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# Independent Directors in India

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## ABSTRACT

*Independent directors occupy a pivotal position in the contemporary framework of corporate governance in India. This paper critically examines the role, relevance, and effectiveness of independent directors under the Companies Act, 2013, read alongside the Securities and Exchange Board of India regulatory regime. The study situates the Indian framework within global corporate governance discourse, particularly the shift towards board independence as a mechanism to mitigate agency conflicts and enhance investor confidence. It analyses the statutory definition, eligibility criteria, tenure, duties, and liability of independent directors, with particular emphasis on Section 149 and Schedule IV of the Companies Act, 2013, as well as the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The paper argues that while Indian law has formally codified a robust and detailed governance architecture, substantive independence in practice remains constrained by promoter dominance, concentrated ownership structures, information asymmetry, and uneven enforcement. Judicial trends and regulatory actions reveal an ongoing tension between heightened expectations from independent directors and their exposure to legal and reputational risk. Through doctrinal analysis and policy evaluation, the study identifies gaps between form and function in board independence and assesses whether the existing framework adequately protects minority shareholders. The paper concludes with focused findings and reform-oriented suggestions aimed at strengthening appointment processes, committee effectiveness, and functional autonomy, thereby aligning the institution of independent directors more closely with its intended governance objectives.*

**Keywords:** *Independent Directors, Corporate Governance, Companies Act 2013, SEBI Regulations, Minority Shareholder Protection.*

## I. INTRODUCTION

### A. Background of the Study

Independent directors now sit at the centre of global corporate governance debates and policy instruments, because regulators see them as one of the main devices to control agency conflicts

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inside companies and to improve board level monitoring of management.<sup>3</sup> As capital markets integrate and cross border capital flows increase, investors demand that listed companies show credible independence on their boards, clear separation between oversight and execution, and transparent decision making. This global backdrop quietly shapes how Indian law makers and regulators design the regime for independent directors under the Companies Act, 2013 and the securities law framework.<sup>4</sup>

In India, post liberalisation reforms, rapid expansion of the securities market, and the shift from bank dominated finance to market based finance exposed serious weaknesses in traditional family controlled boardrooms. Committees constituted by the Securities and Exchange Board of India, starting from early corporate governance committees under Clause 49 of the Listing Agreement and more recently the Uday Kotak Committee, repeatedly treated independent directors as the main internal check on promoter power and as a shield for minority shareholders against tunnelling, related party abuse and opaque disclosure practices.<sup>5</sup> This policy choice assumes that if boards include a minimum number of persons who do not have material ties with promoters, then monitoring will improve, information to markets will become more reliable, and long term firm value will increase.

The Companies Act, 2013 represents a decisive codification of this policy preference, since it embeds the institution of the independent director directly in primary legislation rather than only in listing conditions.<sup>6</sup> Section 149 requires every listed public company to have at least one third of its board as independent directors, and prescribes that certain unlisted public companies which cross specified thresholds of paid up capital, turnover or indebtedness must appoint at least two independent directors. The Act defines independence through detailed negative criteria on pecuniary relationships, shareholding, employment links and professional connections, and it supplements these statutory tests with a Code for Independent Directors in Schedule IV that lays down expectations on professional conduct, role, functions and duties. The legislature at the same time narrows liability through section 149(12), which limits the exposure of independent and non executive directors to acts committed with their knowledge, consent or lack of diligence, signalling an attempt to balance stronger oversight with some

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<sup>3</sup> ORG. FOR ECON. CO OPERATION & DEV., G20/OECD Principles of Corporate Governance (2015), <https://www.bicg.eu/wp-content/uploads/2017/07/OECD-2015.pdf>.

<sup>4</sup> ORG. FOR ECON. CO OPERATION & DEV., Corporate Governance, <https://www.oecd.org/corporate/> (last visited Feb. 1, 2026).

<sup>5</sup> Securities & Exch. Bd. of India, Report of the Committee on Corporate Governance (Oct. 2017), [https://www.sebi.gov.in/reports/reports/oct-2017/report-of-the-committee-on-corporate-governance\\_36177.html](https://www.sebi.gov.in/reports/reports/oct-2017/report-of-the-committee-on-corporate-governance_36177.html).

<sup>6</sup> Companies Act, No. 18 of 2013, § 149(4) (India).

protection from open ended criminal and civil risk.<sup>7</sup>

The securities law layer adds another, sometimes more demanding, set of obligations. The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 stipulate that listed entities must ensure an optimal combination of executive, non executive and independent directors, cap the number of board positions an independent director may hold, require separate meetings of independent directors and mandate robust board evaluation processes.<sup>8</sup> Scholarship on Indian board independence notes that this dense regulatory framework often focuses on formal board composition and process, while the real challenge lies in how independent directors actually exercise their judgment in the shadow of promoter influence and enforcement risk.<sup>9</sup> This mismatch between form and function creates an open question whether the current design under the Companies Act, 2013 and securities regulations is capable of producing the type of independent oversight that policy makers expect.

## II. CONCEPTUAL AND THEORETICAL FRAMEWORK OF INDEPENDENT DIRECTORS

### A. Concept and rationale of independent directors

The concept of an independent director in Indian company law grows out of a simple but powerful idea. The board should contain some members who stand apart from promoters and management and who can exercise objective, disinterested judgment on corporate affairs. Section 149(6) of the Companies Act, 2013 therefore defines an independent director as a non-executive director who is not a managing director, whole-time director or nominee director and who satisfies strict tests of integrity, expertise and absence of material pecuniary relationship with the company, its promoters or its management.<sup>10</sup> This statutory definition ties independence to both status and relationships, because lawmakers assume that real monitoring will occur only when the director is structurally insulated from day-to-day control and private benefits.

At the global level, the institution of the independent director responds to classic corporate governance concerns about the separation of ownership and control. Berle and Means described

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<sup>7</sup> Institute of Company Secretaries of India, Independent Director under Companies Act, 2013 (Mar. 2020), [https://www.icsi.edu/media/filer\\_public/78/8b/788b6cf7-7e67-4131-b883-fe4292b4c475/independent\\_director\\_under\\_companies\\_act\\_2013.pdf](https://www.icsi.edu/media/filer_public/78/8b/788b6cf7-7e67-4131-b883-fe4292b4c475/independent_director_under_companies_act_2013.pdf).

<sup>8</sup> Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 17, [https://www.sebi.gov.in/legal/regulations/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015\\_37269.html](https://www.sebi.gov.in/legal/regulations/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015_37269.html).

