
MURKY WATERS OF ACCOUNTABILITY: CRITIQUING THE BUSINESS JUDGMENT RULE'S AMBIGUITY IN INDIAN CORPORATE LAW

Ankit Singh, National Law Institute University, Bhopal

Sharad Khemka, National Law Institute University, Bhopal

ABSTRACT

Corporate governance in India faces a significant challenge in balancing director discretion with accountability. This article critically examines the ambiguous status of the Business Judgment Rule in Indian corporate law, a doctrine that protects directors from liability for honest business errors in many global jurisdictions.¹ India lacks an explicit BJR, leading to inconsistent judicial approaches and uncertainty for corporate boards.² This ambiguity is further complicated by a rise in minority shareholder activism, which seeks greater accountability but often operates in an unclear legal environment.

The article argues that these “murky waters” hinder effective governance, discourage legitimate risk-taking, and can lead to unnecessary litigation. It concludes by advocating for a clearer, more principled legal framework for the BJR in India. Such clarity is essential for promoting transparency, efficiency, and sustainable growth, while also ensuring strong investor protection. This detailed analysis highlights the urgent need for reform to bring predictability and fairness to director accountability in India.

¹ Bharat Vasani, ‘The Business Judgment Rule: The Indian Context’ (*IndiaCorpLaw*, 7 February 2025) <<https://indiacorplaw.in/2024/02/07/business-judgment-rule-the-indian-context/>> accessed 25 September 2025.

² Bharat Vasani, ‘The Business Judgment Rule: The Indian Context’ (*Cyril Amarchand Blogs*, 20 December 2023) <<https://corporate.cyrilamarchandblogs.com/2023/12/the-business-judgment-rule-the-indian-context/>> accessed 3 September 2025.

Introduction

A strong corporate economy relies and requires a careful balance of giving company directors enough freedom to make important business decisions, which often involve risks, while also holding them fully accountable to shareholders. This balance is key for encouraging new ideas and keeping investors confident. In many developed countries, the Business Judgment Rule (hereinafter “**BJR**”) helps achieve this balance.

The BJR is a legal idea that presumes board decisions are valid if made honestly, with care, and without conflicts of interest, protecting directors from being held responsible for honest mistakes.³ However, in India, there is no clear law or consistent court ruling on the BJR. This lack of clarity has created a confusing situation for director accountability. This legal gap and changing court decisions have led to what can only be called “murky waters”, a difficult area where it is hard to carry out duties and where both company boards and increasingly active shareholders face too much uncertainty.

This article will deeply and critically examine the unclear status of the BJR in Indian company law. It will first look at how the BJR works in other parts of the world, then show how it is missing or only vaguely used in India’s legal system. The article will then discuss the clear increase in minority shareholder activism in India, explaining what drives it and how it shows up. It will critically assess how this active shareholder involvement makes the existing problems with accountability even worse, pushing the entire system to its breaking point. It is argued that these “murky waters” do more than just make good corporate governance difficult by creating unpredictable legal situations; they actively stop good business ideas and badly twist what accountability truly means. This critical review calls for a clearer and more principled legal framework. It argues that having a clear BJR is not just a good idea, but a necessary step for Indian companies to achieve real transparency, efficiency, and lasting growth, while also providing strong protection for investors. It is clear that we need to act now; clarity is crucial.

The Business Judgment Rule: Global Foundations and Indian Ambiguity

The BJR is a basic principle in company law in major common law countries like the United States and the United Kingdom. At its heart, the BJR is a legal idea that gives a strong

³ Lori McMillan, ‘The Business Judgment Rule as an Immunity Doctrine’ (2013) 4(2) William & Mary Business Law Review 5.

assumption that when directors make a business decision, they acted based on good information, with honest intentions, and truly believed that their action was best for the company.⁴ This powerful rule is not just a way to protect directors; it is a key tool that allows companies to be dynamic and active. It serves several important goals that India, unfortunately, largely ignores.

Core Principles and Rationale for the Business Judgment Rule

The BJR is fundamental to corporate law, serving several critical objectives. *First*, it encourages informed risk-taking.⁵ Business naturally involves risks. Company decisions, especially those about big investments, expanding into new markets, or using new technologies, are always uncertain and need bold, forward-looking ideas. Without the protection of the BJR, directors would naturally choose very safe strategies.⁶ They would be paralyzed by the fear of being personally responsible for good business decisions that, looking back, did not turn out well. This “chilling effect” would not just slow down new ideas; it would actively stop business growth and make the economy weaker. Boards would become places where people try to avoid lawsuits instead of creating value. Innovation is the lifeblood of a strong economy, and without the BJR, that lifeblood is dangerously thin.

Second, the BJR supports the idea of courts not interfering in business matters. Judges, by the very nature of their profession are not well-suited to assume the role of managers and second-guess complex business decisions.⁷ They do not have the business sense, market foresight, or practical understanding that is common in boardrooms, where decisions are made under pressure, with incomplete information, and often with big future effects. The rule makes sure that courts do not replace the board’s business judgment with their own, as long as the directors acted within the set rules. This keeps the roles of company management, which handles big strategic decisions, and the courts, which uphold legal and ethical standards, separate and important. Allowing courts to control every small detail of business fundamentally misunderstands how business works.

⁴ Trembly Law, ‘BJR: Why the Deferential Treatment for Business Decisions?’ (*Trembly Law Firm*, 26 April 2016) <<https://tremblylaw.com/blog/bjr-why-the-deferential-treatment-for-business-decisions/>> accessed 20 September 2025.

⁵ Alberto Guerra, ‘The business judgment rule, giving oxygen to risk in strategic decisions’ (*Garrigues*, 17 July 2018) <https://www.garrigues.com/en_GB/new/business-judgment-rule-giving-oxygen-risk-strategic-decisions> accessed 20 September 2025.

