
CORPORATE GOVERNANCE FAILURES IN INDIAN BANKS: LESSONS FROM RECENT BANKING SCAMS

Rumi Roy, LL.M. (Corporate and Commercial Laws), KIIT School of Law, KIIT University, Bhubaneswar, India

ABSTRACT

One of the most significant institutional setbacks of the twenty-first century, the corporate governance failure in the Indian banking system has impacted depositors, destabilised financial institutions, and exposed underlying weaknesses within the Indian financial regulatory systems. This article is a methodical doctrinal and analytical investigation into the governance failures behind four historic banking scandals: the Yes Bank crisis (2019–2020), the Punjab National Bank–Nirav Modi scam of 2018, the ICICI Bank–Videocon loan crisis, and the collapse of Punjab and Maharashtra Co-operative Bank. Based on a multi-layered analytical approach integrating legal-doctrinal analysis, institutional critique, and comparative regulatory inquiry, the paper places these crises within the normative framework created by the Companies Act, 2013, the Banking Regulation Act, 1949, the governance guidelines of the Reserve Bank of India, and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The paper identifies prevalent recurring governance pathologies including weak board independence, managerial power concentration, risk management failures, regulatory supervision gaps, and the toxic force of political and institutional interference. Through a comparative analysis of the banking governance frameworks of the United States, United Kingdom, and European Union, the paper benchmarks India's regulatory responses against the global regime and identifies normative and enforcement gaps. The results indicate that banking governance crises in India are essentially systemic in nature, caused by structural failures rather than individual misconduct alone. The paper concludes with comprehensive legal and policy reform recommendations to enhance board independence, strengthen risk management frameworks, entrench whistle blower protection, and redefine the supervisory role of the Reserve Bank of India as a prospective predictor and pre-emptor of governance failures.

Keywords: Corporate governance, banking regulation, Reserve Bank of India, board independence, banking scandals

I. INTRODUCTION

A. Backdrop of Banking Corporate Governance

The stability of the banking system does not depend only on the amount of capital it possesses or the efficacy of its credit provision, but essentially on the quality of governance that drives its institutional frameworks. This places corporate governance in banking institutions in a uniquely consequential position within the wider rubric of commercial law and financial regulation, because a breakdown in a single bank can cause systemic externalities that put entire economies at risk. The centrality of governance in financial institutions was authoritatively established through the Cadbury Report of 1992, which conceptualised corporate governance as the system through which companies are directed and controlled,¹ a formulation of deceptive simplicity given the colossal nature of its implementation in the banking context.

The 2008 international financial crisis served as a sobering lesson as to what happens when governance fails on a systemic basis, prompting legislative responses across jurisdictions aimed at enhancing board accountability, strengthening risk oversight, and improving regulatory supervision. In its 2017 thematic review of corporate governance, the Financial Stability Board recorded endemic weaknesses across member jurisdictions and observed that, at the board and senior management level, governance failures continued to be a primary contributor of financial instability.²

B. Significance of Governance towards Financial Stability

India, as it has grown as a global economic power, has suffered one banking scandal after another of unparalleled scale, revealing the vulnerability of Indian corporate governance structures. The Discussion Paper on Governance in Commercial Banks in India published by the Reserve Bank of India in June 2020 explicitly acknowledged that governance weaknesses in Indian banks have played a material role in the deterioration of asset quality and erosion of financial stability.³ The scandals of Yes Bank, Punjab National Bank, ICICI Bank, and Punjab

¹CADBURY COMM., THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE (Gee Publishing 1992).

²FIN. STABILITY BD., THEMATIC REVIEW ON CORPORATE GOVERNANCE: PEER REVIEW REPORT (2017) [hereinafter FSB GOVERNANCE REVIEW].

³RESERVE BANK OF INDIA, DISCUSSION PAPER ON GOVERNANCE IN COMMERCIAL BANKS IN INDIA (2020) [hereinafter RBI DISCUSSION PAPER 2020].

and Maharashtra Co-operative Bank have jointly challenged the sufficiency of the Indian banking regulatory framework and have served as a graphic demonstration of the human and economic consequences of governance failure. Beyond the losses suffered by shareholders and depositors, these crises have raised fundamental questions about the structural soundness of India's banking oversight framework and the regulatory system's capacity for enforcement.

C. Research Problem and Objectives

This paper addresses three major research questions. First, what are the structural and institutional drivers of corporate governance failures in Indian banks? Second, is the existing legal and regulatory framework adequate to prevent and respond to such failures? Third, what legal and policy reforms are required to align India's banking governance framework with international best practices? These are not purely academic questions they have immediate practical significance for the millions of depositors, shareholders, and taxpayers whose interests are affected by the quality of banking governance.