<sup>9</sup> Vikramaditya Khanna & Umakanth Varottil, Board Independence in India: From Form to Function?, in *Independent Directors in Asia: A Historical, Contextual and Comparative Approach* 352 (Dan W. Puchniak et al. eds., Cambridge Univ. Press 2017), <https://doi.org/10.1017/9781316819180.011>.

<sup>10</sup> Companies Act, No. 18 of 2013, § 149(6) (India), [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_22\\_29\\_00008\\_201318\\_1517807327856&sectionId=49078](https://www.indiacode.nic.in/show-data?actid=AC_CEN_22_29_00008_201318_1517807327856&sectionId=49078).

how dispersed shareholders lose effective control over managers, which creates space for managerial opportunism unless countervailing checks exist.<sup>11</sup> Agency theory later formalised this by viewing managers as agents who may pursue their own objectives rather than shareholder wealth, thereby generating agency costs.<sup>12</sup> Within this theoretical frame, independent directors appear as one of the key governance mechanisms that can reduce agency costs by monitoring management, reviewing strategy, scrutinising related party dealings, and insisting on accurate disclosure to investors.

In India, the rationale takes a slightly different shape because many large listed companies remain promoter-controlled rather than widely held. Scholarly work on Indian corporate governance shows that the central agency problem is not only between dispersed shareholders and managers but also between controlling shareholders and minority investors.<sup>13</sup> When promoters dominate the board and management, they may divert value through self-dealing, preferential allotments or corporate opportunities. In such a context, independent directors are expected to serve as neutral guardians who can resist extraction of private benefits by controllers and protect minority shareholder interests, rather than merely supervise professional managers. This shift in focus from manager-shareholder conflict to controller-minority conflict explains why Indian law stresses independence from promoters so strongly.

The normative justification of independent directors therefore rests on several overlapping governance goals. First, they are meant to improve the quality of board deliberations by providing outside perspectives and professional expertise that are not tied to management careers.<sup>14</sup> Secondly, they aim to give credibility to the board's oversight of financial reporting, internal controls and risk management, particularly through key board committees like audit, nomination and remuneration, and stakeholders relationship committees. International instruments such as the G20/OECD Principles of Corporate Governance endorse the idea that boards should be able to exercise "objective judgment" and that assigning significant tasks to independent board members helps manage conflicts of interest in areas like remuneration and related party transactions.<sup>15</sup> Thirdly, independent directors are supposed to strengthen investor confidence and thereby lower the cost of capital, because investors believe that there is at least

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<sup>11</sup> Adolf A. Berle & Gardiner C. Means, *The Modern Corporation and Private Property* (Macmillan 1932), <https://archive.org/details/in.ernet.dli.2015.216028>.

<sup>12</sup> Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 *J. Fin. Econ.* 305 (1976), <https://ideas.repec.org/a/eee/jfinec/v3y1976i4p305-360.html>.

<sup>13</sup> Umakanth Varottil, *Evolution and Effectiveness of Independent Directors in Indian Corporate Governance*, 6 *Hastings Bus. L.J.* 281 (2010), <https://ssrn.com/abstract=1548786>.

<sup>14</sup> A. Ramaiya, *Guide to the Companies Act* (19th ed., LexisNexis 2020).

<sup>15</sup> Org. for Econ. Co-operation & Dev., *G20/OECD Principles of Corporate Governance* (2015), <https://www.oecd.org/corporate/principles-corporate-governance.htm>.

some internal mechanism to challenge management when needed.

### **B. Evolution of the institution of independent directors in India**

The Indian story of independent directors starts outside the statute book. Early company law under the Companies Act, 1956 did not recognise any special category of independent director, and boards remained dominated by promoters, executives and nominee directors of lenders. The idea first came through soft law and market pressure, not through binding sections. The Confederation of Indian Industry, through its 1998 document “Desirable Corporate Governance: A Code”, urged listed companies to induct a minimum number of independent, non executive directors and to separate monitoring from management.<sup>16</sup> This voluntary initiative marked the first systematic attempt to locate independence at the centre of governance debates in India, even though compliance was patchy and disclosure quality varied across firms. Regulation shifted from persuasion to obligation when the Securities and Exchange Board of India set up the Kumar Mangalam Birla Committee on Corporate Governance in 1999. The Committee’s report recommended that at least one third of the board should be composed of independent directors where the chairman is a non executive, and at least one half where the chairman is executive.<sup>17</sup> SEBI implemented these recommendations through the famous Clause 49 of the Listing Agreement in 2000, which made board independence, audit committees and governance disclosures a condition for listing on Indian stock exchanges.<sup>18</sup> Scholarship and practice often describe Clause 49 as a milestone because it moved independent directors from a purely aspirational concept to a mandatory listing requirement for most listed entities.<sup>19</sup> The emphasis however remained largely on numerical thresholds and committee structures rather than on deeper questions about information access, liability or appointment processes.

A second wave of reform followed in the early 2000s. SEBI constituted the Narayana Murthy Committee on Corporate Governance in 2002, which focused sharply on the quality and role of independent directors. Its report proposed stricter definitions of independence, detailed responsibilities of audit committees, and stronger requirements on related party transactions, all with the explicit aim of empowering independent directors as gatekeepers of shareholder

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<sup>16</sup> Confederation of Indian Indus., *Desirable Corporate Governance: A Code* (1998), <https://www.nfcg.in/UserFiles/ciicode.pdf>.

<sup>17</sup> Securities & Exch. Bd. of India, *Report of the Committee on Corporate Governance* (1999) (Kumar Mangalam Birla Comm.), [https://www.sebi.gov.in/sebi\\_data/commndocs/corpgov1\\_p.pdf](https://www.sebi.gov.in/sebi_data/commndocs/corpgov1_p.pdf).

<sup>18</sup> Securities & Exch. Bd. of India, *Circular on Corporate Governance* (Feb. 21, 2000), [https://www.sebi.gov.in/legal/circulars/feb-2000/corporate-governance\\_17930.html](https://www.sebi.gov.in/legal/circulars/feb-2000/corporate-governance_17930.html).

<sup>19</sup> Prime Database, *Corporate Governance through Clause 49*, in *Prime Directory* (2008), <https://www.primedatabase.com/Article/dir-10ar9.pdf>.

interest.<sup>20</sup> Around the same time the Ministry of Company Affairs launched a comprehensive review of company law, issued a Concept Paper on new company law in 2004 and appointed the J J Irani Committee to advise on a modern Companies Bill. The Irani Committee endorsed the need to statutorily recognise independent directors, suggested clearer criteria on independence and tenure, and underlined that company law should facilitate but not overburden competent outsiders who join boards in this capacity.<sup>21</sup> This period therefore marks a gradual migration of the independent director idea from listing contracts toward primary legislation.

