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## THE ROLE OF INDEPENDENT DIRECTORS IN CORPORATE GOVERNANCE IN INDIA

*-Vaishnavi Rekha*

### INTRODUCTION

Corporate governance is all about the system of rules, processes, and practices that guide how a company is directed, managed, and held accountable. When ownership and management are separate, it opens the door for those in control to make decisions that might not align with the interests of all shareholders. This issue is particularly pronounced in India, where many companies have concentrated ownership by promoters. In such cases, controlling shareholders can wield significant influence over management and the board. That's where independent directors come in, they're meant to act as a check against this concentration of power.

The role of independent directors has evolved quite a bit in India. It first gained traction through regulations in the securities market and Clause 49 of the Listing Agreement, later making its way into the Companies Act, 2013. The Securities and Exchange Board of India (SEBI) also plays a role in regulating independent directors of listed companies through the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.<sup>1</sup>

The main goal of an independent director is to bring an unbiased viewpoint to board discussions. They are expected to critically evaluate management decisions, safeguard the interests of minority shareholders, oversee financial reporting and risk management, and tackle any conflicts of interest that may arise. However, just having independent directors on a board doesn't automatically ensure effective corporate governance. The experiences of companies like Satyam Computer Services Ltd. and Infrastructure Leasing & Financial Services Ltd.

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<sup>1</sup> Companies Act, No. 18 of 2013, §§ 149-150, India Code (2013); Securities and Exchange Board of India, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Gazette of India, pt. III, sec. 4 (Sept. 2, 2015) (as amended through July 14, 2026). SEBI's current regulations page identifies the LODR Regulations as last amended on July 14, 2026.

(IL&FS) highlight the gap between merely following the rules and providing genuine oversight.

This article delves into the legal framework surrounding independent directors in India, their key roles in corporate governance, their liabilities, the challenges they face in being effective, and the steps needed to enhance their substantive independence.

## **EVOLUTION OF INDEPENDENT DIRECTORS IN INDIA**

The framework for independent directors in India has evolved through a series of corporate governance reforms. It all started with the Kumar Mangalam Birla Committee, which suggested that listed companies should include independent non-executive directors on their boards. Following this, SEBI took action by incorporating these recommendations into Clause 49 of the Listing Agreement.<sup>2</sup>

The significance of independent directors became glaringly obvious after the Satyam scandal in 2009. The attempted acquisition of Maytas companies, linked to Satyam's founder B. Ramalinga Raju and his family, raised major red flags about conflicts of interest and the effectiveness of board oversight. This incident highlighted that simply having independent directors on board wasn't enough; there needed to be a thorough and critical evaluation of management proposals.

In response, the Companies Act of 2013 laid down a legal framework for independent directors. Sections 149 and 150, along with Schedule IV, outline the requirements for independence, appointment, duties, and conduct.<sup>3</sup> SEBI later enhanced the framework for listed companies through the LODR Regulations. The 2017 Kotak Committee on Corporate Governance also put forth several recommendations aimed at improving board independence, managing related-party transactions, refining board composition, and ensuring director accountability.<sup>4</sup>

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<sup>2</sup> Securities & Exchange Board of India, Report of the Kumar Mangalam Birla Committee on Corporate Governance (2000); Securities & Exchange Board of India, Circular No. SMDRP/POLICY/CIR-10/2000 (Feb. 21, 2000).

<sup>3</sup> Companies Act §§ 149-150, sched. IV. Section 149(4) expressly requires every listed public company to have at least one-third of its directors as independent directors.

<sup>4</sup> Securities & Exchange Board of India, Report of the Committee on Corporate Governance (Oct. 5, 2017).

As a result, India's approach has gradually shifted from a model focused mainly on listing requirements to a more comprehensive statutory and regulatory system that clearly defines the qualifications and responsibilities of independent directors.

## MEANING AND LEGAL FRAMEWORK OF INDEPENDENT DIRECTORS

Section 149(6) of the Companies Act outlines what it means to be an independent director. Essentially, this is a director who isn't a managing director, whole-time director, or nominee director, and who meets certain criteria regarding integrity, expertise, financial ties, relationships with promoters, employment history, and any other factors that might impact their independence.<sup>5</sup> Importantly, an independent director cannot be a promoter of the company or its holding, subsidiary, or associate companies, nor can they be related to promoters or directors in ways that the law prohibits. There are also rules in place regarding financial relationships and previous employment or professional connections.