⁶ Swagat Dash and others, ‘The Business Judgment Rule in Practice: Evaluating Directors' Decision-Making and its Legal Framework in India’ (2024) 14(2) *European Economics Letter* 714.

⁷ Lucie Josková, ‘The Business Judgement Rule in the Czech Republic’ (2022) *Acta Universitatis Carolinae* 37-47.

Third, it acts as a crucial reason for attracting and keeping highly skilled people to serve on company boards.⁸ Being a director, especially an independent one, comes with huge responsibilities and the constant threat of serious legal problems. Without the protection offered by the BJR, the fear of being personally responsible for honest business failures would definitely stop good professionals from taking on such important roles. This would harm the quality, variety, and expertise available in company leadership. So, the rule is not a luxury. Rather, it is a vital need to make sure that boards have people who can make complex, high-stakes decisions without too much personal risk for honest mistakes.

However, the BJR is not a free pass. It strictly depends on directors showing they followed specific, necessary duties. These duties include acting with good faith and loyalty, meaning directors must act honestly and be completely loyal to the company, putting its interests first, not their own personal gain.⁹ This clearly means they must avoid self-dealing or taking part in deals where their personal interests openly conflict with their company duties. Directors also have a duty of care, requiring decisions to be made on an informed basis after a reasonable investigation and careful thought about all available important information.¹⁰ This does not mean they have to be perfect or know the future, but they must follow a careful process of asking questions, discussing things thoroughly, and wisely relying on expert advice when needed. Furthermore, the rule clearly does not apply if directors have a big personal financial interest in a deal. Such deals with conflicts are looked at much more closely by courts and often require proof of “entire fairness” (a test developed in the United States jurisprudence, especially the Delaware Supreme Court) or clear approval by shareholders who are not involved in the conflict.¹¹ Finally, the decision must have a rational business purpose, even if it later turns out to be a bad one.¹² The BJR protects against errors in judgment, not against decisions that are illogical, random, or clearly outside what is considered good business practice.

⁸ Swagat Dash and others, ‘The Business Judgment Rule in Practice: Evaluating Directors' Decision-Making and its Legal Framework in India’ (2024) 14(2) European Economics Letter 714.

⁹ Bharat Vasani, ‘The Business Judgment Rule: The Indian Context’ (*IndiaCorpLaw*, 7 February 2025) <<https://indiacorplaw.in/2024/02/07/business-judgment-rule-the-indian-context/>> accessed 25 September 2025.

¹⁰ Contributor, ‘Analyzing Directors’ Duty of Care under the Companies Act, 2013’ (*IndiaCorpLaw*, 29 March 2023) <<https://indiacorplaw.in/2023/03/29/analyzing-directors-duty-of-care-under-the-companies-act-2013/>> accessed 25 September 2025.

¹¹ Monica K Loseman and others, ‘Entire Fairness Remains Default Standard for Conflicted Controller Deals’ (*Gibson Dunn Client Alert*, 8 April 2024) <<https://www.gibsondunn.com/entire-fairness-remains-default-standard-for-conflicted-controller-deals/>> accessed 20 September 2025.

¹² Dhvani Shah, ‘Analyzing the Business Judgement Doctrine in the Indian Context’ (*IndiaCorpLaw*, 3 August 2022) <<https://indiacorplaw.in/2022/08/03/analyzing-the-business-judgement-doctrine-in-the-indian-context/>> accessed 25 September 2025.

The Absence of Explicit Codification in Indian Law

In sharp contrast to the global standards, India's company law struggles with the clear and deeply troubling absence of an explicit Business Judgment Rule. The Companies Act, 2013 (hereinafter "CA 2013"), while thoroughly outlining directors' duties under Section 166,¹³ which includes acting honestly, promoting company goals, and acting in the best interests of the company, its shareholders, employees, and the community, does not provide any clear framework for courts to respect their business decisions. This legal silence is not just a small gap but a huge hole that fundamentally sets the Indian system apart from other common law countries.

Indian courts have, at times, vaguely used ideas that are somewhat like the BJR. They have said that generally, courts should not interfere in company management, especially in business policy decisions.¹⁴ For example, the Supreme Court of India has, in different situations, said that courts should usually not get involved in a company's internal affairs or business choices unless there is clear proof of something illegal, fraud, bad intentions, or unfair treatment.¹⁵ However, these examples are scattered, inconsistent, and simply not enough. They lack the consistent, predictable use seen in countries with a clear BJR. This vague approach completely lacks the clear assumptions and rules that would give directors a strong, reliable shield against courts judging their past decisions unfairly. This widespread uncertainty puts directors in a very difficult spot, always unsure about how much their business decisions will be protected from courts second-guessing them, especially when upset shareholders challenge them. The lack of a formal, clear BJR means that directors often have to prove the business reason or fairness of their decisions, even when they haven't done anything clearly wrong. This significantly and unacceptably adds to the uncertainty of accountability. This system is not designed for clarity or efficiency; it is designed for endless lawsuits and uncertainty.

The Ascent of Shareholder Activism in India

The Indian corporate world has seen a huge change, with a clear and often loud increase in minority shareholder activism over the last ten years.¹⁶ This big shift is a major change from how shareholders used to be, which was usually passive. It is driven by many developing

¹³ Companies Act, 2013 (18 of 2013) s 166.

¹⁴ *Rajahmundry Electric Supply Corporation Ltd v A Nageshwara Rao*, 1955 INSC 76.

¹⁵ *Needle Industries (India) Ltd & Ors v Needle Industries Newey (India) Holding Limited & Ors*, 1981 AIR 1298.