D. Research Methodology and Scope

The paper adopts a doctrinal approach, subjecting the relevant regulatory provisions, legislative instruments, and guidelines of the Reserve Bank of India to systematic legal analysis. This doctrinal inquiry is supplemented by an institutional analysis of governance failures observed in four case studies and a comparative analysis drawing on regulatory developments in the United States, the United Kingdom, and the European Union. Primary legal sources statutes, judicial decisions, and regulatory circulars form the core of the analysis, while secondary academic literature, committee reports, and policy documents provide contextual support. The paper does not purport to be empirical in the quantitative sense, but advances a normative argument for legal reform through engagement with primary and secondary sources. The scope is limited to commercial banks and co-operative banks regulated by the Reserve Bank of India, covering the period from 2014 to 2022.

II. CONCEPTUAL FRAMEWORK OF CORPORATE GOVERNANCE IN BANKING

A. Meaning and Principles of Corporate Governance

Corporate governance deals fundamentally with the structures through which firms are managed and controlled. The canonical formulation of the Cadbury Report encompasses a

series of normative requirements: holding management to account, openness in decision-making, board oversight, and the protection of stakeholder interests.⁴ In the banking context these imperatives take on heightened significance because banks are not merely commercial enterprises but custodians of public deposits and vital infrastructure for the national economy. Bank governance is thus both a matter of private corporate law governing the relationship between management, shareholders, and depositors and a matter of public law implicating the state's interest in financial stability and consumer protection.⁵

B. OECD Principles of Corporate Governance

Perhaps the most widely used normative framework for assessing corporate governance across jurisdictions are the OECD Principles of Corporate Governance, first issued in 1999 and subsequently revised.⁶ The Principles identify six core governance areas: the foundations of an effective governance system; the rights and equitable treatment of shareholders; the role of institutional investors, stock markets, and intermediaries; the role of stakeholders; disclosure and transparency; and the responsibilities of the board.⁷ Together, these principles articulate a governance architecture grounded in checks and balances, accountability, the separation of oversight from executive management, and effective enforcement by regulatory and judicial institutions. The OECD Principles have been integrated into the Basel Committee's banking supervision guidance and have influenced the RBI's own governance framework, making them an appropriate benchmark for evaluating the Indian regulatory response.

C. Basel Committee Rules on Governance of Banks

In 2015, the Basel Committee on Banking Supervision published its Corporate Governance Principles for Banks, the most authoritative international standard addressing the specific governance challenges of banking institutions.⁸ The Basel Principles identify five areas of governance sensitivity particular to banks: board structure and effectiveness; senior management accountability; the risk governance framework; compliance culture; and the

⁴CADBURY COMM., *supra* note 1.

⁵Jonathan R. Macey & Maureen O'Hara, *The Corporate Governance of Banks*, 9 FRBNY ECON. POL'Y REV. 91, 92 (2003).

⁶OECD, G20/OECD PRINCIPLES OF CORPORATE GOVERNANCE (OECD Publishing 2015) [hereinafter OECD PRINCIPLES].

⁷OECD PRINCIPLES, *supra* note 6.

⁸BASEL COMM. ON BANKING SUPERVISION, CORPORATE GOVERNANCE PRINCIPLES FOR BANKS (Bank for Int'l Settlements 2015) [hereinafter BASEL GOVERNANCE PRINCIPLES].

independence of internal audit.⁹ Critically, the Basel Committee acknowledges that banks require governance standards distinct from those applicable to non-financial organisations, given the opacity of bank balance sheets, the fiduciary duties owed to depositors, and the systemic consequences of banking failure.

D. The Distinctiveness of Governance in Banking Institutions

Banking institutions confront governance challenges that set them apart from ordinary commercial entities. The information asymmetry between bank management and its multiple stakeholders - shareholders, depositors, creditors, and regulators is of particular severity in the banking environment.¹⁰ Unlike shareholders of a typical company, who can monitor management quality through publicly disclosed financial statements, depositors possess neither the incentive nor the expertise to scrutinise the quality of a bank's loan portfolio or its risk controls. This structural asymmetry creates a governance problem that market mechanisms alone cannot resolve and that requires a regulatory overlay supplementing normal board accountability mechanisms.

The standard principal-agent problem of corporate governance theory is further complicated in the banking context by the multiplicity of principals with potentially conflicting interests.¹¹ In an environment of limited liability and implicit deposit insurance, excessive risk-taking by bank management produces gains for shareholders while transferring losses to depositors and the public treasury a dynamic rigorously theorised in the literature.¹² Proper corporate governance in banking cannot, therefore, be conceived as merely a mechanism for aligning management with shareholder interests; it must be understood as a tool for balancing competing stakeholder claims and restraining actions that redistribute risk onto depositors and the public fisc.¹³ This multifaceted conception of banking governance provides the normative foundation for the legal analysis developed in this paper.

⁹BASEL GOVERNANCE PRINCIPLES, *supra* note 8.

¹⁰Macey & O'Hara, *supra* note 5, at 91–92.

¹¹Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305 (1976).

¹²Douglas W. Diamond & Philip H. Dybvig, *Bank Runs, Deposit Insurance, and Liquidity*, 91 J. POL. ECON. 401 (1983).

¹³Macey & O'Hara, *supra* note 5, at 91.

