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The Role of Corporate Governance in Preventing Financial Frauds in India

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ABSTRACT

Corporate governance is meant to be the first line of defence against financial fraud, yet India continues to witness large-scale corporate frauds despite an increasingly comprehensive statutory framework. This paper examines the persistent gap between formal compliance and actual accountability in Indian corporate governance, tracing the evolution of the regulatory regime from the 1992 Harshad Mehta scam and the introduction of Clause 49 through to the Companies Act, 2013, and testing that framework against four landmark episodes: the Satyam Computer Services fraud, the Tata Sons and Cyrus Mistry boardroom dispute, SEBI's enforcement action in Rakhi Trading, and the Punjab National Bank fraud. Adopting a doctrinal method, the paper studies statutory provisions, SEBI regulations and judicial pronouncements in order to identify the structural weaknesses that persist despite reform: concentrated promoter ownership that hollows out board independence, auditor dependence on the companies they audit, a National Financial Reporting Authority constrained more by capacity than by statutory power, weak whistleblower protection, chronic enforcement delays, and unaddressed conflicts of interest in the credit rating industry. A comparative analysis of the United States, the United Kingdom and Germany draws out lessons India has yet to adopt, including broader monetary incentives for whistleblowers, independent audit oversight on the model of the Public Company Accounting Oversight Board, and greater institutional investor stewardship. The paper concludes that India's difficulty is not a shortage of law but a shortage of institutions capable of enforcing it, and recommends targeted reforms to director independence, auditor rotation, whistleblower protection, fast-track adjudication and related-party transaction approval.

Keywords: *Corporate Governance, Financial Fraud, Companies Act 2013, SEBI, Independent Directors, Auditor Independence, National Financial Reporting Authority (NFRA), Whistleblower Protection, Serious Fraud Investigation Office (SFIO)*

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I. Introduction

A. Relevance of the Topic

Corporate governance is the foundation of accountability in a company. In India there is a disconnect between the law and its practice, and that gap allows financial fraud to thrive. The collapse of Satyam Computer Services in 2009 damaged investor confidence nationwide.[1] The Infrastructure Leasing and Financial Services (IL&FS) crisis of 2018 showed that even government-backed infrastructure companies are not immune.

Financial fraud is not bad for shareholders alone. It weakens confidence in markets, erodes the retirement savings of the general public, and discourages foreign investment. The regulatory system is tested when the auditors, the board and the promoters are all party to concealment. This study examines the significance of good corporate governance as the first and best line of defence against such fraud.

B. Objectives

This paper has the following objectives:

- To understand the statutory and regulatory regime governing corporate conduct in India.
- To trace the development of corporate governance norms and the influence of major scams upon them.
- To analyse the leading judicial decisions that have interpreted and applied governance standards.
- To compare the Indian framework with those of the United States, the United Kingdom and Germany.
- To identify the existing problems, vulnerabilities and loopholes in enforcement.
- To recommend specific changes in the law that would strengthen the system.

C. Scope of Research

The paper examines corporate governance as a preventive mechanism against financial fraud under Indian corporate law. It covers the provisions of the Companies Act, 2013, the SEBI regulations, the role of the Serious Fraud Investigation Office, and certain provisions of the Bharatiya Nyaya Sanhita, 2023 and the Prevention of Money-Laundering Act, 2002. The research is doctrinal. It relies on primary legal sources, that is statutes, judicial decisions and

[1] See *Union of India v. Satyam Computer Servs. Ltd.*, (2009) 148 Comp Cas 252 (CLB) (India) (C.P. No. 1 of 2009, Co. Law Bd., Principal Bench, New Delhi, Jan. 9, 2009).

committee reports, and on secondary sources such as legal journals, news reports and regulatory circulars. It does not address banking regulation or sector-specific fraud otherwise than in the context of corporate securities.

II. LEGAL BACKGROUND

A. Statutory Provisions

Several key statutes and regulations underpin India's corporate governance framework. The Companies Act, 2013 is the primary legislation.[2] It replaced the Companies Act, 1956[3] and introduced considerably more rigorous governance requirements. The following table summarises the most important provisions relevant to preventing financial fraud.

