

**“HARMONIZING ECONOMIC GOVERNANCE AND
CONSTITUTIONAL VALUES: A STUDY OF COMPLIANCE
UNDER SEBI, COMPETITION, TAX, AND ANTI-MONEY
LAUNDERING LAWS”**

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ABSTRACT

This paper shows how a growing sense of justice among ordinary people forms a complex yet coherent framework of harmonious construction that ties modern Corporate Governance to the Indian Constitution. It firmly contends that the sword of Damocles in the Indian Constitution, a powerful means of piercing the corporate veil in major corporate governance failures, is inconsistent with Articles 14, 19 and 21, and is therefore 'not' fair, just, reasonable, fundamentally right and non-Arbitrary. In other words, mala fide intentions must override corporate governance norms to preserve the conscience of the Preamble's sanctity within the Constitution of India; otherwise, the exact opposite will be treated as a corporate governance statute or policy under Article 13(2) and the Doctrine of Severability, as curtailing public policy and posing a major threat that causes gross irritation within the lines of natural justice. It broadly surveys these substantive statutes as one manifesto of 'how': the SEBI Act, the Competition Act, the Income Tax Act and the Prevention of Money Laundering Act (PMLA) all fit the Indian Constitution's provisions on the substantive law of economic regulation, which seeks to fulfil the state's mandate under the Directive Principles of State Policy (DPSP), Article 39(b) and (c), to stop wealth from concentrating in a few hands. That policy is ultimately inconsistent with the Fundamental Rights to Equality and to Freedom of Trade and Commerce in Part III of the Constitution of India. By exposing glaring corporate governance failures, this study shows how routinely enforcement agencies upgrade de minimis procedural and disclosure defaults into white-collar crimes, peeling away the cosy veil of procedural double jeopardy in corporate law matters and thereby violating Article 14's ban on Arbitrariness, Article 19(1)(g)'s Right to Trade

and Commerce, Article 20(3)'s protection against self-Incrimination, and the substantive due process protection during searches, seizures and attachments under Article 21. This study closes by proposing three novel statutory remedies: 1. Adoption of the "Lead Regulator Doctrine"; 2. Implementation of a Protected Foreign Quote that blocks criminal asset freezes by regulators until the underlying disputes are resolved; and 3. "Proportionality Audits" of new norms notified by SEBI. In the end, this study argues that market governance and freedoms are not mutually exclusive but are both essential pillars of a healthy economy, and it therefore advocates their harmonious coexistence as two sides of the same coin.

Keywords: Sword of Damocles; Natural Justice; Corporate Governance; SEBI LODR Regulations; PMLA; Substantive Due Process; Fundamental Rights (Articles 13, 14, 19 (1)(g), 20(3), 21); DPSPs Articles 39(b) & (c)); Lead Regulator Doctrine; PMLA Procedural Nexus Clause; Proportionality Audit; etc.

INTRODUCTION

A few decades ago, businessmen rarely used the term 'Corporate Governance'. Today, almost all organisations use governance to govern themselves, with special emphasis on accountability, integrity, and risk management. It is commonly believed that corporate governance includes the conventional relationship among a company's board, its securities holders and other stakeholders.¹ It also presents "the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined".² Or in other words, "Corporate Governance is about promoting corporate fairness¹, transparency and accountability".³ There are two major factors leading to the emergence of corporate governance worldwide. The first one was the 1998 financial crisis in Russia, Brazil and most of Asia, which severely shook the global financial system. Secondly, increasing corporate scandals in the United States and Europe occurred due to inadequate corporate governance by businessmen. In the case of India, corporate governance became crucial after the Satyam fraud². This fraud prompted businessmen to achieve efficient, transparent and impeccable corporate governance to gain better stability, profitability and desired growth. "Further, the rapid pace of globalisation and liberalisation compelled companies to have an effective corporate governance strategy and to adopt improved standards of corporate governance to run their business. To reduce fraud,

¹ Constitution of India 1950, art 39(b)–(c).

² Devesh Kapur and Madhav Khosla (eds), *Regulation in India: Design, Capacity, and Performance* (Oxford University Press 2019) 112.

malpractices and financial instability, policymakers and business managers alike stressed on improved corporate governance standards. Internationally, the Organisation for Economic Co-operation and Development (hereinafter 'OECD³') and the World Bank worked continuously for better corporate governance and adopted principles to strengthen companies' structure. Similarly, India saw several reforms through various paths from the Securities and Exchange Board of India⁴ (hereinafter 'SEBI') and the Ministry of Corporate Affairs (hereinafter 'MCA⁵'), Government of India, to improve corporate governance. Recently, the Government passed the Companies Act, 2013, a step forward towards better corporate governance in India. This paper focuses on the new development and emergence of the Companies Act, 2013, and the good practices it encompasses. Before doing so, it is essential to understand corporate governance failures and their most viable statutory remedies⁶ & recommendations.

