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INDEPENDENT DIRECTORS IN INDIA: WATCHDOGS OR RUBBER STAMPS? (An Analytical Study of Corporate Governance, Legal Accountability and Boardroom Independence in India)

~ Prajesh Roy & Arka Datta

ABSTRACT

Independent directors are meant to bring objectivity to Indian boards, supervise management and protect minority shareholders. The Companies Act, 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 give the role a detailed legal foundation. This article asks whether independent directors function as genuine watchdogs or as formal rubber stamps. It examines the meaning of independence, the statutory framework, appointment, duties and liability, the structural obstacles to effective oversight, the Satyam and IL&FS episodes, and the leading judicial decisions. It argues that the answer is conditional: the law designs the role as a watchdog, but effectiveness depends on the quality of appointment, access to reliable information, competence, freedom to dissent and the culture of the boardroom.

Keywords: Independent Directors; Corporate Governance; Companies Act, 2013; SEBI LODR; Minority Shareholders; Director Liability.

1. INTRODUCTION

Corporate governance concerns the way companies are directed, controlled and held accountable. In modern corporations ownership and control are usually separated: shareholders supply capital, while directors and professional managers take decisions. That separation creates the risk that those in control pursue interests that do not coincide with those of the company and its shareholders. In India the problem is sharpened by concentrated ownership, where the tension

is often between controlling promoters and minority investors rather than between dispersed shareholders and managers.

Independent directors are one institutional response. They are non-executive directors who are expected to bring an external, objective view to the board. Unlike executive directors, they do not manage the business day to day; unlike nominee directors, they do not represent a particular lender or investor. Their task is to exercise independent judgement in the interests of the company as a whole, with particular attention to minority shareholders and others who may be overlooked.

The word "watchdog" captures the intended function: asking difficult questions, testing management's explanations, scrutinising financial statements, monitoring risk and challenging conflicted decisions. "Rubber stamp" describes the opposite, where directors attend meetings and approve proposals without real scrutiny. The distinction goes to the heart of whether board independence is substantive or only a matter of compliance.

This article does not assume that every corporate failure is the fault of independent directors, nor that they are inevitably ineffective. It evaluates the legal design of the role and the conditions in which it can work. Its central argument is that independence is not established by satisfying a checklist at the time of appointment. It must be demonstrated continuously, through informed, objective and courageous participation in board decisions. The study is doctrinal and analytical, drawing on the Companies Act, Schedule IV, the SEBI LODR Regulations, judicial decisions and publicly reported corporate events. It is not an empirical survey, and nothing in it is a finding of liability against any individual.

2. MEANING AND EVOLUTION OF INDEPENDENCE

An independent director is not simply a director who is not an employee. Independence is a legal and functional concept. A person may be non-executive and yet lack independence because of promoter relationships, financial dependence or material transactions. Conversely, a person who meets every eligibility criterion must still show independent judgement in actual boardroom conduct.

The concept developed through corporate governance reform and securities regulation. SEBI's Clause 49 of the Listing Agreement placed new emphasis on board composition, audit

committees, disclosure and independent directors for listed companies. The Companies Act, 2013 then gave independent directors a clearer statutory basis, with eligibility criteria, tenure limits, duties and a code of conduct, and the SEBI LODR Regulations, 2015 consolidated listing-related requirements.

Independence has at least three dimensions. Formal independence means the individual satisfies the statutory eligibility and disqualification criteria. Economic independence means the individual is not financially dependent on the company, the promoter or management in a way that could compromise judgement. Behavioural independence means the individual is willing and able to question management, dissent where appropriate and place the company's long-term interests above personal or professional relationships. A strong framework must address all three, and the third is by far the hardest to verify.

One caution is necessary. Independent directors are not meant to run the company from outside the executive structure. They are part of the board and share collective responsibility for its decisions, subject to the statutory protections that apply to them. Their function is oversight, challenge and guidance, not the replacement of management.

3. THE STATUTORY AND REGULATORY FRAMEWORK

Section 149. This is the central provision. Section 149(4) requires every listed public company to have at least one-third of its directors as independent directors, and the Central Government may prescribe minimum numbers for other classes of public companies. Section 149(6) defines an independent director by reference to integrity, expertise, experience and the absence of specified relationships or interests; managing directors, whole-time directors and nominee directors are excluded, and there are restrictions concerning promoters, relatives and pecuniary connections. Section 149(8) requires compliance with Schedule IV. Section 149(9) bars stock options for independent directors while permitting sitting fees, reimbursement and, subject to the Act, profit-related commission. Section 149(10) allows a term of up to five consecutive years, renewable once by special resolution, and section 149(11) limits an independent director to two consecutive terms followed by a three-year cooling-off period.