This legal framework aims to establish independence through clear disqualifications rather than just relying on the personal reputation of a potential director. Additionally, Section 149(7) mandates that independent directors must declare their independence.<sup>6</sup>

According to Section 149(4), every listed public company is required to have at least one-third of its board made up of independent directors.<sup>7</sup> The Companies (Appointment and Qualification of Directors) Rules, 2014 also set out specific requirements for independent directors in certain types of public companies.

Independent directors can serve for a maximum of five consecutive years. If they wish to serve a second term, a special resolution is needed, and no individual can hold the position for more than two consecutive terms. There's also a cooling-off period before they can be reappointed to the same board.<sup>8</sup> These measures are designed to avoid too much familiarity between an independent director and the company or its management.

The LODR Regulations add to the Companies Act for listed entities, introducing further requirements regarding board composition, committees, related-party transactions, and the

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<sup>5</sup> Companies Act § 149(6). The statutory definition includes requirements concerning integrity, expertise, promoter relationships, pecuniary relationships, prior employment, and professional associations.

<sup>6</sup> Id. § 149(7).

<sup>7</sup> Id. § 149(4).

<sup>8</sup> Id. § 149(10)-(11).

overall functioning of independent directors. SEBI's regulatory framework is continually evolving, with the LODR Regulations updated through July 14, 2026.<sup>9</sup>

## **ROLE OF INDEPENDENT DIRECTORS IN CORPORATE GOVERNANCE**

### **i. Providing Independent & Objective Judgment**

The primary job of an independent director is to provide an unbiased viewpoint during board discussions. Schedule IV clearly states that independent directors should apply their own judgment to key areas like strategy, performance, risk management, resource allocation, important appointments, and ethical standards.<sup>10</sup> An independent director isn't just there to nod along with the executive team; they need to engage in thoughtful questioning and maintain a healthy level of skepticism. For instance, if a company is looking to make a deal with a promoter-controlled entity, the independent director should dig into the commercial logic, valuation, transparency, and possible impacts on shareholders. This role becomes even more crucial in companies where a promoter holds significant power, as the interests of the controlling shareholder and minority shareholders can often diverge.

### **ii. Protecting Minority Shareholders**

Independent directors play a crucial role in protecting the interests of minority shareholders. Often, these shareholders don't have enough voting power to contest decisions made by those in control. That's where independent directors come in, they offer a way to review decisions with the broader perspective of the company and all its shareholders in mind.

Schedule IV explicitly mandates that independent directors look out for the interests of all stakeholders, especially minority shareholders.<sup>11</sup> This means their responsibilities go beyond just keeping the company financially healthy; they also ensure that the interests of controlling shareholders don't unfairly overshadow those of minority shareholders.

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<sup>9</sup> Securities & Exchange Board of India, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (as amended through July 14, 2026).

<sup>10</sup> Companies Act, sched. IV, pt. II. Schedule IV expressly identifies strategy, performance, risk management, resources, key appointments, and standards of conduct as areas requiring independent judgment.

<sup>11</sup> Id. sched. IV, pt. II(5). The Code expressly requires independent directors to safeguard the interests of all stakeholders, particularly minority shareholders.

**iii. Preventing Conflicts of Interest & Scrutinizing Related-Party Transactions**

Conflicts of interest are a key area where independent directors can really make a difference in corporate governance. According to Section 184 of the Companies Act, directors must disclose their interests, while related-party transactions are governed by Section 188 and, for listed companies, Regulation 23 of the LODR Regulations.<sup>12</sup> Independent directors, especially through the Audit Committee, have a crucial role in ensuring that related-party transactions are carried out on fair terms and that proper disclosures are made. This function gained significant attention during the Satyam scandal. The proposed acquisition of Maytas involved entities linked to Satyam's promoter, raising clear governance red flags. The shortcomings in the board's handling of this proposal underscored the necessity of independent oversight when management suggests transactions with related parties.

