GOVERNANCE REDEFINED: THE ROLE OF INDEPENDENT DIRECTORS IN INDIA POST-2025: FROM BOARDROOM RITUALS TO ENABLING FUNCTIONAL ACCOUNTABILITY

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ABSTRACT

Independent directors have emerged as key players in India's corporate governance landscape, particularly amid growing corporate fraud and waning investor trust. Although they hold a statutory position under Section 149(6) of the Companies Act, 2013 and fall under SEBI's oversight, their real-world authority has often been minimal. Scandals such as Satyam (2009), IL&FS (2018), and DHFL (2019) exposed deep flaws in board independence, risk oversight, and whistleblower protection.

SEBI's 2025 amendments to the LODR Regulations, focusing on High-Value Debt Listed Entities (HVDLEs), aim to shift the governance paradigm. The changes mandate clearer norms for board structure, director appointments, evaluation processes, and disclosures—moving from symbolic compliance to genuine accountability.

This paper examines these developments through doctrinal and comparative analysis, referencing international models like the Cadbury Report (UK, 1992) and the Sarbanes-Oxley Act (US, 2002). It highlights gaps in the Indian framework and proposes key reforms: dual-approval for appointments, board training, indemnity protection, regular evaluations, and whistleblower safeguards.

Ultimately, it advocates reimagining independent directors not just as legal formalities but as empowered custodians of corporate ethics and stakeholder trust.

Keywords: Independent Directors; Corporate Governance; Amendment of SEBI LODR Regulations 2025; High-Value History Listed Entities (HVDLEs); Companies Act 2013; Board Evaluation; Whistleblower Protection; Regulatory Compliance; Legal Risk; Comparative Governance

Introduction

The development of corporate governance has become a pillar for financial stability and investor confidence, locally and globally. Section 149(6) of the Companies Act, 2013 established the institution of independent directors in India by prescribing certain eligibility criteria for them to function independently without loyalty to promoter or management.[1] The goal was to engender fairness and ensure that corporate decision-making was consistent with the interests of all stakeholders but, most especially, minority stockholders.

But the Indian experience of independent directors has faced difficulties in terms of operational, cultural and regulatory constraints. Independent directors are treated as decorative add-ons to the board rather than active monitors of governance, even with elaborate statutory provisions in place. The inability to avert spectacular corporate debacles, such as Satyam (2009)[2], IL&FS (2018)[3], DHFL (2019) and Franklin Templeton (2020), reflects the difference between the letter and spirit of regulatory efforts. These incidents showed that independent directors either lacked knowledge of key financial decisions or could not question entrenched management, as a result of insufficient access to information, ambiguity about the scope of liability protections and procedural shortcomings when appointing and removing directors.[4] To address these structural issues, the Securities and Exchange Board of India (SEBI) leveled the 2025 Amendments to the Listing Obligations and Disclosure Requirements (LODR) Regulations. These amendments signal a paradigm shift in the governance structure, particularly for High-Value Debt Listed Entities (HVDLEs) through prescriptions such as a robust composition of the board, stringent definitions of independence, segmented responsibilities of directors, performance evaluations, and increased standards of disclosure.[5] The amendments also redefine thresholds for applicability of regulatory provisions specifying a higher minimum outstanding value of listed non-convertible debt securities now to be ₹1,000 crore as opposed to the earlier ₹500 crore[6] thus streamlining the ambit of oversight and

[1]Companies Act, No. 18 of 2013, § 149(6), India Code (2013).
[2]Satyam Computer Services Ltd., SEBI Order No. WTM/PS/IVD/47/12/2012 (India).
[3]Infrastructure Leasing & Financial Services Ltd., Report of the Ministry of Corporate Affairs, Government of India (2019).
[4]Securities and Exchange Board of India, Listing Obligations and Disclosure Requirements (Amendment) Regulations, 2025, Gazette of India, Part III, Sec. 4, Reg. 3–27.
[5]Securities and Exchange Board of India, Listing Obligations and Disclosure Requirements (Amendment) Regulations, 2025, Reg. 15(1A), Gazette of India, Part III, Sec. 4.
[6]Securities and Exchange Board of India, Listing Obligations and Disclosure Requirements (Amendment) Regulations, 2025, Reg. 23(1), 26(1), Gazette of India, Part III, Sec. 4.

officiating coverage of more systemic participants.

What sets the 2025 reforms apart is not only the expansion of the regulatory content, but the focus on substance over form in compliance. The new regime demands a more functionally independent board that can push back against management, spot risk and assert itself on governance strategy. The sort of periodic board evaluation and disclosure of a director' remuneration and performance, requirements in terms of gender representation, limits on tenure and directorships, and formalising whistleblower frameworks point to a more interventionist and accountability-driven approach.[7]

This paper conducts a wide-ranging doctrinal and comparative investigation of the legal, regulatory and functional nature of independent directors in India. It builds on existing governance frameworks of the UK and US, through an analysis of important instruments like the Cadbury Report (1992) and the Sarbanes-Oxley Act (2002), to compare and contrast India's developing framework. It also measures the effect of the SEBI (LODR) Amendments, 2025 on operations in changing the dynamics of the boardroom and accountability in law.