Section	Provision	Purpose
Sec. 149	Independent Directors	Ensure unbiased board oversight
Sec. 177	Audit Committee & Vigil Mechanism	Internal financial monitoring
Sec. 178	Nomination & Remuneration Committee	Control executive pay
Sec. 135	Corporate Social Responsibility	Accountability beyond profits
Sec. 447	Fraud - Punishment	Criminal liability for fraud
Sec. 245	Class Action Suits	Shareholder redress mechanism
Sec. 130-131	Reopening of Accounts	Correct fraudulent financials

Table 1: Key Provisions of the Companies Act, 2013

Source: Companies Act, 2013 (MINISTRY OF CORPORATE AFFAIRS, Government of India)

Several instruments operate beyond the Companies Act. The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 set out the governance requirements for listed companies.[4] The SEBI (Prohibition of Insider Trading) Regulations, 2015 and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 address market manipulation.[5] The Prevention of Money-Laundering Act, 2002 makes laundering the proceeds of crime an offence.[6] Criminal breach of trust, cheating

[2] The Companies Act, 2013, No. 18 of 2013, INDIA CODE (2013).
[3] The Companies Act, 1956, No. 1 of 1956, INDIA CODE (1956) (repealed 2013).
[4] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Gazette of India, pt. III sec. 4 (Sept. 2, 2015).
[5] Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, Gazette of India, pt. III sec. 4 (Jan. 15, 2015); Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, Gazette of India, pt. III sec. 4 (July 17, 2003).
[6] The Prevention of Money-Laundering Act, 2002, No. 15 of 2003, INDIA CODE (2003).

and forgery are offences under the Bharatiya Nyaya Sanhita, 2023, sections 316, 318 and 336 respectively.[7]

The Serious Fraud Investigation Office, set up by a Government of India resolution in 2003, was placed on a statutory footing by section 211 of the Companies Act, 2013.[8] It may search and seize documents, arrest a person whom it has reason to believe guilty of an offence under the Act, and refer cases for prosecution.[9] Its creation was a direct consequence of the inability of the ordinary police machinery to deal with complex corporate crime.

B. Historical Evolution

The story of corporate governance reform in India is largely one of successive crises. A committee was appointed after each major scandal, a report was prepared, and new rules were made. The cycle has repeated itself for three decades.

The Indian economy was tightly regulated before 1991 and companies had limited access to the public capital markets. Liberalisation in 1991 changed that, and Indian companies began raising funds from thousands of small investors. The first serious test of the new market came with the Harshad Mehta securities scam of 1992, in which share prices were inflated using fake bank receipts. The scam exposed the absence of an effective securities regulator, and the SEBI Act was passed in 1992 to fill that void.[10]

In 1998 the Confederation of Indian Industry published a voluntary code of corporate governance. SEBI then appointed the Kumar Mangalam Birla Committee, which reported in 1999,[11] and its recommendations were implemented as Clause 49 of the listing agreement by a SEBI circular of 21 February 2000. The original Clause 49 dealt with board composition, independent directors and the audit committee.

The Naresh Chandra Committee of 2002 examined auditor independence.[12] The Narayana Murthy Committee of 2003 strengthened Clause 49 further,[13] and the revised Clause 49 issued by SEBI circular of 29 October 2004 added certification of the financial statements by the chief

[7] The Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, ss. 316, 318, 336, INDIA CODE (2023).
[8] The Companies Act, 2013, *supra* note 2, s. 211. The Office itself was constituted by a Government of India resolution of 2 July 2003, on the recommendation of the Naresh Chandra Committee; section 211 placed it on a statutory footing.
[9] The Companies Act, 2013, *supra* note 2, ss. 212, 212(8).
[10] The Securities and Exchange Board of India Act, 1992, No. 15 of 1992, INDIA CODE (1992).
[11] KUMAR MANGALAM BIRLA COMM., SEC. & EXCH. BD. OF INDIA, REPORT OF THE COMMITTEE ON CORPORATE GOVERNANCE (1999).
[12] NARESH CHANDRA COMM., DEP'T OF CO. AFFAIRS, MINISTRY OF FIN. & CO. AFFAIRS, REPORT ON CORPORATE AUDIT AND GOVERNANCE (2002).
[13] N.R. NARAYANA MURTHY COMM., SEC. & EXCH. BD. OF INDIA, REPORT OF THE COMMITTEE ON CORPORATE GOVERNANCE (2003).

executive officer and the chief financial officer of listed companies. These changes proved insufficient. In 2009 the founder of Satyam admitted to inflating the company's accounts by more than Rs. 7,000 crore.[14] The scandal showed that compliance is not the same thing as accountability.