III. REGULATORY FRAMEWORK GOVERNING CORPORATE GOVERNANCE IN INDIAN BANKS

A. Companies Act, 2013

The Indian banking governance regulatory system operates at multiple levels. The apex tier is the Companies Act, 2013, which establishes the basic corporate law framework governing all companies incorporated in India, including banking companies.¹⁴ The Act introduced several significant governance reforms: Section 149 mandates the appointment of independent directors in listed companies and prescribed classes of public companies;¹⁵ Sections 177 and 178 require the constitution of audit committees and nomination and remuneration committees respectively;¹⁶ and Section 166 contains the first statutory statement of directors' duties in Indian corporate law, requiring them to act in good faith, in the best interests of the company and its stakeholders, and to avoid conflicts of interest.¹⁷ Although general in application, these provisions form the governance superstructure upon which sector-specific banking regulation is overlaid.

B. Banking Regulation Act, 1949

The Banking Regulation Act, 1949 is the industry-specific statute governing the conduct of banking business in India. Section 10A prescribes requirements for the appointment of directors to boards of banking companies, while Section 10B sets out qualification and experience requirements for whole-time directors, managing directors, and chief executive officers.¹⁸ Section 35A vests the Reserve Bank of India with overriding authority to issue directions to banking companies in the public interest or in the interest of depositors, and constitutes the primary statutory basis for the RBI's governance-related directives.¹⁹ The Banking Regulation (Amendment) Act, 2020 further strengthened the RBI's supervisory powers, particularly in relation to co-operative banks a reform made necessary by the regulatory deficiencies starkly exposed by the PMC Bank crisis.²⁰

¹⁴Companies Act, 2013 (India).

¹⁵Companies Act, 2013, § 149 (India).

¹⁶Id. §§ 177–178.

¹⁷Id. § 166.

¹⁸Banking Regulation Act, 1949, §§ 10A–10B (India).

¹⁹Id. § 35A.

²⁰Banking Regulation (Amendment) Act, 2020 (India).

C. Reserve Bank of India Governance Guidelines

The most significant governance guidelines issued by the Reserve Bank of India over the years include the Guidance Note on Corporate Governance (2002) and the Master Circular on Corporate Governance in Banks (2015),²¹ as well as the Discussion Paper on Governance in Commercial Banks in India (2020).²² The 2020 Discussion Paper, which drew extensively on the recommendations of the P.J. Nayak Committee Report of 2014,²³ proposed a fundamental reconceptualization of governance standards, including enhanced board independence, stricter fit-and-proper criteria for directors, and more rigorous risk and audit oversight mechanisms. The Discussion Paper reflected the RBI's acknowledgement that the existing regulatory framework, though formally comprehensive, was inadequate to address the governance crises then afflicting the Indian banking industry.

D. SEBI (LODR) Regulations, 2015

In the case of listed banking companies, the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 impose an additional layer of governance requirements.²⁴ Regulation 17 prescribes the composition and functioning of the board of directors, including a minimum proportion of independent directors, the presence of a woman director, and in certain circumstances separation of the roles of chairperson and managing director.²⁵ Regulations 18 and 21 mandate the constitution of audit and risk management committees respectively.²⁶ These requirements overlap substantially with those imposed by the Banking Regulation Act and by RBI guidelines, producing a regulatory framework that is, in theory, comprehensive, but has in practice been characterised by inconsistent enforcement and regulatory arbitrage between the RBI and SEBI in relation to listed banking entities.

E. The Tripartite Governance Structure: RBI, Ministry of Finance, and Bank Boards

The governance of Indian banks operates through a tripartite structure of supervisory

²¹Reserve Bank of India, *Master Circular—Guidelines on Corporate Governance in Banks*, RBI/2015-16/54 (July 1, 2015) [hereinafter RBI MASTER CIRCULAR 2015].

²²RBI DISCUSSION PAPER 2020, *supra* note 3.

²³RESERVE BANK OF INDIA, REPORT OF THE COMMITTEE TO REVIEW GOVERNANCE OF BOARDS OF BANKS IN INDIA (P.J. Nayak Comm. 2014) [hereinafter NAYAK COMMITTEE REPORT].

²⁴Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (India) [hereinafter SEBI (LODR) REGULATIONS].

²⁵SEBI (LODR) REGULATIONS, *supra* note 24, reg. 17.

²⁶SEBI (LODR) REGULATIONS, *supra* note 24, regs. 18, 21.

authority: the Reserve Bank of India, exercising regulatory and supervisory functions under the Banking Regulation Act; the Ministry of Finance, which exercises considerable influence over public sector banks through its controlling ownership stake, partly acting through the Bank Board Bureau established in 2016;²⁷ and individual bank boards, which carry primary governance responsibility under the Companies Act and the Banking Regulation Act. These three centres of governance authority have frequently found themselves in tension, contributing to accountability ambiguities and rendering the regulatory system vulnerable to institutional capture. The absence of statutory clarity regarding the respective roles of the Ministry of Finance and the RBI in the governance of public sector banks constitutes a structural weakness that the current legal framework has not adequately resolved.