Historical and Legal Context

India's corporate governance regime has evolved from ancient principles of accountability and ethics, as found in the Arthashastra,[8] to a modern statutory framework driven by post-liberalisation reforms.[9] This section outlines key legal milestones, particularly the SEBI (LODR) Amendments, 2025,[10] and situates India's progress in the context of global practices in the UK and US.

Evolution of Corporate Governance in India

The essential principles of corporate governance are not contemporary constructs but extend back to ancient Indian treatises like Kautilya's Arthashastra, which stressed notions of accountability, ethical leadership and organised administration. But corporate governance in India in its modern sense emerged largely as a response to economic liberalisation in the early

[7]Securities and Exchange Board of India, Listing Obligations and Disclosure Requirements (Amendment) Regulations, 2025, Chapter V-A, Reg. 62FA to 62G, Gazette of India, Part III, Sec. 4.
[8] Kautilya, Arthashastra (R. Shamasastry trans., 1915).
[9] Companies Act, No. 18 of 2013, India Code (2013)
[10] SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2025, Gazette of India, Part III, Sec. 4.

1990s. Opening up the state-run economy meant Indian companies faced investment criteria from an international community of investors, necessitating associated changes in transparency, accountability and shareholder rights.[11]

The earliest of the formal regulatory initiatives was SEBI's introduction of Clause 49 of the Listing Agreement in 2000, which provided the groundwork for board structures, audit committees, and disclosures.[12] This regulatory drive was further enhanced by the introduction of the Companies Act, 2013, which codified the principles of corporate governance and made the inclusion of independent directors across certain categories of companies a statutory requirement.[13]

The Act requires that under Section 149(4), every public company would be required to fill at least 1/3rd of the board with independent directors. The criteria for independence is further defined in Section 149(6) where it is stated that a person shall be considered independent if he is not having any pecuniary relationship, familial or material interest in the company or has not been associated with the promoters.[14] Coupled with additional statutory requirements regarding the maintenance of a director databank (Section 150) and requiring shareholder approval for appointments (Section 152), these provisions created a framework for the independence and the autonomy of the board.

Yet this progress was repeatedly rendered ineffective by real-world case studies of governance failure. Scandals from Satyam (2009), in which massive misstatements went undetected by the board, to the IL&FS crisis (2018), which unearthed board passivity as liabilities mounted, raised questions over the actual authority and functional independence of such directors.[15]

Statutory Framework and the Role of Regulation by SEBI

The primary statute pertaining to independent directors is encapsulated in the provisions of the Companies Act, 2013 and SEBI's Listing Obligations and Disclosure Requirements (LODR) Regulations, 2015, as amended from time to time.[16] While the Companies Act offers

[11]Umakanth Varottil, Evolution and Effectiveness of Independent Directors in Indian Corporate Governance, 6 Nat'l L. Sch. India Rev. 94 (2014).
[12]Securities and Exchange Board of India, Circular No. SMDRP/POLICY/CIR-10/2000 (Feb. 21, 2000).
[13]Companies Act, No. 18 of 2013, § 149, India Code (2013).
[14]Companies Act, No. 18 of 2013, § 149(6), India Code (2013).
[15]Ministry of Corporate Affairs, Report on IL&FS Crisis (2019), https://www.mca.gov.in/.
[16]SEBI (LODR) Regulations, 2015, Gazette of India, Part III, Sec. 4.

independent structural safeguards, SEBI supplements these through listing norms for the public companies or entities accessing capital markets.

Through the SEBI (LODR) Amendment Regulations, 2025, the SEBI has introduced several significant and novel regulatory amendments, particularly for the High-Value Debt Listed Entities (HVDLEs). The amendments tighten governance requirements on those entities who have outstanding listed non-convertible debt securities of ₹1,000 crore or more.[17]

Notably, the 2025 reforms introduced several structural and procedural mandates to strengthen board governance. They require that at least 50% of the board, excluding the chairperson, comprise non-executive directors[18], and mandate that one-third to one-half of the board be independent directors, depending on whether the chairperson is executive or non-executive. The reforms also mandate the inclusion of at least one female independent director on the board. Additionally, directors aged 75 years or above cannot be appointed or reappointed without a special resolution passed by shareholders. The number of directorships held in listed entities has been capped at seven, including positions in High-Value Debt Listed Entities (HVDLEs). Boards are now required to hold a minimum of four meetings per financial year, with at least one-third of the quorum consisting of independent directors. Further, performance evaluations of independent directors have been emphasized, along with the expansion of board responsibilities in areas such as oversight of whistleblower mechanisms and risk management.[19]