Table 2: Timeline of Corporate Governance Reforms in India

Year	Event / Reform	Significance
1956	Companies Act, 1956, enacted	First statutory corporate framework
1992	SEBI Act established	The Securities Market Regulator was created
1998	CII Code on Corporate Governance	First voluntary governance code
2000	Kumar Mangalam Birla Committee Report	SEBI Clause 49 was introduced
2002	Naresh Chandra Committee Report	Audit independence strengthened
2003	N.R. Narayana Murthy Committee Report	Board independence norms tightened
2009	Satyam Computers Scandal	Triggered major governance reforms
2013	Companies Act, 2013, enacted	Comprehensive governance overhaul
2018	Uday Kotak Committee Recommendations	SEBI Listing Obligations revised

Source: MINISTRY OF CORPORATE AFFAIRS, SEBI annual reports and published committee reports

The largest reform was the Companies Act, 2013. It introduced the class action, mandatory corporate social responsibility spending, a statutory definition of fraud in section 447,[15] and direct criminal liability for directors and auditors. The Serious Fraud Investigation Office was given statutory recognition, and independent directors were required to make a formal declaration of independence.

The IL&FS crisis of 2018 made the point again. A highly rated company went under, and the rating agencies had not seen its financial difficulties coming. The Uday Kotak Committee had reported in 2017, recommending changes to board composition and greater transparency,[16] and

[14] *Satyam*, *supra* note 1.
[15] The Companies Act, 2013, *supra* note 2, ss. 245, 447.
[16] UDAY KOTAK COMM., SEC. & EXCH. BD. OF INDIA, REPORT OF THE COMMITTEE ON CORPORATE GOVERNANCE (2017).

in 2018 SEBI amended the Listing Obligations and Disclosure Requirements Regulations, in part on those recommendations.[17]

III. Judicial Pronouncements

A. Landmark Case Laws

Indian courts and tribunals have done a great deal to interpret and enforce the norms of corporate governance. Four episodes are of particular importance.

i. *Union of India v. Satyam Computer Services Ltd.*

This is probably the largest corporate fraud in Indian legal history. Satyam's founder and chairman, B. Ramalinga Raju, confessed that the company's cash and bank balances had been overstated by Rs. 5,040 crore, with fictitious interest accruals and understated liabilities, bringing the total fraud to more than Rs. 7,000 crore.[18] The board had approved accounts that were wholly fabricated, and the statutory auditors, Price Waterhouse, had certified them without proper examination.

The Ministry of Corporate Affairs moved the Company Law Board and the existing board was superseded.[19] The Serious Fraud Investigation Office investigated and prepared prosecution reports. Raju and nine others were convicted in April 2015 by the Special Court for CBI Cases at Hyderabad under the Indian Penal Code and sentenced to seven years' rigorous imprisonment, with a fine of Rs. 5 crore on each of the Raju brothers.[20] SEBI separately barred Raju and others from the securities market for fourteen years and directed disgorgement with interest.[21] The case showed that promoters can be prosecuted, and that failures of governance at the board and the audit committee have consequences.

[17] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, *supra* note 4.
[18] *Satyam*, *supra* note 1.
[19] *Satyam*, *supra* note 1 (petition under ss. 388B, 397, 398, 401, 402, 403, 406 and 408 of the Companies Act, 1956).
[20] *CBI v. B. Ramalinga Raju*, C.C. No. 1 of 2010 (Spec. Ct. for CBI Cases, XXI Addl. Chief Metro. Magis., Hyderabad, Apr. 9, 2015) (India) (convictions under the Indian Penal Code, 1860, ss. 120B, 419, 420, 467, 468, 471 and 477A).
[21] Order in the Matter of Satyam Computer Servs. Ltd., SEC. & EXCH. BD. OF INDIA, WTM Order (July 15, 2014).