IV. CASE STUDIES OF RECENT BANKING SCANDALS IN INDIA

A. Yes Bank Crisis (2019–2020)

1. Facts of the Scandal

Yes Bank was founded in 2004 and, under the leadership of its co-founder and managing director Rana Kapoor, grew to become India's fifth largest private sector bank by total assets. The bank pursued an aggressive growth strategy during the 2010s, expanding its loan book at a rate significantly exceeding the industry average. The bank's reported gross non-performing asset (NPA) ratio as at March 2019 stood at 3.22 per cent, a figure that was dramatically understated, as a subsequent RBI supervisory assessment revealed that the divergence between reported and assessed NPAs ran to thousands of crores.

2. Governance Failures

Forensic analysis of the Yes Bank crisis reveals a concurrent nexus of governance failures at the board, management, and regulatory levels. Rana Kapoor exercised virtually complete control over the bank's lending decisions, bypassing the credit committee and the risk management oversight of the board to channel large-value loans to entities whose promoters had reciprocally extended financial benefits to entities in which Kapoor had a personal interest. The bank's governance infrastructure—board committees, the compliance function, and the

²⁷Ministry of Finance, *Notification Constituting the Banks Board Bureau* (Feb. 28, 2016) [hereinafter BANK BOARD BUREAU NOTIFICATION].

internal audit department existed in form without substance, providing no meaningful check on the concentration of lending power in a single individual.

3. Board Oversight Failures

The central supervisory duty of the Yes Bank board the independent oversight of executive management was comprehensively abrogated. Successive cohorts of nominally independent directors permitted Kapoor to dominate the board, raising serious questions about whether those directors possessed the professional expertise or institutional independence necessary to discharge their statutory and fiduciary duties. The audit committee, which ought to have subjected management representations of asset quality to critical scrutiny, wholly failed to interrogate the unrealistically low NPA rates being reported even as contemporaneous RBI inspections were detecting material asset-quality discrepancies.

4. Regulatory Failures

The RBI's supervisory failures in the Yes Bank matter are of equal significance. Annual inspections conducted under Section 35 of the Banking Regulation Act in 2017 and 2018 detected material asset-quality divergences. Despite these findings, the RBI failed to act decisively, permitting Rana Kapoor to remain in office until January 2019 and allowing his departure through the non-renewal of his term rather than through formal regulatory action. The RBI's institutional culture of supervisory gradualism reinforced partly by confidentiality constraints under the Banking Regulation Act deprived depositors and investors of material information and allowed governance deterioration to proceed unchecked.

5. Legal Consequences

Yes Bank was placed under moratorium by the RBI in March 2020 pursuant to Section 45 of the Banking Regulation Act,²⁸ with depositor withdrawals limited to ₹50,000. A reconstruction scheme was sanctioned under which the State Bank of India acquired a 49 per cent equity stake.²⁹ The Central Bureau of Investigation and the Enforcement Directorate initiated criminal proceedings against Rana Kapoor under the Prevention of Money Laundering

²⁸Banking Regulation Act, 1949, § 45 (India); Reserve Bank of India, *The Yes Bank Ltd. Reconstruction Scheme, 2020*, Gazette of India (Mar. 13, 2020) [hereinafter YES BANK RECONSTRUCTION SCHEME].

²⁹YES BANK RECONSTRUCTION SCHEME, *supra* note 28.

Act, 2002.³⁰ Kapoor was arrested in March 2020 and his trial continues before the Special PMLA Court in Mumbai, a case that has fundamentally reshaped the legal understanding of CEO accountability in Indian banking.

B. Punjab National Bank—Nirav Modi Fraud (2018)

1. Facts of the Scandal

In January 2018, Punjab National Bank (PNB), then India's second largest public sector bank, disclosed a fraud of unprecedented scale in which fraudulent Letters of Undertaking (LoUs) totalling approximately ₹13,700 crore were issued over a seven-year period to entities controlled by jewellers Nirav Modi and Mehul Choksi, enabling them to obtain short-term credit facilities through overseas branches of Indian banks.

2. Governance Failures

The PNB fraud did not subvert sophisticated governance processes — it exploited elementary governance failures with alarming ease. Bank employees issued the LoUs through the SWIFT international messaging system, with no corresponding entries in the bank's Core Banking Software (CBS).³¹ Consequently, the contingent liabilities created by the LoUs did not appear on the bank's books and were invisible to both internal and external auditors. The absence of any reconciliation between SWIFT messaging data and CBS records over a seven-year period is symptomatic of the most fundamental failures of risk control and of an organisational culture in which compliance was treated as a formality rather than a substantive obligation.

3. Board Oversight Failures

The PNB board and its audit committee failed to ensure that basic SWIFT-CBS reconciliation was incorporated into the bank's routine internal audit processes. The board treated internal audit as a compliance tool rather than as a substantive governance mechanism, and had not internalised the risk management culture that the Basel Committee's governance

³⁰Prevention of Money Laundering Act, 2002 (India).