The ongoing legal-operational divide

Using such mechanisms, the statutory and regulatory provisions continue to develop in both breadth and depth, but a gulf remains between legal doctrine and operational reality. Cate's theoretical safeguards mandatory disclosures, conflict of interest norms and fiduciary duties frequently fail before informal power structures within companies, opaque nomination speed dating and soft-enforcement systems.[20] The independence of many independent directors in

[17]SEBI (LODR) Amendment Regulations, 2025, Reg. 62FA–62G.
[18]SEBI (Listing Obligations and Disclosure Requirements) Amendment Regulations, 2025, Reg. 17(1C), 17(1D).
[19]SEBI (Listing Obligations and Disclosure Requirements) Amendment Regulations, 2025, Reg. 23, 26, 34, and newly inserted Chapter V-A.
[20]Piyush Joshi & Jayati Sarkar, Independent Directors in India: Expectations, Performance, and Accountability, 58 Econ. & Pol. Wkly. 45 (2023).

functionality and perception is compromised as their appointment is still driven by personal or professional proximity to the promoters.

Moreover, not only does the law call for shareholder ratification and periodic reviews, such provisions are often seen by management not as real mechanisms of accountability but as mere formalities. The absence of institutionalised training, unused whistleblowing frameworks, poorly defined indemnity protections have all contributed to an environment in which independent directors are disinclined to question executive decisions or draw attention to improprieties.[21]

In this background, the SEBI (LODR) Amendment Regulations, 2025 offer a much needed reprieve. They seek to translate normative aspirations into enforceable duties and, if adopted with rigour, have the potential to reshape board culture from one of passive compliance to proactive governance.

Comparative Analysis of Global Best Practices

Comparative corporate governance provides a valuable lens through which domestic regimes can be assessed, critiqued, and reshaped. United Kingdom and United States have developed board independence mechanisms which are more of an instrumental process to combine ethical and procedural and regulatory mechanisms of governance into a unique harmonious governance ecosystem. These models have developed with changes in legislation, market-driven expectations, and responses to corporate crises. Their achievements and challenges provide learnings for India's own path ahead, against the backdrop of the expanded obligations under the SEBI (LODR) Amendments, 2025.[22]

The UK: The Cadbury Report and Principles-Based Accountability

The UK's contemporary governance framework has evolved significantly over the years, significantly derived from the Cadbury Report (1992), a culmination to the first major recognition of the board as being responsible for ensuring financial accountability.[23] Instead of prescriptive laws, the UK corporate governance system is built on a "comply or explain"

[21]OECD, Corporate Governance Factbook 2023 (2023), https://www.oecd.org/corporate/corporate-governance-factbook.htm.
[22]Umakanth Varottil, Comparative Corporate Governance: Lessons for India, 36 Co. L. J. 45 (2020).
[23]The Report of the Committee on the Financial Aspects of Corporate Governance (Cadbury Report), U.K. (1992).

model, where those companies that are listed on the London Stock Exchange are expected to comply with the UK Corporate Governance Code or explain why they are not doing so.[24]

UK model of corporate governance has several distinctive features. In FTSE 350 the proportion of independent non-execs on the board (excluding the chairman), must be a minimum of 50%.[25] It requires nomination and remuneration committees, both being led by independent directors. External bodies usually carry out annual board appraisals to make it more objective. The model also makes clear demarcation of the tasks of the CEO and the Chairperson. There is also an organizational focus on board readiness, skills building, and routine assessment.

Significantly, the UK regime requires that shareholders be consulted, and the results publicly disclosed, when appointing and reappointing independent directors.[26] This weakens the stronghold of concentrated promoter influence and strengthens merit-based, transparent composition of the board, which is a lesson very relevant to the Indian corporate landscape.

United States: Sarbanes-Oxley Act and Mandatory Compliance

Following several catastrophic corporate failures, including Enron and WorldCom[27], the Sarbanes-Oxley Act, 2002 (SOX) was enacted in the United States. In contrast to the UK's flexible approach the US pursued a more rules-based, enforcement-based model. SOX and other rules and regulations introduced by the Securities and Exchange Commission (SEC) reflect stringent compliance requirements, especially related to financial reporting, audit independence, and internal controls.

The U.S. model has a number of distinctive characteristics. It requires audit committees of independent directors and plays tough on the punishment of officers for financial statement fraud. CEO's and CFO's are also required to sign off in the new world of the Sarbanes-Oxley Section 302 on the financial financial disclosures. The structure contains well-defined fiduciary concepts; "director indemnification" clauses; and tough whistleblower protections under

[24]Financial Reporting Council, The UK Corporate Governance Code (July 2018).
[25]Financial Reporting Council, The UK Corporate Governance Code (July 2018), Principle G and Provision 11.
[26]Paul Davies & Sarah Worthington, Gower and Davies' Principles of Modern Company Law 418–425 (10th ed. 2016).
[27]Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, 116 Stat. 745 (2002).