ii. The Tata Sons and Cyrus Mistry Dispute

This appeal raised the question of how far a promoter may control the board of a company. In October 2016 Cyrus Mistry was removed as Executive Chairman of Tata Sons. He alleged oppression and mismanagement under sections 241 and 242 of the Companies Act, 2013.[22] The National Company Law Tribunal dismissed the petition. The National Company Law Appellate Tribunal set that order aside and directed his reinstatement. The Supreme Court set aside the appellate tribunal's order and decided in favour of Tata Sons.[23] It held that the power to remove a director, including a chairman, is a legitimate instrument of corporate governance provided due process is followed, and that although minority shareholders and independent directors must have effective remedies, the court will not sit in judgment on the commercial decisions of the board.

iii. *Securities and Exchange Board of India v. Rakhi Trading (P) Ltd.*

Here the Supreme Court considered synchronised and reversal trades and the standard of proof in SEBI's enforcement proceedings. The Court held that synchronised and reversal trades in options, executed without any market rationale, are not genuine and contravene regulation 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, without proof either of an intention to manipulate or of an actual effect on the market.[24] It also confirmed that liability in SEBI's civil proceedings is established on a preponderance of probabilities and not on the criminal standard of proof beyond reasonable doubt.[25] That matters, because it allows SEBI to act on complex transactions in which direct evidence of intent is difficult to obtain.

iv. The Punjab National Bank Fraud and the Nirav Modi Extradition Proceedings

The Central Bureau of Investigation registered a first information report on 13 February 2018 alleging that Nirav Modi, the Gitanjali group and others had defrauded Punjab National Bank of about Rs. 14,000 crore. On the agency's case, letters of undertaking were allegedly issued from the bank's Brady House branch from March 2011 onwards, and roughly 1,200 more followed over about six years, without the corresponding SWIFT messages being recorded in the core banking system. The alleged irregularity was not detected by the bank's internal audit

[22] The Companies Act, 2013, *supra* note 2, ss. 241-242.
[23] *Tata Consultancy Servs. Ltd. v. Cyrus Invs. (P) Ltd.*, (2021) 9 SCC 449 (India). The matter is commonly referred to as the Tata Sons case; the Supreme Court Cases report carries it under the name of the lead appeal.
[24] *Sec. & Exch. Bd. of India v. Rakhi Trading (P) Ltd.*, (2018) 13 SCC 753 (India).
[25] *Rakhi Trading*, *supra* note 24.

or by the concurrent audit. The bank officials named in the case are accused and have not been convicted, and Nirav Modi has not been tried in India.

The Enforcement Directorate and the Central Bureau of Investigation began proceedings, and India sought Nirav Modi's extradition from the United Kingdom. District Judge Goozee ruled in favour of extradition on 25 February 2021, the Secretary of State ordered extradition in April 2021, and the High Court dismissed the appeal in 2022; he has not yet been surrendered.[26] The episode shows that corporate governance is not a matter for the boardroom alone but must extend to operational controls, information systems and transaction monitoring at every level.

B. Emerging Judicial Principles

Taken together, these matters establish several propositions. Neither the chairman nor the promoter is exempt from legal accountability, and the regulator may look through a transaction that has no commercial rationale.[27] Directors may be held responsible where they fail to discharge their duties of oversight. Statutory auditors who certify accounts they have not verified may face regulatory and criminal consequences. SEBI and the Serious Fraud Investigation Office have wide powers of investigation, disgorgement and prosecution.[28] And the burden of proof in regulatory proceedings is lower than in a criminal trial, which makes enforcement quicker.[29]

Section 447 of the Companies Act, 2013 is drawn broadly.[30] Fraud is defined as any act, omission, concealment of any fact or abuse of position committed with intent to deceive, to gain undue advantage from, or to injure the interests of, the company, its shareholders, its creditors or any other person. The definition is not confined to those who prepare the accounts, and on its terms reaches the professional who certifies them. Auditors, company secretaries and chief financial officers who certify fraudulent disclosures are therefore exposed.

IV. Comparative Analysis

A comparison with other jurisdictions reveals both the strengths and the limitations of India's corporate governance framework.

[26] *Gov't of India v. Nirav Deepak Modi* (Westminster Magis. Ct. Feb. 25, 2021) (Goozee DJ), appeal dismissed *sub nom. Modi v. Gov't of India* [2022] EWHC 2829 (Admin).
[27] *Rakhi Trading*, *supra* note 24 (the Board "can always lift the veil of such transactions to show the non-genuineness of such transactions").
[28] The Companies Act, 2013, *supra* note 2, ss. 211, 212, 212(8); *Serious Fraud Investigation Office v. Rahul Modi*, (2019) 5 SCC 266 (India).
[29] *Rakhi Trading*, *supra* note 24.
[30] The Companies Act, 2013, *supra* note 2, s. 447.

