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# **CORPORATE GOVERNANCE IN THE ERA OF STRATEGIC CONSOLIDATION: A LEGAL APPRAISAL OF MERGERS AND ACQUISITIONS IN INDIA**

AUTHORED BY - SAYED FAISAL MALIK

LLM (Business Law) Batch: 2025-26

Amity Institute of Advanced Legal Studies (AIALS), Amity University, Noida.

## **Abstract**

The contemporary corporate landscape in India is increasingly shaped by strategic consolidation through mergers and acquisitions (M&A), driven by globalization, intensified market competition, technological advancement, and the continuous pursuit of operational efficiency. In this evolving environment, corporate governance assumes a central and indispensable role in ensuring that such transactions are conducted with transparency, fairness, accountability, and adherence to legal and ethical standards. This paper undertakes a comprehensive legal appraisal of corporate governance norms in the context of M&A in India, examining the dynamic interplay between statutory frameworks, regulatory oversight, and evolving governance principles.

The study critically analyses the adequacy and effectiveness of existing legal provisions in safeguarding stakeholder interests—particularly those of minority shareholders—while simultaneously facilitating corporate restructuring, innovation, and economic growth. It further explores the role of key regulatory bodies, including the Securities and Exchange Board of India (SEBI), the Competition Commission of India (CCI), and the National Company Law Tribunal (NCLT), in shaping governance outcomes during M&A transactions. By engaging with statutory provisions, judicial interpretations, regulatory mechanisms, and emerging market trends, the paper highlights both the strengths and the inherent limitations of India's governance architecture.

Additionally, the paper reflects on contemporary challenges such as regulatory overlap, delays in approvals, information asymmetry, and the complexities associated with cross-border transactions. It argues that while the legal framework has progressively evolved to accommodate the demands of strategic consolidation, significant gaps persist in enforcement,

coordination among regulatory authorities, and practical implementation at the corporate level. The study ultimately underscores the need for a more integrated, principle-based, and stakeholder-oriented governance approach that not only ensures compliance but also promotes ethical corporate conduct, long-term sustainability, and investor confidence in an increasingly consolidated corporate environment

## I. Introduction

Corporate consolidation through mergers and acquisitions has reshaped India's economic trajectory since the liberalization reforms of 1991. Transactions such as the Vodafone–Idea merger and the Tata Group's acquisition of Air India illustrate how companies leverage consolidation to withstand competition and expand globally. Yet, beyond financial synergies, M&A transactions profoundly affect governance structures, raising questions about accountability, compliance, and shareholder rights. The last two decades have witnessed a significant transformation in the Indian corporate sector, marked by a steady rise in mergers and acquisitions as instruments of strategic growth and consolidation. Indian companies are no longer confined to domestic markets; instead, they actively engage in cross-border transactions, complex restructuring, and competitive expansion. In this context, corporate governance has emerged not merely as a regulatory requirement but as a foundational element that shapes the legitimacy and success of M&A activity.

Mergers and acquisitions inherently involve a reconfiguration of rights, responsibilities, and control within corporate entities. Such transactions can generate value and efficiency, yet they also create opportunities for conflicts of interest, information asymmetry, and the marginalization of minority stakeholders. The role of corporate governance, therefore, is to mediate these tensions by ensuring that decision-making processes remain transparent, equitable, and aligned with the broader interests of the company and its stakeholders.

India's legal framework governing M&A reflects an attempt to balance facilitation with oversight. Statutes such as company law, securities regulations, competition law, and foreign exchange rules collectively structure the process of consolidation. However, the effectiveness of these laws ultimately depends on how governance principles—such as board independence, fiduciary responsibility, and disclosure—are interpreted and enforced in practice. The increasing complexity of transactions, coupled with evolving market realities, raises important

questions about whether existing governance mechanisms are sufficient to address emerging risks.