Section 806. It also limits the term of service for directors in order to avoid over-cooperation and cross-directorships.

Apart from the legal requirements, the US corporate governance framework has real-time monitoring, active enforcement by regulators and shareholder activism as checks on the performance of the boards.[28]

Lessons for India from Comparatives

By comparing the framework adopted by the US and UK with India's regulatory system, we arrive at valuable lessons that India can learn from and avenues for reform. These are especially important in light of the SEBI (Listing Obligations and Disclosure Requirements) Amendments of September 2025.[29] For example, the Indian government has recently prescribed a 50% non-executive director requirement (including one-third to one-half being independent), which is similar in nature to the UK 50% independence requirement and the mandatory independence of audit/compliance committee requirement in the US. With regard to the role of the chairperson India propagates the separation of the position of chair and CEO in which the model of the UK indicates a clearly structural separation, however the US does not require a statutory separation but requires a close audit supervision. The appointment in India is from a databank and approvals of shareholders, mirroring the UK's shareholder consultation and the US's nomination committee's oversight.[30] In India, performance evaluations need to be done by independent directors (similar to the UK's requirement for third-party board assessments, and the US practice of annual performance reviews) Protection for whistleblowers has been strengthened in India in the 2025 Amendments, and it is entrenched in corporate codes in the UK and heavily protected under the US Sarbanes-Oxley Act.[31] For liability and indemnity, India offers indemnity funds but still has a gray area, the UK offers trust but not funds yet and the US where both civil and criminal sanction is enforced. Director Training and tenure In India, director training and tenure is now led by the suggested

[28]Jill E. Fisch, Taking Boards Seriously, 19 Cardozo L. Rev. 265 (1997).
[29]SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2025.
[30]Companies Act, 2013, § 150; UK Corporate Governance Code (2018), Provision 5; NYSE Listed Company Manual § 303A.04.
[31]Sarbanes-Oxley Act of 2002 § 806, 18 U.S.C. § 1514A; Companies Act, 2013, § 177(9)–(10); UK Public Interest Disclosure Act 1998.

mandatory training and term limits much as the continuous developmental effort under the UK and educational criteria of NYSE/ NASDAQ norms.[32]

Bridging the Gap: Strategic Integration

In signing off on these 2025 SEBI Amendments, India has learnt for the first time to become more consistent in its regulatory trajectory between prescriptive and principles-based regulations. With its dictates on mandatory specific board structures, gender diversity, performance evaluation and standardised tenure policies, SEBI has itself relied extensively on international examples, especially the board composition standards in the UK and the director responsibility matrix in the US.[33]

India must make sure that there are no entrenched black holes or blind spots, with the implementation. While the country is making the transition from a culture of compulsion to one of conscientiousness, it calls upon the independent director to move from being a mere figurehead to a watchdog of ethical governance.

Challenges in the Legal Framework

Yet, one of the weakest links in the current corporate governance regime, despite several chevaux de frise being placed therein, particularly with the legislative advancements made via the Companies Act, 2013 (2013 Act) and more recently with the SEBI (LODR) Amendments, 2025, is the role of independent directors who suffer the shortcomings in potential interlinked areas. These challenges are frequently structural rather than procedural, often creating a legal-operational gap that can undermine effective oversight by boards or accountability to stakeholders.[34]

Dominance of the Promoters and Nominations Bias

One of the most enduring problems of Indian corporate governance is also the informal hold of promoters over the appointment of directors. Though Section 149(6) lays out independence

[32]SEBI (LODR) Regulations, 2015, Regs. 17(10), 25(6); UK Corporate Governance Code (2018), Provision 21, 23; NASDAQ Rule 5605(c)(2).
[33]OECD, G20/OECD Principles of Corporate Governance (2023), https://www.oecd.org/corporate/principles-corporate-governance.htm.
[34]Umakanth Varottil, Evolution and Effectiveness of Independent Directors in Indian Corporate Governance, 6 Nat'l L. Sch. India Rev. 94, 101–104 (2014).

criteria and Section 150 provides for a databank for director selection, the nomination process itself is opaque and driven by promoters.[35] This erodes the independence of independent directors and introduces an embedded bias that favours allegiance over challenge.

The 2025 SEBI Amendments seek to address this by introducing caps on directorships, requiring shareholder approval for appointments, and enhancing disclosure on the selection process.[36] But unless nomination committees themselves are free of promoter influence, the danger remains that compliant rather than competent directors will be appointed.