¹⁶ George S Geis, 'Shareholder Activism in India: Are We There Yet?' (2024) 10(2) National Law School Business Law Review 4.

factors that now demand, more and more strongly, better company accountability. This growing wave is actively and constantly testing the current governance system, especially showing its obvious weaknesses because there is no clear Business Judgment Rule.

A main reason for this stronger activism is the growing influence and clear responsibility of institutional investors. Both Indian and foreign institutional investors, who manage huge amounts of money for their clients, are increasingly taking an active, even aggressive, stance in company governance.¹⁷ Guided by stricter internal rules and the often-sharp advice from important proxy advisory firms like Institutional Investor Advisory Services and Stakeholders Empowerment Services, these investors are much less likely to simply approve management decisions.¹⁸ They are clearly more willing to challenge what they see as destroying value or serious governance failures. Their combined voice, often made louder through public statements, proxy battles, and direct talks, is a powerful and increasingly impossible-to-ignore force for change.

Also, changes in rules, especially the CA 2013, by introducing specific mechanism for shareholders to bring claims (Ch. XVI, for instance, sets out a framework for shareholders to petition the National Company Law Tribunal to address the “Prevention of Oppression and Management”) and SEBI regulations, by introducing expansive information disclosure requirements to facilitate monitoring by outsiders,¹⁹ have, to their credit, given minority shareholders more effective tools to get justice.²⁰

The introduction of class action lawsuits under Section 245 of CA 2013 gives shareholders a group legal option against dishonest or wrongful actions by the company or its directors, which was a much-needed way for groups to complain.²¹ The wider power and authority of the National Company Law Tribunal and the National Company Law Appellate Tribunal in cases of unfair treatment and mismanagement (Sections 241 to 246 of CA 2013)²² have provided more accessible and, importantly, specialized legal ways for unhappy shareholders to get

¹⁷ *ibid.*

¹⁸ Shashank Shekhar and Namisha Ojha, ‘Proxy Advisory Firms: Shaping Corporate Governance Practices in India’ (*IRCL*, 12 January 2024) <<https://www.irccl.in/post/proxy-advisory-firms-shaping-corporate-governance-practices-in-india>> accessed 20 September 2025.

¹⁹ George S Geis, ‘Shareholder Activism in India: Are We There Yet?’ (2024) 10(2) *National Law School Business Law Review* 4.

²⁰ *ibid.*

²¹ Companies Act, 2013 (18 of 2013) s 245.

²² Companies Act, 2013 (18 of 2013) ss 241-246.

justice.²³ This moves disputes from regular civil courts to tribunals made for company matters. The Securities and Exchange Board of India has also played a commendable active role through rules like the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR).²⁴ These rules require more transparency, set stricter standards for related party transactions,²⁵ define bigger roles for independent directors,²⁶ and demand better board makeup. The increased enforcement by these rule-making bodies has, without doubt, made minority shareholders bolder in pursuing their complaints with more confidence and a stronger expectation of justice.

Major company governance scandals and cases of alleged financial wrongdoing in well-known Indian companies have also played a crucial, though unfortunate, role in sparking shareholder action. Events like the Satyam Computer Services scandal (where the Chairman of Satyam admitted to falsifying the company's accounts for years to show inflated profits),²⁷ the ICICI Bank controversy (where there were allegations on the CEO of conflict of interest and quid pro quo in approving loans to the Videocon Group),²⁸ and recent disputes involving big company groups, for example the Hindenburg Research Report,²⁹ have deeply damaged public and investor trust. This has increased the demand for strong oversight and ethical behavior from boards and management. More media attention and better digital platforms for sharing information have also made it easier for different minority shareholders to organize, share concerns, and agree on actions,³⁰ thereby making their group voice louder.

²³ Shaneen Parikh and Namita Shetty, 'Protection and Redressal of Minority Shareholder Rights' (*Cyril Amarchand Blogs*, 6 March 2023) <<https://corporate.cyrilamarchandblogs.com/2023/03/protection-and-redressal-of-minority-shareholder-rights/>> accessed 20 September 2025.

²⁴ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, SEBI/LAD-NRO/GN/2015-16/013 Reg 24.

²⁵ Affluence Advisory Private Limited, 'SEBI LODR Rules for Related Party Transaction' (*Tax Guru*, 11 April 2025) <<https://taxguru.in/sebi/sebi-lodr-rules-related-party-transactions.html>> accessed 20 September 2025.

²⁶ Lakshmi Sekhar, 'Independent Directors under Companies Act 2013 and SEBI LODR Regulations' (*Tax Guru*, 02 December 2022) <<https://taxguru.in/sebi/independent-directors-companies-act-2013-sebi-lodr-regulations.html>> accessed 20 September 2025.

²⁷ Madan Lal Bhasin, 'Corporate Accounting Fraud: A Case Study of Satyam Computers Limited' (2013) 2(2) *Open Journal of Accounting*.

²⁸ Rajesh Mascarenhas, 'ICICI Bank under fire for allegedly trying to influence I-Sec's minority investors' (*Regstreet Law Advisors Blog*, 27 March 2024) <<https://regstreetlaw.com/news/icici-bank-under-fire-for-allegedly-trying-to-influence-i-secs-minority-investors/>> accessed 20 September 2025.

²⁹ Cherylan Mollan, 'India regulator rejects US firm's fraud claims against Adani Group' (*BBC*, 19 September 2025) <<https://www.bbc.com/news/articles/c0m4l14vdplo>> accessed 20 September 2025.