Section 149(12) is especially significant. It provides that an independent director, or a non-executive director who is neither a promoter nor key managerial personnel, is liable only for acts

or omissions of the company that occurred with the director's knowledge, attributable through board processes, and with the director's consent or connivance, or where the director did not act diligently. It is meant to prevent liability arising merely because a name appears on the board.

Section 150. This provides for a databank of persons eligible and willing to serve as independent directors, while leaving due diligence before selection with the company. The databank widens the pool, but inclusion in it does not establish suitability or independence.

Section 166. The general duties of directors apply to independent directors. They must act in accordance with the articles, act in good faith to promote the objects of the company and the interests of the company and its stakeholders, exercise due and reasonable care, skill and diligence, and exercise independent judgement. They must avoid conflicts of interest and undue gain. The express reference to independent judgement is central to the watchdog role.

Section 177. The audit committee of a listed public company must have at least three directors, with independent directors in the majority. It recommends auditors, reviews auditor independence, examines financial statements, approves or modifies related-party transactions, scrutinises inter-corporate loans and investments, evaluates internal financial controls and risk management, and monitors the use of funds raised publicly. It can take professional advice and access company records, and the section requires a vigil mechanism in specified companies with protection against victimisation.

Section 178. The nomination and remuneration committee must have at least three non-executive directors, at least half of them independent. It identifies persons qualified to become directors and senior managers, recommends appointments and removals, and sets the manner of evaluating the board, its committees and individual directors.

Schedule IV. This is the Code for Independent Directors. It expects integrity, objectivity, sufficient time and attention, freedom from extraneous considerations and active support for good governance. It describes their role in strategy, performance, risk, financial integrity, controls, minority protection and conflict resolution, and requires at least one meeting a year of independent directors alone, without management, to review the board, the chairperson and the quality of information flow.

SEBI LODR Regulations, 2015. Regulation 17 deals with board composition, Regulation 18 with the audit committee and Regulation 25 with obligations specific to independent directors, including tenure and the separate annual meeting. Listed entities must also comply with the rules on related-party transactions, disclosures and performance evaluation.

These provisions must be read together. Section 149 creates the office, section 166 supplies fiduciary duties, sections 177 and 178 place independent directors in key committees, Schedule IV describes expected conduct and the LODR Regulations add requirements for listed entities. The framework is substantial; whether it works depends on implementation.

4. APPOINTMENT, TENURE AND REMUNERATION

The quality of independent oversight begins with appointment. A company should identify the skills its board needs, such as finance, law, technology, risk, industry knowledge or regulatory expertise, and choose candidates who can contribute. A director appointed merely to meet a numerical requirement achieves compliance without strengthening governance. Schedule IV requires an appointment process independent of management, a balance of skills and experience, a statement that the candidate meets the independence conditions, and a formal letter of appointment setting out role, duties, liabilities and remuneration.

Tenure limits aim to prevent excessive familiarity. Yet they cannot guarantee independence: a new director may depend on the promoter for professional opportunities or social access, while a long-serving director may keep the capacity to challenge if governance structures and personal integrity support it.

Remuneration is a delicate balance. It must be enough to attract capable professionals and recognise the responsibility involved, but not so large or so performance-linked that it creates dependence. The bar on stock options reflects the concern that equity incentives could compromise objectivity. Shareholder approval is a useful safeguard, but in promoter-controlled companies minority shareholders have little power to shape appointments, which is why transparent nomination criteria and candid evaluation matter.

5. ROLE, FUNCTIONS AND DUTIES

Independent directors contribute to strategic oversight by testing the assumptions behind major proposals on capital allocation, acquisitions and expansion. They are not expected to write management's plans, but they must ensure the board has enough information to judge them.

Their most important function may be financial integrity. Especially on the audit committee, they should understand material accounting policies, significant estimates, audit qualifications, contingent liabilities and related-party exposures, and seek independent advice where explanations are incomplete or inconsistent.