CHAPTER I: INTRODUCTION & THE CORPORATE PANOPTICON- CORPORATE GOVERNANCE UNDER THE SEBI⁷ (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

A common requirement is the appointment of a compliance officer. The compliance officer originates from the LODR, and Regulation 629 requires a listed entity to appoint a qualified company secretary as compliance officer. The Regulation also lists the compliance officer's many duties, including ensuring conformity with all applicable regulatory provisions, co-ordinating with SEBI, the Stock Exchanges and Depositories on compliance with rules, regulations and other directives, and ensuring correct procedures are followed. Creating the compliance officer role broadens the company secretary's responsibilities and liabilities by making them solely responsible for LODR compliance. Some consider this a positive step that will 'strengthen the compliance ecosystem in listed companies'³⁰ and enable greater regulatory oversight.

CORPORATE GOVERNANCE FAILURE IDENTIFIED

1. Independent Directors⁸ (IDs) often act as passive rubber stamps for dominant promoters and not as a fiduciary of retail investors.

³ Prevention of Money Laundering Act, 2002, s 3.

⁴ Securities and Exchange Board of India Act, 1992, ss 11, 11B.

⁵ Companies Act, 2013, s 177.

⁶ *RC Cooper v. Union of India* (1970) 1 SCC 248, 271.

⁷ SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, reg 17.

⁸ Dr Anuradha Roy Chowdhury, 'Corporate Governance under the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015' (2026) *St Xavier's University Journal* 118, 120.

2. The legislation imposes stringent criminal and administrative liability on Company Secretaries, while promoter-executives who mastermind financial siphoning escape personal accountability.
3. Auditors and boards often miss off-balance-sheet siphoning through unlisted subsidiary networks.
4. "In matters of grave importance, style, not sincerity, is the vital thing⁹."-Oscar Wilde. The Jurisprudential Corollary: Today's corporates treat SEBI LODR Regulation 17 board composition requirements and ESG disclosures as aesthetic performance art, caring little for the substance of promoter dominance and off-balance-sheet Related Party Transactions (RPTs).

THE ORIGINAL REMEDY I FIRMLY RECOMMEND TO AMELIORATE CORPORATE GOVERNANCE

“While auditing the structural weaknesses in the system of corporate governance prevalent in India, the literature reveals that the listed entities are essentially “family-run, promoter-driven enterprises with large controlling shareholders”. Therefore, the Independent Directors (IDs) required by Regulation 17 of the SEBI (LODR)¹⁰ Regulations, 2015, do not serve their purpose of being objective custodians of the minority stake. The promoters and controlling shareholders of the enterprises hold the major voting powers at the general meetings, and the processes of appointment and re-appointment of the IDs do not deviate from this control structure. Thereby creating a rubber-stamp system wherein, the IDs facilitate Related-Party Transactions¹¹ (RPTs) and the siphoning of finances rather than exercising oversight over the management. Proposed Amendment in relation to constitutional fundamental rights as under Part III r/w the Statute, whose prima facie amendment for upholding the Independent Director’s sanctity¹² is done In the commission of dismantling the dominance exercised by promoters and to reinstate the operational autonomy of corporate boards, it is necessary to amend Section 149 of the Companies Act, 2013 to create an autonomous and centralised mechanism for the appointment.” New section 149A: choosing and appointing independent directors.

⁹ *The Importance of Being Earnest* (1895)-Oscar Wilde

¹⁰ *SEBI (LODR) Regulations 2015*, reg 6.

¹¹ *Companies Act 2013*, s 447.

¹² *Competition Act 2002*, ss 3, 4.

CHAPTER II: "THE ISOPRAXIS OF ENFORCEMENT: A LEGAL REALIST CRITIQUE OF REGULATORY DISCRETION GOVERNING PMLA"

