INDEPENDENT IN LAW, DEPENDENT IN PRACTICE EXAMINING THE EFFECTIVENESS OF INDEPENDENT DIRECTORS UNDER INDIAN CORPORATE GOVERNANCE LAW

by

Vatsal Sutaria

&

Archie Kotwani

ABSTRACT

India's law requires designated independent directors to satisfy detailed eligibility conditions, disclose conflicts, undertake specified duties and sit on committees that supervise financial reporting and appointments. The assumption behind these rules is that a director who lacks disqualifying ties will be able to judge management proposals without undue influence. That assumption is incomplete. A person may comply with every statutory condition yet depend on promoters or an incumbent board for nomination, access to information, committee assignments and a second term. This article examines that dependence through the Companies Act, 2013, the SEBI listing regulations, regulatory reform papers and selected disputes. It argues that the appointment process deserves closer scrutiny than the usual catalogue of independence tests. The law now offers important counterweights, including special-resolution approval and a limited alternative involving public-shareholder support; neither makes the process wholly independent of concentrated ownership. Satyam and IL&FS show what oversight systems are asked to do when management information is unreliable, but do not prove that every independent director in those companies was culpable. A comparison with the United Kingdom and United States suggests reforms centred on nominations, independent information channels, dissent records and evidence-based accountability. The proposed standard measures independence by the director's freedom to question, investigate and, when necessary, oppose the people who secured the appointment.

Indian Journal of Contemporary Legal and Social Issues

Keywords: Independent directors; Companies Act, 2013; SEBI LODR; promoter control; board accountability; minority shareholders; director liability.

1. INTRODUCTION

A company can appoint a director who is independent under the law and still create conditions in which disagreement carries a personal cost. The director may rely on the chair for briefings, the company secretary for papers, the nomination committee for another term and a controlling shareholder for the votes that secure that term. These relationships do not necessarily produce partial decisions. They do, however, give the study of independence a practical dimension that definitions based on family ties, employment history and financial connections cannot settle. The Companies Act, 2013 puts independent directors at the centre of the governance of listed public companies, and SEBI adds a detailed framework for listed entities.[12]

The central question is whether these institutional arrangements give independent directors enough room to oppose management or promoters when shareholders' interests diverge. Formal independence describes compliance with an eligibility rule at a point in time. Substantive independence describes a continuing capacity to obtain facts, test proposals, record dissent and act on a reasoned judgment despite pressure. The first is observable through declarations and disclosures. The second is harder to establish, because decisions often occur in private meetings and because a director may reasonably agree with management. A vote in favour of a board proposal is therefore not proof of dependence, just as a public disagreement is not conclusive proof of independence.

Indian corporate governance has a further complication. In widely held companies, the traditional agency problem concerns managers using dispersed investors' money. In companies with a strong promoter or controlling shareholder, a different agency conflict may be prominent: controllers can influence board composition and related-party dealings while minority investors remain unable to negotiate their own protections. The Kotak Committee expressly recognised the difficulty presented by promoter-led business structures and urged attention to independence in

Indian Journal of Contemporary Legal and Social Issues

[1] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.

[2] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, regs. 16(1)(b), 17–19, 25, 30 & sched. III, pt. A, ¶ 7B (India) [hereinafter SEBI LODR Regulations], https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&smid=&ssid=3.

practice. Its concern was not simply the absence of rules; it was the gap between formal compliance and the board's actual conduct.[3]

This article proceeds doctrinally. It reads the statutory provisions and listing rules together, examines two corporate failures as bounded case studies, and considers appellate decisions on director responsibility. It also reviews the design choices made in the UK Corporate Governance Code and Nasdaq rules. It does not claim to measure the prevalence of capture among Indian independent directors, because that would require a systematic dataset of nominations, committee work, voting, correspondence and resignations. Its narrower claim is institutional: certain lawful features of appointment, remuneration and information supply can create incentives to avoid disagreement. Whether such incentives affected a particular director must be proved separately.[4]

2. WHAT INDEPENDENCE IS SUPPOSED TO ACHIEVE

The statutory idea of an independent director is functional. The person is placed on the board precisely because a decision-maker who is neither management nor a business associate may be prepared to test internal accounts, advise on risk, scrutinise related-party transactions and protect interests that controlling insiders could neglect. The Companies Act's Schedule IV expects independent directors to bring objective judgment to strategy, performance and risk, to safeguard stakeholder interests and to scrutinise management. This is a demanding description of conduct rather than a simple absence of connections.[5]

There are at least four distinct ways in which independence can fail. A financial tie may make a director reluctant to risk an income stream. A professional tie may create obligations to the same institutions or individuals whose conduct is under review. A social tie may discourage confrontation even where no legal relationship exists. Finally, institutional dependence may arise from how the board controls nomination, information and reappointment. These mechanisms interact, but they are analytically different. A director who receives no significant remuneration may still have a strong incentive to preserve an appointment because it confers access, reputation or future board opportunities.

Indian Journal of Contemporary Legal and Social Issues

[3] SEBI, Report of the Committee on Corporate Governance 4–6, 12–22 (Oct. 5, 2017) [hereinafter Kotak Committee Report], https://www.sebi.gov.in/sebi_data/attachdocs/oct-2017/1509102194616.pdf.
[4] SEBI, 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.
[5] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.