This paper seeks to critically examine the relationship between corporate governance and M&A in India within the broader context of strategic consolidation. It explores how legal norms influence corporate behavior during such transactions and evaluates whether they adequately protect stakeholder interests while enabling economic growth. By situating the discussion within current developments and challenges, the paper aims to contribute to a more nuanced understanding of governance in a rapidly consolidating corporate environment.

The governance implications of M&A are complex. Consolidation often alters ownership structures, board composition, and decision-making authority. These changes can undermine transparency and accountability if not properly regulated. The central research question addressed here is:

## **II. How does the Indian legal framework balance corporate efficiency with governance safeguards in M&A transactions?**

### **Legal Framework Governing M&A in India**

India's regulatory regime is multi-layered, involving several statutes and regulators.

#### *Competition Act, 2002*

Section 6 of the Competition Act prohibits combinations that cause an appreciable adverse effect on competition.

The Competition Commission of India (CCI) reviews mergers above prescribed thresholds. Governance implications include ensuring that dominant firms do not abuse market power, thereby protecting consumer welfare and shareholder interests.

#### *Companies Act, 2013*

Sections 230–234 of the Companies Act provide mechanisms for compromise, amalgamation, and cross-border mergers. Section 233 introduces fast-track mergers for small companies, while Section 234 permits mergers with foreign companies. Governance concerns here include adequate disclosure to shareholders and fair valuation of assets.

#### *FEMA, 1999*

The Foreign Exchange Management Act regulates foreign investment and security transfers. RBI guidelines ensure that cross-border M&A transactions comply with India's foreign exchange policy. Governance implications include transparency in foreign ownership and compliance with national economic policy.

#### *Income Tax Act, 1961*

Section 2(42C) defines "slump sale," relevant for asset transfers in M&A. Tax neutrality provisions encourage restructuring but raise governance concerns about aggressive tax planning.

#### *Insolvency and Bankruptcy Code, 2016*

The IBC facilitates acquisition of distressed assets through corporate insolvency resolution. Governance implications include protecting creditors' rights and ensuring fair treatment of stakeholders.

#### *SEBI Regulations*

The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, mandate disclosure of acquisitions beyond certain thresholds. These rules protect minority shareholders and ensure transparency in takeover bids.

### **III. Revisiting Corporate Governance in M&A: Unaddressed Dimensions and Emerging Concerns**

While the legal and regulatory framework governing mergers and acquisitions in India has been extensively analysed, much of the existing scholarship remains confined to statutory compliance, minority shareholder protection, and institutional oversight. Such an approach, although necessary, often overlooks deeper structural and functional realities that shape corporate governance in practice. This section seeks to bridge that gap by examining underexplored dimensions that significantly influence governance outcomes in the era of strategic consolidation.

#### **1. Informal Governance and Promoter Dominance**

A critical yet under-discussed feature of Indian corporate governance is the persistence of informal power structures, particularly in promoter-driven companies. Although the law

emphasizes board independence and procedural fairness, decision-making in M&A transactions is often influenced by promoter interests prior to formal board deliberations.

This creates a divergence between formal compliance and substantive governance, where approvals may reflect pre-determined outcomes rather than independent evaluation. Consequently, governance risks arise not from absence of regulation, but from the limited effectiveness of institutional checks in countering entrenched control.

## 2. Privatization of Governance through Intermediaries

M&A transactions rely heavily on external actors such as investment banks, legal advisors, and valuation experts. These intermediaries play a decisive role in structuring deals, determining valuations, and issuing fairness opinions.

However, their influence raises important governance concerns. Their incentives are often aligned with successful deal closure rather than critical scrutiny, and the regulatory framework provides limited accountability for flawed or biased advice. This phenomenon effectively results in a partial privatization of governance functions without corresponding liability mechanisms.

## 3. Inadequacy of Traditional Due Diligence in the Digital Age

The scope of due diligence in M&A has expanded significantly with the rise of digital economies. Issues relating to data protection, cybersecurity, artificial intelligence systems, and digital assets now form a crucial part of corporate valuation and risk assessment.

