the IBC affects the rights of minority shareholders or requires the removal of directors who may be subject to ongoing proceedings under the Companies Act, the two statutory frameworks can produce conflicting outcomes. The Supreme Court of India has addressed some of these tensions in its jurisprudence on the IBC, but significant uncertainties remain. Greater statutory coordination between the two regimes perhaps through a comprehensive consolidating statute would enhance legal certainty and reduce the scope for strategic litigation.[27]

G. Enforcement Infrastructure: Regulatory Fragmentation and Capacity

The effectiveness of any corporate governance framework is ultimately contingent upon the quality and consistency of enforcement. In India, the enforcement of corporate law norms occurs through multiple channels: the NCLT and NCLAT, the Serious Fraud Investigation Office (SFIO), the Securities and Exchange Board of India (SEBI), the Reserve Bank of India in the case of banking companies, the Competition Commission of India in respect of merger-related governance issues, and the criminal justice system for offences under the Companies Act 2013. Each of these channels has distinct jurisdictional scope, institutional culture, and capacity, and their interactions are not always coherent.[28]

The NCLT, established under the Companies Act 2013 as the principal adjudicatory body for corporate disputes, has experienced a dramatic increase in caseload since the enactment of the IBC.[18] The NCLT Annual Report 2022-23 recorded over 20,000 pending cases across its various benches, with a significant proportion comprising IBC-related matters. This has created a structural bottleneck that affects the quality and timeliness of adjudication across all

[26] Re IL&FS Group Companies.
[27] Tata Consultancy Services Ltd v Cyrus Investments Pvt Ltd (2021) 9 SCC 449.
[28] National Company Law Tribunal, *Annual Report 2022–23* (NCLT 2023).

categories of corporate law disputes, including governance-related matters under Sections 241-246. The appointment of additional technical and judicial members, the creation of dedicated benches with specialist expertise, and investment in digital infrastructure are necessary to address this capacity deficit.[29]

SEBI's enforcement record in corporate governance matters has been more active, particularly in relation to disclosure violations, related party transactions, and insider trading. SEBI's powers under the Securities and Exchange Board of India Act 1992 and the LODR Regulations to issue show cause notices, conduct inspections, impose penalties, and seek disgorgement of ill-gotten gains provide a more agile enforcement toolkit than the NCLT litigation route. However, SEBI's jurisdiction is confined to listed companies, leaving the governance of a large number of unlisted public and private companies outside its supervisory ambit.[30]

H. Related Party Transactions: A Critical Governance Challenge

Related party transactions (RPTs) transactions between a company and its directors, promoters, or entities in which they have an interest represent one of the most significant and persistent governance challenges in the Indian corporate landscape. The promoter-dominated ownership structure of most listed Indian companies creates substantial opportunities and incentives for the extraction of value from the company through RPTs that are priced on terms favourable to the controlling shareholder rather than the company. The Companies Act 2013 introduced enhanced disclosure and approval requirements for RPTs, including mandatory audit committee approval, board approval, and shareholder approval through ordinary resolution for transactions exceeding specified thresholds.[31]

Despite these requirements, academic research and regulatory enforcement actions suggest that RPT abuse continues to be a significant problem in Indian listed companies. The structural weakness is that shareholder approval of RPTs is typically determined by the vote of the very promoters who benefit from the transactions, since controlling shareholders are not required to abstain from voting on transactions in which they have an interest (subject to limited exceptions). The SEBI LODR Regulations have progressively strengthened the RPT framework, most recently through the 2021 amendments which significantly expanded the

[29] Securities and Exchange Board of India Act 1992.
[30] Securities and Exchange Board of India, *Annual Report 2022–23* (SEBI 2023).
[31] Companies Act 2013, s 188.

definition of related parties and the scope of transactions requiring shareholder approval, and introduced a mandatory materiality threshold below which RPTs require only audit committee approval. These reforms represent a meaningful step forward, but the fundamental problem of promoter-controlled approval processes remains unresolved.[32]

CONCLUSION AND SUGGESTIONS

This paper has undertaken a comprehensive and critical analysis of corporate governance and directors' duties in India, demonstrating that while the Companies Act 2013 represents a meaningful and important legislative advance over its predecessor, significant structural and institutional gaps remain in the realisation of its reformative objectives. The central hypothesis advanced at the outset of this paper that the 2013 Act fails to provide a sufficiently robust framework for director accountability and minority shareholder protection has been substantially confirmed by the analysis of directors' duties, the independent director regime, minority shareholder remedies, and enforcement infrastructure.