**iv. Role in Board Committees**

Independent directors hold a significant amount of sway through board committees. According to Section 177, certain companies are required to set up an Audit Committee, which must have a majority of independent directors and an independent director as the chairperson.<sup>13</sup> This committee tackles important issues like financial statements, auditors, internal financial controls, and related-party transactions.

Meanwhile, Section 178 lays out the framework for the Nomination and Remuneration Committee (NRC). This committee is tasked with finding qualified candidates for director and senior management positions, creating remuneration policies, and assessing directors' performance.<sup>14</sup> Independent directors are crucial to the functioning of this committee.

These committees are vital because they give independent directors structured ways to exercise oversight, rather than relying solely on their participation in general board meetings.

**v. Monitoring Financial Reporting & Internal Controls**

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<sup>12</sup> Id. §§ 184, 188; LODR Regulations, reg. 23.

<sup>13</sup> Companies Act § 177.

<sup>14</sup> Id. § 178; LODR Regulations, reg. 19.

Investors rely heavily on accurate financial statements to gauge how well a company is performing and its overall financial health. That's why independent directors, especially those on the Audit Committee, have a crucial role in scrutinizing the integrity of financial information and the effectiveness of internal financial controls.

According to Schedule IV, independent directors are tasked with ensuring that the financial information is reliable and that the financial controls and risk-management systems are solid.<sup>15</sup> However, this doesn't mean they take over the roles of management, statutory auditors, or internal auditors. Instead, their job is to provide oversight, asking whether the right systems are in place and if any unusual transactions or red flags have been thoroughly investigated.

The Satyam fraud serves as a stark reminder of why this oversight is so vital. The scandal involved significant manipulation of the company's financial statements, raising serious concerns about the effectiveness of internal controls and the board's ability to oversee such activities.

#### **vi. Risk Management**

These days, corporate risks go way beyond just the usual financial concerns. Companies now have to navigate a whole range of risks, including regulatory compliance, legal issues, cybersecurity threats, technology challenges, reputational damage, financing hurdles, and ensuring business continuity.

This is where independent directors come into play, bringing a fresh perspective to the table when it comes to assessing risks. Their input is especially crucial when management might be a bit too optimistic about a significant business decision. Independent directors can ask the tough questions: Has enough due diligence been done? Are all potential risks on the radar? And have those risks been adequately communicated?

It's worth noting that Schedule IV specifically highlights risk management as a key area where independent directors are expected to use their independent judgment.<sup>16</sup>

#### **vii. Ethical & Whistle-Blower Oversight**

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<sup>15</sup> Id. sched. IV, pt. II(4).

<sup>16</sup> Companies Act, sched. IV, pt. II(1).

To ensure effective corporate governance, it's crucial to have systems in place that allow people to report misconduct without the fear of retaliation. Independent directors play a key role in this by making sure that any complaints involving senior management or influential figures are taken seriously. Their involvement in the Audit Committee is especially important, as this committee serves as a dedicated space for addressing issues related to financial reporting, internal controls, and similar concerns. The goal here isn't just to react after misconduct happens; it's about fostering an environment where employees and other stakeholders feel comfortable raising concerns before they escalate into major corporate failures.

## **DUTIES & RESPONSIBILITIES OF INDEPENDENT DIRECTORS**

Section 166 lays out the fundamental responsibilities that directors must uphold, which include acting in good faith, exercising due care and independent judgment, and steering clear of conflicts of interest.<sup>17</sup> These obligations go hand in hand with the specific requirements set for independent directors.

Meanwhile, Schedule IV outlines a comprehensive Code for Independent Directors. This code emphasizes the importance of integrity, the need to dedicate ample time and focus to their roles, and the necessity to avoid any actions that could jeopardize their independence. It also encourages independent directors to play a key role in fostering effective corporate governance practices.<sup>18</sup>

Moreover, the Code mandates that independent directors attend board and committee meetings, seek clarification when needed, ensure they have all the necessary information before making decisions, and voice any concerns if the company's interests are at stake.

In essence, being independent doesn't mean just sitting back and observing. An independent director is expected to actively engage, ask questions, and voice dissent when it's warranted.