Indian corporate governance frameworks, however, continue to rely largely on traditional financial and legal due diligence models. This gap creates exposure to latent technological risks, which may only surface post-acquisition, thereby undermining both valuation accuracy and long-term governance stability.

## 4. ESG as a Strategic Governance Consideration

Environmental, Social, and Governance (ESG) factors are increasingly influencing M&A decisions globally. In India, ESG is often treated as a disclosure requirement rather than a core determinant of transaction viability and valuation.

In practice, acquirers are beginning to assess ESG compliance as a proxy for long-term sustainability and reputational risk. Poor ESG alignment between merging entities can lead to integration challenges and stakeholder resistance. Thus, ESG must be understood not merely as a reporting obligation, but as a strategic governance variable shaping consolidation outcomes.

### 5. The Neglected Phase: Post-Merger Governance

Legal scrutiny in India is heavily concentrated on the approval stage of M&A transactions, with comparatively little attention paid to post-merger governance integration. Yet, it is during this phase that governance failures most frequently occur.

Challenges such as board restructuring, cultural integration, harmonization of compliance systems, and alignment of managerial incentives can significantly impact the success of a merger. The absence of a structured legal or regulatory framework addressing post-merger governance represents a critical blind spot in Indian M&A law.

### 6. Regulatory Arbitrage and Strategic Structuring

M&A transactions are sometimes employed as tools for regulatory arbitrage, enabling firms to restructure in ways that minimize liabilities, circumvent regulatory constraints, or achieve tax efficiencies.

While such practices may operate within the boundaries of legality, they raise broader governance concerns regarding the ethical use of corporate restructuring mechanisms. This highlights the need to distinguish between legitimate strategic consolidation and opportunistic structuring that undermines regulatory intent.

### 7. Minority Shareholders: Protection without Participation

Indian corporate law provides several safeguards for minority shareholders, including disclosure requirements and exit opportunities. However, these protections are largely reactive in nature.

Minority shareholders typically have limited influence over decision-making processes in M&A transactions, particularly in companies with concentrated ownership. This creates a governance model where minorities are protected from extreme harm but are not meaningfully empowered to shape outcomes, raising questions about the substantive inclusiveness of the system.

### 8. The Tension between Speed and Scrutiny

Recent regulatory reforms aimed at improving ease of doing business have introduced mechanisms such as fast-track mergers and simplified approval processes. While these measures enhance efficiency, they also create a potential trade-off between speed and regulatory scrutiny.

Accelerated approvals may reduce the depth of examination in complex transactions,

increasing the risk of oversight failures. This tension underscores the need for a balanced approach that preserves procedural efficiency without compromising governance integrity.

#### 9. Cross-Border M&A and Governance Divergence

As Indian firms increasingly engage in cross-border M&A, they encounter differing governance standards, legal systems, and cultural expectations. Harmonizing these differences poses significant challenges.

Legal compliance alone cannot ensure effective governance integration, as variations in board practices, disclosure norms, and stakeholder engagement models may lead to conflicts. This suggests that cross-border transactions require not only legal alignment but also normative and cultural convergence in governance practices.

#### 10. Insolvency-Driven M&A and the Shift in Governance Paradigm

The rise of insolvency-driven acquisitions under the Insolvency and Bankruptcy framework has introduced a fundamental shift in governance dynamics. In such cases, creditors, rather than shareholders, become the primary decision-makers.

This transition reflects a move towards a creditor-centric governance model, where financial recovery takes precedence over traditional ownership rights. While this approach enhances efficiency in resolving distressed assets, it also redefines the balance of power within corporate governance structures.

### **IV. Corporate Governance Challenges in Mergers and Acquisitions**

Mergers and acquisitions are not merely financial or strategic exercises; they are deeply embedded in governance structures that determine how decisions are made, monitored, and enforced. In the Indian context, where ownership is often concentrated and promoter-driven, M&A transactions raise unique governance concerns. These challenges are particularly pronounced due to asymmetries of information, power imbalances, and evolving regulatory oversight.

