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INDEPENDENT DIRECTORS UNDER SCRUTINY: STRIKING THE BALANCE BETWEEN ACCOUNTABILITY AND INDEPENDENCE IN INDIA

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INTRODUCTION

Independent Directors can be described as 'linchpin of corporate governance' as it occupies a pivotal position. According to the Companies Act,2013, they are charged and entrusted with supervisory role and crucial responsibilities such as ensuring transparency, accountability, maintaining independency, protecting minority shareholders and other stakeholders from potential mismanagement by promoters or executive directors[1]. Therefore, the function of independent director is different from that of executive director or promoter director because it holds a supervisory or advisory role. Following major corporate scandals, the legislators and regulators have increasingly tried to sought to strengthen the responsibility of the independent directors through statutory obligations and stricter enforcement mechanism.

However, the growing trend of imposing stricter liabilities may undermine the very essence of independence which the law seeks. While ensuring accountability is essential, excessive liability may discourage qualified professionals from accepting such positions. This article examines and explores the need to strike a balance between accountability and independence of independent directors along with its evolving liability framework.

ROLE OF INDEPENDENT DIRECTORS IN CORPORATE GOVERNANCE

The role of independent director is institutionalised as integral component of corporate governance under Companies Act, 2013. They are non – executive directors, unlike executive directors, they are not operating and managing day-to-day activities of company. Therefore,

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[1]Companies Act, No. 18 of 2013, & 149(6), Acts of Parliament, 2013(India)

their primary function is to provide unbiased judgements on matters relating to strategy, performance, risk management and stakeholder protection.

The main purpose of appointment is to uphold transparency, ensure compliance of legal obligations and safeguarding interests of minority shareholders. Their presence helps to promote greater accountability and reduce conflict of interests that may arise due to concentrated power structure prevalent in Indian Corporations.

LEGAL FRAMEWORK GOVERNING INDEPENDENT DIRECTORS

Independent Directors are primarily governed by the Companies Act,2013 and the Securities and Exchange Board of India (SEBI) regulations.

The qualifications and duties of Independent Directors are provisioned under Section 149 of the Companies Act, 2013. According to Section 149(12) the liability of Independent Director is limited as they shall be held liable only in respects of acts of omission or commission by a company that occurred with their knowledge, attributable through board processes and with their connivance or failure to act diligently[2].

Additionally, various governance responsibilities are imposed by SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015[3]. Responsibilities such as participation in audit committees, nomination committees and oversight of related-party transactions.

THE GROWING LIABILITY OF INDEPENDENT DIRECTORS

Aftermath of Satyam scandal, which exposed serious deficiencies in board oversight, a shift can be traced in which independent directors can be increasingly found facing regulatory investigation and legal proceedings arising from corporate misconduct. They have been viewed not merely as ceremonial appointees but as active guardians of corporate governance.

In recent years, the role of independent directors has been transformed from passive advisors to active participants in governance process because of the growing expectation of exercising greater diligence in monitoring company affairs has been reflected by the enforcement actions by regulatory authorities. Issues such as failure to identify irregularities, scrutinize financial statements or question management decisions has often attracted regulatory attention.

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[2]Companies Act, No. 18 of 2013, & 149(12), Acts of Parliament, 2013 (India)
[3] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 17-25.

Although this development may strengthen accountability but also raise concerns regarding the practical limits of an independent director's responsibility.

JUDICIAL APPROACH TOWARDS DIRECTOR LIABILITY

The judicial approach by Indian courts have helped to distinguish between the liability of executive director and non- executive independent directors.

In Pooja Ravinder Devidasani V. State of Maharashtra (2014*),* the Supreme Court emphasized that "criminal liability cannot be imposed merely because an individual holds the position of a director. Specific allegations demonstrating active involvement in the alleged wrongdoing must be established[4]."

Similarly, in Sunil Bharti Mittal V. Central Bureau of Investigation (2015), the Supreme Court reiterated that "vicarious liability cannot automatically be attributed to directors without evidence of their role in the commission of the offence[5]."

Again, in Shiv Kumar Jatia V. State of NCT Delhi (2019) 17 SCC 193 recognized the limitation of not possessing investigative powers hence largely depending on the information provided by management and professionals. Therefore, Supreme Court held that "directors cannot be held criminally liable for negligence unless there is direct involvement or gross negligence with mens rea. The Court explicitly rejected the notion that directors are expected foresee or prevent every mishap[6]."

While these rulings have reinforced the principle of a required demonstrable nexus between the director's conduct and the alleged wrongdoing and not be subjected to blanket liability solely on account of their designation. But at the same time, have also recognised they cannot remain passive spectators if there is evidence of knowledge, consent, connivance, or failure to exercise due diligence, liability may legitimately arise.

THE CHALLENGE: ACCOUNTABILITY VERSUS INDEPENDENCE

The shift towards growing scrutiny presents a systematic governance crisis. Although holding independent directors accountable enhances board effectiveness and impels active oversight exercising through reasonable care and diligence which investors and stakeholders expect.

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[4] Pooja Ravinder Devidasani V. State of Maharashtra, (2014) 16 S.C.C.1 (India)
[5] Sunil Bharti Mittal V. Central Burreau of Investigation, (2015) 4 S.C.C. 609 (India)
[6] Shiv Kumar Jatia V. State of NCT Delhi (2019) 17 S.C.C. 193 (India)

But also, this legal vulnerability may deter competent professionals from accepting board positions because this imposes an unrealistic expectation upon them as they don't have access to operational details unlike executive directors. Therefore, the challenge may become acute in cases of sophisticated fraud or misconduct deliberately concealed by the management.

STRIKING THE RIGHT BALANCE

A balanced approach must be adopted in order to recognize the importance and limitations. The Board processes must be strengthened to enable independent directors to access information, conduct regular compliance reviews, director training programmes.

The accountability should be meaningful not punitive. Therefore, courts should apply as much as possible the protective framework embodied in Section 149(12) of the Companies Act, 2013 to preserve the confidence and essence of independent directors.

CONCLUSION

Greater accountability, although necessary but must not come at the cost of independence. Therefore, maintaining a balance is necessary for the future of corporate governance as independent directors plays indispensable role in modern corporate governance. An equilibrium can be reached by a careful balance – one that holds independent directors responsible while protecting them from unwarranted liability.