"When examining regulatory overreach under SEBI, Competition Law, and PMLA, legal analysis must transcend black-letter positivism. As Oliver Wendell Holmes Jr., John Chipman Grey, and Jerome Frank established, the true operational law lies not in statutory text but in the adjudicator's cognition, subjective perception, and behavioural enforcement. In corporate enforcement, statutory thresholds like 'reason to believe' under Section 132¹³ of the Income Tax Act or search authorisations under Section 17 of the PMLA¹⁴ are inherently shaped by administrative psychology and discretionary whims. By analysing dissenting tribunal observations and judicial obiter, we observe that regulatory friction¹⁵ with Articles 14, 19(1)(g), and 21 does not stem from statutory text alone, but from the unbridled 'Isopraxis', i.e., the actual mechanics of how regulatory actors leverage discretion to turn administrative infractions into criminal proceedings. Corporate governance regulations, whether under SEBI, the Competition Act, or the Income Tax Act, are written on paper as strict, analytical, black-letter mandates (Positivism). However, corporate enforcement operates strictly under my Realist Isopraxis. Whether a routine corporate filing error is treated as a minor administrative oversight or escalated into a draconian predicate offence under the Prevention of Money Laundering Act (PMLA) depends entirely on judicial and regulatory psychology because the "Reason to Believe"¹⁶ under Income Tax Section 132 or PMLA Section 17/18 is not an objective statutory formula; it is a subjective cognitive state inside the mind of the officer or judge.

From a global lens, the Act also violates the international instrument signed by India, i.e., the International Covenant on Civil and Political Rights (ICCPR)¹⁷ and the Indian Constitution Article 21; read with the fair trial jurisprudence under Article 14 ICCPR and thus should not be applied in a narrow way to limit equality of Limitation Period and Legal Certainty under India's PMLA; Bajpai and Pal 33 arms provided to the accused; equality before courts and tribunals is an essential ingredient and a guarantee of equal access and equality of arms as well as non-

¹³ *Competition Commission of India v Steel Authority of India Ltd* (2010) 10 SCC 744, 758.

¹⁴ *Standard Chartered Bank v Directorate of Enforcement* (2005) 4 SCC 530, 542.

¹⁵ *Finance (No. 2) Act 2019 (amending the Prevention of Money Laundering Act 2002, ss 17, 18).*

¹⁶ *Ibid* s 45.

¹⁷ *Prof GS Bajpai and Garima Pal, 'Absence of Period of Limitation in India's Prevention of Money Laundering Act, 2002: Analysing Its Impact on Legal Certainty and Fundamental Rights' (2026) ResearchGate* <https://www.researchgate.net/publication/400455073> accessed 8 October 2026.

discriminatory treatment of parties; and Article 14(3)(b) ICCPR¹⁸ demands that accused persons shall have adequate time and facilities to prepare their defence and to communicate with counsel, which is a crucial guarantee regarding fair trials and equality of arms. FATF¹⁹ does not recommend a specific time limit for such offences but allows alignment with national criminal law principles.

Adjudicating Authority, these internal mechanisms do not equate to the impartiality and procedural fairness of judicial review. Moreover, BNSS²⁰ provisions are grounded in centuries-old principles of common law fairness and form part of the "procedure established by law" under Article 21. Therefore, any deviation must be justified with compelling reasoning and not merely administrative convenience. The omission of judicial sanction under PMLA, especially given its punitive and stigmatic consequences, risks failing this constitutional benchmark.

CORPORATE GOVERNANCE FAILURES

1. PLMA” s unchecked reach & deletion of sections 17/18 safeguards-statutory mechanism & administrative overreach

The Prevention of Money Laundering Act (PMLA), 2002 was enacted to combat cross-border drug trafficking and terror financing. However, legislative amendments²¹ specifically via the Finance (no. 2) Act, 2019—severed the statutory safeguards embedded within the law. The deletion of the provisos to Section 17(1) (Search and Seizure) and Section 18(1) (Search of Persons) removed the mandatory requirement that an investigating officer obtain a judicial magistrate’s pre-approval or file a formal police report under Section 157 CrPC before initiating a raid. Minor corporate restructurings, accounting re-classifications, or delayed disclosures are routinely re-characterised as proceeds of crime, triggering immediate property attachments under Section 5 and summons under Section 50.

2. The Enforcement Wrong: The transformation of filing delays into criminal offences of money laundering and the elimination of procedural protections:

"Morality is simply the attitude we adopt towards people whom we personally dislike." The Philosophical Corollary: When the instruments of state enforcement transform routine corporate

¹⁸ Statute of the International Court of Justice Art 35(2).

¹⁹ Prevention of Money Laundering Act 2002, s 50.

²⁰ *Vijay Madanlal Choudhary v Union of India* 2022 SCC Online SC 929, paras 112–115.

²¹ *MN Mohan Kumar and Jyotirmoy Banerjee, 'The Intersection of CCI and SEBI: An Overlap of Legal Framework' (2025) 8(1) Int'l J L Mgmt. & Hum 45, 49.*

disclosure defaults into predicate PMLA violations, the very concept of objective legal standards is perverted beyond recognition. The absence of any limitation periods under the law and the concomitant dismissal of magistrate approval under sections 17 and 18 represent a total negation of procedural safeguards.

