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INDEPENDENCE OF INDEPENDENT DIRECTORS IN INDIA: A CRITICAL ANALYSIS OF LEGAL FRAMEWORK AND CORPORATE ACCOUNTABILITY

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Abstract

Independent directors were placed at the heart of Indian corporate governance to protect the interests of minority investors while reducing the influence of large owners. This expectation is still only partially met more than two decades after Clause 49 was enacted and 10 years after the Companies Act of 2013, which provided it legal basis. This essay analyzes whether Indian law genuinely guaranties independence or only confirms it. The paper uses a four-part framework—selection, information, and incentives—to analyze the Companies Act, SEBI Listing Regulations, committee reports, court decisions, and secondary literature using a doctrinal approach supported by purposive case analysis and a selective comparison with the United States and the United Kingdom liability and exit. The main criticism is that, while India has established a strong sense of independence, its architecture is inadequate. Even though the eligibility criteria are stringent, the eligible individual is nonetheless chosen, notified, reimbursed, and eliminated within a system that promoters heavily influence. Although important, the liability safe harbor in section 149(12) of the Companies Act does not eliminate the risk of being summoned until considerably later in the process. In addition to outlining the empirical and doctrinal shortcomings that must be addressed, the article finishes with reform ideas for nomination, information access, procedural safe harbors, protected exit, and public reporting of board-level effectiveness.

Keywords: minority shareholders, board accountability, SEBI Listing Regulations, Companies Act 2013, independent directors, corporate governance, and section 149(12).

Introduction

Every few years, when an Indian company fails, the same question is raised in the media and, eventually, in court documents: where were the independent directors? Although the pattern is more prevalent, the most frequently stated names are Infrastructure Leasing and Financial

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Services (IL&FS) in 2018 and Satyam in 2009. The boards appeared to be in order, committees met, and documentation was done. The flaw was only revealed after the damage had been done, and in numerous cases, independent directors were the first to depart when the issue arose.

The independent director institution is a regulatory import, even if India did not passively accept it. The Kumar Mangalam Birla Committee first proposed the idea for Indian listed-company legislation in 1999. It was later improved by the Irani Committee, the Narayana Murthy Committee, and the Companies Act of 2013, which established a code of conduct for independent directors in Schedule IV and a specific legislative status in Section 149. The Listing Obligations and Disclosure Requirements Regulations, 2015 (the Listing Regulations) have been amended several times since the Uday Kotak Committee reexamined the matter in 2017. India's legal system is currently one of the most comprehensive in the world. However, affect and detail are distinct concepts. What distinguishes Indian-listed corporations is their concentrated ownership. The conventional agency dilemma involves controlling shareholders against everyone else rather than shareholders vs management in a corporation where the votes are controlled by a promoter family or a governmental ownership. In that case, an independent director is expected to do more than simply keep an eye on the boss. He or she has the authority to dismiss, create the charge, and occasionally disagree with those who proposed the appointment. This paper focuses on how the law responds to this difficulty. The paper makes three contributions. First, it consolidates the existing legal situation into a single analytical account, taking into account the Listing Regulation changes for 2021, 2022, and 2024. Second, it proposes a simple analytical tool called an independence dependency matrix, which asks who controls each stage of a director's life. Third, it organizes the findings into a set of open research topics and specific reforms.

Literature and Conceptual Background

1. The reasons behind the significance of independence

The usual rationale comes from agency theory. Jensen and Meckling discussed the costs that arise when a company's managers are not its owners. Later, Fama and Jensen argued that outside directors can act as a check on the company's decision-makers since they have a vested interest in maintaining their status as monitors. Thus, independence is not a position in and of itself, but rather a means to an end: credible oversight. The picture has been complicated by empirical writing. In their examination of American corporations, Bhagat and Black observed no consistent association between the percentage of independent directors and long-term success, implying that the number of independent directors is not a reliable measure of

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governance. The lesson for India is not that independence is meaningless, but that formal ratios mean little if director selection and training are overlooked.

2. **Controlling shareholders in the Indian context**

Gilson and Gordon observed that the central government's role shifts to limiting private benefits of control in places where ownership is concentrated. Varottil's studies on the growth of independent directors in India, as well as Afsharipour's work on the convergence of Indian governance with international standards, make similar points. The risk of establishing a compliance routine occurs when regulations designed for distributed ownership markets are transferred to promoter-led firms. Varottil expressly stated that promoters may usually select directors they feel comfortable with; thus, it is vital to evaluate the function of independent directors in India.