The Satyam scandal in 2009 created a sudden stress test for this evolving institution. In the days preceding the promoter's confession, several independent directors resigned from the Satyam board, which triggered sharp public criticism about their effectiveness and their attentiveness to red flags.<sup>22</sup> Academic analysis of the scandal notes that the fraud occurred despite compliance with Clause 49 on paper, including the presence of reputed independent directors, which exposed the gap between formal board independence and substantive oversight.<sup>23</sup> The Satyam episode pushed regulators and policy makers to revisit liability standards, disclosure norms and the due diligence expected from non executive and independent directors, and it also caused many individuals to reconsider board positions out of fear of personal exposure.

The Companies Act, 2013 represents the first full codification of the independent director as a statutory office in India. Section 149 requires every listed public company to have at least one third independent directors and extends the requirement to certain large unlisted public companies that cross prescribed thresholds of capital, turnover or borrowings.<sup>24</sup> Section 149(6) lays down detailed independence criteria, while section 149(10) and (11) address tenure and cooling off, and section 149(12) calibrates the civil and criminal liability of independent and non executive directors. Schedule IV introduces a dedicated Code for Independent Directors, which elaborates their role in bringing an objective view to board evaluation, scrutinising performance, balancing conflicting stakeholder interests and safeguarding the interests of minority shareholders. Technical guides issued by professional bodies such as the Institute of

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<sup>20</sup> Securities & Exch. Bd. of India, Report of the SEBI Committee on Corporate Governance (2003) (N R Narayana Murthy Comm.), <https://www.nfcg.in/UserFiles/narayanamurthy2003.pdf>.

<sup>21</sup> Ministry of Co. Affairs, Govt. of India, Report of the Expert Committee on Company Law (J J Irani Comm., May 2005), <https://ibbi.gov.in/uploads/resources/May%202005%2C%20J.%20J.%20Irani%20Report%20of%20the%20Expert%20Committee%20on%20Company%20Law.pdf>.

<sup>22</sup> Tariq Ahmad, Satyam Scam in the Contemporary Corporate World (2010), <https://ssrn.com/abstract=1460022>.

<sup>23</sup> Org. for Econ. Co operation & Dev., Scandal at Satyam: Truth, Lies and Corporate Governance (Wharton Sch. case note, 2009), <https://knowledge.wharton.upenn.edu/article/scandal-at-satyam-truth-lies-and-corporate-governance/>.

<sup>24</sup> Companies Act, No. 18 of 2013, § 149(1), (4) (India), [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_22\\_29\\_00008\\_201318\\_1517807327856&sectionId=49078](https://www.indiacode.nic.in/show-data?actid=AC_CEN_22_29_00008_201318_1517807327856&sectionId=49078).

Company Secretaries of India highlight that the Act, taken together with these codes, significantly raises expectations from independent directors while trying to avoid a chilling effect through limited liability provisions.<sup>25</sup>

### **C. Corporate governance objectives and the role of independence**

Corporate governance theory links the idea of board independence directly with core objectives such as reducing agency costs, protecting investors, and sustaining market confidence. Agency theory frames managers or controlling shareholders as potential opportunists who may divert corporate resources for private benefit, unless some credible monitor stands between them and the company's assets.<sup>26</sup> In this framework, independent directors appear as a structural safeguard. They sit on the board without close pecuniary ties or managerial ambitions and so, at least in theory, they can question strategy, probe disclosures, and resist conflicted transactions with fewer personal distortions than insiders.

Global governance codes highlight this link. The G20/OECD Principles of Corporate Governance emphasise that boards should “exercise objective independent judgment” on corporate affairs, and that independence plays a special role in areas like financial reporting, remuneration, and related party transactions.<sup>27</sup> The Cadbury Report in the United Kingdom, often treated as a foundational soft law instrument, insisted that non executive and independent directors contribute to accountability by bringing balance and external judgment to the boardroom.<sup>28</sup> These instruments do not treat independence as a symbol. They instead connect it with very specific governance goals: reliable financial information, fair treatment of shareholders, and a responsible approach to risk.

In India, corporate governance objectives reflect the particular ownership structure of listed firms. Many companies remain family or promoter controlled, with concentrated shareholding and inter-locking business interests. Indian scholarship therefore stresses that the main conflict often lies between controlling shareholders and minority investors, rather than only between shareholders and managers.<sup>29</sup> Within this setting, independent directors are expected to check tunnelling, ensure fairness in related party dealings, and protect minority shareholders from

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<sup>25</sup> Indian Inst. of Corp. Affs., Technical Guide on the Provisions Relating to Independent Directors (2019), <https://www.independentdirectorsdatabank.in/img/partners/617faded32e5d.pdf>.

<sup>26</sup> Michael C. Jensen & William H. Meckling, Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure, 3 J. Fin. Econ. 305 (1976), <https://ideas.repec.org/a/eee/jfinec/v3y1976i4p305-360.html>.

<sup>27</sup> Org. for Econ. Co-operation & Dev., G20/OECD Principles of Corporate Governance 49–52 (2015), <https://www.oecd.org/corporate/principles-corporate-governance.htm>.

<sup>28</sup> Comm. on the Fin. Aspects of Corp. Governance, Report of the Committee on the Financial Aspects of Corporate Governance (Cadbury Report, 1992), <https://ecgi.global/sites/default/files/codes/documents/cadbury.pdf>.

<sup>29</sup> Umakanth Varottil, Evolution and Effectiveness of Independent Directors in Indian Corporate Governance, 6 *Hastings Bus. L.J.* 281 (2010), [https://repository.uclawsf.edu/hastings\\_business\\_law\\_journal/vol6/iss2/1](https://repository.uclawsf.edu/hastings_business_law_journal/vol6/iss2/1).

oppressive board decisions. The Companies Act, 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 both mirror these objectives when they require independent directors on audit, nomination and remuneration, and stakeholders relationship committees, precisely in those spaces where conflicts of interest are most acute.<sup>30</sup>

Independence also serves the objective of improving disclosure quality and enhancing transparency. Empirical work on Indian listed companies suggests that firms with more independent directors on their boards and audit committees tend to show better voluntary disclosure and more timely reporting.<sup>31</sup> This pattern supports the theoretical claim that independent directors, when they function properly, reduce information asymmetry between insiders and the market. Better disclosure, in turn, lowers the perceived governance risk for investors and can reduce the cost of capital. The law therefore uses independence not only to police outright abuse, but also to enhance the informational efficiency of the securities market.