³¹Reserve Bank of India, *Circular on SWIFT-CBS Integration*, DBS.CO.OSMOS/BC/4/33.01.001/2017-18 (Feb. 20, 2018) [hereinafter RBI SWIFT CIRCULAR 2018].

principles would expect of a bank of PNB's systemic significance.³²

4. Regulatory Failures

RBI inspections of PNB over the years during which the fraud was perpetrated failed to detect the SWIFT-CBS reconciliation gap. This breakdown reflects a systemic weakness in the RBI's supervisory methodology and an insufficient sensitivity to technology-facilitated fraud risks. The parliamentary standing committee that subsequently examined the matter recorded extensive criticism of both bank management and the RBI's supervisory effectiveness.³³

5. Legal Consequences

Criminal charges were pressed against Nirav Modi and Mehul Choksi, both of whom had fled India before the fraud was disclosed. Nirav Modi was arrested in the United Kingdom in December 2019 and remains subject to extradition proceedings. The fraud also prompted the RBI to issue an emergency circular in February 2018 requiring all banks to urgently integrate SWIFT operations with CBS³⁴ a rudimentary control whose prolonged absence is itself indicative of the supervisory limitations of the pre-crisis regulatory regime.

C. ICICI Bank—Videocon Loan Controversy

1. Facts of the Scandal

The ICICI Bank–Videocon controversy involved allegations that the then-Managing Director and CEO of ICICI Bank, Chanda Kochhar, had improperly approved loans of approximately ₹3,250 crore to the Videocon Group at a time when her husband, Deepak Kochhar, had received substantial financial benefits from Venugopal Dhoot, chairman of the Videocon Group, in close temporal proximity to the loan sanctions. These allegations, which came to public prominence in 2018, represent among the most prominent allegations of CEO-level governance failure in Indian corporate history.

³²BASEL GOVERNANCE PRINCIPLES, *supra* note 8.

³³PARLIAMENT OF INDIA, STANDING COMM. ON FIN., BANKING SECTOR IN INDIA—ISSUES, CHALLENGES AND THE WAY FORWARD, TWENTY-SEVENTH REPORT (17th Lok Sabha 2019).

³⁴RBI SWIFT CIRCULAR 2018, *supra* note 31.

2. Governance Failures

The ICICI Bank case raises serious concerns about the disclosure and management of conflicts of interest at the highest levels of bank governance. The loan sanction process for Videocon appears not to have been preceded by proper disclosure of the personal financial relationship between the CEO and the promoter of the borrowing entity, as required by Section 184 of the Companies Act, 2013,³⁵ and in apparent contravention of the bank's own conflict-of-interest policies. The bank's board initially defended Kochhar and commissioned an investigation that cleared her — a position subsequently reversed by an independent inquiry led by Justice B.N. Srikrishna (Retd), which found that she had violated the bank's code of conduct and conflict-of-interest regulations.

3. Board Oversight Failures

The ICICI Bank case reveals a failure by the nomination and remuneration committee and the audit committee to identify and act upon conflicts of interest at the CEO level. The board's initial disposition to defend the CEO rather than pursue objective investigation — reversed only under sustained public and regulatory pressure — reflects a governance culture in which primary board loyalty lay with established management rather than with the board's independent oversight function. The ultimate resolution of the matter through Kochhar's dismissal for cause following the Srikrishna investigation illustrates the legal complications inherent in remediating governance failures at the board level when corrective action is inordinately delayed.

4. Legal Consequences

The CBI and Enforcement Directorate pressed charges against Chanda Kochhar, Deepak Kochhar, and Venugopal Dhoot under the Indian Penal Code and the Prevention of Money Laundering Act. In 2022, SEBI issued adjudication orders against Chanda Kochhar imposing fines and penalties for violations of securities disclosure requirements.³⁶ The case has had a lasting influence on regulatory expectations regarding CEO disclosure obligations

³⁵Companies Act, 2013, § 184 (India).

³⁶Securities and Exchange Board of India, *Adjudication Order* No. Order/SB/SB-1/2022-23/15524 (Sept. 2022).

and the board's duty to address substantively rather than passively the conflicts of interest of executive officers.

D. Punjab and Maharashtra Co-operative Bank Crisis (2019)

1. Facts of the Scandal

Punjab and Maharashtra Co-operative Bank (PMC Bank), a multi-state co-operative bank with over 137 branches and deposits of approximately ₹11,617 crore, was subjected to a regulatory directive by the Reserve Bank of India in September 2019³⁷ following the discovery of massive financial irregularities. Investigation revealed that approximately three-quarters of the bank's loan book totalling approximately ₹6,500 crore comprised concealed exposures to a single real estate developer, Housing Development and Infrastructure Limited (HDIL), which had itself become insolvent, leaving the bank severely undercapitalised and unable to meet depositor obligations.

2. Governance Failures

The PMC Bank case is a paradigmatic instance of governance collapse in the co-operative banking sector. The bank's credit concentration in a single borrower so far exceeded regulatory single-party exposure limits that the exposure was concealed through the creation of approximately 21,049 fictitious loan accounts, a deception that persisted undetected through multiple successive annual audit cycles. The PMC Bank directors many of whom shared associational and community ties with HDIL and its promoters failed to exercise the independent oversight that governance principles demand; their personal and institutional links with the dominant borrower rendered structural independence impossible.