The distinction matters for legal design. Bright-line tests can bar employment, material business dealings or prescribed familial connections. They are easier to administer than an assessment of personal loyalty. Yet an exhaustive attempt to define independence could exclude experienced candidates while missing informal influence. A defensible legal system therefore needs two layers: rules that identify obvious conflicts and procedures that enable an eligible director to work independently after taking office. The existing Indian regime contains parts of both; the question is whether its procedures are strong enough.[67]

Agency theory explains why outside monitoring is valuable but should not be treated as a complete account of boards. Directors may contribute industry knowledge and advice as well as supervision. Excessive insistence on confrontation can turn useful advice into defensive paperwork. The appropriate standard is reasoned challenge: a director ought to seek the information needed for an important decision, test significant assumptions and disclose a material conflict; the director need not oppose every proposal to establish independence. This standard becomes especially demanding where the board is asked to approve a transaction that directly benefits a controlling shareholder.

3. INDIAN STATUTORY AND REGULATORY FRAMEWORK

A. Eligibility, tenure and declarations

Section 149(4) requires every listed public company to have at least one-third of its total directors as independent directors, subject to the applicable statutory scheme. Section 149(6) defines independence by reference to character and expertise, promoter status, specified relationships, pecuniary interests and other disqualifications. Section 149(7) requires a declaration of independence at the first relevant board meeting, the first meeting of each financial year and when circumstances change. These conditions provide an entry filter and an ongoing disclosure duty, but do not make a board vote independent merely because the declaration was signed.[8]

Indian Journal of Contemporary Legal and Social Issues

Section 149(10) permits an independent director to hold office for a term of up to five consecutive years and to be reappointed on passing a special resolution with the necessary disclosure in the board's report. Section 149(11) limits consecutive terms to two and ordinarily

[6] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.
[7] SEBI, Report of the Committee on Corporate Governance 4–6, 12–22 (Oct. 5, 2017) [hereinafter Kotak Committee Report], https://www.sebi.gov.in/sebi_data/attachdocs/oct-2017/1509102194616.pdf.
[8] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.

requires a three-year cooling-off period before another appointment. Independent directors are not subject to retirement by rotation. Term limits prevent indefinite incumbency, but the possibility of a valuable second term can increase the salience of the nomination decision near the end of the first. Cooling-off requirements address prolonged attachment only after a person leaves office.[9]

The Companies (Appointment and Qualification of Directors) Rules, 2014 provide for an independent-director databank and associated compliance requirements, including an online proficiency assessment subject to prescribed exemptions. Section 150 allows selection from a databank, yet the databank is not an external appointing authority and does not eliminate a company's role in proposing a candidate. Better candidate information can widen the pool, but its mere availability does not determine who is placed before shareholders.[10][11]

B. Committees, access and duties

Section 177 establishes the statutory audit-committee framework; section 178 concerns the nomination and remuneration committee. For listed entities, LODR regulations 18 and 19 contain further composition and operational requirements. Schedule IV asks independent directors to satisfy themselves about the integrity of financial information, seek clarification where necessary, attend meetings and report concerns about unethical behaviour, suspected fraud or breaches of company policy. The architecture assumes that a director can obtain useful information and that the committee is able to call management and advisers to account.[12][13]

This assumption requires careful treatment. Board and audit-committee papers are usually created within the corporate organisation. Their completeness and timing can determine whether a director sees a problem before a transaction becomes irreversible. Independent directors have rights and responsibilities to ask questions, seek outside professional advice where appropriate and record their positions. Rules about composition and attendance are observable; the quality of

Indian Journal of Contemporary Legal and Social Issues

[9] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.
[10] Companies (Appointment and Qualification of Directors) Rules, 2014, r. 6 (India), https://indiankanoon.org/doc/14378097/.
[11] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.
[12] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.
[13] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, regs. 16(1)(b), 17–19, 25, 30 & sched. III, pt. A, ¶ 7B (India) [hereinafter SEBI LODR Regulations], https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&smid=&ssid=3.

the information supplied, the questions asked and the response to objections need a more substantive test.[14]

Section 166 sets out the general duties of directors, including good faith, due care, skill and diligence and the exercise of independent judgment. Section 134 assigns responsibilities concerning financial statements and the directors' responsibility statement. These provisions caution against an account of independent directors as merely symbolic protectors of outsiders. They are board members with real obligations. At the same time, the duties must be applied in light of the director's role and the information reasonably available through board processes; turning every financial restatement into automatic personal liability would distort the statutory scheme.[15][16]

C. Listed-company appointment safeguards

The listing regime adds requirements concerning composition, disclosure, committee operation, meeting practice, evaluation and independent directors' separate meetings. Regulation 25(2A) requires a special resolution for the appointment, reappointment or removal of an independent director, with a specified alternative route where a first appointment does not achieve the special-resolution majority but gains both an ordinary majority of votes cast and a majority of votes cast by public shareholders. The relevant distinction is between a public-shareholder voting safeguard and a general veto vested in minority investors: they are not the same institution.[17][18]

The history of the provision matters. SEBI's 2021 consultation considered stronger independence in appointment and removal, the nomination process, remuneration and resignation. A 2022 board memorandum recorded concerns that a special resolution could be blocked by competing promoter blocs, and proposed a public-shareholder approval alternative in defined circumstances. This sequence makes it inaccurate to say that Indian law provides only unchecked promoter