3. The Enforcement Wrong: The transformation of filing delays into criminal offences of money laundering and the elimination of procedural protections, as is manifested in "Morality is simply the attitude we adopt towards people whom we personally dislike."- Oscar Wilde. The Jurisprudential Corollary: When the instruments of state enforcement transform routine corporate disclosure defaults into predicate PMLA²² violations, the very concept of objective legal standards is perverted beyond recognition. The absence of any limitation periods under the law and the concomitant dismissal of magistrate approval under sections 17 and 18 represent a total negation of procedural safeguards.

CONSTITUTIONAL FRICTION

1. Article 14 (non-arbitrariness & proportionality): deleting judicial oversight under sections 17 and 18 empowers executive officers to act as sole judges of their own satisfaction ("reason to believe"). This absence of an objective, verifiable standard violates the doctrine of substantive non-arbitrariness²³ established in *E.P. Royappa v. State of Tamil Nadu* (1974) & fails the *Puttaswamy* four-prong test of proportionality.
2. Article 20(3)²⁴ (protection against compulsory self-incrimination): statements recorded under section 50 of the PMLA are admissible as evidence in trial. Converting regulatory disclosure defaults into criminal proceedings while compelling corporate directors to testify under threat of penalty directly bypasses the right against self-incrimination.
3. Article 21²⁵ (procedural due process & liberty): the combination of pre-trial property attachment (freezing corporate operating capital) and the stringent "twin conditions"²⁶ for bail under section 45 subjects corporate officers to punitive incarceration before any judicial finding of fraud, violating the fundamental guarantee of fair procedure.

2: MULTI-REGULATOR ATTRITION (CONCURRENT SEBI, CCI & ED PROBES)

²² *An Ideal Husband*, 1895- Oscar Wilde

²³ *Constitution of India*, 1950, art 14.

²⁴ *Maneka Gandhi v Union of India* (1978) 1 SCC 248, 280.

²⁵ *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1, 118.

²⁶ *Constitution of India* 1950, art 19(1)(g).

1. Statutory mechanism & administrative overreach

Corporate entities in India operate under overlapping jurisdictional mandates. A single market event—such as a debt restructuring, an asset acquisition, or a pricing adjustment—can trigger concurrent, parallel investigations by:

- SEBI under section 11/11b²⁷ for alleged market manipulation or non-disclosure under LODR regulations;
- The competition commission of India (CCI) under section 26(1) for alleged abuse of dominance; and
- The Enforcement Directorate (ED) under PMLA Section 3 on allegations of money laundering stemming from the initial financial defaults.

Under Section 26(1) of the Competition Act²⁸, 2002, the CCI can direct the Director General (DG) to initiate a preliminary investigation upon forming a mere *prima facie* opinion, without affording the corporate entity a pre-decisional hearing²⁹ (*CCI v. Sail*, 2010). Concurrently, SEBI imposes financial penalties under Section 15HA³⁰, while the ED issues provisional attachment orders over the company's bank account. This multi-agency pile-on results in severe operational paralysis and reputational attrition before any agency establishes a definitive finding of fraud.

CONSTITUTIONAL INCOHERENCE

1. Article 19(1)(g)³¹ (right to practice any profession / carry on trade): the execution of concurrent, multi-agency searches, asset freezes, and public preliminary orders acts as an unreasonable, non-tariff restraint on trade. Forcing a corporate entity to allocate capital toward defending parallel proceedings across multiple forums deprives it of the economic liberty (Article 21) to conduct lawful business.
2. Article 14 r/w '*Lon Fuller's Internal Morality of Law on Anti-Arbitrariness*³²' (procedural double jeopardy³³ & institutional inconsistency): allowing multiple regulatory tribunals to reach contradictory factual findings on the same set of transaction documents creates procedural chaos. The exposure of a corporate entity to multiple, simultaneous statutory

²⁷ *Karti P Chidambaram v. Enforcement Directorate, Supreme Court Observer Case Tracker* (2025/2026).

²⁸ *Pankaj Bansal v Union of India* (2023) 11 SCC 748, 762.

²⁹ *Constitution of India 1950*, art 20(3).

³⁰ *Constitution of India 1950*, art 22(1).

³¹ *Constitution of India, 1950*, art 21.

³² *Competition Commission of India v Bharti Airtel Ltd* (2019) 2 SCC 521, 545.

³³ *Constitution of India 1950*, art 20(3).

penalties for a single underlying act violates the principle of procedural fairness. Article 14 (legal certainty & equality before law): the absence of limitation periods destroys legal certainty—a core sub-facet of the rule of law under Article 14. Subjecting commercial entities to the perpetual threat of state prosecution allows administrative authorities to selectively target specific corporate houses while ignoring similarly situated entities.