³⁰ Xinhao Hou and Yao Tang, 'Big data empowerment: Digital transformation and governance of minority shareholders: Evidence from China' (*PubMed Central*, April 2024) <<https://pmc.ncbi.nlm.nih.gov/articles/PMC11020940/>> accessed 20 September 2025.

Manifestations of Shareholder Activism

Minority shareholder activism in India shows up in various and increasingly complex ways, each directly challenging the current situation. This includes challenging Related Party Transactions, which remain a frequent and often disputed issue. Activists closely examine deals between the company and groups controlled by its promoters, often suspecting unfair dealings or a clear misuse of company resources.³¹ The stricter RPT rules under LODR and CA 2013 have, quite rightly, given more reasons for such challenges. Activists also demand board restructuring and governance reforms, often pushing for the appointment of truly independent directors, the removal of board members who are not doing well or have conflicts of interest, and overall improvements in board diversity and effectiveness. This includes pushing for the important separation of the Chairperson and MD/CEO roles, a vital step towards better checks and balances.³² Shareholders are increasingly opposing strategic decisions, contesting mergers, acquisitions, sales of assets, or decisions about how to use capital that they see as harmful to shareholder value or not in the company's best interest. Important examples include strong opposition to large asset sales or opposition to delisting.³³ Scrutinizing executive compensation is another common area, with concerns about what is considered excessively high pay for key managers, especially when it is not clearly linked to performance or is too much compared to company profits, having become a common and justified issue in activist campaigns.³⁴ Furthermore, more and more activists are advocating for ESG Principles, using Environmental, Social, and Governance (ESG) concerns to influence company strategy. They demand better environmental compliance, fair labor practices, and ethical governance.³⁵ This shows a global trend towards responsible investing, and India must not fall behind. Finally, initiating litigation is a frequent tactic, with the NCLT having, sadly, become a main battleground for disputes under rules about unfair treatment and mismanagement.³⁶ Shareholders seek various solutions,

³¹ Aryan Rawat, 'Shareholder's Activism and the Recent Trends' (2024) SSRN.

³² Alon Brav and others, 'Hedge Fund Activism, Corporate Governance, and Firm Performance' (2008) 63 *Journal of Finance* 1729.

³³ C R Dua and others, 'Shareholders' Rights & Shareholder Activism 2025' (*Chambers and Partners*, 23 September 2025) <<https://practiceguides.chambers.com/practice-guides/shareholders-rights-shareholder-activism-2025/india>> accessed 27 September 2025.

³⁴ Matt DiGuiseppe and others, 'The director's guide to shareholder activism' (*Harvard Law School Forum on Corporate Governance*, 26 September 2025) <<https://corpgov.law.harvard.edu>> accessed 27 September 2025.

³⁵ Holly J Gregory and others, 'Shareholder Activism and ESG: What Comes Next, and How to Prepare' (*Harvard Law School Forum on Corporate Governance*, 29 May 2021) <<https://corpgov.law.harvard.edu/2021/05/29/shareholder-activism-and-esg-what-comes-next-and-how-to-prepare/>> accessed 27 September 2025.

³⁶ Sandeep Bhuraria and Nishtha Grover, 'Unraveling Oppression And Mismanagement Under The Companies Act, 2013' (*Live Law*, 6 May 2024) <<https://www.livelaw.in/law-firms/law-firm-articles/-/oppression-mismanagement-companies-act-2013-zeus-law-associates-257121>> accessed 27 September 2025.

including removing directors, stopping company actions with court orders, or undoing problematic deals.

This growing wave of activism, while generally good for improving governance standards and demanding more transparency, also sadly highlights a major weakness, the uncertainty around director accountability because there is no clear or existing Business Judgment Rule. Activists operate in a legal environment where the line between a fair challenge to wrongdoing and unwanted interference in business decisions is dangerously unclear. This affects how effective their actions are and how well directors can manage company affairs decisively. The lack of a clear BJR means that every board decision, no matter how sound its business reason, can potentially be put under intense and often unfair court review, creating a situation of widespread uncertainty that is ready for exploitation.

Consequences of Ambiguity: Challenges to Accountability and Corporate Governance

An indeterminate Business Judgment Rule together with intensifying minority shareholder activism has plunged Indian corporate governance into a particularly uncertain terrain. Here, the exact limits of director accountability are not just poorly defined, but dangerously blurred. This lack of clarity is not just a theory; it creates real and serious dangers for how well companies run, how much risk they take, and the very honesty of their accountability system.³⁷

A main and deeply troubling criticism focuses on the big challenge faced by Indian courts and tribunals when they judge decisions made by company boards. Because there is no clear BJR, there is no widely accepted legal standard for courts to respect business decisions. While courts often say they will not interfere in a company's internal management or business policy,³⁸ a statement that sounds empty without a guiding principle, the rules for when they will interfere are unclear and, frustratingly, applied inconsistently.³⁹

This creates a significant and harmful risk of hindsight bias. Judges, looking back at complex business decisions with the benefit of knowing the outcome, might accidentally, but disastrously, replace the directors' business judgment with their own. This can lead to punishing directors for honest mistakes or misjudgments about the market, rather than for

³⁷ Stephen M Bainbridge, 'The Business Judgment Rule as Abstention Doctrine' (2004) 57(1) Vanderbilt Law Review 3.

³⁸ *Needle Industries (India) Ltd & Ors v Needle Industries Newey (India) Holding Limited & Ors*, 1981 AIR 1298; *Miheer H Mafatlal v Mafatlal Industries*, AIR 1997 SC 506.