Indian Journal of Contemporary Legal and Social Issues

[14] SEBI LODR Regulations, supra note 2, regs. 17(10), 18(1), 19(1), 25(3)–(5), (7)–(11), sched. II, pt. C.
[15] Companies Act, 2013, No. 18 of 2013, §§ 134(5), 149(8), 150(2), 152, 161, 173, 184, 188 (India).
[16] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.
[17] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, regs. 16(1)(b), 17–19, 25, 30 & sched. III, pt. A, ¶ 7B (India) [hereinafter SEBI LODR Regulations], https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&smid=&ssid=3.
[18] SEBI LODR Regulations, supra note 2, reg. 25(2A) & proviso (special-resolution route and specified alternative involving public-shareholder votes).

approval. It is equally inaccurate to describe the alternative as an across-the-board requirement that every independent director must win a separate majority-of-minority vote.[1920]

For unlisted companies and listed companies that fall within different applicability rules, the precise governing duties can differ. The Companies Act and SEBI's listing regulations should not be treated as interchangeable. Likewise, exceptions, amendments and special categories of listed entities can affect the application of particular provisions. This paper evaluates the ordinary framework for equity-listed Indian companies and does not suggest that every company faces identical composition or voting requirements.[2122]

4. THE APPOINTMENT AND REAPPOINTMENT PARADOX

A. Control of the candidate slate

The strongest source of dependence may arise before a director joins the board. Someone must identify the candidate, evaluate the credentials, negotiate willingness to serve and recommend the name for a shareholder vote. Section 178 places nomination responsibilities within a board committee and sets independence requirements for its composition. That is a meaningful separation from an unfiltered executive choice. It is not a guarantee of separation from the incumbent board's social and professional networks. Where a promoter is influential in the overall governance structure, the nominating process may remain exposed to that influence even though the committee meets the prescribed composition test.[2324]

Control over a slate is distinct from control over the vote. Shareholders can reject a nominated candidate; ordinarily they cannot choose freely among a large set of candidates selected by an independent public body. Voting safeguards therefore address the final decision, while agenda power operates earlier. An investor who is dissatisfied with one nominee may face a choice between approving that person and leaving a vacancy, especially where the company is near a

Indian Journal of Contemporary Legal and Social Issues

[19] SEBI, 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.

[20] SEBI, Board Memorandum on Alternative Appointment of Independent Directors ¶¶ 2–4 (Nov. 2022), https://www.sebi.gov.in/sebi_data/meetingfiles/nov-2022/1667447875714_1.pdf.

[21] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.

[22] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, regs. 16(1)(b), 17–19, 25, 30 & sched. III, pt. A, ¶ 7B (India) [hereinafter SEBI LODR Regulations], https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&smid=&ssid=3.

[23] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.

[24] Kotak Committee Report, supra note 3, chs. II–III (appointment, role, evaluation and committee composition).

regulatory composition threshold. A nomination procedure that explains how candidates were sought, who proposed their names and why alternatives were rejected would make this structural constraint more visible.

The special-resolution rule improves resistance to a narrow majority but does not make approval immune to concentrated voting. A shareholder with a sufficiently large block may influence whether the required voting threshold is reached. Conversely, the public-shareholder alternative provides an additional route for a first appointment supported outside the promoter group; it can protect a candidate from a blocking position held by one substantial shareholder. Because that route is conditional and confined to the specified appointment context, its existence does not settle questions about every reappointment or removal. The legally important point is that independence depends on both the initial selection process and the structure of the final shareholder vote.[25][26]

B. The price of another term

Reappointment presents a different conflict from initial appointment. The director has developed working relationships, knows the organisation and may be well placed to challenge management on the basis of experience. The same experience can make continuing service desirable, particularly when board positions provide professional standing. A legal test that disqualifies candidates because they want reappointment would be absurd. Nevertheless, where an incumbent believes that a searching audit inquiry or dissenting vote could end the prospect of another term, the incentive may alter behaviour even without any explicit threat.

Section 149's tenure limits reduce lifetime dependence, while the need for a special resolution makes renewal a public corporate decision. These are partial answers. They do not determine whether a nomination committee will recommend a director who has persistently challenged the chair, nor do they require publication of reasons for declining to renominate an eligible incumbent. A possible reform is an explanatory report on the nomination committee's evaluation

Indian Journal of Contemporary Legal and Social Issues

[25] SEBI, Board Memorandum on Alternative Appointment of Independent Directors ¶¶ 2–4 (Nov. 2022), https://www.sebi.gov.in/sebi_data/meetingfiles/nov-2022/1667447875714_1.pdf.
[26] SEBI LODR Regulations, supra note 2, reg. 25(2A) & proviso (special-resolution route and specified alternative involving public-shareholder votes).

criteria, significant participation and material dissent, without allowing the company to disclose privileged advice or confidential whistleblower information.[27][28]

C. Remuneration, status and interconnected careers

Section 149(9) permits independent directors to receive sitting fees, reimbursement of participation expenses and profit-related commission approved by members; it excludes employee stock options. Such payments are not inherently compromising. Directors undertake legal risk and must devote time to the company. Inadequate remuneration can restrict service to individuals who can afford to work without pay. The risk lies in discretionary pay or benefits that become substantial relative to the person's other income, or where remuneration decisions are perceived to reward compliant behaviour. Disclosure of the method and amount of payment is more useful than an automatic presumption that any fee purchases loyalty.[29]

Multiple board seats pose a related problem. They can spread good practice and give directors experience across industries, but can also strain time available to read audit papers and investigate irregularities. More subtly, the same small network may nominate one another for appointments. A network connection is not itself a legal conflict. Its significance depends on whether it creates a relationship that a reasonable investor would consider relevant to judgment. Disclosures that separate material business ties from professional acquaintance are more informative than a large unstructured register of acquaintances.