3. Article 21 (Right to a Speedy Trial & Due Process): Initiating enforcement actions a decade after an event severely prejudices a corporate defendant's ability to mount an effective legal defence. Prolonged, indefinite administrative investigations³⁴ infringe upon the implicit right to a speedy trial and fair adjudication guaranteed under the interpretation of substantive due process under Article 21(Right to Dignity) r/w Article 39A(DPSP), stating Ideals of accessible justice.

MY PROPOSED STATUTORY REMEDIES, RECOMMENDATIONS & DRAFT REFORM CLAUSES

To resolve these constitutional friction points, the paper proposes three original, actionable statutory remedies to realign corporate regulation with Part III guarantees:

1: The PMLA Procedural Nexus Clause

Objective: Sever the immediate, automatic escalation of routine regulatory defaults into criminal money laundering probes until fraud is established by the primary sector regulator. Drafting Amendment³⁵: (Proviso to Section 3 of the PMLA, 2002).

2: The Lead Regulator Doctrine³⁶

Objective: Prevent multi-agency attrition and conflicting tribunal orders by establishing a statutory priority window for primary sector regulators.

Draft Amendment (Insertion of Section 11(5)³⁷ in the SEBI Act & Section 21B in the Competition Act): "In the event of concurrent regulatory jurisdiction over a corporate entity arising from a single transaction or set of disclosures, the primary domain regulator shall exercise exclusive priority jurisdiction for a statutory window of 180 days to establish findings of fact. All secondary enforcement agencies, including criminal investigative authorities, shall stay parallel

³⁴ Ritima Singh, 'CCI v TRAI / Bharti Airtel: Regulatory Framework for Better Coordination' (2023) *Competition Commission of India Journal*

³⁵ *Securities and Exchange Board of India Act 1992, s 11(5) (proposed amendment).*

³⁶ *Competition Act 2002, s 21B (proposed amendment).*

³⁷ *Securities and Exchange Board of India Act 1992, s 11(1A) (proposed amendment).*

proceedings pending the expiration of said window or the release of the primary regulator's factual report."

3: Statutory Proportionality Audits

Objective: To codify the Puttaswamy four-prong test directly into regulatory rulemaking to prevent unconstitutional compliance burdens. Draft Amendment (Insertion of Section 11(1A) in the SEBI Act³⁸, 1992): "Every draft compliance regulation, circular, or disclosure mandate proposed by the Board shall be accompanied by a published Statutory Proportionality Audit certifying that the proposed compliance burden satisfies the four-prong test under Articles 14 and 19(1)(g) of the Constitution: (a) Legitimate State Goal, (b) Rational Connection, (c) Necessity (Least Restrictive Means), and (d) Substantive Balance against commercial liberty."

CHAPTER-III: COMPETITION LAW & MARKET CORPORATE GOVERNANCE

The task of the antitrust laws is to reconcile economic regulation and the Constitution. The Competition Act, 2002 (Competition Act) lays down a directive principle of state policy which the Competition Commission of India (CCI) is obligated to enforce. The very object of the Act, which is to achieve the economic democracy enshrined in the Constitution, particularly Articles 39(b) and (c), by preventing the creation of monopoly and ensuring access to markets, has to yield to the basic structure of the Constitution. The investigator of the SFIO, have now certain powers vested in a civil court under the Code of Civil Procedure, 1908 with respect to the summoning of and enforcing of attendance of persons and examining them on oath, discovery and production of books of accounts and other documents, the inspection of books, registers and other documents etc. Some of the major scandals investigated by SFIO are the Reebok Scandal, Satyam Scandal, and now the Saradha³⁹ a Group scam, where SFIO proved its ability and proficiency. While enforcing competition laws, the CCI is, in fact, likely to run into conflict with the fundamental rights guaranteed by the Constitution under Part III. For instance, the Competition Act, under Section 26(1), authorises the CCI to initiate an investigation and pass orders preliminary to investigation by the Director General (DG). This provision, according to the Court in CCI⁴⁰ v. Steel Authority of India Ltd. (SAIL) case (2010), creates a direction of an administrative nature. But public announcement of an investigation by the CCI often leads to a

³⁸ *Income Tax Act 1961, s 132(1) (proposed proviso).*

³⁹ *Corporate Governance and its efficacy in the present era, Dr Qazi Mohd. Usman*