3. **Indian research on resignation and culpability**

Recent Indian art can be classified into two categories. One thread is about liability. In its 2019 report on the liability regime for non-executive and independent directors, the Vidhi Center for Legal Policy made the following claims: the safe harbor in section 149(12) is limited; independent and non-executive directors can be brought into proceedings even for passive negligence; and section 149 protection only takes effect after an investigation or legal action has begun. Another suggestion in the report was to align director liability across statutes. The Parliamentary Standing Committee on Finance proposed a more expansive safe harbor that includes other statutes. The other strand focuses on leaving. Chakrabarti, Subramanian, and Kotrike discovered that the Satyam catastrophe raised the perceived risk of acting as an independent director in other Indian organizations, based on data from over 2,500 Indian public businesses. A study of audit committee withdrawals in India following Satyam found a similar conclusion about who took the decision to quit after studying both social pressure and economic incentives.

Research Problem, Goals, and Inquiries

It is a straightforward problem. Indian law defines an independent person quite clearly, but it is far less apparent if such person can act freely after entering office. If there is a significant disparity between qualifications and behavior, the legal increase in the number and responsibilities of independent directors will result in more compliance but not much higher responsibility. The study's objectives are to map the current legal framework for independent

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directors in publicly traded Indian companies, assess how well the framework protects independence at each stage of a director's tenure, determine whether the liability regime fairly balances protection and accountability, and recommend reforms and a research agenda. These resulted in the following research questions.

RQ1: How does the Companies Act of 2013 and the Listing Regulations define and protect the independence of independent directors?

RQ2: At what stage of an independent directorship's life cycle—selection, information, compensation, liability, and exit—does the framework give management or the controlling shareholder the final say?

RQ3. Does the liability structure, notably section 149(12), strike an appropriate balance between protecting directors who conduct due diligence and holding them accountable for oversight failures?

RQ4: Which legislative and regulatory changes would have the most immediate impact on converting legal independence into practical independence?

Methods of Research

Design

The qualitative and doctrinal investigation includes a functional comparison and an analytical case component. The doctrinal section's primary sources include the Companies Act of 2013 and its Rules, the Listing Regulations as amended, SEBI board decisions and circulars, the Ministry of Corporate Affairs' March 2020 circular on proceedings against independent and non-executive directors, Birla to Kotak committee reports, and Supreme Court rulings on director liability. It examines what the law states, how different portions interact, and where they disagree.

Selection of cases

The Tata group removed Nusli Wadia as an independent director in 2016 following the Tata-Mistry dispute (removal and shareholder control), the Satyam board crisis of 2008 and 2009 (approval of a related-party transaction and abrupt resignations), the IL&FS default of 2018 (oversight failure in a complex group), and the independent director resignations of 2025

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documented in recent commentary (exit behavior in newer-economy companies). The sample size is purposefully tiny. The goal is analytical illustration rather than statistical generalization.

Analytical instrument

Each stage of an independent director's career is analyzed using the same question: who makes the decisions. Responses are recorded using an independence dependency matrix with three potential readings. A stage is categorized as "dependent" when management or the controlling shareholder makes effective decisions, "shared" when influence is divided, and "insulated" when the director or minority shareholders have actual control under the law. The rationale is presented such that readers can question it, and the coding is interpretative.

Comparative element

A functional comparison of the United States and the United Kingdom was conducted to determine whether different systems provide different solutions to the same problems. The United States utilizes a listing-standard and litigation paradigm, whereas the United Kingdom uses a comply-or-explain policy. These jurisdictions were chosen because of their impact on Indian reform discussions and their divergent approaches.

Limitations and sources

In October and November 2026, legal materials and secondary literature were gathered by targeted searches of statute texts, regulatory publications, law firm briefings, law journals, and university repositories. The study did not generate a new dataset or conduct interviews. As a result, rather than focusing on the activities of the average independent director, the conclusions address the structure of the law and the documented instances. This is a major restriction that extends to the gaps mentioned in Part 10.

The Legal Framework

Who is considered independent?

Section 149(6) of the Companies Act of 2013 and Regulation 16(1)(b) of the Listing Regulations define an independent director. In general, the candidate must be honest, have relevant experience, not be a director or promoter, have had no substantial financial involvement with the firm or its group in recent years, and have no connections to senior personnel. Following the Kotak Committee's recommendations, SEBI reinforced these laws and implemented a cooling-off period for anyone who had previously held important executive

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positions or worked for the firm. Furthermore, independent directors must proclaim their independence at the time of appointment and each year.