³⁹ Rahul Singh and Pratyay Amrit, 'Law-and-Economics of Business Judgment Rule in India' (2024) 15(3) Asian Journal of Law and Economics 331-342.

acting in bad faith, without care, or disloyalty. For *example*, a decision to invest heavily in a new technology that later fails due to unexpected market changes could be wrongly seen as a failure of duty if the court lacks a way to judge the process of making the decision rather than just its result. This goes against the basic idea that business decisions naturally involve risk and should not be judged only by whether they succeed or fail; it is a legal error that stops new ideas.

Furthermore, because there is no clear BJR or a strong history of court cases that act like a BJR, court decisions are ad hoc and to an extent contradictory.⁴⁰ While some rulings might show some respect for directors' decisions, others might look very closely and unfairly at the business reasons, acting like shadow boards.⁴¹ This inconsistency makes it extremely difficult, if not impossible, for company boards to know exactly what they are allowed to do and how much courts might interfere. Such legal unpredictability creates a widespread sense of uncertainty, where directors cannot reliably guess the legal results of their sound business decisions. This cripples active and quick company management. This situation leads to stagnation, not growth.

Navigating Oppression and Mismanagement Provisions

Sections 241 to 246 of the CA 2013, which deal with unfair treatment and mismanagement, are clearly vital tools for protecting minority shareholders.⁴² They are designed to stop the majority from abusing its power. However, because there is no clear BJR, these broadly written rules can accidentally add to the “murkiness” of accountability and create a big, unacceptable challenge to directors' freedom. The idea of “prejudicial” actions or “unfair treatment” under Section 241 is naturally subjective and can be understood in many ways.⁴³ Without a BJR framework, there is a widespread and dangerous risk that honest business decisions, even if made carefully and with good intentions, could be challenged as unfair if they lead to a bad outcome for a minority group. This blurs the important difference between a real complaint about serious company wrongdoing (e.g., fraud or financial statement manipulation) and simply disagreeing with a business strategy that, under a BJR, would usually be protected. This allows unhappy shareholders to misuse legitimate legal rules. Moreover, the National

⁴⁰ Harshal Baviskar and Hita Manjunath, ‘Business Judgement Rule : Issues and Prospects in India’ (2024) SSRN.

⁴¹ Swagat Dash and others, ‘The Business Judgment Rule in Practice: Evaluating Directors' Decision-Making and its Legal Framework in India’ (2024) 14(2) European Economics Letter 714.

⁴² Companies Act, 2013 (18 of 2013) ss 241-246.

⁴³ Umakanth Varottil, ‘Unpacking the Scope Of Oppression, Prejudice And Mismanagement Under Company Law In India’ (2020) NUS Law Working Paper 2020/020.

Company Law Tribunal, in its praiseworthy effort to protect minority interests, might sometimes get too deeply involved in judging business decisions without a guiding principle of respect for those decisions.⁴⁴ While the NCLT's role is crucial for quick solutions, its interference in core business policy, without the discipline of a BJR, can lead to the tribunal effectively taking over the board's business judgment. This is not what the NCLT is meant to do, and it can seriously weaken the board's authority, effectiveness, and very purpose. The "murky waters" here are the unclear boundaries between proper court involvement to stop wrongdoing and unwanted interference in core business operations. This could turn the NCLT into an accidental, but very harmful, judge of business strategy. This is a distortion of its role.

Impact on Corporate Strategy and Litigation

The unclear situation around the Business Judgment Rule has real and very negative effects on company strategy and stability. It often leads to a losing situation for everyone involved, which is completely unacceptable. The idea that it's easier to challenge board decisions, because there's no strong BJR to protect them, can accidentally and dangerously encourage lawsuits that are just meant to cause trouble or get something unfairly from a small group of minority shareholders. Such actions might be driven by personal reasons, a desire to get unfair benefits (like higher prices in delisting offers, or forcing changes in strategy), or just to mess up company plans, rather than real concerns about company wrongdoing or creating long-term value.⁴⁵ The mere threat of a lawsuit itself, in these uncertain situations, becomes a powerful, often misused, tool. When facing the constant threat of lawsuits, the paralyzing uncertainty of court outcomes, and the chilling possibility of personal responsibility, directors might become extremely careful and avoid risks.⁴⁶ This behavior, which may be termed as "defensive directorship," stops new ideas and actively prevents boards from making bold, transformative decisions that are vital for long-term value but might involve short-term risks or face shareholder opposition.⁴⁷ Companies might tragically miss out on important growth opportunities, delay necessary changes, or fail to adapt to fast-changing market conditions, ultimately harming all shareholders by making the company less competitive. The unclear legal

⁴⁴ Dhvani Shah, 'Analyzing the Business Judgement Doctrine in the Indian Context' (*IndiaCorpLaw*, 3 August 2022) < <https://indiacorplaw.in/2022/08/03/analyzing-the-business-judgement-doctrine-in-the-indian-context/> > accessed 25 September 2025.

⁴⁵ *ibid.*

⁴⁶ Kainat Iftikhar and others, 'The role of corporate governance in the nexus between litigation risk and corporate innovation' (2024) 24(4) *Borsa Istanbul Review* 732-746.

⁴⁷ Sakshat Bansal and Ananya Vajpeyi, 'The Warning of an Ambush: Disarming and Appeasing Activist Shareholders' (2021) *ILI Law Review*.

environment here creates a deep chilling effect on board decision-making, making them prioritize caution over calculated risk, leading to stagnation. Furthermore, lawsuits, even if the activist ultimately loses, cost the company a lot of money in legal fees, waste management's time that should be spent on core business, and cause lasting damage to the company's reputation.⁴⁸ This drain on valuable resources can be especially harmful for smaller companies or those going through difficult changes, possibly pushing them towards financial trouble.