### **III. LEGAL FRAMEWORK GOVERNING INDEPENDENT DIRECTORS UNDER THE COMPANIES ACT, 2013**

#### **A. Statutory definition, eligibility and independence criteria**

Section 149 of the Companies Act, 2013 places the independent director as a distinct statutory office. It requires every listed public company to have at least one third of its total number of directors as independent directors, and extends the obligation to certain classes of unlisted public companies which cross thresholds of paid up capital, turnover or borrowings.<sup>32</sup> The provision therefore converts what was earlier only a listing requirement into a core element of company law design. It treats independence not as an optional governance feature, but as part of the default structure of public corporate enterprise in India.

Section 149(6) then sets out the statutory definition of an independent director. It states that an independent director means a director other than a managing, whole-time or nominee director, who in the opinion of the Board is a person of integrity and possesses relevant expertise and experience, and who also satisfies a number of specific negative criteria.<sup>33</sup> The Act insists that

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<sup>30</sup> Securities & Exch. Bd. of India, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, regs. 17–19, [https://www.sebi.gov.in/legal/regulations/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015\\_37269.html](https://www.sebi.gov.in/legal/regulations/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015_37269.html).

<sup>31</sup> Jayati Sarkar, Subrata Sarkar & Kaustav Sen, Board of Directors and Opportunistic Earnings Management: Evidence from India, 23 *J. Accounting, Auditing & Fin.* 517 (2008), <https://doi.org/10.1177/0148558X0802300403>.

<sup>32</sup> Companies Act, No. 18 of 2013, § 149(1), (4) (India), [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_22\\_29\\_00008\\_201318\\_1517807327856&sectionId=49078](https://www.indiacode.nic.in/show-data?actid=AC_CEN_22_29_00008_201318_1517807327856&sectionId=49078).

<sup>33</sup> Companies Act, No. 18 of 2013, § 149(6) (India), [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_22\\_29\\_00008\\_201318\\_1517807327856&sectionId=49078](https://www.indiacode.nic.in/show-data?actid=AC_CEN_22_29_00008_201318_1517807327856&sectionId=49078).

such a director must not be a promoter of the company or its holding, subsidiary or associate company, and must not be related to promoters or directors of such entities. This element focuses directly on insulating the independent director from promoter influence, which is central in a promoter-driven market like India.

The definition further provides that neither the independent director nor any of his or her relatives shall have had any pecuniary relationship with the company, its holding, subsidiary or associate company, or with its promoters or directors, in the two immediately preceding financial years or the current financial year, other than remuneration as such director or transactions not exceeding a prescribed materiality threshold.<sup>34</sup> Rules under the Act specify quantitative limits for such transactions. This requirement tries to secure financial detachment so that the director does not depend on the company for significant economic benefit outside legitimate board fees. It also extends independence analysis to close family, recognising that influence often travels through relatives in closely held corporate groups.

Shareholding-based criteria tighten this further. Section 149(6) stipulates that neither the independent director nor any of his or her relatives should hold, together or singly, more than two per cent of the total voting power of the company.<sup>35</sup> This small numerical cap reflects a deliberate policy choice. Law makers wanted to ensure that an independent director does not effectively become a small but interested shareholder, since even modest blocks can be material in thinly traded or closely held companies. By capping ownership at a very low level, the statute aims to separate the independent monitoring role from any significant proprietary stake.

The provision also looks back over time. It states that the independent director, or his or her relative, must not have been a key managerial personnel or an employee of the company or its group entities in any of the three financial years immediately preceding the year of appointment.<sup>36</sup> The look-back rule in effect imposes a cooling off period. It prevents quick transformation of an insider into an “independent” outsider, which could otherwise seriously compromise the credibility of the role. Additional disqualifications cover partners or employees of firms of auditors, company secretaries in practice, cost auditors or legal and consulting firms which have had significant transactions with the company in recent years. These rules recognise

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<sup>34</sup> Companies (Appointment and Qualification of Directors) Rules, 2014, r. 5, [https://www.mca.gov.in/Ministry/pdf/CompaniesAppointmentQualificationDirectorsRules\\_ChapterXI\\_13032014.pdf](https://www.mca.gov.in/Ministry/pdf/CompaniesAppointmentQualificationDirectorsRules_ChapterXI_13032014.pdf).

<sup>35</sup> Companies Act, No. 18 of 2013, § 149(6)(d) (India), [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_22\\_29\\_00008\\_201318\\_1517807327856&sectionId=49078](https://www.indiacode.nic.in/show-data?actid=AC_CEN_22_29_00008_201318_1517807327856&sectionId=49078).

<sup>36</sup> Companies Act, No. 18 of 2013, § 149(6)(e) (India), [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_22\\_29\\_00008\\_201318\\_1517807327856&sectionId=49078](https://www.indiacode.nic.in/show-data?actid=AC_CEN_22_29_00008_201318_1517807327856&sectionId=49078).

that professional and advisory relationships can create subtle bonds of loyalty and dependence. Schedule IV to the Act supplements section 149(6) with qualitative expectations. It requires independent directors to uphold ethical standards of integrity and probity, exercise objective independent judgment on corporate affairs, and satisfy themselves on the integrity of financial information and robustness of risk management systems.<sup>37</sup> While Schedule IV does not add new disqualifications, it plays a normative role. It signals that independence is not only about the absence of specific relationships, but also about a mindset of detachment, diligence and courage to speak against management or promoters when necessary.

Judicial and regulatory developments have begun to read these criteria strictly. In *Securities and Exchange Board of India v. Kanaiyalal Baldevbhai Patel*, the Securities Appellate Tribunal emphasised that directors described as independent must, in substance, meet the statutory independence tests and cannot escape responsibility by pointing to mere designation.<sup>38</sup> SEBI enforcement orders in cases like Fortis Healthcare have also examined whether so-called independent directors had material connections with promoters or failed to question related party transactions, and have imposed penalties where they did not live up to statutory expectations.<sup>39</sup> These decisions underscore that the statutory definition and eligibility criteria under the Companies Act, 2013 are not only formal boxes to tick, but form the basis for assessing both the appointment and accountability of independent directors in India.

### **B. Appointment, tenure, removal and resignation**

Section 149 of the Companies Act, 2013 places the formal power of appointment of independent directors in the general meeting, but it expects the initiative to come from the board and its nomination function. The board identifies a person who meets the independence and qualification standards, obtains written consent, and then places the proposal before shareholders with an explanatory statement that records its opinion on suitability and independence. This design tries to blend shareholder control with board level screening of candidates.<sup>40</sup>

Schedule IV then builds a more normative layer around this basic legal mechanics. It states that the appointment process of independent directors should be independent of management, and

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<sup>37</sup> Companies Act, No. 18 of 2013, Sched. IV, cls. I-II (India), [https://upload.indiacode.nic.in/schedulefile?aid=AC\\_CEN\\_22\\_29\\_00008\\_201318\\_1517807327856&rid=11](https://upload.indiacode.nic.in/schedulefile?aid=AC_CEN_22_29_00008_201318_1517807327856&rid=11).