3. Regulatory Failures

The PMC Bank crisis exposed a fatal flaw in the pre-2020 regulatory architecture: the RBI's effective ability to directly supervise co-operative banks was constrained by the parallel jurisdiction of State Co-operative Registrars, creating supervisory overlaps and accountability gaps that permitted the fraud to continue undetected for years. The longstanding absence of

³⁷Reserve Bank of India, *Directive Under Section 35A of the Banking Regulation Act, 1949 to Punjab and Maharashtra Co-operative Bank Ltd.*, RBI/2019-20/88 (Sept. 23, 2019).

effective RBI oversight of co-operative bank governance structures allowed the fraud to reach a scale at which depositor losses of unprecedented magnitude became inevitable.

4. Legal Consequences

PMC Bank's managing director Joy Thomas and the principal promoters of HDIL were arrested and charged under the Indian Penal Code and the Maharashtra Protection of Interest of Depositors Act. The Banking Regulation (Amendment) Act, 2020 subsequently brought co-operative banks more comprehensively within the RBI's supervisory remit,³⁸ addressing in part the regulatory blind spot within which the PMC Bank fraud had operated for years.

V. SYSTEMIC GOVERNANCE WEAKNESSES IN INDIAN BANKING

A. Weak Board Independence

Analysis of the four case studies reveals systemic governance weaknesses that transcend the particularities of individual institutions. The first and most fundamental is the weakness of board independence across the Indian banking sector. In public sector banks, board independence is structurally undermined by the government's dual role as regulator and majority shareholder a structural conflict of interest that the P.J. Nayak Committee Report of 2014 identified as the overarching governance pathology of India's public sector banking system.³⁹ In private sector banks, independence is frequently compromised by the dominance of founding families or by the informal subordination of nominally independent directors to powerful managing directors. The result, in both sectors, is a structurally deficient board culture lacking the capacity to challenge executive decisions or provide the rigorous independent oversight that governance principles require.

B. Managerial Power Concentration

The second systemic weakness is the concentration of decision-making authority in individual personalities, illustrated most starkly by the Yes Bank and ICICI Bank cases. The RBI's Discussion Paper of 2020 recognised that the combination of the chairperson and CEO roles, or the effective concentration of decision-making in a dominant managing director,

³⁸Banking Regulation (Amendment) Act, 2020, *supra* note 20.

³⁹NAYAK COMMITTEE REPORT, *supra* note 23.

creates a structural power imbalance inimical to independent board oversight.⁴⁰ The tendency of bank boards particularly in the private sector to treat their managing directors as founder-heroes whose judgment is beyond question has proved disastrous on multiple occasions when that individual judgment has been compromised by self-interest or excessive risk appetite. This pathology is what governance scholarship characterises as CEO dominance a phenomenon that well-designed governance structures seek to prevent.

C. Risk Management Failures

The third systemic weakness is the failure of risk management systems across the sector. In all four case studies, the formal risk management architecture credit committees, risk management committees, and compliance functions failed either to detect the governance problems at issue or to escalate identified concerns to the board in any meaningful way.⁴¹ The Basel Committee's 2015 governance principles are emphatic that risk management must be embedded in a bank's governance culture rather than merely represented in its organisational chart.⁴² The Indian case studies suggest that the formal risk management infrastructure mandated by RBI guidelines exists in most banks as a compliance artefact rather than as an effective governance mechanism a condition aptly characterised in governance scholarship as 'governance theatre.'

D. Regulatory Supervision Deficiencies

Pervasive regulatory supervision gaps constitute a fourth systemic dimension of the banking governance crisis. The RBI's annual inspection programme under Section 35 of the Banking Regulation Act has proved insufficient to detect governance failures in a timely manner, partly owing to the limited resources of the RBI's supervisory apparatus, partly to the inherent limitations of periodic inspection as a supervisory instrument, and partly to institutional uncertainties surrounding the RBI's authority to intervene in the internal governance affairs of private sector banks.⁴³ The public statements of former RBI Deputy Governor Viral Acharya on the constraints upon the RBI's operational autonomy pointed to the

⁴⁰RBI DISCUSSION PAPER 2020, *supra* note 3.

⁴¹RBI MASTER CIRCULAR 2015, *supra* note 21.

⁴²BASEL GOVERNANCE PRINCIPLES, *supra* note 8, at 14–15.

⁴³Banking Regulation Act, 1949, § 35 (India).

extent to which banking supervision in India has been impaired by political and institutional pressures inimical to decisive regulatory action.⁴⁴

E. Political and Institutional Influences

Political and institutional factors have continued to undermine the governance of public sector banks in India. Director and CEO appointments that are not fully insulated from political influence have produced boards structurally ill-equipped to challenge managerial decisions or exercise robust independent oversight. The Finance Ministry's exercise of its ownership rights through informal rather than transparent governance channels has created accountability gaps which governance reformers have long identified as requiring statutory redress. Until the government-RBI relationship that of ownership and regulation is restructured through statutory amendment, formal governance reforms alone cannot achieve their intended effect.