⁴⁰ *Securities and Exchange Board of India Act 1992, s 11(1A) (proposed amendment).*

fall in the share value of the target firms and cancellation of contracts and commitments that would cause damage to the target firms' reputation. Such interference by the CCI is an unreasonable restriction of trade practised by the companies in contravention of Article 19(1)(g)⁴¹. Further, there are instances when a single transaction may invite concurrent investigations by other regulators such as SEBI and DG, leading to multiple proceedings. This violates the principle of equality before the law enshrined in Article 14. The problem could be addressed through a 'Lead Regulator Doctrine'⁴² and a regulatory structure akin to that of the US. The Fiscal Wrong: Section 132 searches and working capital account freezes executed on unvetted, subjective officer "satisfaction." A cynic is a man who knows the price of everything and the value of nothing" (Lady Windermere's Fan, 1892, Oscar Wilde). Jurisprudential Corollary: Income tax enforcement under Section 132 acts with cynical fiscal detachment when it executes summary asset freezes and search warrants premised upon subjective officer "satisfaction," by ignoring the longer-term 'value' of uninterrupted commercial operations protected under Article 19(1)(g) and Article 265 through freezing working capital account assets and issuing search warrants.

CORPORATE GOVERNANCE FAILURES LISTED

1. Cartelization & abuse of dominance: Promoters forming covert cartels or abusing their market position to suppress competing players, thus violating Article 39(b) and (c) (the Directive Principles), which forbid concentration of wealth.
2. Procedural attrition as a weapon: Corporate rivals⁴³ taking advantage of the information disclosure mandates under Section 19(1) to trigger Section 26(1) DG investigations to harass and impede competing firms by way of state regulatory intervention.

MY ORIGINAL PROPOSED RECOMMENDATIONS & SOLUTIONS

The "lead regulator doctrine": insertion of Section 21B⁴⁴ into the Competition Act, 2002:

1. Right to appeal: the right to appeal against the CCI's direction under section 26(1) of the Competition Act, 2002, when made while taking a view on a 'prima facie' opinion, is not maintainable under section 53A (1) of the said Act.

⁴¹ *Prevention of Money Laundering Act 2002*, ss 3, 5, 17, 45, 50.

⁴² *Puttaswamy (n 27) 124 (four-prong test applied to regulatory rulemaking).*

⁴³ *Companies Act 2013*, s 245.

⁴⁴ *Competition Act 2002*, ss 21B, 26(1).

2. Natural justice: The parties to the proceedings do not have a right to notice and hearing at the preliminary stage of recording of 'prima facie' opinion, but the Commission may, in its discretion, call upon the parties concerned to assist it in its proceedings.
3. Powers of CCI: The CCI may impose temporary restraint under section 33 of the Act, but only in exceptional circumstances.
4. Recording of reasons: While recording a 'prima facie' opinion, the Commission shall record at least some reasons⁴⁵, and in giving directions or orders in the exercise of its powers under section 26(1) of the Act, which may affect the rights of the parties, it shall record detailed reasons.

CHAPTER IV: FISCAL COMPLIANCE & INCOME TAX REGIMES

Under the Income Tax Act⁴⁶, 1961, the issue of taxation and fiscal responsibility is a matter of a critical junction between state powers and constitutional rights. In accordance with Article 265, no tax shall be levied or collected unless it is provided by law, but in practice, the Income Tax Authorities mostly rely on the power of summary search and seizure provided by Section 132 and reassessment provided by Section 148 r/w⁴⁷. One of the main issues with the constitutional validity of the tax collection mechanism is the presence of subjectivity in the administrative decisions. Since Section 132 allows Income Tax officials to conduct search and seizure of corporate property and freeze accounts, the "reason to believe" standard based on their subjective assessments may violate a company's constitutional rights. According to the theory of fact-scepticism of Jerome Frank, judicial decisions are based on standards that are not formally justified. A seizure of a company's assets and freezing of its accounts is an administrative decision that can deprive a business of its constitutional right to protection from unreasonable searches and seizures under Article 19(1)(g) and equal protection under Article 14. The search and attachment of property shall only be constitutionally valid if it is issued not by independent administrative agencies but by the judiciary. 3. CCI Preliminary Inquiries & Attrition. The Regulatory Wrong: Section 26(1) preliminary investigations resulting in immediate market devaluation and reputational damage prior to proving liability. "The truth is rarely pure and never simple."- (The Importance of Being Earnest, 1895, Oscar Wilde). The Jurisprudential Corollary: Antitrust enforcement under Section 26(1) of the Competition Act rests on the naïve presumption

⁴⁵ *Constitution of India 1950, arts 14, 19(1)(g), 21, 39(b)–(c).*

⁴⁶ *Section 132 of the Companies Act 2013*

⁴⁷ *Sections 211 and 212 of the Companies Act 2013*

that the initiation of a Director General (DG) inquiry is an inert administrative act. In commercial reality, market valuation and corporate reputation are precarious assets; an unfounded preliminary investigation results in an immediate, unconstitutional restraint of trade under Article 19(1)(g) prior to demonstration of the "complex truth" of market abuse.