The nomination committee should therefore record the expected time commitment, the nature of outside assignments and the reasons for treating a candidate as independent where less obvious connections exist. This resembles the UK approach, which asks boards to evaluate circumstances that could appear to impair independence and explain a contrary judgment. The aim is to make judgment accountable, not to convert every social connection into automatic disqualification.[30][31]

Indian Journal of Contemporary Legal and Social Issues

[27] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.
[28] SEBI LODR Regulations, supra note 2, reg. 25(2A) & proviso (special-resolution route and specified alternative involving public-shareholder votes).
[29] Companies Act, 2013, No. 18 of 2013, § 149(9) (India) (sitting fee, reimbursement and profit-related commission; exclusion of stock options for independent directors).
[30] Fin. Reporting Council, UK Corporate Governance Code 2024, princs. G–K, provisions 9–24, 29 (Jan. 2024), https://media.frc.org.uk/documents/UK_Corporate_Governance_Code_2024_a2hmQmY.pdf.
[31] Fin. Reporting Council, UK Corporate Governance Code 2024, supra note 17, provisions 10–12, 17–21.

D. Information dependence and board culture

Appointment and remuneration receive attention because they are visible. Information dependence can be more decisive. An independent audit-committee member may know that a reported cash balance is material but lack access to direct bank confirmations or to the audit team's underlying concerns. The committee's minutes may record approval after management assurances. A later investigator must distinguish a director who failed to ask an obvious question from one who asked it but received credible false information. Without a record of requests, answers and escalation, that distinction is hard to make.

A practical system of independence requires a right to obtain independent advice with a sensible budget, direct meetings with internal and external auditors, access to compliance and risk officers and a protected method of escalating concerns. Meeting separately without executives can help only if those meetings are used to identify matters for follow-up. This is also why the content of minutes matters: a record that all items were 'discussed' tells little about a director's diligence. A concise record of unresolved questions, information requests and subsequent action offers better evidence of monitoring.[3233]

E. Resignation and silence

A director facing an unresolved governance dispute may resign. The resignation can protect personal integrity, but it may also remove the only board member willing to challenge a disputed transaction. LODR Schedule III requires disclosures about an independent director's resignation, including a letter with detailed reasons and confirmation about other material reasons. The framework is useful because a vague departure may otherwise give investors no insight into board conflict. Its effectiveness depends on truthful and sufficiently specific disclosure, timely publication and scrutiny of cases where a public reason is inconsistent with earlier concerns.[34]

Indian Journal of Contemporary Legal and Social Issues

An effective regime should avoid forcing a director to choose between continued silence and a public allegation unsupported by evidence. A confidential reporting channel to the appropriate regulator, coupled with retention of contemporaneous correspondence and protection against retaliatory threats, would supplement the published resignation notice. The director must still observe duties of confidentiality and avoid misleading public statements. The objective is to

[32] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.
[33] SEBI LODR Regulations, supra note 2, regs. 17(10), 18(1), 19(1), 25(3)–(5), (7)–(11), sched. II, pt. C.
[34] SEBI LODR Regulations, supra note 2, sched. III, pt. A, ¶ 7B (resignation disclosures).

make the record reliable while preserving a path for concerns that cannot safely be resolved inside the boardroom.

5. GOVERNANCE FAILURES AND THE LIMITS OF THE EVIDENCE

A. Satyam: oversight when the numbers are false

Satyam Computer Services illustrates the danger of treating board approval as proof that the underlying information is sound. In his letter dated 7 January 2009, chairman B. Ramalinga Raju admitted that financial statements included substantial fictitious cash and other misstatements. The letter is a primary record of admissions by the chairman, not an adjudicated account of each director's personal conduct. SEBI later announced action against named persons connected with the wrongdoing. These materials establish a serious failure in the company's reporting and control environment; they do not establish that every independent director knew the accounts were false.[3536]

The proposed acquisition of two promoter-related companies, commonly associated with the Maytas controversy, raises a more direct question about board challenge. A contemporaneous Company Law Board order recorded allegations surrounding the proposed transaction and independent-director resignations. The significance for this paper is institutional: a board asked to approve a transaction involving persons connected to a controlling family needed reliable independent valuation, a clear account of conflicts, and a process in which dissent could affect the outcome. The public record of controversy invites questions about what material was supplied and what doubts were raised, but should not be stretched into findings of personal dishonesty without an order making those findings.[3738]

There are two different possible explanations for failure at Satyam. Directors might have received misleading documents and been unable, acting reasonably, to detect falsification. Or they might have been presented with warnings that called for inquiry and failed to act with appropriate care.