Impairment of Competitiveness and Board Quality

Ultimately, the uncertainty around the BJR have wider, devastating effects on India's company competitiveness and its ability to attract top talent, which is a national concern. As mentioned before, the lack of a clear BJR discourages directors from making good business decisions that might involve risks. This directly leads to a damaging lack of new ideas and a reluctance to explore new markets or technologies, making Indian companies less flexible, less competitive, and ultimately, less important on the global stage.⁴⁹ Highly skilled and experienced professionals, especially independent directors who are crucial for good governance, may rightly hesitate to join Indian boards. This is because of the higher personal risk they face compared to countries with strong BJR protections.⁵⁰ This can lead to a loss of talent from boardrooms, permanently reducing the quality, variety, and independence of company leadership, which is a tragedy to achieving the goal of a strong corporate economy. International investors, who are used to the clear rules provided by the BJR in other developed markets like the US and UK, clearly see India's unclear legal situation as a higher risk. This could potentially stop vital foreign money from coming into Indian companies, slowing down economic growth and development. This is because investors naturally prefer places where the rules for directors' freedom and accountability are clear, consistent, and reliable.⁵¹ This is a direct disadvantage in competition.

In short, the current system, by not providing clear rules for courts to respect business decisions, creates a difficult situation for both directors trying to make good decisions and bona-fide minority shareholders seeking fair accountability. It is a system where the lines are

⁴⁸ Nickolay Gantchev, 'The Costs of Shareholder Activism: Evidence from a Sequential Decision Model' (2012) *Journal of Financial Economics* (JFE), Forthcoming.

⁴⁹ Chen Lin and others, 'Shareholder Litigation and Corporate Innovation' (2019) Berkely Education <<https://faculty.haas.berkeley.edu/manso/litigation.pdf>> accessed 27 September 2025.

⁵⁰ S Lakshmi Naaraayanan and others, 'Does Personal Liability Deter Individuals from Serving as Independent Directors?' (2019) *Journal of Finance and Economics*, Forthcoming <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3466102> accessed 27 September 2025.

⁵¹ Rafael La Porta and others, 'Law and Finance' (1998) 106(6) *Journal of Political Economy* 1113-1155.

blurred, leading to inefficiency, possible exploitation, and a general state of widespread uncertainty that benefits absolutely no one in the long run. The “murky waters” of accountability are not just an inconvenience; they are a fundamental barrier to India’s progress in company governance, demanding immediate and firm action.

Charting a Course: Towards Clarity and Clear Accountability

To navigate and, indeed, to finally clear the uncertainty of accountability in Indian company law, a combined, authoritative, and uncompromising effort is needed to make the BJR’s application clear. This is not about protecting directors from real wrongdoing, rather it is about creating a predictable, fair, and efficient system that clearly balances their operational freedom with strong, non-negotiable shareholder protection. A strong approach demands both decisive legal changes and consistent court rulings, making sure that India’s company governance system is both strong and helps with lasting growth.

Benefits of a Defined Business Judgment Rule

A clear and well-defined BJR in India would bring huge benefits, addressing the serious problems found in the previous critical analysis. It would encourage business risk-taking and innovation by giving directors the firm confidence that their honest, informed decisions will not be unfairly judged by courts based on hindsight. This is absolutely vital for Indian companies to innovate, expand aggressively, and compete effectively in a fast-changing and fiercely competitive global economy.⁵² A clear BJR would also reduce pointless and self-serving lawsuits. It would significantly raise the bar for challenging board decisions, strictly requiring plaintiffs to show bad faith, conflicts of interest, or serious carelessness in the decision-making process, rather than just questioning business results (as discussed in *In re Straight Path Communication Inc.*).⁵³ This would empower courts and tribunals to quickly dismiss mala-fide lawsuits filed just to cause trouble, thereby greatly reducing the burden on the legal system and stopping the terrible misuse of legal options for personal gain. Furthermore, it would improve board quality and attract top talent. By greatly reducing the unfair personal risk for legitimate business decisions, a clear BJR would make directorships, especially for independent directors, much more appealing and less dangerous.⁵⁴ This would

⁵² Chen Lin and others, ‘Shareholder Litigation and Corporate Innovation’ (2020) 67(6) Management Science.

⁵³ *In Re Straight Path Communications Inc. Consolidated Stockholder Litigation*, C.A. No. 2017-0486-SG

⁵⁴ S Lakshmi Naaraayanan and others, ‘Does Personal Liability Deter Individuals from Serving as Independent Directors?’ (2019) Journal of Finance and Economics, Forthcoming
<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3466102> accessed 27 September 2025.

allow Indian companies to draw from a wider, deeper pool of highly skilled and experienced professionals, permanently improving the quality, variety, and independence of their boards. A defined BJR would also make companies more efficient and flexible. With clearer legal protection, boards could spend more time and valuable resources on planning and carrying out strategies, instead of dealing with constant threats of lawsuits or taking overly cautious, defensive approaches.⁵⁵ This would fundamentally make companies more flexible and responsive to changing market demands. Finally, clearly adopting a well-defined BJR would bring India's company governance system into much-needed alignment with international standards. This would clearly boost investor confidence and attract more foreign direct and portfolio investment.⁵⁶ Predictability in legal outcomes is, after all, a necessary factor for international investment decisions.

A Dual Approach: Legislative Codification and Judicial Development

Solving the widespread uncertainty around the BJR needs a multi-part strategy that includes both clear legal changes and a consistent, principled development in court rulings.