Table 3: Comparative Corporate Governance Framework in India, the USA, the UK and Germany

Parameter	India	USA	UK	Germany
Governing Law	Companies Act 2013	SOX Act 2002	Companies Act 2006	Stock Corp. Act
Regulator	SEBI / MCA	SEC	FCA	BaFin
Board Model	Unitary	Unitary	Unitary	Two-tier
Independent Directors	Min. 1/3 Board	Majority	Majority	Supervisory Board
Whistleblower Law	Vigil Mechanism (Sec. 177)	Dodd-Frank Act	PIDA 1998	GeschGehG 2019
Audit Committee	Mandatory (listed)	Mandatory	Mandatory	Mandatory
Class Action Suits	Sec. 245 (limited)	Well developed	Collective redress	KapMuG Act

Source: Compiled from OECD corporate governance reports and from MINISTRY OF CORPORATE AFFAIRS, SEC, FCA and BaFin publications

A. United States

The Sarbanes-Oxley Act of 2002 was passed in the wake of the Enron and WorldCom scandals.[31] It requires personal certification of the financial statements by the chief executive officer and the chief financial officer, and it established the Public Company Accounting Oversight Board to oversee auditors. Section 806 provides strong protection to whistleblowers.[32] The Dodd-Frank Act of 2010 reinforced this by offering monetary incentives to whistleblowers whose information leads the Securities and Exchange Commission to a successful enforcement action.[33] The Commission's annual reports to Congress on the programme record thousands of tips each year, and its cumulative awards to whistleblowers passed one billion dollars in 2021.[34]

India's reward mechanism is far narrower. SEBI inserted an informant mechanism into the SEBI (Prohibition of Insider Trading) Regulations, 2015 in September 2019, under which an informant whose original information leads to disgorgement may claim a reward, subject to a

[31] Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (codified as amended in scattered sections of 15, 18 and 28 U.S.C.).
[32] Sarbanes-Oxley Act of 2002, *supra* note 31, s. 806, 116 Stat. 745, 802 (codified at 18 U.S.C. s. 1514A).
[33] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, s. 922, 124 Stat. 1376, 1841 (2010) (codified at 15 U.S.C. s. 78u-6).
[34] U.S. SEC. & EXCH. COMM'N, ANNUAL REPORT TO CONGRESS: WHISTLEBLOWER PROGRAM (published annually). The figures are those reported by the Commission itself.

cap.[35] It is confined to insider trading and has produced few payouts, and it has no counterpart to the percentage-of-sanctions model in section 922 of the Dodd-Frank Act.

B. United Kingdom

The UK Corporate Governance Code, issued by the Financial Reporting Council, operates on a comply-or-explain basis.[36] Companies need not meet every provision, but they must state and explain any departure. This is often described as more flexible than the Indian approach, although the contrast should not be overdrawn: regulation 17 and Schedule V of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 require listed entities to report on their governance compliance and to explain non-compliance, and several of those provisions are recommendatory rather than mandatory.[37] The United Kingdom does have a strong culture of shareholder activism, and excessive executive pay packages are a regular target of institutional investors' votes. Whistleblowers are protected by the Public Interest Disclosure Act 1998.[38]

C. Germany

Germany has a two-tier board.[39] The management board runs the company and a separate supervisory board oversees it. In large companies employees are represented on the supervisory board, an arrangement governed not by the Stock Corporation Act but by the co-determination legislation.[40] This provides a structural check that the Indian unitary board does not have. Critics say that worker representation can produce groupthink and slow decision-making. In large German manufacturing companies, however, it has worked well to prevent the unchecked promoter control that is common among listed companies in India.

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[35] Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, *supra* note 5, ch. IIIA, regs. 7A-7K (inserted in September 2019).

[36] FIN. REPORTING COUNCIL, THE UK CORPORATE GOVERNANCE CODE 4 (2018). The 2018 edition is the one relied on here; it has since been superseded by the 2024 Code, which applies to accounting periods beginning on or after 1 January 2025.

[37] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, *supra* note 4, reg. 17, sch. V.

[38] Public Interest Disclosure Act 1998, c. 23 (UK).