VI. COMPARATIVE PERSPECTIVE

A. Global Banking Governance: Common Weaknesses and Differential Responses

The governance failures surveyed in this paper are not unique to India; what distinguishes India is the inadequacy of its regulatory response relative to the post-crisis reforms undertaken in comparable jurisdictions. The Financial Stability Board's thematic review of corporate governance across member jurisdictions identified a common set of weaknesses in the aftermath of the 2008 financial crisis, including inadequate board oversight of risk, excessive concentration of authority in the CEO, and deficiencies in internal audit and compliance culture.⁴⁵ The more developed jurisdictions are distinguished not by the absence of governance failure but by the comparative vigour and speed of regulatory response a distinction that carries important implications for India's reform agenda.

B. Lessons from the United States, United Kingdom, and European Union

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 introduced sweeping reforms to financial institution governance in the United States, the most instructive for India being the whistle blower protection and financial incentive regime created by Section

⁴⁴Viral V. Acharya, Deputy Governor, Reserve Bank of India, *Some Ways to Decisively Resolve the NPA Crisis of Indian Banking*, Address at FICCI-IBA Annual Banking Conference, Mumbai (2017).

⁴⁵FSB GOVERNANCE REVIEW, supra note 2.

922.⁴⁶ The Dodd-Frank framework provides compelling monetary incentives for individuals to report securities violations to the Securities and Exchange Commission, producing a marked increase in the volume and quality of regulatory intelligence available to US financial regulators. The absence of any comparable financial incentive mechanism in India's regulatory framework constitutes a material governance gap, allowing regulatory intelligence of governance deterioration to reach regulators only when deterioration is most advanced and most urgently in need of external identification.

The United Kingdom's response to banking governance failures was crystallised in the 2013 report of the Parliamentary Commission on Banking Standards, which recommended the establishment of personal accountability arrangements for senior banking executives.⁴⁷ These recommendations were implemented through the Senior Managers and Certification Regime, enacted under the Financial Services and Markets Act 2000 as amended by the Financial Services (Banking Reform) Act 2013,⁴⁸ which holds individual senior managers personally accountable for governance failures within their respective areas of responsibility and reverses the burden of proof in regulatory disciplinary proceedings. The SMCR has demonstrably influenced governance culture in UK banks by creating personal incentive structures for compliance that have no equivalent in the Indian banking regulatory system, where individual accountability of bank directors and senior managers has remained chronically under-enforced.

EU banking governance is principally defined by the Capital Requirements Directive IV (CRD IV), implemented in 2013 on the basis of the Basel III framework.⁴⁹ CRD IV imposes detailed requirements on board composition including limits on simultaneous directorships, gender diversity requirements, and mandatory ongoing competency training for board members. The EU's Supervisory Review and Evaluation Process (SREP) additionally requires banking supervisors to conduct annual governance assessments of all banks within an integrated supervisory framework⁵⁰ a systematic approach that the RBI's current supervisory methodology does not replicate. These international comparisons confirm that India's

⁴⁶Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 922, 124 Stat. 1376, 1841 (2010).

⁴⁷PARLIAMENTARY COMM'N ON BANKING STANDARDS, CHANGING BANKING FOR GOOD, HC 175-I (2013).

⁴⁸Financial Services and Markets Act 2000, c. 8 (UK), *as amended by* Financial Services (Banking Reform) Act 2013, c. 33 (UK).

⁴⁹Council Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on Access to the Activity of Credit Institutions and the Prudential Supervision of Credit Institutions and Investment Firms, 2013 O.J. (L 176) 338 [hereinafter CRD IV].

⁵⁰CRD IV, *supra* note 49.

governance reform trajectory, while broadly oriented in the right direction, lags substantially behind in the specificity and enforceability of its requirements.

VII. LEGAL AND POLICY REFORMS IN INDIA

A. Recent RBI Governance Reforms

The governance crises examined in this paper have prompted the Reserve Bank of India to undertake a sequence of reforms that represent a considerable, though incomplete, improvement of the regulatory framework. The circular issued on 26 April 2021 on Corporate Governance in Banks Appointment of Directors and Constitution of Committees of the Board tightened requirements for director independence and competency, raised thresholds for the composition of key board committees, and mandated separation of the roles of non-executive chairperson and managing director or CEO across all commercial banks.⁵¹ These reforms, if rigorously applied, would address many of the structural governance shortcomings identified in the case studies. Their effective implementation requires, however, a culture of enforcement at the RBI that was conspicuously absent in the pre-crisis period.

B. Fit and Proper Criteria for Directors

The fit-and-proper criteria applied by the RBI in the appointment of bank directors have been progressively refined throughout the reform period, with the updated framework requiring evaluation of the integrity, financial soundness, solvency, and governance compliance track record of all nominated and elected directors.⁵² Nonetheless, the current fit-and-proper model remains predominantly retrospective in orientation, focused on the exclusion of disqualifying factors rather than on a positive assessment of the governance competencies that effective board oversight of complex banking institutions demands. This contrast with the forward-looking competency assessment of the SMCR regime is instructive: India's fit-and-proper framework is in substance a disqualification scheme rather than a competency assessment mechanism a deficiency requiring correction in the next phase of governance reform.