<sup>38</sup> Securities & Exch. Bd. of India v. Kanaiyalal Baldevbhai Patel, (2017) SAT (Mumbai), [https://sat.gov.in/english/pdf/E2017\\_JO2017134.PDF](https://sat.gov.in/english/pdf/E2017_JO2017134.PDF).

<sup>39</sup> Securities & Exch. Bd. of India, Order in the Matter of Fortis Healthcare Ltd. (Oct. 17, 2018), [https://www.sebi.gov.in/enforcement/orders/oct-2018/order-in-the-matter-of-fortis-healthcare-limited\\_40854.html](https://www.sebi.gov.in/enforcement/orders/oct-2018/order-in-the-matter-of-fortis-healthcare-limited_40854.html).

<sup>40</sup> Companies Act, No. 18 of 2013, § 149, INDIA CODE (2013).

that the explanatory statement must state that in the opinion of the board the proposed director is independent of management and meets the statutory conditions. It also insists that the appointment is formalised through a detailed letter which sets out term, expected committee roles, fiduciary duties and limits on conduct. So the Code attempts to lock in independence not only through negative criteria, but also through a more structured appointment ritual.<sup>41</sup>

The databank mechanism under section 150 and the related rules tries to widen the pool. Companies may choose independent directors from a databank of eligible and willing individuals who have registered and cleared an online proficiency test. This system seeks to break the old pattern of a small club of personal acquaintances of promoters moving from one board to another. It also pushes potential independent directors to invest in learning company law and governance norms in a more formal way.<sup>42</sup>

Practice guidance from professional bodies shows how this legal framework plays out step by step. Study material of the Institute of Company Secretaries of India emphasises preliminary checks such as Director Identification Number, scrutiny of disqualifications, proper board resolution and timely filing of e-forms with the Registrar. It treats the appointment of an independent director as a compliance event with documentary trails, not as a casual boardroom choice. This compliance heavy approach aims to reduce the risk that a defective appointment later becomes a ground to challenge board decisions.<sup>43</sup>

The statutory regime on tenure seeks to give both stability and freshness. Section 149 allows a term of up to five consecutive years for an independent director, with the possibility of one more term of up to five years, but only if shareholders approve a special resolution and the board gives proper disclosure. The provision also prescribes a cooling-off period after two consecutive terms. The idea is that independence erodes slowly when a director stays too long on the same board and becomes socially and economically aligned with the controlling group.<sup>44</sup>

Case law under the 1956 Act still guides interpretation. In *Tarlok Chand Khanna v. Raj Kumar Kapoor*, the Delhi High Court held that any restriction in the articles that tries to prevent shareholders from removing a director is void, and that even a so-called permanent director can be removed by following the statutory procedure. The court treated the removal power as an essential incident of shareholder control over management. This reasoning continues to

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<sup>41</sup> Companies Act, No. 18 of 2013, sched. IV, INDIA CODE (2013).

<sup>42</sup> Companies Act, No. 18 of 2013, § 150, INDIA CODE (2013).

<sup>43</sup> Institute of Company Secretaries of India, Appointment and Qualifications of Directors 7–15 (Study Material for Professional Programme, 2013), <https://www.icsi.edu/media/portals/0/APPOINTMENT%20AND%20QUALIFICATIONS.pdf>.

<sup>44</sup> Companies Act, No. 18 of 2013, § 149(10)–(11), INDIA CODE (2013).

influence how courts read the new section 169 under the 2013 Act.<sup>45</sup>

### **C. Duties, roles and responsibilities of independent directors**

Section 149(8) of the Companies Act, 2013 links every independent director to the Code for Independent Directors in Schedule IV, so their role is not only structural but also normative.<sup>46</sup> The Code calls itself a guide to professional conduct and asks independent directors to uphold ethical standards, act objectively and in a bona fide manner in the interest of the company. It expects them to bring independent judgment to the board, to moderate conflicts between management and shareholders, and to protect the interests of minority investors. These are not soft aspirations only, because courts and regulators can read them together with statutory duties and use them to assess whether an independent director discharged the role with due care.

The starting point on duties for all directors is section 166. It requires directors to act in good faith in the best interests of the company, its shareholders, employees, community and environment, to exercise due and reasonable care, skill and diligence, and to avoid conflicts of interest and undue gain.<sup>47</sup> Independent directors, even though non executive, fall squarely within this duty framework. Indian commentary on fiduciary duties stresses that these obligations resemble trust like duties, so an independent director must ask tough questions, insist on proper information, and must not stay passive when red flags appear. If an independent director allows management to proceed with a decision that clearly harms the company or its minority shareholders, silence can quickly look like breach of section 166.

Schedule IV goes further and earmarks particular functions for independent directors which ordinary non executive directors do not carry to the same intensity. It asks them to scrutinise management performance, to monitor that financial controls and risk management systems stay robust, and to satisfy themselves on the integrity of financial information and the robustness of audit and related party transaction processes.<sup>48</sup> It also expects them to balance conflicting interests of stakeholders and to evaluate whether board decisions align with long term sustainability of the company. Guidance notes issued by professional institutes in India highlight that independent directors should meet at least once a year without management, share candid views about board functioning, and then feed those views back into formal board

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<sup>45</sup> Tarlok Chand Khanna v. Raj Kumar Kapoor, [1983] 54 Comp. Cas. 12 (Del.) (India), <https://indiankanoon.org/doc/439474/>.

<sup>46</sup> Companies Act, No. 18 of 2013, § 149(8) & Sched. IV, INDIA CODE.

<sup>47</sup> Companies Act, No. 18 of 2013, § 166, INDIA CODE.

<sup>48</sup> Institute of Company Secretaries of India, Independent Director under Companies Act, 2013 12–14 (Mar. 2020), [https://www.icsi.edu/media/filer\\_public/78/8b/788b6cf7-7e67-4131-b883-fe4292b4c475/independent\\_director\\_under\\_companies\\_act\\_2013.pdf](https://www.icsi.edu/media/filer_public/78/8b/788b6cf7-7e67-4131-b883-fe4292b4c475/independent_director_under_companies_act_2013.pdf).

evaluation. In day to day practice this means that an independent director cannot treat the position as honorary. The role demands time, preparation, and a willingness to record dissent where needed.