[39] Aktiengesetz [AktG] [Stock Corporation Act], Sept. 6, 1965, BGBl. I at 1089, ss. 76, 95, as amended (Ger.).

[40] Mitbestimmungsgesetz [MitbestG] [Co-Determination Act] 1976 (Ger.); Drittelbeteiligungsgesetz [DrittelbG] [One-Third Participation Act] 2004 (Ger.).

D. Key Lessons for India

Three lessons follow from this comparison. First, financial rewards for whistleblowers work, and India's informant mechanism should be extended beyond insider trading and placed on a percentage-of-sanctions basis rather than left to the vigil mechanism alone. Second, there should be an independent body on the model of the Public Company Accounting Oversight Board to oversee auditors.[41] The National Financial Reporting Authority, which took effect from 1 October 2018, is a step in that direction; its weakness lies in capacity and in its overlap with the Institute of Chartered Accountants of India rather than in any absence of statutory power.[42] Third, institutional investors must engage more actively. Mutual funds and insurance companies in India tend to vote with management proposals without independent analysis, even though disclosure of their votes and of the reasons for them is already required of mutual funds.

V. Difficulties and Loopholes

Even after these much-needed reforms to the law, corporate fraud continues on a considerable scale in India. Several structural problems and loopholes account for it.

A. Concentrated Promoter Ownership

The ownership pattern of Indian companies is distinctive. In most large listed Indian companies a promoter family holds either a majority or a substantial minority stake, and with it control over appointments to the board, the appointment of auditors and executive compensation. Independent directors are required, but they are frequently nominated by the promoter, and their independence in fact is open to question. The G20/OECD Principles of Corporate Governance recognise that where ownership is concentrated, the substance of board independence is harder to secure than its form.[43]

Where the promoter controls both the board and the management, the internal checks that corporate governance is meant to supply have little real purchase. Recommendations of the audit committee can be reversed. Complaints by whistleblowers can be suppressed. Related-party transactions are frequently used to move funds, and are approved by the very people who profit from them.

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[41] Sarbanes-Oxley Act of 2002, *supra* note 31, s. 101 (establishing the Public Company Accounting Oversight Board).

[42] The Companies Act, 2013, *supra* note 2, s. 132. The National Financial Reporting Authority was constituted with effect from 1 October 2018.

[43] See OECD, G20/OECD Principles of Corporate Governance (rev. ed. 2023), https://doi.org/10.1787/ed750b30-en.

B. Auditor Dependence and Regulatory Gaps

Statutory auditors are appointed by the shareholders but in practice by the promoters, and the company pays their fees. That is a conflict of interest in itself. The Satyam fraud turned on cash and bank balances that the statutory auditors had not independently verified with the banks, and the failure went undetected for years.

The National Financial Reporting Authority was set up in 2018 to monitor audit quality. The Institute of Chartered Accountants of India has publicly contested the division of disciplinary jurisdiction that followed, and audit firms have challenged section 132 in the Delhi High Court without success.[44] Regulators locked in a turf dispute enforce less effectively. The Authority's real difficulty, however, is capacity and resourcing rather than statutory power. Section 132(4) allows it to investigate professional or other misconduct on its own motion or on a reference from the central government, gives it the powers of a civil court for summoning, examination on oath and the production of documents, and permits it to impose monetary penalties and to debar a member or firm from practice for up to ten years.[45]

C. Weak Whistleblower Protection

Listed companies and certain other companies must establish a vigil mechanism under section 177 of the Companies Act, 2013.[46] The protection given to those who use it remains thin. Outside the securities market there is no centralised authority to receive complaints of corporate fraud; within it, SEBI's SCORES platform and the informant mechanism under the insider trading regulations provide a route, and the latter permits confidentiality through a legal representative.[47] A monetary reward is available only for information about insider trading. Anonymity is not otherwise guaranteed, and those who raise concerns are exposed to retaliation. India has no separate whistleblower protection statute covering the private sector. The Bill introduced in Parliament in 2010 became the Whistle Blowers Protection Act, 2014, but that Act has never been brought into force, and even if notified it would apply to disclosures about central government employees and agencies rather than to the private sector.[48]

D. Enforcement Delays

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[44] *Deloitte Haskins & Sells v. Union of India*, 2025 SCC OnLine Del 641 (Feb. 7, 2025) (India) (upholding s. 132 and the National Financial Reporting Authority Rules, while directing the Authority to separate its audit quality review and disciplinary functions).
[45] The Companies Act, 2013, *supra* note 2, s. 132(4).
[46] The Companies Act, 2013, *supra* note 2, s. 177(9)-(10).
[47] Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, *supra* note 5, ch. IIIA.
[48] The Whistle Blowers Protection Act, 2014 (India) (assented to May 9, 2014; not brought into force).