Ambiguity in Legal Liability and Accountability

An important concern is the ambiguity surrounding the extent of liability imposed on independent directors. While Section 149(12) of the Companies Act specifies that such directors are accountable only for actions or inactions undertaken with their knowledge or complicity, judicial interpretations have varied. Prominent cases like Satyam and IL&FS have revealed that even non-executive directors may face lengthy legal proceedings and harm to their reputations.[37]

The 2025 amendments have not yet resolved this tension fully. While proposals for director indemnity funds and risk-aligned liability standards have been discussed, they have yet to be institutionalised.[38] The continued absence of a coherent liability framework acts as a deterrent to skilled professionals, who are unwilling to assume board positions that may expose them to disproportionate legal consequences.[39]

Procedural Shortcomings in Appointment, Tenure, and Removal

Weaknesses in the process for appointing, re-appointing, and removing independent directors also de-legitimize the governance framework. As-mandated, statutory provisions for reappointments include employees with fixed terms and shareholder approval, but there is little uniformity of metrics applied to evaluate director performance.[40] Moreover, the payout of a

[35]Companies Act, No. 18 of 2013, § 149(6), India Code (2013).
[36]SEBI (LODR) Amendment Regulations, 2025, Reg. 17–27.
[37] Satyam Computer Services Ltd., SEBI Order No. WTM/PS/IVD/47/12/2012; Ministry of Corporate Affairs, IL&FS Report (2019).
[38]Press Trust of India, SEBI Proposes Legal Defense Fund for Independent Directors, Bus. Standard (Jan. 2025).
[39]Piyush Joshi & Jayati Sarkar, Independent Directors in India: Expectations, Performance, and Accountability, 58 Econ. & Pol. Wkly. 45 (2023).
[40]Companies Act, § 178; SEBI (LODR) Regulations, 2025, Reg. 25(4).

dominant promoter to oust independent directors, while technically inviolate by special resolutions, can in practice create a nearly simulative system via their vote count.[41]

While the 2025 amendments do seek to reign in tenure through age caps (of 75 years), performance reviews, and mandatory shareholder disclosures, these are wholly inadequate in the absence of standardised evaluation criteria and regulatory oversight of the removal process.[42] The lack of a transparent, performance-based exit mechanism undermines the security of tenure and the incentive for independent directors to dissenting oversight.

Weaknesses in Whistleblower Protection and Internal Oversight

While whistle-blower protection is an important aspect of the accountability culture, implementation in India has been sporadic and ineffective. Relatively few companies have mature internal reporting systems, and independent directors are rarely in a position to directly monitor these frameworks.[43] This inhibits their capability to detect misconduct at an early stage and encourages employees to remain silent about irregularities for fear of retaliation.The 2025 SEBI Amendments bolster this in that they require HVDLEs and listed entities to maintain formal whistleblower mechanisms that guarantee anonymity and ban retaliation, but this could be better enforced with board-level oversight.[44] So long as violations do not incur penalties and there are no systems for real-time monitoring of compliance, whistleblower regimes will be formalistic rather than functional.[45]

Regulatory Fragmentation and Divergent Enforcement

One of the basic problems that still hampers governance outcomes is the fragmentation of regulatory enforcement. Even though SEBI has gradually widened its supervisory arsenal, enforcement is still reactive rather than proactive. Cases of non-compliance are discovered only retrospectively, often after substantial damage has already taken place, and enforcement outcomes are delayed due to procedural bottlenecks and lack of inter-agency coordination.[46] In addition, the entity type (listed equity company or debt-listed HVDLE or private enterprise)

[41]Umakanth Varottil, Board Independence in India: Legal Mandates and Reality, India Corp. L. (2022).
[42]SEBI (LODR) Amendment Regulations, 2025, Reg. 25(6), 26(1).
[43]Centre for Monitoring Indian Economy (CMIE), Corporate Accountability Survey 2023.
[44]SEBI (LODR) Amendment Regulations, 2025, Reg. 62FA–62G.
[45]OECD, Corporate Governance Factbook 2023, https://www.oecd.org/corporate/corporate-governance-factbook.htm.
[46]SEBI, Annual Enforcement Report 2023–24, https://www.sebi.gov.in.

shapes the regulatory approach so that governance norms are not uniformly applied. The 2025 amendments try to harmonise these standards especially for entities listed through debt but how effective these changes will be in practice will depend on timely enforcement, adequacy of resources, and institutional will.[47]

Proposed Reforms and Implementation Strategies

For the independent director's role to transition from the token ever-occupied chair in a commercial entity to a meaningful, responsible fiduciary, India's governance and regulatory paradigm should graduate from mere statutory prescriptions to a holistic framework of legitimacy, enforceability, diligence, institutional sustainability, and accountability mechanisms. While the SEBI (LODR) Amendment Regulations, 2025 lay an important basis to this transformation, this must be coupled with other reforms to become substantive. This chapter offers a basket of interlocked legal and institutional reforms intended to remedy the structural and operational deficits laid out above.