## **LIABILITY OF INDEPENDENT DIRECTORS & THE JUDICIAL APPROACH**

Independent directors need a certain level of protection from automatic liability since they typically aren't involved in the daily operations of a company. That's why Section 149(12) lays out a clear standard for liability. An independent director can be held accountable for actions, whether by omission or commission, that they were aware of, that can be traced back

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<sup>17</sup> Companies Act § 166.

<sup>18</sup> Id. sched. IV, pt. I–III. Schedule IV describes the Code as a guide to professional conduct and emphasizes integrity, objective judgment, sufficient time and attention, and preservation of independence.

through board processes, and that involved their consent or connivance, or if they failed to act with due diligence.<sup>19</sup>

The Supreme Court has consistently pointed out that you can't just impose liability on directors simply because they hold that title. In the case of *Sunil Bharti Mittal v. Central Bureau of Investigation*, the Court clarified that for directors to face criminal liability, there needs to be a legal foundation for it; you can't just assume it based on their position within the company.<sup>20</sup>

In a similar vein, in *Pooja Ravinder Devidasani v. State of Maharashtra*, the Supreme Court ruled that a non-executive director, who isn't involved in the day-to-day operations, can't be automatically held liable under Section 141 of the Negotiable Instruments Act.<sup>21</sup>

Again, in *Sunita Palita v. Panchami Stone Quarry*, the Supreme Court reiterated that liability hinges on the director's role. A non-executive independent director shouldn't face prosecution just because they have the title of director, especially without clear allegations that establish their responsibility for the company's business conduct.<sup>22</sup>

This principle aims to strike a balance. Independent directors shouldn't be seen as automatic guarantors of corporate behavior, but at the same time, the protections in place shouldn't be used as a reason to neglect the diligence expected from their role.

## SATYAM AND IL&FS

The Satyam and IL&FS incidents offer valuable insights into how well independent directors really function. The Satyam scandal highlighted that just having independent directors on the board doesn't guarantee effective oversight. For instance, the board initially approved the controversial Maytas deal, which involved companies linked to Satyam's promoter, only to backtrack after facing significant pushback. The later exposure of accounting fraud underscored the serious repercussions of weak corporate governance.<sup>23</sup>

Similarly, the IL&FS crisis raised red flags about board oversight. In 2018, the Ministry of Corporate Affairs took action by approaching the National Company Law Tribunal, citing

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<sup>19</sup> Id. § 149(12).

<sup>20</sup> *Sunil Bharti Mittal v. Central Bureau of Investigation*, (2015) 4 SCC 609 (India). The Supreme Court's subsequent decisions continue to rely on *Sunil Bharti Mittal* for the principle that criminal liability is not automatically imposed upon directors merely because of their corporate position.

<sup>21</sup> *Pooja Ravinder Devidasani v. State of Maharashtra*, (2014) 16 SCC 1 (India). The Court emphasized that a non-executive director who is not responsible for the day-to-day conduct of the company's business cannot be made liable merely because of being a director.

<sup>22</sup> *Sunita Palita v. Panchami Stone Quarry*, (2022) 10 SCC 152 (India). The Supreme Court held that independent non-executive directors could not be subjected to liability merely on the basis of their designation, absent the necessary allegations connecting them with responsibility for the company's business.

<sup>23</sup> Securities & Exchange Board of India, Order in the Matter of Satyam Computer Services Ltd., available in SEBI's adjudicatory record concerning the Satyam matter. The record documents the proposed acquisition of Maytas companies and the information concerning the proposed transactions considered by Satyam's board.

that IL&FS and its affiliates were operating in a way that harmed public interest. This led to the suspension of the existing board and the formation of a new one.<sup>24</sup>

These examples don't imply that independent directors are to blame for every corporate mishap. Instead, they reveal a larger systemic issue: independent directors rely heavily on the information they receive, reporting systems, management disclosures, auditors, and committee processes. If any of these systems break down or if information is hidden, simply being an independent director won't be enough to spot wrongdoing.

The key takeaway here is the difference between formal independence and real independence. A director might meet all the legal requirements but still fall short if they don't have enough information, time, expertise, or the courage to question management.