Convictions for fraud are difficult and slow to obtain even when the fraud is discovered. The Serious Fraud Investigation Office and the Central Bureau of Investigation can investigate, but the cases then go to courts that are already overburdened. The Satyam case took six years, from the confession in January 2009 to the conviction in April 2015.[49] Prosecution deters less when it is delayed. Companies and their promoters know that even if they are caught the proceedings will be long, and that assets can be dissipated before a final order is made.

E. Shell Companies and Layered Structures

Shell companies remain a significant vehicle for corporate fraud, particularly through related-party transactions. The Ministry of Corporate Affairs struck off about 2.26 lakh companies under section 248 of the Companies Act, 2013 in 2017-18 for failure to file annual returns, with further tranches in 2018-19, which indicates how far the corporate form is being misused.[50] Detection, however, is reactive. By the time a shell structure is identified, the funds have usually gone offshore. The Fugitive Economic Offenders Act, 2018 has improved India's ability to trace and recover assets held abroad in large frauds,[51] but that capacity remains limited.

F. Rating Agency Failures

The IL&FS collapse exposed the failure of the credit rating agencies. The group's long-term instruments carried AAA ratings into August 2018 and were cut to default grade within weeks of the default in September 2018. Rating agencies are paid by the companies they rate. That structural conflict has been identified worldwide but has not been adequately addressed in India. SEBI has tightened disclosure norms without altering the payment model.

VI. Suggestions and Reforms

The following reforms follow from the analysis in the preceding chapters.

A. Independent Director Independence

The object must be that independent directors are independent in fact. The present system of appointment needs reform. Companies should be matched with genuinely independent directors through a random or merit-based selection process, drawing on a central database of directors maintained by SEBI or by the Ministry of Corporate Affairs. Sections 149(10) and 149(11) already limit an independent director to two consecutive terms of five years, with a three-year cooling-off period,[52] so the tightening worth considering is a shorter single term rather than a

[49] *Satyam*, *supra* note 1; *B. Ramalinga Raju*, *supra* note 20.
[50] Ministry of Corp. Affairs, Annual Report 2018-19 (India).
[51] The Fugitive Economic Offenders Act, 2018, No. 17 of 2018, India Code (2018).
[52] The Companies Act, 2013, *supra* note 2, ss. 149(10)-(11).

further restriction on re-election. Remuneration should be standardised so that there is no incentive to accommodate the promoter. The declaration of independence should be verified rather than self-certified.

B. Auditor Rotation and PCAOB-Type Oversight

Section 139(2) already requires rotation of the audit firm. No firm may be appointed or reappointed for more than two consecutive terms of five years in a listed company or a prescribed class of company, with a five-year cooling-off period, and an individual auditor is limited to a single term of five years.[53] What is worth debating is a shorter mandatory cycle, or joint audit for the largest listed companies. The National Financial Reporting Authority should be resourced to operate as the Public Company Accounting Oversight Board does,[54] with the capacity to monitor audit quality in real time, to investigate individual auditors and to impose meaningful sanctions. The present division of supervision between the Authority and the Institute of Chartered Accountants of India is confusing and dilutes accountability.

C. Whistleblower Reward Programme

Parliament should pass a dedicated Corporate Whistleblower Protection Act, building on the informant mechanism, which is at present confined to insider trading. It should offer a share of between 10 and 30 per cent of the sanctions recovered where the whistleblower's information is central to the case. It should guarantee anonymity, prohibit retaliation by employers, and provide a fast-track reinstatement procedure where retaliation occurs. SEBI should establish a dedicated whistleblower office with its own budget and staff, as the Securities and Exchange Commission has done under section 924(d) of the Dodd-Frank Act.[55]

D. Fast-Track Courts for Corporate Fraud

Fast-track courts for corporate and financial fraud should be established, and the judges of those courts should be expert in financial and company law. Where the alleged fraud exceeds Rs. 500 crore, a statutory limit of two years from charge sheet to verdict should apply. There should also be a power to freeze assets at the investigation stage, before formal prosecution, to prevent their dissipation.