Committees and board composition

Section 149(4) of the Act and Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 require at least one-third of a listed public company's board to be independent. Regardless of whether the chairperson is an executive or a non-executive associated with the promoter, at least half of the board must be independent, as stated in Regulation 17 of the Listing Regulations.

According to discussion on the 2021 amendments, independent directors must make up at least two-thirds of the audit committee and the nominating and pay committee. The Listing Regulations and Schedule IV require that independent directors meet at least once a year in the absence of non-independent directors.

2. Tenure

Sections 149(10) and 149(11) allow an independent director to be reappointed once by special resolution after serving for up to five consecutive years. They must then adhere to a three-year cooling down period. The Listing Regulations reflect this regulation. It is the only method the statute can prevent a long-serving director from gradually transitioning into management.

3. Removal and appointment

The most recent changes to the Act include appointment, reappointment, and dismissal. According to the Act, the nomination and compensation committee will pick candidates, who will subsequently be appointed at a public meeting. Regulation 25(2A) of the Listing Regulations goes into effect on January 1, 2022, requiring shareholder approval via special resolution before a listed company's independent director is appointed, reappointed, or removed.

In response to concerns that a special resolution may still be used to block or coerce outcomes, the Sixth Amendment of November 2022 introduced an alternate method that incorporated two thresholds: an ordinary-majority threshold and a majority-of-minority threshold.According to the third amendment from December 2024, appointments to significant positions, such as independent directors, must be authorized by shareholders within three months of the appointment's effective date.

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4. Liability

According to Section 149(12), an independent director and a non-executive director who is not a promoter or a key managerial staff member are only liable for acts or inactions committed with their knowledge, as a result of board procedures, with their consent or collusion, or when they failed to act diligently. Section 149(12) is a non-obstante clause, and such directors should not be required to participate in Act proceedings until the Act's conditions are completed and substantial evidence is presented against them, according to the Ministry of Corporate Affairs, which restated the stance in March 2020. The Supreme Court ruled in SMS Pharmaceuticals Ltd v. Neeta Bhalla (2005), K K Ahuja v. V K Vora (2009), and Pooja Ravinder Devidasani v. State of Maharashtra (2014) that a non-executive director cannot be prosecuted solely on the basis of their title under Section 141 of the Negotiable Instruments Act, 1881. As a result, Section 212 of the Companies (Amendment) Act of 2019 now applies to everyone, including independent directors. Fraud is punishable by hefty fines and imprisonment under the Act.

Analysis: Four Independence Dimensions

One way to interpret the above approach is as a systematic collection of protections. When you read it step by step, a new image appears. The dependency matrix is applied to four dimensions in this section.

1. **Selection: Whoever chooses the director is the first step toward independence**

In the majority of publicly traded companies, a person who is officially eligible must be proposed by a board and committee over which the promoter has significant control, and then selected by shareholders, who have the promoter's most powerful voice. Although the nominating committee is intended to be independent, it is comprised of directors whose appointments may have been aided by the promoter. Although the databank under Section 150 only names applicants, it was designed to expand the pool. It does not pick them, and a firm has no responsibility to nominate persons who are unfamiliar with it.

2. Knowledge and proficiency: the director observes what management demonstrates

Typically, independent directors meet quarterly, read management-prepared board packs, and take part in a company-designed familiarization program. Although Schedule IV compels them to review performance and report difficulties, the law does not provide them with a reliable means of gathering their own data. They lack a statutory right to access unfiltered operational data, its own secretariat, and a guarantyd budget for independent counsel. Thus, a director who

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feels there is a related-party agreement requests that management disclose evidence against management. The Satyam incident serves as the most prominent illustration. Before investor opposition forced the plan to be withdrawn, the proposal to buy businesses affiliated with the promoter family's sons was put to a board of independent directors. Shortly afterward, the chairman admitted that earnings had been inflated for years, and two independent directors resigned. The sequence indicates how monitoring was carried out at the level of the question put to the board rather than at the level of the underlying facts, independent of individual justifications. It is emphasized that this stage is dependent.