CORPORATE GOVERNANCE FAILURES LISTED IN LITERATURE

1. Opaque Off-Balance-Sheet Transactions: Promoters and management using shell entities, fake invoices, and unrecorded cash flows to evade taxes, undermining accounting transparency and board governance.
2. Arbitrary Administrative Enforcement: Income tax authorities wielding Section 132 search powers based on subjective administrative satisfaction, freezing working capital accounts and disrupting business continuity without prior judicial scrutiny.

MY ORIGINAL RECOMMENDATIONS & REMEDIES I PROPOSE

(1) The Prior Judicial Warrant Requirement in Accordance with Section 132
"I propose amending Section 132(1) of the Income Tax Act, 1961:

'No search, seizure, or operational account freeze shall be executed against any commercial entity without prior judicial authorisation issued by a Judicial Member of the Income Tax Appellate Tribunal (ITAT⁴⁸) upon a finding of reasonable suspicion backed by sworn material evidence, replacing subjective administrative satisfaction with independent judicial oversight.'"

2. Statutory Safeguards for Statements Recorded Under Oath
"I recommend inserting a statutory proviso to Section 132(4) of the Income Tax Act, 1961:

'Provided that no admission or statement recorded during search operations past 22:00 hours or without the presence of legal counsel shall possess evidentiary value unless corroborated by independent physical or digital documentary evidence seized during the search, preserving fundamental rights under Article 20(3) and Article 21.'

3. Objective Thresholds and Judicial Review for Initiating Searches:

⁴⁸ President of the Institute of Chartered Accountants of India (ICAI). The Chairperson and other members who are in full-time employment of NFRA cannot be associated with any audit firm including related consultancy firms during the course of their employment and two years after the expiry of such appointment. Available at <http://blog.ipleaders.in/powers-and-functions-of-national-financial-reporting-authority-under-companies-act-2013/> (accessed on November 15, 2016).

"I recommend that extending search and seizure powers into Virtual Digital Spaces⁴⁹ (VDS) requires a much more structured legal framework. To remedy this, the statute r/w section 148A of the Income Tax Act, 1961 must substitute subjective impressions with a clear, objective legal test. Furthermore, investigating officers should be legally obliged to record their specific reasons in writing, subject to limited yet effective review by an independent judicial authority before launch."

4. Digital Forensic Standards and Mandatory Chain of Custody: "I recommend, as a matter of fact, that digital data is inherently delicate and easy to compromise; the law must establish strict, explicit safeguards for electronic evidence. Handling, copying, and retrieving digital records should no longer be left to standard field officers; it must be restricted entirely to certified digital forensics experts and specially trained officers."

5. Judicial Warrants for Intrusive Digital Investigations: "I recommend that intrusive digital searches—especially those demanding private passwords, personal communications, or access to cloud repositories—go well beyond traditional physical raids. Given the sheer volume of sensitive personal and commercial data stored online, the law must mandate prior judicial or quasi-judicial authorisation before officers can compel decryption or access remote servers."

6. Post-Search Oversight & Independent Taxpayer Grievance Redressal

"I recommend that enforcement power without institutional checks inevitably leads to abuse. To protect taxpayer rights and ensure accountability, the statute must set up an independent, accessible grievance redressal mechanism. Taxpayers⁵⁰ should have a clear, time-bound avenue to challenge procedural overreach, report mishandled data, or seek immediate relief without having to wait through years of trial litigation."

CONCLUSION

Corporate compliance and constitutional liberties are not opposing forces; they are mutually reinforcing pillars of economic governance. Modern corporate regulation in India has swung from under-enforcement to administrative overreach. By turning minor disclosure lapses into predicate money laundering offences and subjecting entities to uncoordinated multi-agency probes, the regulatory state risks undermining the commercial freedom guaranteed by Article 19(1)(g) and

⁴⁹ Ritima Singh, 'CCI v TRAI / Bharti Airtel: Regulatory Framework for Better Coordination' (2023) *Competition Commission of India Journal*