Dual-Approval Mechanism for Appointment and Reappointment

This empowers a clique of independent directors who then go on to embrace a dual-approval mechanism - requiring both promoters and minority shareholders' votes to be approved for any incumbent independent directors' appointment and reappointment.

According to this model, only directors who have been passed twice may be appointed/selected. One, the Nomination and Remuneration Committee (NRC) that will have a majority of independent directors on the board would evaluate and recommend the name. Secondly, the candidate has to garner a positive vote from minority shareholders (excluding promoter and promoter group votes).[48] Adopting this mechanism borrowed from the UK's "majority of the minority" voting scheme provide an opportunity of enhancing the credibility of directors appointment and mitigating the deceptive appointment of affiliated or lapdog directors in the name of independence.[49]

[47]Umakanth Varottil, SEBI's Regulatory Dilemma: Enforcement in a Fragmented System, IndiaCorpLaw Blog (Feb. 2024).
[48]Paul Davies & Sarah Worthington, Gower and Davies' Principles of Modern Company Law 421–422 (10th ed. 2016).
[49]Financial Reporting Council, The UK Corporate Governance Code (July 2018), Principle 15.

Compulsory Certification and Continuous Professional Development

As corporate governance becomes increasingly complex, fresh training and education and professional development should be mandated for all independent directors. At present, Companies Act and SEBI require at least registration in a director databank and optional proficiency testing.[50]

Proposals have been put forward to mandate commercial independent directors to undergo certification courses every three years, with focus on areas like financial literacy, regulatory changes, ESG-related needs, cyber security and board dynamics. They too call for the accreditation of director training service providers, similar to the UK's Financial Reporting Council and the U.S. National Association of Corporate Directors (NACD). In addition, SEBI's regulatory changes (including the 2025 amendments) should be formally included within existing director training programmes.[51]

Clarification of director legal liability: Director indemnity fund

To dispel the existing ambiguity over the liability of independent directors, it is imperative to make legal amendments. More specifically, the law should include a formal safe harbour clause to the effect that independent directors would not be liable for good faith decisions based on information supplied by management or auditors.[52] There should also be an exclusive indemnity and legal defence fund co-legally sponsored by SEBI and industry stakeholders for independent directors to take care of anyone who is sued because of their fiduciary responsibility.[53] Such a twin structure consisting of legal certainty and institutional safeguard would bring India in line with best global practices and put paid to disincentives which have prevented qualified persons from serving as directors.[54]

Standardised evaluation and transparent removal protocols

While the 2025 amendments mandate board evaluations, the process remains largely unstandardized. To make such assessments effective, annual evaluations of boards and

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[50] Companies Act, No. 18 of 2013, § 150.
[51] Umakanth Varottil, Director Training in India: A Regulatory and Institutional Review, IndiaCorpLaw Blog (Dec. 2023).
[52] Companies Act, § 149(12); see also Securities Law Committee Report, Ministry of Corporate Affairs (2021).
[53] SEBI, Discussion Paper on Legal Defense and Insurance Mechanisms for Independent Directors (Jan. 2025).
[54] Jill E. Fisch, Taking Boards Seriously, 19 Cardozo L. Rev. 265, 278–279 (1997).

directors should be conducted by external third-party agencies, using objective key performance indicators such as attendance, participation, integrity, and committee contributions. To enhance transparency, evaluation summaries should be published as part of the company's annual corporate governance report.[55] Additionally, removal protocols should clearly define legitimate grounds for dismissal, ensure procedural fairness, and require shareholder approval, excluding promoter votes.[56] This dual safeguard ensuring both the tenure of independent directors and accountability for those serving longer terms has the potential to reinforce the functional autonomy of independent directors.

Robust and Independent Whistleblower Systems

When it comes to corporate whistleblower mechanisms, the credibility of these provisions rests on procedural integrity and board-level engagement.

Suggestions for reforms to prevent such falsehoods from being taken at face value include a use of anonymised digital whistleblowing/monitoring platforms, similar to those now in use in some organisations, over which independent directors or specific subcommittees of boards have direct oversight. A quarterly report detailing the whistleblowers' complaints and actions taken on them should be made to SEBI and shared with shareholders to bring accountability.[57] They also need to ensure stronger legal protections to prevent retaliation, by enforcing sanctions against executives who breach whistleblower protections. The regime under the SEBI changes of 2025 mark a move in the direction of increasing regulatory patient and the development of corporate paper trails so as to change Indian corporate governance from a superficial to a substantial level system.[58]

Interdisciplinary Insights: The Nexus Between Law and Economics

Corporate governance is not just a legal construct but an essential economic mechanism that mediates the relationship between ownership, control and performance in modern firms. Hence, the evaluation of the role of independent directors should necessarily transcend the

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[55]SEBI (LODR) Amendment Regulations, 2025, Reg. 25(4), 26(4).
[56]OECD, Corporate Governance Factbook 2023, https://www.oecd.org/corporate/.
[57]Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, § 806 (2002); SEBI (LODR) Amendment Regulations, 2025, Reg. 62FB.Michael C. Jensen & William H. Meckling, Theory of the Firm:
[58]SEBI, Annual Report 2023–24, Ch. 5 (Enforcement and Whistleblower Compliance), https://www.sebi.gov.in.

statutory requirements, and extend to the value creation aspect in terms of reducing agency costs, increasing firm valuation and improving investor confidence.[59] This part frames the independent director in wider economic and behavioural contexts to highlight the usefulness of strong governance by drawing on law and economics literature.