Indian Journal of Contemporary Legal and Social Issues

[35] Letter from B. Ramalinga Raju, Chairman, Satyam Computer Services Ltd., to Board of Directors (Jan. 7, 2009), filed as Exhibit 99.2 with the U.S. Securities & Exchange Commission, https://www.sec.gov/Archives/edgar/data/1106056/000114554909000025/u00107exv99w2.htm.
[36] SEBI, Press Release No. 67/2014, Order in the Matter of Satyam Computer Services Limited (July 16, 2014), https://www.sebi.gov.in/sebi_data/docfiles/28591_t.html.
[37] Company Law Board, Order Concerning Satyam Computer Services Ltd. (Jan. 2009), filed as Exhibit 99.4 with the U.S. Securities & Exchange Commission, https://www.sec.gov/Archives/edgar/data/1106056/000114554909000039/u00110exv99w4.htm.
[38] SEBI, Annual Report 2008–09, box 3.1 (investigation into Satyam Computer Services Ltd.), https://www.sebi.gov.in/sebi_data/attachdocs/1289364867230.pdf.

Both can coexist across different people and decisions. The legal test must therefore examine committee membership, attendance, access to evidence, requests for external verification, dissent and the chronology of statements. The fact of fraud is an essential starting point, never the end of the liability inquiry.

B. IL&FS: the failure of group-level supervision

The IL&FS crisis poses a different oversight problem. On 1 October 2018, the Ministry of Corporate Affairs announced that the government had moved the National Company Law Tribunal under sections 241(2) and 242 of the Companies Act and that the tribunal had permitted replacement of the existing board. The government stated that group affairs were being conducted in a manner prejudicial to public interest. That press release documents a state intervention and the grounds advanced for it; it does not provide a finding that each displaced director, whether executive or independent, committed fraud.[39]

A complex corporate group can obscure risk through subsidiaries, guarantees, financing structures and related-party exposures. An independent director of a holding company may have formal access to board papers yet lack a clear consolidated picture of obligations across entities. That issue is not resolved merely by fixing the number of independent members at holding-company level. The Kotak Committee addressed monitoring of group entities and the need to improve risk and audit oversight. The relevant inquiry is whether directors received information at a level that matched the risks their board was expected to supervise.[40][41]

The practical lesson from IL&FS is therefore about systems as much as individuals. To assess the conduct of a particular independent director one would need records of board and committee meetings, cash-flow forecasts, internal audit reports, credit-risk reports, representations by executives and any warnings or demands for corrective action. A press release announcing a board supersession cannot substitute for that evidence. At the same time, the absence of a final personal-liability finding in the sources examined does not prove that oversight arrangements were adequate.

Indian Journal of Contemporary Legal and Social Issues

[39] Ministry of Corporate Affairs, Government in Public Interest Moved NCLT to Supersede Management of IL&FS on Grounds of Mismanagement, Press Information Bureau (Oct. 1, 2018), https://www.pib.gov.in/newsite/PrintRelease.aspx?lang=2&reg=48&relid=183864.

[40] SEBI, Report of the Committee on Corporate Governance 4–6, 12–22 (Oct. 5, 2017) [hereinafter Kotak Committee Report], https://www.sebi.gov.in/sebi_data/attachdocs/oct-2017/1509102194616.pdf.

[41] Ministry of Corporate Affairs, Government in Public Interest Moved NCLT to Supersede Management of IL&FS on Grounds of Mismanagement, Press Information Bureau (Oct. 1, 2018), https://www.pib.gov.in/newsite/PrintRelease.aspx?lang=2&reg=48&relid=183864.

C. How cases should be compared

The two cases should not be collapsed into a claim that independent directors simply 'failed'. Satyam turns in large part on falsified accounts and a controversial proposed related-party transaction. IL&FS raises questions about monitoring a large debt-laden corporate group. The information available, the relevant committee work and the timing of warning signs may differ. A stronger empirical research design would code each contested decision by the directors involved, documents supplied before the decision, recorded requests for information, external advice, subsequent resignation and the final legal outcome. This article has not performed that dataset analysis and draws no statistical inference about the overall effectiveness of Indian independent directors.

6. LIABILITY WITHOUT HINDSIGHT

A. The statutory boundary

Section 149(12) does not grant independent directors complete immunity. It limits their liability for acts of omission or commission by the company to circumstances involving knowledge attributable through board processes and consent or connivance, or a failure to act diligently. The formulation is important because board membership alone is not a sound basis for liability for every corporate wrong. Yet an independent director who disregards information received at board level or fails to act diligently may be exposed. Section 166 continues to supply a general standard of conduct and independent judgment.[42][43]

Applying section 149(12) requires attention to two different factual routes. Knowledge and consent or connivance involve what was brought to the director and the director's response. Lack of diligence focuses on conduct that reasonable oversight required in the circumstances. The law should resist both extremes: treating receipt of any board pack as conclusive knowledge of a concealed fraud, and treating a director's lack of executive office as an automatic answer to a well-founded allegation of neglect. The statutory language gives investigators and courts a starting point for a role-specific inquiry.

Indian Journal of Contemporary Legal and Social Issues

[42] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.
[43] Companies Act, 2013, No. 18 of 2013, §§ 134(5), 149(8), 150(2), 152, 161, 173, 184, 188 (India).