On related-party transactions, they should ask whether a transaction serves the company, whether its terms are fair, whether approvals and disclosures are in order, and should not accept "commercial necessity" as an answer by itself. On risk and compliance, they should see that the company has systems for financial, operational, legal, cyber, environmental and reputational risk, and that the board receives timely reports. They are also expected to protect minority shareholders and stakeholders, giving attention to employees, creditors, consumers and the community without automatically preferring any one group.

Through the nomination and remuneration committee they influence senior appointments and pay, and they should ensure a credible whistle-blower mechanism, with complaints independently assessed and retaliation addressed. Finally, they must be ready for dissent: to ask questions, request papers, seek expert advice, record disagreement and insist that minutes reflect material concerns. Dissent is not disloyalty; it is evidence that the board has weighed competing views.

6. LIABILITY AND LEGAL PROTECTION

Independent directors occupy a position of trust, but they are not guarantors against every corporate failure. Their liability depends on the provision invoked, their actual role, the information available, the board process and their own conduct. The company's liability, executive management's liability and an independent director's liability must be kept distinct.

Section 149(12) sets a specific threshold under the Companies Act: knowledge attributable through board processes, together with consent, connivance or want of diligence. It protects non-executive directors against indiscriminate action, but it is not blanket immunity. A director who knowingly approves a wrongful transaction, ignores clear warning signs or fails to ask necessary

questions may be liable where the conditions are met. Section 166 adds a separate layer, since failing to exercise care, skill, diligence or independent judgement may breach statutory duty, and other laws on financial statements, fraud, related-party dealings and securities may also apply. The legal basis of any alleged liability must therefore be identified rather than assumed.

The balance is a real one. If every independent director could be prosecuted whenever a company defaulted, capable professionals would decline appointments and boards would turn defensive. Broad immunity, on the other hand, would invite passive membership. The law must separate vicarious liability based on designation alone from accountability for a director's own knowledge, consent or lack of diligence.

In practice, protection depends on conduct: reading board papers in advance, requesting missing information, disclosing conflicts, attending meetings, taking part in committee work, recording concerns and ensuring accurate minutes. Resignation does not necessarily erase liability for the period in office, and mere presence on a board does not by itself establish it.

7. THE CASE FOR THE WATCHDOG

There are strong reasons to see independent directors as essential. They bring an external perspective, questioning assumptions that insiders may take for granted. They reduce conflicts of interest, since an independent majority on the audit and remuneration committees makes it harder for management to control the review of its own conduct. They can protect minority shareholders who otherwise lack practical influence over concentrated-ownership companies. They support investor and lender confidence, because informed challenge and transparent oversight add credibility to disclosures. And they can help in crises, pressing for independent investigations and remedial action when management's credibility is in doubt.

These benefits are not automatic. They require adequate information, relevant expertise, sufficient time and practical freedom to disagree. Even so, the watchdog model is not merely theoretical: the statute gives independent directors committee seats, access to information, the right to external advice and formal channels for raising concerns.

8. THE CASE FOR THE RUBBER STAMP

Promoter dominance. Promoters often influence board nominations, strategy and senior appointments. Even a formally independent director may hesitate to challenge a powerful promoter who controls future appointments, referrals or social standing.

Information asymmetry. Management controls most of what reaches the board. Papers may be lengthy, technical or circulated just before a meeting, and independent directors may have no direct access to internal auditors, employees or operational records unless the board creates it. Formal independence cannot become informed oversight without reliable information.

Boardroom dynamics. Directors may hesitate to disagree with a chairperson or dominant executive, particularly when a decision is presented as urgent or already settled. Consensus is valuable, but consensus without debate is not governance.

Overboarding and time. Statutory limits on directorships do not ensure that each director has the time to understand a complex business. Actual workload and complexity matter more than numerical caps.

Expertise gaps. Complex group structures, cyber risk, artificial intelligence, climate exposure and cross-border transactions demand specialist knowledge that even a diverse board may lack. Continuing education and access to external experts are essential.

Weak appointment and evaluation. Selection through narrow professional networks reproduces existing power relationships, and annual evaluation becomes box-ticking if it is not candid and linked to improvement.

Fear of liability. Even with section 149(12), litigation costs and reputational harm can push directors towards either excessive caution or passive compliance.