[53] The Companies Act, 2013, *supra* note 2, s. 139(2).
[54] Sarbanes-Oxley Act of 2002, *supra* note 31, s. 101.
[55] Dodd-Frank Wall Street Reform and Consumer Protection Act, *supra* note 33, s. 924(d), 124 Stat. 1376, 1850 (codified at 15 U.S.C. s. 78u-7).

E. Institutional Investor Stewardship

India already has mandatory stewardship codes. SEBI issued a Stewardship Code for all mutual funds and all categories of alternative investment funds by circular of 24 December 2019,[56] and the insurance and pension regulators have issued codes for insurers and for pension funds. Mutual funds have for more than a decade been required to disclose their voting on the asset management company's website and in the annual report, with the rationale for each vote and an auditor's certification. The UK Stewardship Code, on which this recommendation was originally modelled, binds its own signatories and could not be made binding in India.[57] What is needed is therefore not a fresh disclosure obligation but enforcement of the existing Indian codes and scrutiny of the quality of the explanations given. Active institutional engagement remains one of the best safeguards against governance failure.

F. Technology in Fraud Detection

The Ministry of Corporate Affairs, SEBI and the Reserve Bank of India should build an integrated financial data platform so that regulators can detect suspicious transactions across regulated entities in real time. Anomaly-detection tools for financial statements driven by artificial intelligence are now available commercially. Their use should be made mandatory for statutory auditors, who should report anomalies to the National Financial Reporting Authority and to SEBI.

G. Related Party Transaction Reforms

Material related-party transactions require the approval of shareholders under section 188 of the Companies Act, 2013.[58] The concern is that promoter and promoter group influence over these resolutions can still prove decisive, which weakens the approval requirement in practice. The law should require the approval of a majority of the disinterested shareholders for every material related-party transaction, and the test of materiality should be defined more precisely, so that transactions which presently escape it are caught.

VII. Conclusion

Corporate governance and financial fraud go hand in hand. The stronger the governance, the less likely fraud is and the easier it is to detect. Where governance is weak, fraud flourishes, and the consequences for investors, employees and the economy can be devastating.

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[56] Sec. & Exch. Bd. of India, Circular No. CIR/CFD/CMD1/168/2019, Stewardship Code for All Mutual Funds and All Categories of AIFs (Dec. 24, 2019) (mandatory from 1 July 2020).
[57] Fin. Reporting Council, The UK Stewardship Code 2020 (2019). A revised Code has since been issued.
[58] The Companies Act, 2013, *supra* note 2, s. 188.

India has come a long way and has made real and significant strides. The Companies Act, 2013 is contemporary and extensive. SEBI's regulatory regime is among the most advanced in the emerging world. The Serious Fraud Investigation Office has investigated and prosecuted complex corporate fraud. The establishment of the National Financial Reporting Authority is a major step towards independent audit oversight.

But the divide between the law and its enforcement remains wide. Concentrated promoter ownership, the dependence of auditors on audit fees, inadequate whistleblower protection and slow courts remain fertile ground for fraud. The reforms of 2013 were necessary but not sufficient, as the IL&FS crisis, the Punjab National Bank matter and the continued proliferation of shell companies show.[59]

The comparison suggests that India has much to learn from the whistleblower reward system of the United States, the comply-or-explain culture of the United Kingdom, and the structural separation of management from oversight in Germany. Each of these models has its drawbacks, and each reflects the culture and economy in which it grew. India must find its own answers to its own problems.

Three things are crucial to the future of corporate governance in India. First, real independence, and not merely formal compliance with independence norms, on the part of directors, auditors and rating agencies. Second, consequences that are meaningful, quick enough and severe enough to deter. Third, the use of data and analytics to identify problems before they become crises. These are not revolutionary ideas. They are proven solutions, and India has the institutional infrastructure to implement them.

Corporate fraud is, in the end, a failure of governance. Corporate governance must be treated not as a compliance process but as an institution to be built, if India is to reach its goal of a ten trillion dollar economy with deep and trusted capital markets. The law sets the framework. The real work is making it operate.

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[59] See *supra* notes 26, 50 and the accompanying text.