B. What the cases establish

In Official Liquidator v. P.A. Tendolkar, the Supreme Court considered director responsibility in misfeasance proceedings under an earlier companies statute. The judgment supports scrutiny of what directors should have noticed in the circumstances of the company's affairs. It must be applied with care: it did not interpret section 149(12), which was enacted decades later, and it involved a particular historical statutory and evidential setting. Its value is in the reasoning about directors who cannot ignore warning signs that their office and available information put before them.[44]

N. Narayanan v. Adjudicating Officer, SEBI concerns market misconduct and the responsibility of persons involved in misleading disclosure. It demonstrates the force of securities regulation against those whose conduct contributes to false information. The case should not be cited for the proposition that every independent director has the same operational knowledge or liability as an executive. Its facts concerned the persons and acts before the Court, not an abstract rule that board status equals fraudulent intent.[45]

Pooja Ravinder Devidasani v. State of Maharashtra arose under section 141 of the Negotiable Instruments Act, 1881. The Supreme Court required allegations connecting the accused director to responsibility for the conduct of the company's business rather than relying only on a title. Because the offence and governing provision differ, the case does not directly define diligence under section 149(12). Its narrower lesson is one of pleading and attribution: personal liability requires attention to the statutory basis and the accused person's actual role.[46]

Chintalapati Srinivasa Raju v. SEBI arose from the Satyam matter and requires particular care about the distinction between position, possession of information and a finding of prohibited conduct. The Supreme Court considered the evidential and legal basis for SEBI's action against the relevant appellants. It is unsafe to convert a person's connection to the corporate group into proof of involvement in every wrongful transaction. That reasoning fits the need for

Indian Journal of Contemporary Legal and Social Issues

[44] Official Liquidator, Supreme Bank Ltd. v. P.A. Tendolkar, (1973) 1 S.C.C. 602 (India), https://indiankanoon.org/doc/1197844/.
[45] N. Narayanan v. Adjudicating Officer, SEBI, (2013) 6 S.C.R. 391 (India), https://indiankanoon.org/doc/140793831/.
[46] Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 S.C.C. 1 (India), https://indiankanoon.org/doc/52020558/.

individualised assessment, while remaining tied to the securities provisions and facts decided in the case.[47][48]

SEBI v. Rakhi Trading concerned alleged manipulative securities transactions rather than the appointment or negligence of independent directors. It helps explain that market wrongdoing may be inferred from transaction patterns and circumstantial evidence, subject to the governing legal standard. Its use in an article about board independence should be limited to regulatory proof and market integrity. It offers no direct authority for imposing liability on an independent director because the company's governance later proved defective.[49]

C. Accountability that rewards investigation

An unlimited liability regime could discourage capable people from serving on boards, or encourage formalistic dissent designed chiefly to create a defensive record. Excessively narrow liability could reward passive compliance. A better approach is to test whether the director followed a reasonable process when a material risk became apparent: sought relevant records, challenged inconsistencies, obtained advice where necessary, disclosed conflicts, escalated unresolved matters and recorded reasons. Such a test would make accountability depend on actual monitoring rather than on a presumed duty to discover every concealed act.

Regulators should specify the conduct attributed to each director and the document or meeting from which knowledge or a duty to inquire arose. They should distinguish fraudulent participation, knowing acquiescence and careless oversight, because each deserves a different legal response. Boards, meanwhile, should retain correspondence that supports genuine investigation rather than producing minutes that conceal disagreement. This combination can protect diligent dissent without allowing a director to disclaim responsibility for failures visible from available evidence.[50][51][52]

Indian Journal of Contemporary Legal and Social Issues

[47] Chintalapati Srinivasa Raju v. SEBI, Civ. Appeal No. 16805 of 2017 (Sup. Ct. India May 14, 2018), https://api.sci.gov.in/supremecourt/2017/30817/30817_2017_Order_14-May-2018.pdf.
[48] SEBI, Order of the Supreme Court in Chintalapati Srinivasa Raju v. SEBI (May 14, 2018), https://www.sebi.gov.in/enforcement/orders/may-2018/order-of-hon-ble-supreme-court-in-the-matter-of-chintalapati-srinivasa-raju-vs-sebi-and-connected-civil-appeals_38980.html.
[49] SEBI v. Rakhi Trading (P) Ltd., (2018) 13 S.C.C. 753 (India), https://api.sci.gov.in/supremecourt/2011/1353/1353_2011_Judgement_08-Feb-2018.pdf.
[50] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.
[51] Official Liquidator, Supreme Bank Ltd. v. P.A. Tendolkar, (1973) 1 S.C.C. 602 (India), https://indiankanoon.org/doc/1197844/.
[52] Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 S.C.C. 1 (India), https://indiankanoon.org/doc/52020558/.