Formal independent-director meetings. A separate annual meeting corrects nothing if it is treated as a formality rather than a forum to discuss information gaps, board dynamics and management responsiveness.

9. GOVERNANCE CASE STUDIES

Satyam (2009). The Satyam episode involved a major accounting fraud in which the company's chairman admitted that financial statements had been falsified and assets overstated. It shook investor confidence and became a landmark in Indian governance debates. Its lesson for

independent directors is that the mere existence of a board and audit committee does not make financial statements reliable; effective oversight requires understanding the business, examining inconsistencies, engaging with auditors and responding to warning signs. It would be inaccurate, however, to infer from the scandal alone that every independent director was complicit or liable. In February 2009 the Government stated that agencies including the SFIO, CBI, SEBI, ICAI and the tax authorities were investigating, and that the earlier board had been suspended and a new board appointed. Responsibility must be decided on evidence and under the law applicable at the time.

IL&FS (2018). The IL&FS group defaulted on financial obligations, raising concerns about interconnected exposures, liquidity, risk management and governance in a complex group structure. For independent directors the lesson is the importance of understanding group-level exposures, funding structures and contingent liabilities, and of insisting on clear risk reporting and effective internal controls, rather than looking only at one entity's accounts.

DHFL. The DHFL matter, involving allegations of serious financial irregularities and investigations, underlines the need to review loan books, connected-party transactions, end-use of funds and risk concentration in financial institutions. Allegations, investigative findings and final judicial determinations must be kept apart; an investigation does not itself establish the guilt of every director.

Taken together, the cases show that independent directors are part of a system of prevention and early detection. They cannot guarantee that fraud will never occur. Their contribution is measured by whether they build robust oversight, respond to warning signs and ensure that concerns are escalated and documented.

10. JUDICIAL APPROACH

Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1. In a prosecution under the Negotiable Instruments Act, 1881, the Supreme Court held that merely being a director does not make a person liable for an offence by the company. The complaint must contain specific averments showing how the director was responsible for the conduct of the company's business. The case concerned section 141 of that Act rather than section 149(12) of the Companies Act, but it supports the broader principle that liability must follow the person's actual role.

Har Sarup Bhasin v. Origo Commodities India Pvt. Ltd. (Delhi High Court, 7 January 2020). In proceedings under sections 138 and 141 of the Negotiable Instruments Act, the High Court considered the protection available to an independent or non-executive director under section 149(12). It shows that the director's factual status, whether genuinely independent, involved in management or acting as key managerial personnel, matters.

Sunita Palita v. Panchami Stone Quarry, (2022) 10 SCC 152. The appellants were non-executive independent directors of MBL Infrastructure Ltd., arrayed as accused in a cheque-dishonour complaint that merely alleged they were responsible for day-to-day business. The Supreme Court held that directorship alone is not enough; the complaint must contain facts showing the person was in charge of and responsible for the conduct of the business at the relevant time. It noted that non-executive independent directors do not ordinarily take part in day-to-day management, quashed the proceedings against them and left those against the company, its managing director and the cheque signatory to continue. The decision protects independent directors from prosecution by designation alone without creating immunity for misconduct.

Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd., (2021) 9 SCC 449. This is not a ruling on section 149(12). Its governance relevance lies in its treatment of board powers, the articles of association and the line between commercial disagreement and oppression or mismanagement. For independent directors the lesson is that decisions should rest on proper process, relevant information, fair consideration and compliance with statutory and constitutional requirements.

Earlier foundations. S.M.S. Pharmaceuticals v. Neeta Bhalla (2005) 8 SCC 89, K.K. Ahuja v. V.K. Vora (2009) 10 SCC 48 and National Small Industries Corporation v. Harmeet Singh Paintal (2010) 3 SCC 330 established the pleading requirements and the distinction between persons responsible by virtue of office and other directors under section 141. Later rulings build on them.

The common theme is that corporate office alone does not create automatic vicarious criminal liability. This complements, but does not replace, the independent director's duties under company law.

11. RECONCILING INDEPENDENCE AND ACCOUNTABILITY

The watchdog-or-rubber-stamp question is often framed as a binary, but in reality independent directors may be effective in some companies and ineffective in others. The law sets minimum standards; culture and board practice decide whether those standards mean anything.

