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**COMPREHENSIVE NOTE:**  
**LIABILITIES OF THE DIRECTORS- A CRITICAL**  
**APPRAISAL ALONG WITH RELEVANT**  
**CASES IN INDIA**

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***ABSTRACT***

*Directors of corporations in India are subject to a number of legal duties and responsibilities that, if neglected, might expose them to liability. The obligations of directors in India are governed by the Companies Act, 2013, as well as other legislations. Liabilities may be a result of behaviors including carelessness, fraud, breach of fiduciary responsibility, poor management, and breaking numerous rules and regulations.*

*In India, directors may be held accountable for the company's debts under certain conditions, such as if they committed fraud or behaved carelessly. They could also be held accountable for any losses the business incurs as a result of their behavior or inactivity. For a variety of infractions, including making false representations in accounting records, market manipulation, or money laundering, directors may also be subject to criminal prosecution.*

*In the following research paper, the author will talk about all the liabilities faced by the directors of a company and answer how does SEBI enforce its role of enforcing the liabilities on directors. Another question that will be answered will be about the role of corporate governance in ensuring that the liabilities are fulfilled.*

**KEYWORDS:** *Company, Directors, Liability, Corporate Governance, Obligations, Duties.*

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## RESEARCH QUESTIONS

1. What part does corporate governance play in ensuring that directors of Indian companies uphold their obligations?
2. How is the Securities and Exchange Board of India (SEBI) tasked with overseeing and upholding the responsibilities of directors in publicly traded corporations?

## LITERATURE REVIEW

The following research papers discuss the topic thoroughly and present the various views of the authors:

- This research paper<sup>1</sup> written by **M. Ramachandran** and **Arya R** about a comparison between the duties of directors' duties in the 2013 Act and 1956 Act and said that the Companies Act of 1956, India's prior corporate legislation, was abhorrently inadequate in this area. The new Companies Act of 2013 may be seen as providing a noteworthy example of legislation that clearly and correctly clarifies, reexamines, and broadens the scope of the chiefs' responsibilities.
- **Daya Shankar Tiwari**<sup>2</sup>, in their research paper about the Criminal Liability of Directors stated that the brains of a firm are often seen as the directors. The director is responsible for managing, directing, and controlling the company's activities. Since directors cannot operate outside of their authority, it is vital to restrict their powers and duties. By this paper, the author hopes to highlight the director's accountability for any wrongs done while performing his or her duties. The author also went through important sections of corporate law that deal with directors' criminal culpability.
- This research paper drafted by **M. Vignesh** and **M. Kannappan** talks about the various duties and liabilities that are imposed on anyone that becomes the Director of a Company in India.

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<sup>1</sup> M.RAMACHANDRAN and ARYA.R (2018) A STUDY ON DIRECTORS DUTIES UNDER 2013 COMPANIES ACT IN COMPARISON WITH 1956 COMPANIES ACT, International Journal of Pure and Applied Mathematics. Acad Publisher . Available at: <https://acadpubl.eu/hub/2018-120-5/1/19.pdf> (Accessed: March 14, 2023)

<sup>2</sup> Tiwari, D.S. (2013) Criminal liability of director, SSRN. Available at: <https://deliverypdf.ssrn.com/delivery.php?ID=750066083101070097069066080112096076007056010023061049023085007108094105006125000111041119107107108043037092093116123109114092060086008008061122027080118089028092004064001071084065012082083025002085121127070012021001093065115074006098026003099001071114&EXT=pdf&INDEX=TRUE> (Accessed: March 14, 2023)

## CRITICAL ANALYSIS

The directors of companies in India are subject to a variety of responsibilities that fall into two primary classifications: **Civil Liabilities** and **Criminal Liabilities**.

### Civil Liabilities:

1. **Responsibility of Concern:** Directors have a fiduciary obligation to act in the company's best interests and to discharge their responsibilities with due care, diligence, and competence.
2. **Breach of Duty:** A director may be held accountable for any loss or harm incurred by the firm if they fail to uphold their duty of care.
3. **Mismanagement:** Directors are subject to liability if the company's affairs are handled improperly, which might result in losses for the company's shareholders.
4. **Insider Trading:** Directors who utilize any non-public material for their own profit or the benefit of others may be charged with insider trading.

### Criminal Liabilities:

1. **Fraud:** Directors who intentionally provide false information to shareholders, manipulate financial records, or make fraudulent comments are subject to criminal prosecution.
2. **Cheating:** Directors who commit crimes like embezzling corporate assets or syphoning off company cash are subject to criminal prosecution.
3. **Criminal Breach of Trust:** Directors who commit a criminal act of breach of trust, such as stealing money or abusing business assets, may be subject to criminal prosecution.

The Companies Act of 2013 also establishes severe punishment for directors who violate certain Act requirements, such as failing to file annual reports or financial statements or failing to call board meetings for shareholders. In order to prevent any legal repercussions, it is crucial for directors to be aware of their obligations and act in the company's best interests.