Legal Change: Making the Business Judgment Rule a Law: The CA 2013 must be changed to clearly and without doubt make the Business Judgment Rule a law. This change must carefully define the conditions under which the rule applies, learning wisely from global best practices while smartly adapting them to India's unique situation. The law must create a clear, legal assumption that directors acted honestly, with care, and in the best interests of the company. This clearly puts the first burden of proof on the person challenging the decision to show strong evidence against this assumption. The rule must only apply if directors clearly show they made their decision based on good information. This means they must have done a reasonable investigation and carefully considered all important information available to them. This requires and encourages strong board processes and careful record-keeping. The law must clearly state, without any doubt, that the BJR does not apply if directors had a significant personal financial interest in a deal that was not properly revealed and approved by directors or shareholders who had no conflict (as adopted in *Aronson v. Lewis*).⁵⁷ Such deals with conflicts must be looked at much more closely and strictly by courts, perhaps using an "entire

⁵⁵ Stephen M Bainbridge, 'The Business Judgment Rule as Abstention Doctrine' (2004) 57(1) Vanderbilt Law Review 3.

⁵⁶ OECD, 'G20/OECD Principles of Corporate Governance 2023' (OECD, 2023) <https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/09/g20-oecd-principles-of-corporate-governance-2023_60836fcb/ed750b30-en.pdf> accessed 27 September 2025.

⁵⁷ *Aronson v Lewis*, 473 A.2d 805 (1984).

fairness” test. Finally, the decision must have a reasonable business reason, even if it later fails.⁵⁸ This low standard ensures that courts do not unfairly second-guess the *worth* of the decision but instead carefully examine the *process* by which it was made.

A provision can be added after Section 166 (Duties of Directors),⁵⁹ to reflect the BJR. The following insertion is suggested:

“166A. Business Judgment Rule: (1) *A director shall not be liable for any loss or damage suffered by the company arising from a business judgment made by the director, if the director*

(a) made the judgment in good faith and for a proper purpose;

(b) did not have a material personal interest in the subject matter of the judgment;

(c) made the judgment on the basis of information that the director reasonably believed to be appropriate; and

(d) rationally believed that the judgment was in the best interests of the company.

(2) For the purposes of this section, “business judgment” means any decision to take or not to take action in respect of matters relevant to the business operations of the company.

(3) Nothing in this section shall protect a director in cases of fraud, willful misconduct, or gross negligence.”

Court Decisions: Developing Consistent and Strong Legal Rulings: Indian Courts, especially the Supreme Court, High Courts, and the National Company Law Appellate Tribunal and NCLT, must play an active, decisive, and consistent role in interpreting and applying these principles. Through important rulings, they can tell the difference between *process* and *result*. Courts must clearly and consistently tell the difference between a flawed decision-making *process* (like lack of information, bad intentions, conflict of interest), which definitely needs court involvement, and simply a bad *result* of a legitimate business decision, which must be protected by the BJR (taking inspiration from judgements like *NAACP v Golding* and *Black v Fox Hills North Community Association*).⁶⁰ This difference is fundamental to the rule’s effective and fair use.

⁵⁸ Lewis H Lazarus and others, ‘Standards of Review in Conflict Transactions on Motions to Dismiss: Lessons Learned in the Past Decade’ (2011) 36(3) Delaware Journal of Corporate Law.

⁵⁹ Companies Act, 2013 (18 of 2013) s 166.

⁶⁰ Department of Housing and Community Affairs, ‘Guide to the Procedures & Decisions of the Commission on Common Ownership Communities’ (*Department of Housing and Community Affairs*, 2025)

They must also develop specific guidelines for India. While wisely learning from global examples, Indian courts must create rules for respecting business decisions that are very sensitive to the unique features of the Indian corporate world. This includes considering how common promoter-led companies are,⁶¹ and the growing, more assertive role of institutional investors. Lastly, courts must discourage lawsuits filed just to cause trouble. Courts must use the BJR as a powerful tool to quickly dismiss lawsuits that simply challenge the business wisdom of the board without claiming fraud, mala-fide intentions, or serious procedural mistakes. This will stop the widespread misuse of legal processes and protect company resources.

Ensuring Robust Shareholder Protection

Putting a clear BJR in place must, under no circumstances, weaken the protection for minority shareholders. Instead, it must be a key part of a full system for better accountability. This will ensure that the rule acts as a shield for honesty and careful management, not a weapon for getting away with things or hiding wrongdoing.

First, strengthening the role of independent directors is crucial. Emphasize the vital and necessary role of truly independent directors. Decisions approved by most independent directors, or majority of minority shareholders, especially in deals involving possible conflicts of interest or big strategic changes, must be given more respect under the BJR (following the *MFW/Kahn* Framework).⁶² Making independent directors more independent, improving their skills, and clearly defining their responsibilities under CA 2013 and LODR is absolutely crucial.

Second, better rules for sharing information are needed. Require even more transparency about important board decisions, strategic plans, and related party transactions. Full and timely sharing of information empowers shareholders to make informed judgments, talk constructively with management, and hold directors accountable.⁶³ This will greatly reduce the

<https://www.montgomerycountymd.gov/DHCA/housing/commonownership/business_judgment_rule.html> accessed 27 September 2025.

⁶¹ Small Case, 'High Promoter Holding Stocks in India' (*Small Case*, 27 September 2025) <<https://www.smallcase.com/lists/high-promoter-holding-stocks/>> accessed 27 September 2025.

⁶² Adam Slutsky and others, 'Delaware Supreme Court Holds That Boards Must Satisfy the MFW Framework in Controller Transactions to Obtain Business Judgment Deference' (*Goodwin Alert*, 15 April 2024) <<https://www.goodwinlaw.com/en/insights/publications/2024/04/alerts-practices-ma-delaware-supreme-court-holds-that-boards>> accessed 27 September 2025.

⁶³ Financial Stability Board, 'G20/OECD Principles of Corporate Governance' (*FSB*, 11 September 2023) <<https://www.fsb.org/2023/09/g20-oecd-principles-of-corporate-governance/>> accessed 27 September 2025.

need for reactive lawsuits.