3. Liability and incentives: torn between comfort and dread

There is an unusual combination of incentives for independent directors. They have an incentive to avoid dispute with the company's leadership because their remuneration are minimal in comparison to the legal risk. At the same time, when difficulties arise, they have an incentive to completely avoid the organization out of fear of blame. Both factors make it difficult to engage carefully. As a statement of principle, Section 149(12) effectively reduces the second pressure. The timing is the issue that both practitioners and the Vidhi study highlighted. A defense is a safe harbor. It is useful during a trial or the quash application stage, but it does not prevent the issuing of a summons, the start of an inquiry, or the harm to one's reputation in the meanwhile. A director protected by the Companies Act may nonetheless be identified in a proceeding under another law because the safe harbor is not referenced in many other statutes that prosecute directors. Furthermore, the terms "diligently" and "knowledge attributed through board processes" have no definitions. Directors are unsure of the need for due diligence.

This forces people to act defensively, reducing criticism in order to protect themselves or resigning without raising the alarm.

4. Removal and exit: the weakest link

A director has three options if they disagree with the board's direction: speak up, remain silent, or quit. The law does not strongly support the first. Requiring retiring directors to explain their reasons to the stock exchange is a useful transparency tool. However, the firm is not compelled to remedy the flaws raised, and there is no reliable way for a departing director to notify the regulator. The motivation is to leave discreetly. According to studies conducted following Satyam, the market for directors responded to the increased risk, and departures in India collected around the shock. Commentary on the 2025 resignations indicated the same

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incomplete pattern: independent directors were left to defend the minority. The Tata-Mistry controversy highlighted the vulnerability of an independent director whose opinions differ from those of the controlling shareholder. Following Cyrus Mistry's dismissal in 2016, shareholders ousted Nusli Wadia, an independent director on several Tata Group boards who supported Mistry. This essay does not discuss the merits of the case, but the Supreme Court's 2021 ruling in Tata Consultancy Services Ltd v. Cyrus Investments Pvt Ltd ultimately supported Tata Sons on corporate law issues. The point is structural for the time being. If removal is decided by a simple vote of shareholders owned by a single group, an independent director who disagrees may be replaced by one who does not. Although a controlling shareholder with more than a quarter of the votes cast can still reject a resolution they disagree with, and one with three-quarters of the votes can approve it, the 2021 requirement for a special resolution for removal raises the cost of such an action.

A Comparative Viewpoint

The UK uses a code-based strategy. The UK Corporate Governance Code, based on the comply-or-explain concept, requires boards to explain their independence decisions and views a long time (nine years) as a condition that could imperil independence. It also strengthens the board's relationship with its institutional investors, who have the ability to discuss and criticize appointments. The American model combines the potential of exculpation clauses in Delaware, which limit directors' financial liability for duty of care violations, an active private litigation system, and listing regulations that require listed corporations' boards to have a majority of independent directors. The US has a litigation threat, which lends diligence legal weight, whereas the UK has a culture of investor involvement and tenure monitoring. While neither model fully addresses the controlling-shareholder issue, they both give something India needs in the same way.

Findings

Six conclusions, each related to a research issue, are supported by the analysis.

Finding one (RQ1). Since 2013, the statutory definition of independence has been increasingly specific, particularly after the Kotak Committee. In terms of eligibility, Indian law is on par with most other regimes.

Finding 2 (Q2). At the control points, independence is the weakest. Information is dependent

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on management, selection is still significantly influenced by the majority shareholder, and removal remains a shareholder bloc power that the director may oppose. The improvements for 2021 and 2022 narrow but do not erase these discrepancies.

Finding 3 (RQ 2). The Companies Act and the Listing Regulations set out separate requirements and procedures for appointment and removal. More crucially, the distinction not only generates legal ambiguity, but also allows businesses to take the easier path.

Finding four (RQ3). The correct principle is described in Section 149(12), however it was enacted too late. It leaves the important terms "diligence" and "knowledge attributed through board processes" ambiguous, functions as a defense rather than a filter, and lacks a clear parallel in many other legislation. As a result, the regime achieves nothing to uncover the negligent director and does little to reassure the cautious one.

Finding 5 (RQ2 and RQ3). Exit is a poorly managed and unprotected event. Although departure reasons can be reported, there is no safe means to contact the regulator, and a corporation that ignores the reasons for a resignation suffers no consequences. Since Satyam, departures have been observed to cluster around crises.

Finding 6 (RQ4). In India, the standards governing directors are more strict than the surrounding institutions that ensure independence, such as informed minority voting, judicial norms of vigilance, and public reporting of board effectiveness.