7. COMPARATIVE LESSONS

A. United Kingdom

The UK Corporate Governance Code 2024, effective generally from 1 January 2025, operates through a comply-or-explain model for companies within its scope. It identifies circumstances likely to impair or appear to impair a non-executive director's independence, including recent employment, material business relationships, additional remuneration, cross-directorships, close family ties, representation of significant shareholders and lengthy tenure. Where a board nevertheless considers a director independent, it should explain why. This puts the quality of the board's judgment into the public record rather than assuming that a formal declaration answers every issue.[5354]

The Code also calls for a senior independent director and an independent-led nominations process, with attention to orderly succession and transparent appointments. These practices do not abolish shareholder influence. Their value lies in creating identifiable board-level responsibilities and an avenue, outside the executive hierarchy, through which concerns can reach non-executive directors. The Indian system could adopt more detailed explanations of contested independence judgments without copying the Code's flexible enforcement design wholesale.[55]

B. United States

United States requirements vary by exchange and issuer. Nasdaq Rule 5605(e) generally requires director nominees to be selected or recommended either by a vote of independent directors constituting a majority of independent directors, with only those directors voting, or by a nominations committee composed solely of independent directors, subject to specified exceptions. The NYSE rules likewise prescribe independent nomination-committee structures for relevant listed issuers. Federal Rule 10A-3 supplies an additional independence rule for audit-committee members. These arrangements concentrate the recommendation stage in directors who have met the applicable independence criteria.[5657]

Indian Journal of Contemporary Legal and Social Issues

[53] Fin. Reporting Council, UK Corporate Governance Code 2024, princs. G–K, provisions 9–24, 29 (Jan. 2024), https://media.frc.org.uk/documents/UK_Corporate_Governance_Code_2024_a2hmQmY.pdf.
[54] Fin. Reporting Council, UK Corporate Governance Code 2024 (Jan. 22, 2024) (stating general effective date Jan. 1, 2025 and provision 29 effective Jan. 1, 2026), https://www.frc.org.uk/library/standards-codes-policy/corporate-governance/uk-corporate-governance-code/.
[55] Fin. Reporting Council, UK Corporate Governance Code 2024, supra note 17, provisions 10–12, 17–21.
[56] Nasdaq Stock Market LLC Rules, r. 5605(a)(2), (b), (c), (e), https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-5600-series.

The US comparison clarifies a point often lost in Indian debates: independence at the approval stage and independence at the recommendation stage are separate issues. Even a fully independent nomination committee may rely on management's candidate suggestions or professional networks. Nevertheless, placing independent directors formally in control of the recommendation can reduce the direct role of executives in selecting their monitors. Indian law already assigns nomination work to a committee with independence requirements; greater transparency in candidate sourcing and committee reasoning would make that structural safeguard easier to judge.[58][59]

C. Limits of transplantation

Neither jurisdiction supplies a complete solution for India. UK comply-or-explain reporting assumes investors can evaluate explanations and impose some discipline. US exchange rules operate within their own shareholder structures and enforcement arrangements. Indian companies vary in promoter ownership, institutional investment, size and board capacity. Reform should therefore preserve a workable route to fill vacancies and avoid giving a small bloc an unqualified power to block all candidates. The sensible lesson is procedural: who proposes the name, who evaluates conflicts, what alternative candidates were considered and what explanation is given to shareholders?

8. A WORKABLE REFORM PROGRAMME

A. Make nomination reports decision-useful

Listed companies should disclose the nomination committee's search method, the categories of persons consulted, significant expertise sought and the reason the chosen candidate satisfies the independence test. Where the nomination was suggested by a promoter, executive or existing director, that source should be identified subject to legitimate privacy concerns. Disclosure need not expose the personal details of unsuccessful candidates. The purpose is to enable investors to distinguish an open search from a closed referral process while retaining the company's authority to propose directors.

Indian Journal of Contemporary Legal and Social Issues

[57] NYSE Listed Company Manual § 303A.04 (independent nominating/corporate governance committee); see also 17 C.F.R. § 240.10A-3 (2025) (audit committee independence).
[58] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.
[59] Nasdaq Stock Market LLC Rules, supra note 19, r. 5605(e)(1) (independent director oversight of director nominations).

B. Improve the second-term decision

A reappointment notice should distinguish objective performance indicators, attendance, relevant qualifications and the director's record of seeking information or identifying governance risks. It should explain whether the nomination committee considered conflicts created during the first term. Directors should be free to disagree without an automatic loss of eligibility. For a contested second term, meaningful public-shareholder disclosure can test whether the decision rewards responsible oversight or simple alignment with management. These requirements can be built into existing shareholder documentation rather than creating a new appointment authority.[6061]

C. Give directors usable information rights

Independent directors need assured access to the audit function, risk officers, compliance staff and external auditors without executive filtering for matters within their responsibilities. Listed entities should approve a modest independent-advice budget for specified committee purposes. Minutes should record material questions, outstanding information requests and whether the response was adequate. The duty to investigate must remain proportionate; no director can reconstruct every business transaction. The aim is to make a reasonable inquiry possible and auditable.[62]

D. Protect dissent and make resignation intelligible

Resignation disclosures should be read with previous board-level concerns, and companies should not be permitted to replace a detailed reason with a bland summary when the director has given a fuller letter. A confidential route to SEBI for material unresolved concerns would reduce the pressure to make unsupported public allegations. Public disclosure would still be governed by applicable securities rules and the need to avoid misleading statements. Such a mechanism should protect bona fide reporting but not shield knowingly false accusations.[63]

Indian Journal of Contemporary Legal and Social Issues

E. Distinguish poor process from bad outcomes

SEBI and corporate authorities should evaluate independent-director conduct against an explicit sequence: information available; material warning signs; inquiries made; expert help sought;