## CHALLENGES TO EFFECTIVE INDEPENDENCE

There are several structural challenges that impact how independent directors operate in India.

1. **Influence of promoters** can really affect the true independence of these directors. Even though their appointment follows legal procedures and requires shareholder approval, promoters often hold significant voting power in companies where ownership is concentrated.
2. **Information asymmetry**, which poses a real challenge. Independent directors typically aren't involved in the day-to-day management, so they rely heavily on the information provided by executives and management systems.
3. **Passive participation**, which can really undermine the effectiveness of the role. Simply showing up to meetings without asking meaningful questions or thoroughly reviewing documents doesn't equate to proper oversight.
4. **Liability issues** also need to be handled with care. If independent directors face too much risk of criminal or regulatory action, it might deter qualified individuals from taking on these roles. On the flip side, if there's not enough accountability, it could lead to a lack of active oversight.
5. **Time constraints and competing commitments** can impact the quality of oversight. An independent director who sits on multiple boards needs to ensure they're giving enough attention to each company. While there are statutory and regulatory limits on how many directorships one can hold, just having these formal limits isn't enough to ensure proper engagement.

## STRENGTHENING THE ROLE OF INDEPENDENT DIRECTORS

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<sup>24</sup> Ministry of Corporate Affairs, Government of India, Press Release: Government Moves NCLT for Supersession of Board of IL&FS, Oct. 1, 2018. The Ministry stated that the affairs of IL&FS and its group companies were being conducted in a manner prejudicial to public interest and sought supersession of the existing board under Sections 241(2) and 242 of the Companies Act.

To boost the effectiveness of independent directors, we need to enhance both how they're appointed and the environment in which they work.

- First off, the appointment process should focus on key qualities like professional competence, integrity, industry expertise, and a proven track record of independence, rather than personal connections. The IICA databank and the set proficiency requirements are steps toward creating a solid foundation of knowledge and eligibility for independent directors.<sup>25</sup>
- Next, it's crucial that independent directors receive timely and comprehensive information before board and committee meetings. It's tough to make informed decisions without access to relevant financial, operational, legal, and risk-related data.
- Additionally, board evaluations should look at how actively directors participate, not just whether they show up. They should feel empowered to ask questions, seek out more information, and express differing opinions when necessary.
- Continuing education is also important, especially in areas like corporate law, accounting, financial reporting, risk management, cybersecurity, and new governance challenges.
- Lastly, board committees, especially the Audit Committee and NRC, should have the freedom to operate independently from executive management. The effectiveness of independent directors hinges not only on their personal attributes but also on whether the corporate structure allows them to fully utilize those strengths.

## CONCLUSION

Independent directors play a crucial role in shaping the corporate governance landscape in India. Their main goal is to bring an unbiased perspective to corporate decision-making, safeguard the interests of minority shareholders, examine potential conflicts of interest, oversee financial reporting and risk management, and enhance accountability within the boardroom.

The Companies Act of 2013 and the SEBI LODR Regulations have laid down a detailed framework that outlines their qualifications, appointment processes, responsibilities, committees, tenure, and liabilities. Schedule IV emphasizes that independent directors should be proactive contributors to governance, not just passive board members.

However, the experiences of Satyam and IL&FS highlight that simply adhering to regulations doesn't guarantee effective corporate governance. The real challenge lies in transitioning from mere formal independence to true substantive independence. Independent directors need to be genuinely free from the influence of promoters, have access to adequate information, enough time to fulfill their roles, the right expertise, and the courage to challenge management when necessary.

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<sup>25</sup> Companies (Appointment and Qualification of Directors) Rules, 2014, r. 6; Companies Act § 150.

Ultimately, the success of this institution hinges on the caliber of each individual director and the environment they work in. While independent directors can't promise that corporate misconduct will be completely eradicated, a well-functioning system of independent oversight can certainly enhance the transparency, accountability, and responsiveness of corporate decision-making to the needs of shareholders and other stakeholders. Therefore, the ongoing evolution of corporate governance in India should focus not just on increasing the number of independent directors but also on ensuring that their independence is genuinely impactful in practice.