Suggestions: Possible Actions

The recommendations follow the four dimensions and are intended to be implemented by targeted amendments and SEBI regulations, rather than a reform of the Companies Act.

1. Make minority approval the standard for businesses under promoter control

When the promoter group has a clear dominating position, the appointment and removal of independent directors should need a majority vote of non-promoter shareholders. This should be used in conjunction with the special resolution, not instead of it. In addition to the meeting notification, the nomination and compensation committee should make available the selection criteria, databank search, and shortlist from which the candidate was picked. Then proxy advisers and institutional investors have something to consider.

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2. Provide directors with a channel of communication

SEBI should require listed companies that exceed a certain size to have a small, ring-fenced annual budget for independent advice, unrestricted access to internal audit and statutory auditors without management present, and a company secretary or equivalent officer who reports to the lead independent director on board-process matters. At the annual meeting of independent directors, the board should receive a brief, signed statement outlining issues for follow-up, and the board's reaction should be documented.

3. Make the safe harbor a filter instead of a defense

Adoption of the Vidhi Center's demands for standard liability and protections during the summons stage is justified. In reality, this requires three things: a statutory clause or a coordinated amendment across major corporate-offense statutes so that the section 149(12) standard is recognized everyplace; a written screening step by the investigating authority or a magistrate prior to the summoning of an independent director in a company matter; and a process-based statement of diligence issued by SEBI or the Ministry that outlines the steps that demonstrate it (attendance, preparation) Presumptive protection should be granted to directors who can demonstrate those actions, but not to those who cannot.

4. Establish a secure escape and escalation path

When an independent director resigns, they should be able—and, in some cases, required—to submit a brief, private statement to SEBI at the same time as their resignation is made public, outlining any concerns they may have about related-party transactions, accounting, or governance. This form of good-faith communication should be legally protected against defamation and contractual claims. SEBI should investigate these concerns and reveal aggregate patterns that have been anonymised.

5. Report efficacy rather than merely composition

Companies already publish the number of independent directors they have. The annual report should include the results of an externally facilitated board evaluation conducted at least every three years, the number of items on which independent directors disagreed or requested additional information, the D&O insurance coverage held and its primary exclusions, and a summary of the results of the independent directors' separate meetings. These indicators of independent directors' activities enable investors to distinguish between active and ornamental boards.

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Deficits in Current Law and Research

There are two types of gaps listed below: gaps in the current legislation and gaps in the findings of current research.

Legal framework gaps

There is no operational definition of the diligence standard. Despite the perform's mandate for directors to perform diligently, neither the statute nor the leading cases specify the duties of independent directors in complicated group structures.

In terms of appointment and removal levels, neither the Listing Regulations nor the Companies Act provide a clear hierarchy or reconciliation.All statutes do not provide equal levels of protection. Many additional laws utilized to prosecute directors do not reflect the safe harbors established by the Companies Act. There is no protected whistleblower pathway for independent directors who quit.

Research gaps

There is no dataset that links the type of appointment—promoter-proposed, minority-approved, or databank-sourced—to related-party approvals, qualified audit opinions, or board resignations. There is presently no empirical research on the impact of the 2022 majority-of-minority route. The genuine conduct of directors, including how often they disagree, what they desire, and what happens to them later, is poorly recognized. It is necessary to conduct research through surveys and interviews. Older governance literature fails to address the independence challenges brought by newly listed and newer-economy businesses, where founders have significant advantages. Claims about how protective section 149(12) is in practice are based on specific cases because the judicial record on the provision in the High Courts, the NCLT, the SAT, and the criminal courts has not been correctly classified.

Conclusion

India has made tremendous strides in defining independent directors, but relatively little has been done to ensure their independence. The committees are well-organized, the eligibility requirements are comprehensive, and the liability safe harbor is an excellent idea. However, the people the director is supposed to monitor retain the majority of authority over the processes that determine whether a director can say no, such as who chooses, who notifies, who pays, who can be removed, and what happens after exit.Regulators are aware of this, as evidenced

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by recent revisions. The three-month approval window, the minority-based alternative threshold, and the special resolution for appointment and removal are all intended to increase non-promoter shareholder involvement. The next step is to complete the task by requiring minority approval in controlled companies, providing directors with resources and a protected voice, transforming the liability safe harbor into a pre-summons filter with a defined diligence standard, and requiring companies to demonstrate their independent directors' activities.Until the law is evaluated primarily on the outcomes rather than the number of independent directors, the question of where the independent directors were following each company's failure will persist.

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