Reducing Agency Costs Through Independent Oversight

According to agency theory, diverging interests due to separation of ownership and control opens up space for managerial opportunism. In this regard, independent directors serve as monitoring agents to protect the interests of the shareholders, especially dispersed or minority shareholders.[60] Empirical evidence shows that firms with higher ratio of independent directors are set to manifest higher disclosure transparency, lower earning management, conservative financial reporting and larger return on equity.[61] Under the 2019 SEBI (LODR), regulations target the same but take it a step further by requiring structural independence such as one-third to a half the board be comprised of independent directors, depending on whether the chair is independent and buttressing this condition with mandatory performance assessments and a more robust whistleblower process.[62]

Governance and Capital Efficiency

The effective independent board fosters good governance as it enhances the efficiency of the capital by reducing information asymmetry and partly by decreasing the perceived risk for the external investors.[63] This, in turn, leads to a low cost of capital due to lower perceived governance risk by debt and equity suppliers. This also offers better access to long-term capital, especially for High-Value Debt Listed Entities (HVDLEs). Furthermore, the existence of strong board independence is a positive signal to the market, facilitating higher valuations and maintained investors advertising.[64] This implication is also corroborated by empirical

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[59]Managerial Behavior, Agency Costs and Ownership Structure, 3 J. Fin. Econ. 305 (1976).
[60]Stephen Bainbridge, Independent Directors and the ALI Corporate Governance Project, 61 Geo. Wash. L. Rev. 1034 (1993).
[61]Sanjai Bhagat & Bernard Black, The Uncertain Relationship Between Board Composition and Firm Performance, 54 Bus. Law. 921 (1999).
[62]SEBI (LODR) Amendment Regulations, 2025, Reg. 17, 25(4), 62FB.
[63]Ronald J. Gilson & Jeffrey N. Gordon, The Agency Costs of Agency Capitalism, 113 Colum. L. Rev. 863 (2013).
[64]OECD, Corporate Governance and Market Performance: Empirical Evidence from Emerging Economies (2022).

evidence in OECD markets, where a positive association between investor activism, board independence, and firm valuation[65] is observed.

Board Culture and Behavioural Economics

Equally, the behavioural aspect of governance reform is as critical. Even strong laws have little impact on independence when groupthink, social conformity and status quo bias can undermine board independence.[66] Avoiding isolation, reputational harm, or removal can deter independent directors from taking a stand against executive management or promoters.

In particular, legal change has to go hand in hand with cultural change in order to address the behavioural inertia that is hindering probably the efficiency of the board. This includes creating board atmospheres that support psychological safety, that cultivate constructive dissent, and that foster meaningful discourse. It further necessitates the inclusion of ethical leadership development in director development plans. The board also needs to be helmed deeper to uphold the requirement of mental and cognitive diversity under the 2025 SEBI amendments, to keep the boardroom to prevent homogeneity.[67]

Positive Externalities and Broader Economic Impact

The goods of independent directorship have positive externalities that run beyond the specific outcomes for the firm. These are enhanced involvement of institutional and retail investors in the capital market, higher reliance on corporate reporting and auditing, and building a more robust financial system, less exposed to governance-related systemic risk.[68]

For public sector companies, banks, public sector undertaking (PSU) banks and PSU as a whole, robust independent directorship is critical to maintain macro economic stability. It is a critical linchpin in taming crony capitalism, reducing opportunities for regulatory arbitrage and in building public confidence in the private sector. For that reason, the business case for enhancing the authority and duties of independent directors is strong; not only to mitigate micro

[65]OECD, G20/OECD Principles of Corporate Governance (2023), https://www.oecd.org/corporate/.
[66]Iris Bohnet, Behavioral Economics and Corporate Governance, in Behavioural Economics and Public Policy 143–152 (2021).
[67]SEBI (LODR) Amendment Regulations, 2025, Reg. 17(1C), 25(6).
[68]OECD, Financial Markets Trends Report 2023: Governance and Risk Management.Umakanth Varottil, Board Independence in India: Legal Mandates and Reality, IndiaCorpLaw Blog (2022).

level governance risks, but to promote sustainable capital formation, corporate resilience, and balanced economic growth.