Formal independence is easier to verify than behavioural independence. A company can check whether a candidate is a promoter, a relative or financially connected, but not whether the candidate will oppose a major acquisition or a related-party deal. Independence is therefore a continuing obligation, not a one-time certification. Collective responsibility also needs care: a director may be outvoted, or may support a proposal on incomplete information, and the law must distinguish a reasoned decision that later fails from one taken with knowledge of wrongdoing or in disregard of obvious warning signs. Hindsight should not automatically become proof of negligence.

A compliance mindset is another risk. Numbers of independent directors, committee composition and meeting frequency are easy to record, but attendance is not engagement. Evaluation should look at the quality of questions, follow-up, committee work and responsiveness to concerns. And liability must remain balanced: independent directors should not be scapegoats for every default, but the title should not shield a person who knowingly participates in wrongdoing or fails in diligence.

12. RECOMMENDATIONS

Transparent, merit-based appointments. Publish board skill criteria, and have the nomination and remuneration committee document its search process, conflict checks and reasons for recommending a candidate. Treat the databank as a resource, not a substitute for due diligence.

Safeguards against promoter influence. Candidate identification should not be controlled solely by the promoter or chief executive, and listed companies should disclose relationships, professional engagements and potential conflicts meaningfully.

Better information flow. Circulate board papers well in advance, flag material risks, unresolved audit issues and related-party transactions, give independent directors direct access to the company secretary and auditors, and allow external advice at the company’s expense where reasonably necessary.

Induction and continuing training, especially sector-specific, in banking, insurance, infrastructure and technology.

Meaningful evaluation that examines preparation, quality of challenge and the board's response to dissent, with periodic external evaluation to improve candour.

Protection for dissent and whistle-blowers. Minutes should record material questions and dissenting views, and serious allegations should be able to reach the audit committee chairperson or an independent investigation channel.

Stronger audit committees that meet auditors without management where appropriate, track remediation of control weaknesses and judge related-party transactions on substance and fairness.

Calibrated liability. Enforcement agencies should distinguish executive decision-makers from independent directors and identify the statutory basis of liability, looking at board papers, minutes and recorded objections, while not allowing a formal title to hide active involvement or lack of diligence.

Diversity and renewal, so that the same small circle of repeat appointees does not dominate boards.

A culture of responsible challenge. Chairpersons should welcome informed disagreement and management should answer questions candidly. A healthy boardroom does not need constant conflict; it needs a process in which agreement follows scrutiny rather than replacing it.

13. CONCLUSION

Independent directors are central to India's corporate governance framework. Sections 149, 166, 177 and 178 of the Companies Act, Schedule IV and the SEBI LODR Regulations together create far more than a requirement to appoint a number of non-executive directors. They aim to ensure boards contain people capable of objective judgement, of monitoring management and of protecting the company and its shareholders.

But statutory presence is not substantive independence. Promoter influence, weak appointment processes, information asymmetry, limited time, inadequate expertise and a culture that discourages dissent can reduce independent directors to passive participants. Satyam and IL&FS

show why oversight, financial scrutiny and risk management matter, although individual responsibility must be decided on evidence rather than assumption. The decisions in Pooja Ravinder Devidasani, Har Sarup Bhasin and Sunita Palita confirm that directors cannot be made vicariously liable merely by designation, while the duties of care, diligence, good faith and independent judgement remain real obligations.

The answer to the title question is therefore conditional. The law designs independent directors as watchdogs, but they become rubber stamps where independence exists only on paper and board processes do not support challenge. Their effectiveness depends on who appoints them, what information they receive, how they participate, whether they can dissent without retaliation and whether their conduct is evaluated fairly.

The true measure of an independent director is not the number of meetings attended or resolutions approved, but the quality of judgement exercised, the questions asked, the risks identified and the willingness to act when the company's interests require it. A strong governance system does not expect independent directors to prevent every failure. It expects them to make silence, indifference and unexamined approval unacceptable.

Principal Sources

Companies Act, 2013 (ss. 149, 150, 152, 166, 177, 178 and Schedule IV); Companies (Appointment and Qualification of Directors) Rules, 2014; SEBI (LODR) Regulations, 2015 (Regulations 17, 18, 25); Negotiable Instruments Act, 1881 (ss. 138, 141); Ministry of Corporate Affairs, "Findings of Investigations into the Satyam Fraud", PIB, 24 February 2009. Statutory references should be checked against the latest consolidated official texts before submission or citation.