#### 1. Board Accountability and Fiduciary Duties

The board of directors plays a central role in approving and overseeing M&A transactions. Directors are bound by fiduciary duties to act in good faith, exercise due care, and prioritize the interests of the company as a whole. However, in practice, these duties may come under strain during high-stakes consolidation deals.

One major concern is the potential conflict between the interests of promoters and those of the company. In promoter-dominated firms, boards may lack true independence, leading to decisions that favor controlling shareholders rather than maximizing overall shareholder value. This is particularly evident in related-party transactions, where acquisitions may be structured to benefit affiliated entities.

Additionally, directors often rely heavily on external advisors such as investment bankers and legal consultants. While expert input is necessary, over-reliance can dilute independent judgment. The absence of rigorous internal evaluation mechanisms further weakens board accountability.

To address these issues, stronger norms around board independence, mandatory fairness opinions, and detailed documentation of decision-making processes are essential.

## 2. Protection of Minority Shareholders

Minority shareholders are among the most vulnerable stakeholders in M&A transactions. Given their limited control over corporate decisions, they often rely on regulatory protections to safeguard their interests.

Key concerns include unfair valuation practices, inadequate exit opportunities, and coercive tactics during takeovers or delistings. For instance, squeeze-out mergers or schemes of arrangement may result in minority shareholders being forced to accept terms that do not reflect the true value of their holdings.

Although Indian law provides mechanisms such as exit offers, voting thresholds, and disclosures, enforcement remains inconsistent. Minority shareholders also face practical challenges in accessing timely information and pursuing legal remedies due to cost and procedural complexity.

Strengthening minority protection requires not only stricter regulatory enforcement but also improved access to grievance redressal mechanisms, class action remedies, and enhanced transparency in valuation methodologies.

## 3. Transparency and Disclosure

Transparency is a cornerstone of good corporate governance, yet it becomes particularly complex in the context of M&A. Transactions typically involve sensitive negotiations, confidentiality agreements, and strategic considerations that limit the extent of immediate disclosure.

This creates a tension between the need to protect business interests and the obligation to keep

stakeholders informed. Delayed or selective disclosures can lead to market manipulation, insider trading concerns, and erosion of investor confidence.

In India, regulatory frameworks mandate disclosures at various stages of M&A transactions, especially for listed companies. However, compliance is sometimes treated as a procedural formality rather than a substantive governance requirement.

Improving transparency requires a shift toward more meaningful disclosures, including clear explanations of transaction rationale, risks, valuation assumptions, and long-term impact. Technology-driven reporting and real-time updates can further enhance stakeholder trust.

#### 4. Role and Effectiveness of Independent Directors

Independent directors are expected to act as neutral arbiters who safeguard the interests of all stakeholders, particularly in complex transactions like mergers and acquisitions. Their role includes scrutinizing proposals, questioning management decisions, and ensuring compliance with legal and ethical standards.

However, the effectiveness of independent directors in India is often questioned. Challenges include limited access to critical information, dependence on management for data, and lack of specialized expertise in handling complex M&A deals. In some cases, social or professional ties with promoters may compromise their independence.

Moreover, independent directors may face time constraints due to multiple board commitments, reducing their ability to engage deeply with transaction details.

Enhancing their role requires capacity building, access to independent advisory resources, and stricter criteria for independence. Regular training and performance evaluation can also improve their effectiveness in governance oversight.

#### 5. Information Asymmetry and Due Diligence Gaps

A recurring governance issue in M&A transactions is the imbalance of information between parties. Acquirers may not always have complete visibility into the target company's financial, legal, or operational risks. Similarly, shareholders may lack access to critical details influencing the transaction.

Inadequate due diligence can lead to post-merger disputes, financial losses, and reputational damage. Governance frameworks must therefore emphasize comprehensive and transparent due diligence processes, supported by accurate disclosures and independent verification.