The principal findings of the paper are as follows. First, the codification of directors' duties under Section 166, while representing a valuable statement of the normative expectations placed upon directors, is incomplete and potentially counterproductive in several respects: it omits a business judgment rule, it introduces an unresolved tension between shareholder and stakeholder interests, and it does not provide sufficiently clear guidance on the standard of care expected of directors of different levels of experience and expertise. Second, the independent director regime is formally rigorous but substantively ineffective in the promoter-dominated Indian corporate context, because the selection of independent directors is controlled by the very parties whose conduct they are meant to oversee. Third, the class action remedy under Section 245 remains largely theoretical in the absence of adequate NCLT capacity, affordable litigation procedures, and a developed plaintiff bar. Fourth, mandatory CSR under Section 135 is an innovative policy intervention but introduces theoretical tensions that the statute does not satisfactorily resolve and raises serious questions about the efficiency of mandatory expenditure as a welfare delivery mechanism. Fifth, the interaction between the Companies Act 2013 and the IBC requires greater statutory coordination. Sixth, enforcement of corporate governance norms suffers from regulatory fragmentation and inadequate adjudicatory capacity.

[32] SEBI LODR (Amendment) Regulations 2021.

Suggestions for Legislative and Regulatory Reform

On the basis of the foregoing analysis, this paper makes the following concrete suggestions for legislative and regulatory reform.

First, the Companies Act 2013 should be amended to introduce a statutory business judgment rule, modelled on comparable provisions in Delaware corporate law and consistent with the approach adopted in the UK, that protects directors who make informed, good-faith, disinterested business decisions from personal liability for adverse outcomes. The rule should require that the director was disinterested in the decision, was adequately informed, and rationally believed the decision to be in the best interests of the company. This reform would reduce judicial hindsight bias, encourage entrepreneurial risk-taking, and align India's standard with international best practice.

Second, the process for appointment of independent directors should be reformed to require mandatory institutional shareholder approval through a resolution on which promoters and their associates are required to abstain. A formal skills matrix requirement and a mandatory board effectiveness evaluation process, similar to the provisions in the UK Corporate Governance Code, would enhance the quality and competence of independent oversight. Restrictions on the total number of board memberships an independent director may simultaneously hold should be strengthened, and a minimum time commitment requirement for independent directorships should be introduced.

Third, the NCLT's capacity should be substantially expanded through the urgent appointment of additional technical and judicial members, the creation of dedicated corporate governance benches with specialist expertise in company law as distinct from insolvency law, and investment in digital case management infrastructure. Procedural reforms to Section 245 class action suits, including the introduction of opt-out class action procedures, streamlined certification, and the development of a litigation funding framework, would make this remedy more practically accessible to minority shareholders.

Fourth, the CSR framework under Section 135 should be accompanied by a clearer normative statement on the relationship between CSR obligations and directors' fiduciary duties, explicitly clarifying that CSR expenditure is part of the company's legal obligations and that directors who cause the company to comply with Section 135 in good faith are not thereby in

breach of their fiduciary duties to maximise shareholder value. Enhanced monitoring, independent evaluation, and public reporting of CSR outcomes would also improve the accountability and effectiveness of the mandate.

Fifth, a comprehensive legislative review should be undertaken to harmonise the Companies Act 2013 with the Insolvency and Bankruptcy Code 2016, addressing the jurisdictional and normative overlaps identified in this paper and providing clear guidance on the treatment of directors' conduct in the zone of insolvency. A unified corporate restructuring and governance code, as exists in several mature corporate law jurisdictions, would provide greater coherence and predictability.

Sixth, the RPT framework should be strengthened by requiring mandatory abstention by interested promoters and their associates from shareholder votes on material RPTs, introducing independent valuation requirements for all RPTs above a de minimis threshold, and empowering institutional investors to play a more active role in RPT oversight through strengthened stewardship guidelines.

In conclusion, India's corporate governance framework is at a critical juncture. The legislative architecture of the Companies Act 2013, supplemented by the SEBI LODR Regulations and the Insolvency and Bankruptcy Code 2016, provides a comprehensive formal framework that in many respects meets or approaches international standards. The enduring challenge is to close the persistent gap between formal compliance and substantive governance quality through institutional capacity building, enforcement modernisation, structural reform of the independent director regime, and targeted legislative reform of the kind proposed in this paper. Only by addressing these deep structural weaknesses can India realise the full potential of its corporate sector as an engine of inclusive, transparent, and sustainable economic development for all stakeholders.

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