The duties of independent directors now sit inside a second regulatory layer created by the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Regulation 17 says that the board must lay down a code of conduct that “suitably incorporate[s]” the duties of independent directors as laid down in the Companies Act, 2013, and must periodically review legal compliance reports.<sup>49</sup> Regulation 25 adds obligations with respect to independent directors, such as a requirement that they hold at least one separate meeting each year and that their maximum tenure and criteria of independence follow the Act.<sup>50</sup> Referencer material on SEBI LODR shows that only independent directors on the audit committee can approve certain related party transactions and that two thirds of the nomination and remuneration committee must be independent, which pushes independent directors into the centre of board oversight architecture. Their responsibilities therefore extend beyond the full board table into the core committees that shape appointments, pay, and financial supervision.

#### **D. Code for independent directors and statutory safeguards**

Schedule IV to the Companies Act, 2013 sets out the Code for Independent Directors and describes it as a guide to professional conduct that should build confidence among investors, regulators and companies in the institution of independent directors.<sup>51</sup> The Code rests on section 149(8), which makes compliance with its provisions a statutory expectation rather than a mere voluntary best practice. It pushes independent directors to act not just as figureheads on the board but as persons who consciously shape the culture of transparency and fairness in the company.<sup>52</sup>

The Code opens with guidelines of professional conduct. It expects independent directors to uphold integrity and probity, to act objectively in the best interests of the company and its shareholders, and to moderate situations of conflict between management and ownership. It stresses active and constructive participation in board and committee meetings, sufficient time and attention to professional obligations, and the need to keep themselves informed about the company and the external environment. This architecture tries to translate abstract ideas of

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<sup>49</sup> Institute of Company Secretaries of India, SEBI (LODR) Regulations, 2015 and Companies Act, 2013 – A Comparison 7–10 (2016), [https://www.icsi.edu/media/webmodules/companiesact2013/Final\\_LODR.pdf](https://www.icsi.edu/media/webmodules/companiesact2013/Final_LODR.pdf).

<sup>50</sup> SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 25, <https://ca2013.com/lodr-regulation-25/>.

<sup>51</sup> Companies Act, No. 18 of 2013, sched. IV, INDIA CODE (2013).

<sup>52</sup> Companies Act, No. 18 of 2013, § 149(8), INDIA CODE (2013).

independence into concrete behavioural standards that can later guide board evaluations and regulatory scrutiny.<sup>53</sup>

The Code then specifies their role and functions in some detail. It requires independent directors to bring an independent judgment on issues of strategy, performance, risk and key appointments, to scrutinise the performance of management, and to satisfy themselves on the integrity of financial information and the robustness of financial controls and risk management systems. It also emphasises the duty to balance conflicting interests of stakeholders, especially when the interests of minority shareholders may diverge from those of controlling shareholders or management. Corporate codes adopted by large listed entities closely track these elements and tell their independent directors that they must question, probe and challenge management rather than simply endorse proposals placed before the board.<sup>54</sup>

The Code also lays down the manner of appointment, reappointment, training and evaluation of independent directors. It states that the appointment process should be independent of management and should ensure that the right balance of skills, experience and knowledge is brought on to the board. It requires formal letters of appointment, clear terms of engagement and disclosure of the terms to shareholders. Evaluation of performance, both of the board as a whole and of individual independent directors, is an express part of the framework. Separate meetings of independent directors, without the presence of non independent directors and management, are mandated so that they can review board functioning freely and assess the quality, quantity and timeliness of information flow. The SEBI Listing Regulations reinforce these requirements at the securities law level and thereby convert them into hard obligations for listed entities.<sup>55</sup>

#### **IV. ROLE OF INDEPENDENT DIRECTORS IN CORPORATE GOVERNANCE IN INDIA**

Independent directors sit at the core of the modern corporate governance model in India because lawmakers expect them to inject objectivity into promoter dominated boards and to bridge the gap between controlling and minority shareholders.<sup>56</sup> Global standards on governance, such as the G20/OECD Principles of Corporate Governance, also stress that boards should include a

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<sup>53</sup> Institute of Company Secretaries of India, Independent Director under Companies Act, 2013 7–10 (2020), [https://www.icsi.edu/media/filer\\_public/78/8b/788b6cf7-7e67-4131-b883-fe4292b4c475/independent\\_director\\_under\\_companies\\_act\\_2013.pdf](https://www.icsi.edu/media/filer_public/78/8b/788b6cf7-7e67-4131-b883-fe4292b4c475/independent_director_under_companies_act_2013.pdf).

<sup>54</sup> Novartis India Ltd., Code for Independent Directors 1–3 (2019), [https://www.novartis.com/in-en/sites/novartis\\_in/files/code-for-independent-directors-r.pdf](https://www.novartis.com/in-en/sites/novartis_in/files/code-for-independent-directors-r.pdf).

<sup>55</sup> Securities & Exch. Bd. of India, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 25 (as amended up to July 10, 2024), <https://www.sebi.gov.in>.

<sup>56</sup> Org. for Econ. Co-operation & Dev., G20/OECD Principles of Corporate Governance 9–11 (2015), <https://www.oecd.org/corporate/principles-corporate-governance.htm>.

sufficient number of independent members who can exercise sound judgment free from conflicts and who can chair key committees of the board.<sup>57</sup> Indian reforms after liberalisation have largely tried to align with this expectation and have turned the independent director into a central pillar of listed company governance.

At the level of the full board, independent directors carry the burden of monitoring strategy, performance and risk while still allowing management enough space to run the business. They are expected to question business plans, probe assumptions and insist on realistic risk assessments. Comparative work on board duties suggests that in complex group structures, non executive and independent directors play a key role in ensuring that the interests of the listed company are not sacrificed for the benefit of the wider group or controlling shareholders.<sup>58</sup> In India, where pyramids and cross holdings remain common, this function becomes even more sensitive and difficult, because the independent director must often push back against subtle pressure to approve group favourable transactions that may not be in the best interests of the company whose board they sit on.

Regulatory design under the Companies Act, 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 therefore gives independent directors a structural role in the composition of boards. Listed entities must ensure a specified minimum number of independent directors and, where the chairperson is an executive, an even higher proportion of independent members on the board.<sup>59</sup> The listing regime also requires at least one woman director in many cases, who is often also independent. These rules are not only numerical tests. They are meant to ensure that discussions at the board table cannot be completely captured by promoters or executives, and that independent directors can combine their voices to resist proposals that harm the company or its minority investors.

Independent directors also dominate key board committees which lie at the heart of Indian corporate governance. Audit committees must consist of a majority of independent directors, with an independent chairperson, and they review financial statements, internal control systems and related party transactions.<sup>60</sup> Nomination and remuneration committees, again composed largely of independent directors, decide the framework of pay for executive directors and senior

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<sup>57</sup> Org. for Econ. Co-operation & Dev., G20/OECD Principles of Corporate Governance 2023, at 40–42, <https://www.oecd.org/corporate/g20-oecd-principles-corporate-governance.htm>.