## V. Judicial Trends

Indian courts have played a decisive role in shaping governance outcomes in M&A.

- In *Miheer H. Mafatlal v. Mafatlal Indus. Ltd.*, the Supreme Court emphasized shareholder democracy, holding that courts should not interfere with commercial wisdom unless the scheme is unfair.
- In *Vodafone Int'l Holdings B.V. v. Union of India*, the Court addressed tax implications of cross-border acquisitions, linking fiscal accountability with governance.
- In *Tata Consultancy Servs. v. Cyrus Invs. Pvt. Ltd.*, governance concerns regarding board independence and minority rights were foregrounded.
- In *Needle Indus. v. Needle Indus. Newey*, the Court underscored fiduciary duties of directors in corporate restructuring.
- In *ArcelorMittal India v. Satish Kumar Gupta*, the Court clarified the role of promoters in insolvency resolution, reinforcing governance safeguards.

These precedents illustrate the judiciary's dual role: facilitating corporate restructuring while safeguarding governance norms.

### Comparative Perspective

A comparative analysis highlights differences in regulatory approaches:

- **United States:** The SEC enforces disclosure under the Securities Exchange Act of 1934, while the FTC and DOJ review antitrust implications. Governance is safeguarded through centralized oversight.
- **United Kingdom:** The Takeover Panel ensures transparency in shareholder communications, while fiduciary duties of directors are strictly enforced.
- **India:** Oversight is fragmented among SEBI, CCI, RBI, and MCA. While this creates procedural delays, it embeds stronger checks against abuse of dominance.
- Scholars argue that India's fragmented model reflects its developmental context, balancing efficiency with governance safeguards.

### Challenges and Governance Implications

Despite statutory and judicial safeguards, several challenges persist:

#### *Cultural Integration*

Cross-border mergers often falter due to divergent managerial practices and cultural differences.

Governance implications include communication barriers and reduced accountability.

#### *Minority Shareholder Protection*

Dilution of minority rights remains a recurring concern. SEBI's takeover code provides safeguards, but enforcement challenges persist.

#### *Regulatory Overlap*

Multiplicity of regulators complicates compliance. Harmonization of oversight is essential to reduce uncertainty and enhance governance.

#### *ESG and Sustainability*

Environmental, social, and governance (ESG) concerns are increasingly relevant in M&A negotiations. Governance frameworks must integrate sustainability to ensure long-term value creation.

### **Conclusion**

M&A transactions are not merely financial strategies but governance events. They reshape board structures, redefine shareholder rights, and test regulatory resilience. Strengthening disclosure norms, harmonizing regulatory oversight, and enhancing minority protections are essential to ensure that consolidation fosters sustainable corporate governance. Future research should explore ESG integration and the intersection of technology and law in M&A governance.

Corporate governance in the context of mergers and acquisitions in India stands at a critical juncture, shaped by the competing demands of regulatory control and economic dynamism. As strategic consolidation becomes an increasingly common feature of the corporate landscape, the importance of a robust governance framework cannot be overstated. M&A transactions, by their very nature, test the integrity of governance structures, exposing both their strengths and their vulnerabilities.

The analysis undertaken in this paper suggests that India has made considerable progress in developing a comprehensive legal regime that addresses key governance concerns in M&A. Regulatory bodies and statutory provisions have evolved to promote transparency, protect minority shareholders, and ensure procedural fairness. At the same time, persistent challenges

such as regulatory overlap, delays in approvals, and inconsistencies in enforcement continue to affect the efficiency and credibility of the system.

Going forward, the focus must shift from mere compliance to the cultivation of a governance culture that prioritizes ethical decision-making and long-term value creation. This requires not only legal reform but also institutional strengthening, greater accountability of corporate actors, and enhanced awareness among stakeholders. In an era defined by rapid consolidation and global integration, effective corporate governance will serve as the cornerstone for sustainable growth, investor confidence, and the overall stability of the corporate sector in India.