[60] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.
[61] SEBI LODR Regulations, supra note 2, reg. 25(2A) & proviso (special-resolution route and specified alternative involving public-shareholder votes).
[62] SEBI LODR Regulations, supra note 2, regs. 17(10), 18(1), 19(1), 25(3)–(5), (7)–(11), sched. II, pt. C.
[63] SEBI LODR Regulations, supra note 2, sched. III, pt. A, ¶ 7B (resignation disclosures).

handling of conflicts; decisions recorded; and subsequent action. A director who reasonably relied on a convincing external assurance should not be judged solely by a fraud uncovered years later. A director who ignored repeated adverse audit reports should not be excused because the person was non-executive. This would give practical content to the 'diligently' language of section 149(12).[64]

F. Evaluate whether the reforms work

An evidence-based review should sample listed-company appointment notices, public-shareholder voting outcomes, resignations, reappointments and enforcement decisions. It should code how nominees were sourced and whether reappointments correlate with disclosed disagreement, rather than assuming that a low rate of dissent proves weak independence. The sample would need controls for company size, ownership concentration, sector and governance events. The study proposed here is doctrinal; a later empirical project could test the institutional hypothesis using such a dataset.

9. CONCLUSION

Indian law is no longer confined to a minimal declaration of independence. It specifies eligibility, tenure, committees, duties, disclosures and shareholder voting procedures. SEBI's revisions have also introduced safeguards that constrain simple promoter approval in important circumstances. The legal problem is narrower and more persistent: the person who is expected to scrutinise the company may still depend on its governing network for nomination, information, status and renewal. That dependence creates an identifiable risk, even if it cannot prove that any particular decision was compromised.[656667]

The case studies reveal why the distinction matters. The Satyam record documents falsified reporting and questions about approval of a promoter-related transaction. The IL&FS intervention documents severe group-level governance concerns. Neither record, standing alone, assigns personal fault to every independent director. Section 149(12) requires a specific inquiry into

Indian Journal of Contemporary Legal and Social Issues

[64] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.
[65] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.
[66] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, regs. 16(1)(b), 17–19, 25, 30 & sched. III, pt. A, ¶ 7B (India) [hereinafter SEBI LODR Regulations], https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&smid=&ssid=3.
[67] SEBI, Board Memorandum on Alternative Appointment of Independent Directors ¶¶ 2–4 (Nov. 2022), https://www.sebi.gov.in/sebi_data/meetingfiles/nov-2022/1667447875714_1.pdf.

knowledge, consent or connivance and diligence. This should remain central to legal accountability.[686970]

The most defensible reforms address the ordinary conditions of board work: transparent candidate selection, intelligible reappointment decisions, direct access to risk information, protected channels for dissent and enforcement that identifies the particular conduct attributed to each director. The test of independence should be whether an eligible director can investigate and disagree without having to depend on the approval of the people being monitored. The statutory definition is necessary; the institutional conditions of judgment decide how much it achieves.

BIBLIOGRAPHY

Primary legislation, regulations, case law and institutional materials cited in the footnotes are collected below. Web addresses identify the public versions used for this analysis.

Category	Authority / material	Relevance
Legislation	Companies Act, 2013; Companies (Appointment and Qualification of Directors) Rules, 2014	Eligibility, fiduciary duties, board committees and liability
Regulation	SEBI LODR Regulations, 2015 (as amended)	Listed-company composition, nomination, votes and disclosures
Regulatory policy	Kotak Committee Report (2017); SEBI consultation and board memoranda (2021–22)	Independence in spirit; reform history
Indian judgments	Official Liquidator v. P.A. Tendolkar (1973); N. Narayanan v. SEBI (2013)	Director oversight; market disclosure
Indian judgments	Pooja Ravinder Devidasani (2014); Chintalapati Srinivasa Raju (2018); SEBI v. Rakhi Trading (2018)	Individual attribution; securities enforcement
Case records	Satyam chairman's letter (2009); CLB order; SEBI Satyam press release (2014)	Financial misstatement and related-party governance
Institutional material	Ministry of Corporate Affairs IL&FS press release (2018)	Board replacement and group governance

[68] Letter from B. Ramalinga Raju, Chairman, Satyam Computer Services Ltd., to Board of Directors (Jan. 7, 2009), filed as Exhibit 99.2 with the U.S. Securities & Exchange Commission, https://www.sec.gov/Archives/edgar/data/1106056/000114554909000025/u00107exv99w2.htm.

[69] Ministry of Corporate Affairs, Government in Public Interest Moved NCLT to Supersede Management of IL&FS on Grounds of Mismanagement, Press Information Bureau (Oct. 1, 2018), https://www.pib.gov.in/newsite/PrintRelease.aspx?lang=2&reg=48&relid=183864.

[70] Companies Act, 2013, No. 18 of 2013, §§ 149(4), 149(6)–(7), 149(10)–(12), 150, 166, 177–78, sched. IV (India), https://www.indiacode.nic.in/handle/123456789/2114.

Comparative	UK Corporate Governance Code 2024; Nasdaq Rule 5605; NYSE Manual § 303A.04; 17 C.F.R. § 240.10A-3	Independence assessments and nominations

Indian Journal of Contemporary
Legal and Social Issues