<sup>58</sup> Org. for Econ. Co-operation & Dev., Duties and Responsibilities of Boards in Company Groups 27–34 (2020), <https://www.oecd.org/corporate/duties-and-responsibilities-of-boards-in-company-groups.htm>.

<sup>59</sup> Securities & Exch. Bd. of India, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 regs. 17, 25 (as amended July 10, 2024), <https://www.sebi.gov.in/legal/regulations>.

<sup>60</sup> *Id.* reg. 18.

management and oversee the process of board appointments and evaluations.<sup>61</sup> Stakeholders' relationship committees are tasked with examining complaints of investors and other stakeholders. Through these committee roles, independent directors control the spaces where the most sensitive decisions on numbers, people and conflicts of interest are actually taken.

Protection of minority shareholders is another key dimension of their role. Independent directors on the audit committee must approve most related party transactions and are expected to insist on arm's length terms and full disclosure where the company deals with promoters or their affiliates.<sup>62</sup> They are supposed to balance the desire of controlling shareholders to extract private benefits with the rights of dispersed or institutional investors who provide capital but do not control the board. SEBI's tightening of rules on related party transactions, and the requirement that only independent directors vote on certain conflict heavy matters, reflects a conscious design choice to use these directors as gatekeepers who screen self dealing before it reaches the general meeting.

Indian guidance literature paints them as "conscience keepers" of the company who should uphold not just the letter of law but also the spirit of fairness and transparency in boardrooms. The Institute of Company Secretaries of India emphasises that independent directors must prepare for meetings, review information critically, meet separately without management, and ensure that their dissent, if any, is clearly recorded in minutes.<sup>63</sup> Secretarial standards on board meetings further require that minutes of audit and other committees be placed before the full board, which gives independent directors an institutional channel to surface issues discovered in committee work to the entire board for action.<sup>64</sup>

## **V. CHALLENGES, GAPS AND JUDICIAL TRENDS**

Independent directors in India operate inside a dense web of expectations, some of which point in opposite directions. They must monitor the management, protect minority shareholders and yet cooperate with promoters who often control board composition. Empirical interview evidence shows that many independent directors themselves remain unsure whether their primary mandate is to police related party transactions, to advise management, or to act as broad

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<sup>61</sup> Id. reg. 19.

<sup>62</sup> Id. reg. 23.

<sup>63</sup> Institute of Company Secretaries of India, Guidance Note on Independent Directors 10–16 (2020), [https://www.icsi.edu/media/webmodules/GN8\\_Guidance\\_Note\\_on\\_Independent\\_Directors.pdf](https://www.icsi.edu/media/webmodules/GN8_Guidance_Note_on_Independent_Directors.pdf).

<sup>64</sup> Institute of Company Secretaries of India, Guidance Note on Meetings of the Board of Directors 7–12 (based on Revised SS-1, 2015), [https://www.icsi.edu/webmodules/Guidance\\_note\\_on\\_Meetings\\_of\\_the\\_Board\\_of\\_Directors\\_%28based\\_on\\_Revised\\_SS-1%29.pdf](https://www.icsi.edu/webmodules/Guidance_note_on_Meetings_of_the_Board_of_Directors_%28based_on_Revised_SS-1%29.pdf).

guardians of corporate governance.<sup>65</sup> This conceptual ambiguity weakens their bargaining power in the boardroom and makes ex post judicial scrutiny unpredictable.

Promoter dominance and concentrated ownership create a second structural challenge. In most large Indian listed companies, one or a few promoter entities hold decisive stakes and can effectively control board appointments even when the law requires a formal majority of independent directors.<sup>66</sup> The board then risks becoming an extension of promoter will, while independence remains more on paper than in substance. Scholarly work on Indian corporate governance records that the core agency problem is not manager versus shareholder, but majority versus minority, and notes that independent directors are often nominated through promoter networks, social ties and long-standing business relationships.<sup>67</sup> This reality dilutes the monitoring role that Clause 49 of the Listing Agreement and section 149 of the Companies Act, 2013, try to assign to them.

Information asymmetry further constrains independent directors. They usually join boards after key strategic choices have been made, and they rely heavily on agenda papers curated by management. Many directors sit on multiple boards, which stretches the time available for studying complex financials, risk reports and compliance notes for each company.<sup>68</sup> Academic work on board effectiveness suggests that “busy” directors are less able to challenge management and more likely to miss red flags in financial reporting or related party dealings.<sup>69</sup> In India, this difficulty is amplified by dense regulation under the Companies Act, SEBI’s Listing Obligations and Disclosure Requirements, and sectoral norms, which together create a compliance maze that non-executive directors struggle to navigate without strong in-house support.

The legacy of the Satyam scandal continues to shape perceptions of risk. Satyam was widely described as “India’s Enron” and triggered a round of corporate governance reforms, including the Corporate Governance Voluntary Guidelines, 2009, and tighter listing standards.<sup>70</sup> However, empirical studies on audit committees post-Satyam show that while formal

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<sup>65</sup> Vikramaditya S. Khanna & Shaun J. Mathew, *The Role of Independent Directors in Controlled Firms in India: Preliminary Interview Evidence*, 22 *Nat’l L. Sch. India Rev.* 35 (2010), <https://ssrn.com/abstract=1690581>.

<sup>66</sup> Madhuryya Arindam, *The Independent Director: Has It Been Indianised Enough?*, 6 *NUJS L. Rev.* 231, 236–38 (2013), <https://nujlawreview.org/articles/the-independent-director-has-it-been-indianised-enough/>.

<sup>67</sup> *Id.* at 237–38.

<sup>68</sup> Vikramaditya S. Khanna, *Corporate Governance in India: Past, Present and Future*, in *The Oxford Handbook of Corporate Governance* 485, 498–500 (Mike Wright et al. eds., 2013).

<sup>69</sup> Renee B. Adams, Benjamin E. Hermalin & Michael S. Weisbach, *The Role of Boards of Directors in Corporate Governance: A Conceptual Framework and Survey*, 48 *J. Econ. Lit.* 58, 70–74 (2010).

<sup>70</sup> R. Narayanaswamy et al., *Corporate Governance in India and the Satyam Fraud*, IIMB Working Paper No. 471, at 5–7 (Indian Inst. Mgmt. Bangalore 2012), [https://www.iimb.ac.in/sites/default/files/2018-07/WP\\_No\\_471.pdf](https://www.iimb.ac.in/sites/default/files/2018-07/WP_No_471.pdf).

compliance increased, substantive changes in behaviour, such as meeting frequency, attendance and toughness of questioning, remained modest, and enforcement stayed relatively weak.<sup>71</sup> The gap between stringent rules on paper and lax enforcement in practice means that independent directors face uncertain exposure: they may be left untouched in many failures, yet occasionally be targeted very aggressively in high-profile cases.