Corporate governance is crucial in ensuring that Indian company directors follow their duties. It includes a set of guidelines, customs, and procedures used to guide and manage an organization. It offers a structure for managing the needs of a company's many stakeholders, including shareholders, executives, clients, suppliers, financiers, the government, and the community. The Companies Act of 2013, the rules of the Securities and Exchange Board of India (SEBI), and the

listing agreements of the stock exchanges are only a few of the laws in India that regulate corporate governance. These regulations set minimal requirements for corporate governance and provide means of enforcing them.

A firm's Board of Directors is in charge of making sure that the company is run in a way that serves the shareholders as well as and other stakeholders. Corporate governance tools including audit committees, independent directors, and risk management programs may assist make sure the board performs this duty. Non-executive directors known as independent directors are chosen to oversee and offer an unbiased view of the company's activities. They are not connected to the company's management. Audit committees examine the organization's financial reporting and risk management programs, and risk management programs assist in identifying and controlling possible business hazards.

Companies in India may actively implement best practices in corporate governance in addition to the regulatory obligations. These procedures may involve openness and information sharing, management and board responsibility, and moral conduct. Following these procedures may enhance the company's reputation and performance while helping to foster trust among stakeholders.

In conclusion, corporate governance is crucial for ensuring that Indian company directors follow their duties. It offers a framework for balancing stakeholders' interests and implementing controls for upholding moral and legal requirements.

The regulatory organization that monitors the operation of the Indian securities market is called the Securities and Exchange Board of India (SEBI). It has the authority to oversee and enforce the director obligations of listed businesses. These are some of the ways SEBI keeps an eye on and enforces the obligations of directors in listed companies:

1. **Disclosure Requirements:** According to SEBI regulations, businesses must provide information on director responsibilities in their annual report and accounts and other filings. This material contains specifics about any legal actions taken against directors, their compensation, and any potential conflicts of interest.

2. **Insider Trading Laws:** Under SEBI's insider trading laws, directors and other insiders are not permitted to trade in the company's stocks using unreleased price-sensitive information. The director may be held accountable for any violations of these rules.
3. **Takeover Rules:** SEBI has rules governing acquisitions of publicly traded firms. According to these rules, the potential buyer must publicly declare their desire to buy the business and provide information about the offer. In the case of a takeover, it is the responsibility of the target company's directors to make sure that shareholder interests are safeguarded.
4. **Corporate Governance Regulations:** Companies are required to have a particular number of independent directors on their boards of directors under SEBI requirements relating to corporate governance. These independent directors serve as a check on the executive directors' behavior and make sure they are upholding their obligations.
5. **Enforcement Actions:** Directors who breach securities laws may face enforcement procedures from SEBI. These enforcement measures may take the form of fines, penalties, or in certain circumstances, even criminal charges.

## JUDICIAL PRONOUNCEMENTS

The *Satyam Scandal*<sup>3</sup> is among the most important recent incidents. Ramalinga Raju, the founder and chairman of the firm, confessed to faking accounting and exaggerating earnings in this case. Numerous directors, including independent directors, were found accountable for their failure to exercise their responsibilities and notice the fraud. The significance of independent directors in promoting sound corporate governance and keeping the board responsible is highlighted by this case.

Another well-known instance of directors being held accountable for failing to safeguard investors' interests is *The Sahara Case*<sup>4</sup>. When the Sahara group of firms disobeyed a court order to return investor funds, the directors of those companies were held personally accountable. This situation highlights the duty of directors to act in the organization's and its stakeholders', particularly investors', best interests.

An instance of directors being held criminally liable for their activities is in the *Kingfisher*

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<sup>3</sup> Satyam Computer Services Limited Scam

<sup>4</sup> Sahara vs. SEBI case

*Airlines Case*<sup>5</sup>. The chairman of the now-defunct Kingfisher Airlines, Vijay Mallya, and several board members were charged with embezzling money from the business for their own use. This situation emphasizes how important it is for directors to operate honestly and refrain from using business cash improperly for their own advantage.

The SEBI claimed that the executives of Infosys, comprising Narayana Murthy, had broken insider trading laws in the *N. R. Narayana Murthy v. SEBI case*. The SEBI found that the directors had broken their fiduciary obligations and fined them as a result. This situation emphasizes how important it is for directors to uphold statutory regulations and safeguard shareholder interests.

To sum up, it is crucial for sound corporate governance and safeguarding the interests of shareholders and other stakeholders that directors' responsibilities in Indian corporations be met. These legal precedents emphasize the need for directors to use caution, vigilance, and care as they carry out their responsibilities. A company's checks and balances should be sufficient to guard against any improper activity by its directors.

## CONCLUSION

In conclusion, a company's directors are subject to a number of obligations and duties towards the business, its stakeholders, shareholders, and workers. They must fulfil their obligations with care, competence, and effort, and failure to do so may have legal and financial repercussions. Recent case laws have shown that courts are more prepared to hold directors responsible for their deeds and to inflict harsh fines in situations of duty violation. Directors must thus be fully aware of their responsibilities and use extreme prudence while performing their tasks. On the other side, organizations need to have strong corporate governance rules and practices in place to guarantee that its directors work in the organization's best interests and adhere to legal and regulatory obligations. Ultimately, the obligations of directors are crucial to upholding the corporate sector's integrity, and their responsibility must be preserved to guarantee that businesses conduct themselves in an open and responsible way.

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<sup>5</sup> Vijay Mallya Scam

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