Conclusion and Recommendations

While the law continues to evolve in order to enhance its scope and ambit, the landscape of practical empowerment for independent directors in India continues to be significantly challenged by the view of stakeholder voice/process as an impediment, rather than an integral aspect of good governance.[69] SEBI (LODR) Amendment Regulations, 2025 are a landmark and well-intentioned initiative in this direction by recalibrating board infrastructure, augmenting transparency, institutionalising performance evaluation and widening the ambit of governance to High-Value Debt Listed Entities (HVDLEs).[70] But independent directors must become real stewards of corporate accountability and that we need strategic implementation, cultural change and institutional support to ensure successful regulatory reform.

Independent directors have a distinct fiduciary role not members of executive management, nor passive onlookers. Their purpose is to provide impartial oversight, defend the interests of minorities and preserve long-term stakeholder value.[71] These objectives may be realized by resolving not just the structural issues appointment procedures, liability protections, etc. but the normative ones boardroom dynamics, ethical leadership, regulatory credibility, etc.

According to the doctrinal, comparative and economic analysis in this article, the following suggestions emerge to further strengthen the independence, authority and effectiveness of independent directors in India.

Recommendations Related to the Legal and Regulatory System

Reforms should include the adoption of a dual-approval regime for board appointments and reappointments, requiring the consent of both non-promoter shareholders[72] and the board itself. Additionally, a safe harbour clause should be institutionalised under the Companies Act to shield independent directors from liability for bona fide decisions made in good faith.[73] Further,

[69]SEBI (LODR) Amendment Regulations, 2025, Gazette of India, Part III, Sec. 4, Reg. 17–27, 62FA–62G.
[70]World Bank, The Role of Independent Directors in Enhancing Public Sector Governance, Policy Note No. 77532 (2022).
[71]Jill E. Fisch, Taking Boards Seriously, 19 Cardozo L. Rev. 265, 268 (1997).
[72]Financial Reporting Council, The UK Corporate Governance Code (2018), Principle 15.
[73]Companies Act, No. 18 of 2013, § 149(12), India Code (2013).

the establishment of a Director Indemnity Fund is essential to provide legal and financial protection to directors facing litigation arising from board-level decisions.[74]

Procedural and Institutional Reforms

The evaluation of independent directors should be standardized through evaluation by independent third party agencies and a summary of the evaluation report should be disclosed at the annual report of governance of the company.[75] Finally, independent directors should be subjected to continuing education and periodic re-certification to assess competence[76]. Similarly, an open and transparent performance-based removal process should be enshrined to prevent independent directors from arbitrary or even retaliatory removal.[77]

Change in Culture and Behaviour

Ensuring diversity on the board of gender, age, and professional background is a must in order to reduce groupthink and strengthen the board's oversight function.[78] Promotion of ethical governance culture can be further reinforced through soft law tools such as board charters, codes of conduct and whistleblower protocols with a major role to be played by independent directors in its implementation.[79] To reinforce such enhancements, clear processes be put in place for voicing concerns, and for documenting differences of opinion, which end up creating a sense of psychological safety and promoting constructive disagreement in boardrooms.[80]

Enforcement and Monitoring

Facilitate SEBI's enforcement architecture to act against non-compliance in a timely manner, which will include both audit trail data publication and director accountability metric publication.[81] It strengthens the role of the Institute of Directors and stock exchanges in capacity-building, certification and ethical audit of board functioning.[82]

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[74]SEBI, Discussion Paper on Legal Defense and Insurance Mechanisms for Independent Directors (2025).
[75]SEBI (LODR) Amendment Regulations, 2025, Reg. 25(4), 26(4).
[76]Companies Rules, 2014, Rule 6(4).
[77]OECD, Corporate Governance Factbook 2023, https://www.oecd.org/corporate/.
[78]SEBI (LODR) Amendment Regulations, 2025, Reg. 17(1C).
[79]World Bank, Enhancing Board Effectiveness in Emerging Markets: The Role of Ethics and Culture (2022).
[80]Iris Bohnet, Behavioral Economics and Corporate Governance, in Behavioural Economics and Public Policy 143–152 (2021).
[81]SEBI, Annual Report 2023–24, Ch. 5 (Enforcement and Whistleblower Compliance), https://www.sebi.gov.in.
[82]Institute of Directors (India), Board Leadership & Governance Certification Framework (2024).

Long Term Vision

Independent directors can no longer be seen as just statutory artefacts or compliance mechanisms. Rather, they have to be seen as key stakeholders in India's journey towards a responsible, transparent and globally competitive corporate sector. True reform involves not just rule-making, but creating a culture of governance that rewards independence, values dissent, and instills integrity.[83]

A shift from procedural compliance to genuine boardroom effectiveness: for corporate governance to truly deliver its intended benefits in India, independent directors must be empowered not only through legal provisions but also through institutional culture, practical support, and ethical commitment.

[83]OECD Principles of Corporate Governance (2023), https://www.oecd.org/corporate/.