## VI. FINDINGS, SUGGESTIONS AND CONCLUSION

Independent directors in India now stand at the centre of the corporate governance framework, yet their effectiveness still depends more on context than on statutory text. The evidence from interview based research in controlled firms shows that many independent directors see themselves caught between promoters, management and minority investors, with no single clear constituency.<sup>72</sup> They describe their role as mixed adviser, monitor and reputation bearer. This itself is a key finding of the present study. The law gives them many labels, but practice often gives them confused and sometimes conflicting expectations.

The legal framework under the Companies Act, 2013 and SEBI's Listing Regulations largely tracks global governance benchmarks like the G20/OECD Principles of Corporate Governance. Those principles stress board independence, strong committees and robust disclosure as the main tools to protect investors.<sup>73</sup> Indian law has borrowed these building blocks and has even gone further in some places, for example by codifying a detailed Code for Independent Directors in Schedule IV and by creating a statutory safe harbour in section 149(12). However, the research shows that formal alignment with international norms does not by itself deliver substantive independence in promoter dominated companies.

Promoter control and ownership concentration continue to shape how boards work. In many large listed companies promoters influence nomination, social networks inside the board, and the future reappointment of independent directors. Comparative writing on Indian corporate governance points out that the primary agency problem is majority versus minority, not managers versus shareholders as in dispersed ownership systems.<sup>74</sup> This paper finds the same pattern. Independent directors often owe their position to promoter support, and this structural dependence undercuts their ability to challenge related party transactions, succession decisions

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<sup>71</sup> *Id.* at 7–11.

<sup>72</sup> Vikramaditya S. Khanna & Shaun J. Mathew, *The Role of Independent Directors in Controlled Firms in India: Preliminary Interview Evidence*, 22 *Nat'l L. Sch. India Rev.* 35 (2010), <https://ssrn.com/abstract=1690581>.

<sup>73</sup> Org. for Econ. Co-operation & Dev., *G20/OECD Principles of Corporate Governance* (2015), [https://www.oecd.org/en/publications/2015/11/g20-oecd-principles-of-corporate-governance\\_g1g56c3d.html](https://www.oecd.org/en/publications/2015/11/g20-oecd-principles-of-corporate-governance_g1g56c3d.html).

<sup>74</sup> Vikramaditya S. Khanna & Shaun J. Mathew, *India, in Corporate Governance in Asia 157* (Bruce Aronson & Jang-Sup Shin eds., Cambridge Univ. Press 2020), <https://www.cambridge.org/core/books/corporate-governance-in-asia/india/65336CC1D1AD0F2DAD36E92FD880F9BC>.

or complex group structures.

The regulatory response has moved in the right direction but remains incomplete. SEBI's consultation paper on independent directors in 2021 frankly recognised that appointment and removal processes, and not only independence criteria, decide how free an independent director feels in practice.<sup>75</sup> It proposed special resolutions for appointments, stronger disclosure on resignation and more balanced nomination processes. Guidance issued by the Institute of Company Secretaries of India similarly stresses that independent directors must receive adequate information in time, meet separately without management, and record dissent where needed.<sup>76</sup> The present study supports these thrusts, but also notes that implementation is uneven and depends heavily on board culture in each company.

A major finding of this research is that committee work is where independent directors can still make a real difference. Audit, nomination and remuneration, and stakeholder committees are all designed to have a majority of independent directors and an independent chair. The Kotak Committee on Corporate Governance and later SEBI decisions highlighted these spaces as the engine room of board oversight over financial reporting, related party transactions and pay.<sup>77</sup> When independent directors prepare properly, insist on detailed explanations and use their power to delay or condition approvals, committees can genuinely restrain self-dealing or cosmetic disclosure. When they treat committee work as a ritual, the governance architecture collapses into box ticking.<sup>78</sup>

On the liability side, section 149(12) and recent Supreme Court jurisprudence offer some protection but do not fully remove fear. Leading commentaries like Ramaiya point out that independent directors are liable only for acts or omissions with their knowledge, consent or lack of diligence, and are not regarded as officers in default merely because of their title.<sup>79</sup> Professional material from ICAI on independent directors also explains that enforcement agencies should not proceed against them in a mechanical way and that liability should follow

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<sup>75</sup> Sec. & Exch. Bd. of India, Consultation Paper on Review of Regulatory Provisions Related to Independent Directors (Mar. 1, 2021), [https://www.sebi.gov.in/reports-and-statistics/reports/mar-2021/consultation-paper-on-review-of-regulatory-provisions-related-to-independent-directors\\_49336.html](https://www.sebi.gov.in/reports-and-statistics/reports/mar-2021/consultation-paper-on-review-of-regulatory-provisions-related-to-independent-directors_49336.html).

<sup>76</sup> Inst. of Company Sec'ys of India, Guidance Note on Independent Directors (2020), [https://www.icsi.edu/media/webmodules/GN8\\_Guidance\\_Note\\_on\\_Independent\\_Directors.pdf](https://www.icsi.edu/media/webmodules/GN8_Guidance_Note_on_Independent_Directors.pdf).

<sup>77</sup> Sec. & Exch. Bd. of India, Report Submitted by the Committee on Corporate Governance (Uday Kotak Committee) (2017), <https://www.nfeg.in/KOTAKCOMMITTEREPORT.pdf>.

<sup>78</sup> KPMG in India, SEBI Decision Regarding Kotak Committee Recommendations (Apr. 2018), <https://assets.kpmg.com/content/dam/kpmg/in/pdf/2018/04/SEBI-accepts-majority-Kotak-committee-recommendations.pdf>.

<sup>79</sup> A. Ramaiya, Guide to the Companies Act (19th ed., LexisNexis 2020), see product description at <https://store.lexisnexis.com/en-in/products/guide-to-the-companies-act-2013-box-1-covers-volume-1-to-3-and-appendix-1-and-2-along-with-consolidated-table-of-cases-consolidated-index-and-additional-reference-material-insku9789389991352.html>.

the functional role actually performed.<sup>80</sup> Yet interviews and anecdotal evidence suggest that many independent directors still face investigations and notices as part of a broad group of “all directors”, and must then rely on these safeguards defensively.

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<sup>80</sup> Inst. of Chartered Accts. of India, *Technical Guide on the Provisions of Independent Directors from Corporate Governance Perspective* (2020), <https://www.icai.org/post/icai-publications-corporate-laws-corporate-governance-committee>.

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