Third, improving rules for unfair treatment and mismanagement is vital. While the rules under Sections 241 to 246 of CA 2013 are vital, they urgently need to be improved to fit with a clearer BJR. Courts must be guided to tell the difference, very precisely, between real unfair treatment which needs court involvement and penalties, and simply being unhappy with business decisions that, under a BJR, would be protected. For the same, Court can adopt the approach of *Aronson v Lewis*, where the Delaware Supreme Court held that plaintiffs must plead particularised facts showing lack of independence/disinterest, or otherwise defeat the presumption underlying the BJR, before courts will displace BJR. This would involve a stricter and more objective test for what counts as “prejudicial” behavior.

Fourth, constructive shareholder involvement must be actively promoted. A sustainable governance framework does not rely solely on ex post litigation. It depends on early, informed engagement between investors and companies. Institutional investors and proxy advisory firms, in particular, should be encouraged and required to assume a more responsible role in company governance. SEBI has already taken meaningful steps in this direction through the Stewardship Code for Mutual Funds and AIFs,⁶⁴ which obliges institutional investors to adopt stewardship policies, disclose them publicly, and engage with investee companies on governance and strategy. These requirements create a regulatory baseline for responsible investor conduct. Building on this, regulators should foster a culture of constructive dialogue where investors raise concerns with boards and management in a structured manner, rather than allowing those concerns to escalate into costly litigation. Proxy advisory firms, whose recommendations often shape voting outcomes, should also be held to high standards of transparency and accountability, as reflected in SEBI’s ongoing consultations on proxy advisor regulation. Strengthening these mechanisms will align Indian practice with global standards such as the OECD/G20 Principles of Corporate Governance,⁶⁵ and the UK Stewardship Code,⁶⁶ both of which emphasise that engaged, long-term investors are central to healthy corporate

⁶⁴ Editor, ‘Stewardship Code mandatory for Mutual Funds & AIFs wef 01.04.2020’ (*Tax Guru*, 24 December 2023) <<https://taxguru.in/sebi/stewardship-code-mandatory-mutual-funds-aifs-wef-01-04-2020.html>> accessed 27 September 2025.

⁶⁵ OECD, ‘Institutional investors and stewardship’ (2022) OECD Corporate Governance Working Papers.

⁶⁶ Financial Reporting Council, ‘FRC overhauls the Investor Stewardship Code to focus on value creation, reducing burdens and enhanced engagement between market participants’ (*FRC*, 3 June 2025) <https://www.frc.org.uk/news-and-events/news/2025/06/frc-overhauls-the-investor-stewardship-code-to-focus-on-value-creation-reducing-burdens-and-enhanced-engagement-between-market-participants/?utm_source=chatgpt.com> accessed 27 September 2025.

governance.

Fifth, strong enforcement against wrongdoing is essential. Clarifying the BJR can only work if accompanied by credible deterrence against misconduct. Regulatory bodies such as SEBI and the Ministry of Corporate Affairs must therefore strengthen their enforcement against fraud, mismanagement, and serious breaches of duty. The SEBI Act, 1992 expressly mandates such a role. Section 11 empowers SEBI to protect investors and regulate the securities market, Section 11B gives it authority to issue binding directions in the interest of investors or the market, and Section 12A prohibits manipulative, fraudulent, and unfair trade practices.⁶⁷ The BJR is definitely not a license to get away with things, but a protection for honest business judgment. Directors who act with bad intentions or serious carelessness must face strict, quick, and unavoidable penalties.

Finally, Director and Officer (D&O) insurance should be actively promoted. Such policies provide financial protection to directors and officers against personal liability arising from their decisions, covering legal costs and damages incurred in the discharge of their duties.⁶⁸ Crucially, these policies must be drafted to exclude coverage for fraud, willful misconduct, or intentional wrongdoing, thereby balancing protection with accountability.

Conclusion

The “murky waters” of accountability in Indian company law, caused by the widespread and unacceptable uncertainty around the BJR, create a basic and urgent challenge to the honesty and energy of company governance. This critical examination has shown, with clear evidence, that the lack of a clear, strong principle for courts to respect business decisions not only creates paralyzing uncertainty for directors but also risks stopping honest business risk-taking and accidentally encouraging harmful lawsuits from shareholders. This unstable and unacceptable balance, if not dealt with, will greatly slow down India’s company growth and permanently reduce its appeal as a global place for investment.

To find a clearer, more predictable, and ultimately fairer path, India must take a decisive and immediate step: clearly making the BJR a law in its company statutes. This must be supported by consistent, principled, and strong court rulings. This clarity will give directors the

⁶⁷ Securities and Exchange Board of India Act, 1992 (5 of 1992).

⁶⁸ Editor, ‘What is D&O Insurance? Learn more about Directors & Officers insurance’ (*Allianz*, June 2022) <<https://commercial.allianz.com/news-and-insights/expert-risk-articles/d-o-insurance-explained.html>> accessed 27 September 2025.

confidence to use their business judgment, knowing their honest, informed decisions will be protected from unfair judgment based on hindsight. Importantly, this must be balanced with strong, well-defined ways to protect shareholders. This will ensure that the BJR acts as a shield for honesty and careful management, not a weapon for getting away with things or hiding wrongdoing. By creating this clear and predictable system, India can finally create an environment where company accountability is open, directors' freedom is properly respected, and the nation's companies can thrive, driven by both new ideas and strong, ethical governance. This strong change will not only bring India in line with global best practices but will also strengthen the foundations for a more mature, predictable, and ultimately more successful company system. It is time to act now; the future of Indian company governance depends on it.