⁵⁰ "Salmond on Jurisprudence"—John William Salmond

the due process protections of Articles 14, 20(3), and 21. This paper demonstrates that the solution does not require dismantling regulatory oversight or compromising the economic democracy principles of Article 39(b) and (c). Instead, it requires structural alignment. Adopting the Lead Regulator Doctrine, inserting the PMLA Procedural Nexus Clause, mandating Statutory Proportionality Audits, and reforming Independent Director appointments create a clear hierarchy of enforcement. These reforms ensure that corporate wrongdoers are held accountable through due process, while legitimate businesses can operate without fear of arbitrary state attrition. Restoring this balance is essential to building an economic environment where market integrity and constitutional rights exist in harmony. At its core, India's modern corporate enforcement apparatus is trapped in a deep structural paradox. In the noble pursuit of economic democracy and public integrity—goals explicitly enshrined in the Directive Principles of Articles 39(b) and 39(c)—the state has built a sprawling web of overlapping enforcement authorities. Yet, when market regulators treat compliance as a battleground of sheer administrative power, they forget that no economic policy can outrank the fundamental rights guaranteed to citizens and businesses under Part III of the Constitution. Across the four major pillars of economic regulation, the human and institutional cost of this friction becomes glaringly obvious in Securities Governance & SEBI⁵¹. Under Sections 11 and 11B of the SEBI⁵² Act, broad discretionary powers mean minor filing delays or procedural missteps are often met with disproportionate penal sanctions⁵³. When penal discretion scales without clear statutory limits, it violates Article 14⁵⁴'s guarantee against state arbitrariness, r/w “*Lon Fuller’s Internal Morality of Law against Arbitrariness*”⁵⁵; therefore, imposing fair, just, reasonable, non-arbitrary & fundamentally right sanctions upon enterprise rather than curing market failure. To evaluate the administrative state through legal realism is to

⁵¹ Prevention of Money Laundering Act 2002, s 50.

⁵² The Composition of the National Financial Reporting Authority (NFRA) is as follows:

(1) A Chairperson who is an eminent person and has expertise in accounting, auditing, finance or law.

(2) A maximum of 15 members comprising

a) Member- Accounting, b) Member- Auditing and c) Member- Enforcement.

(3) A representative of the Ministry of Corporate Affairs who is not below the rank of Joint Secretary or equivalent.

(4) A representative of RBI, nominated by it and who is a member of the RBI Board.

(5) A representative of SEBI who is its chairman or whole-time member and is nominated by SEBI.

(6) A retired Chief Justice of a High Court or a person who has been a High Court Judge for not less than 5 years, to be nominated by the central government.

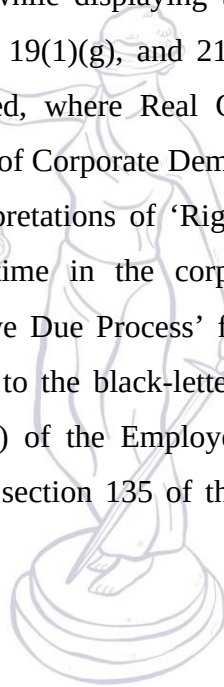
(7) President of the Institute of Chartered Accountants of India (ICAI).

⁵³ See Section 149(1) of the Companies Act, 2013; Every Listed Company /Public Company with paid-up capital of Rs 100 Crores or more / Public Company with turnover of Rs 300 Crores or more shall have at least one Woman Director.

⁵⁴ Constitution of India, 1950, Article 14.

⁵⁵ “The Morality of Law”- Book by ‘Lon L. Fuller’.

invoke the very words of Oscar Wilde, who observed that “style at times has been preferred to sincerity.” In modern corporatism, statutory compliance plays the role of a picture of Dorian Gray in which ESG filings and LODR disclosures of a corporation are the mask that conceals the rotting corpse of promoter hegemony and audit failures. On the other hand, when the enforcement agencies wield tools including, but not limited to, the provisions of section 132 of the Income Tax Act and section 17 of the PMLA, Wilde’s “morality as an attitude learned via experience”⁵⁶ adopted toward those personally disliked” finds resonance. By criminalising the procedural time limits of administration⁵⁷, the state indulges in the same hypocrisy of requiring the uniformity of statutory compliance from corporates while displaying the widest latitude of discretion in its functioning, thus violating Articles 14, 19(1)(g), and 21 of the Constitution of India. i.e., the ‘Grey’ area Chipman Gray propounded, where Real Corporate Governance Laws basically operate, thereby strengthening the spine of Corporate Democracy⁵⁸, quintessential for maintaining the balance between Article 21’s interpretations of ‘Right to Livelihood’ from the employees investing their respective labour & time in the corporate firm with that of the second interpretation of Article 21; ‘Substantive Due Process’ from the employer’s stable & efficient Corporate Governance norms coherent to the black-letter statutes in extension of yield out of Article 300A(Capital-Investment Risk) of the Employer, thereby fostering Corporate Social Responsibility (CSR) in accordance to section 135 of the Companies’ Act, 2013 towards The Entirety of Nation State India.



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⁵⁶ “*The Path of Law*”- Oliver Wendell Holmes Jr. (1881)

⁵⁷ “*The Nature & Sources of Law*”- John Chipman Gray (1909)

⁵⁸ “*The Great Dictator*”- speech by Sir Charles Spencer Chaplin Jr. (1941).