⁵¹Reserve Bank of India, *Circular on Corporate Governance in Banks—Appointment of Directors and Constitution of Committees of the Board*, RBI/2021-22/24 (Apr. 26, 2021) [hereinafter RBI GOVERNANCE CIRCULAR 2021].

⁵²Reserve Bank of India, *Master Direction on Fit and Proper Criteria for Elected Directors on the Boards of Primary (Urban) Co-operative Banks (Reserve Bank) Directions, 2019* (updated Jan. 2021).

C. Strengthening Risk Management and Internal Audit

The RBI has placed the strengthening of risk management and internal audit frameworks at the centre of its post-crisis reform agenda. Specific requirements now mandate that banks maintain independent risk management committees at the board level, separate risk management from business origination functions, and ensure that the Chief Risk Officer reports directly to the board's audit committee without management intermediation.⁵³ These requirements represent a significant advance over the pre-crisis model; however, their practical value will depend on the calibre of individuals appointed to risk and audit functions an area where the current fit-and-proper framework remains inadequate. The Yes Bank and PNB experiences demonstrate that a formal architecture of committees can fail comprehensively in the absence of substantive independence and professional competence.

D. Whistle blower Mechanisms and Compliance Culture

One of the most significant gaps in India's banking governance reform agenda is the inadequacy of whistle blower protection. The Whistle blowers Protection Act, 2014 provides a general framework for the protection of public interest disclosures but affords insufficient coverage to persons reporting governance failures in private sector banking companies and provides no financial incentive for reporting.⁵⁴ The Indian Banks' Association's 2019 Task Force on Corporate Governance identified the strengthening of whistle blower mechanisms as a priority reform area, noting that the absence of effective whistle blower protection contributed materially to delays in the detection of governance failures across multiple banking institutions.⁵⁵ Building a sound compliance culture requires more than regulatory mandates: it requires a governance environment in which compliance is treated as a strategic imperative and in which individuals who identify and report governance concerns are protected rather than marginalised.

VIII. RECOMMENDATIONS AND POLICY SUGGESTIONS

This paper advances seven principal legal and policy recommendations for the reform of India's banking corporate governance framework, grounded in the doctrinal, institutional,

⁵³Reserve Bank of India, *Guidelines on Risk Management Framework for Banks*, RBI/2021-22/112 (Oct. 2021).

⁵⁴Whistle blowers Protection Act, 2014 (India).

⁵⁵INDIAN BANKS' ASS'N, REPORT OF THE IBA TASK FORCE ON CORPORATE GOVERNANCE IN BANKS (2019).

and comparative analysis developed in the preceding sections. These recommendations are conceived as a complementary package disaggregated implementation of individual components will fail to produce durable governance change without the supporting infrastructure of the remainder.

First, the Banking Regulation Act, 1949⁵⁶ should be amended to mandate statutory separation of the roles of chairperson and managing director or CEO in all scheduled commercial banks, eliminating the structural concentration of executive and oversight functions in a single individual. This reform, already required of private sector banks by the RBI's April 2021 circular,⁵⁷ should be given full legislative force applicable universally with parliamentary authority. The recommendation of the Uday Kotak Committee of 2017 on analogous separation in listed companies provides a useful legislative template.⁵⁸

Second, the statutory duties of directors currently prescribed by Section 166 of the Companies Act, 2013⁵⁹ should be supplemented by industry-specific statutory duties for bank directors, incorporating the substantive obligations articulated in the Basel Committee's governance principles⁶⁰ including an affirmative duty to participate in independent risk management review rather than merely to ratify management proposals.

Third, a dedicated Banking Sector Whistle blower Protection Act should be enacted to provide more specific and robust protections to individuals reporting governance violations by banking institutions, including financial incentives for disclosures resulting in regulatory action modelled on the Dodd-Frank Section 922 regime.⁶¹

Fourth, the RBI's supervisory methodology should be overhauled to incorporate a governance-focused Supervisory Review and Evaluation Process, conducted annually for systemically important banks and triennially for others, with appropriately redacted results shared with relevant bank audit committees and, in cases of material public interest, with the market at prescribed intervals.

⁵⁶Banking Regulation Act, 1949, *supra* note 18.

⁵⁷RBI GOVERNANCE CIRCULAR 2021, *supra* note 51.

⁵⁸UDAY KOTAK COMM. ON CORPORATE GOVERNANCE, REPORT OF THE SEBI COMMITTEE ON CORPORATE GOVERNANCE (2017).

⁵⁹Companies Act, 2013, § 166, *supra* note 17.

⁶⁰BASEL GOVERNANCE PRINCIPLES, *supra* note 8.

⁶¹Dodd-Frank Wall Street Reform and Consumer Protection Act, *supra* note 46, § 922.

Fifth, the governance of state-owned banks should be structurally insulated from political intervention through the statutory reconstitution of the Bank Board Bureau⁶² as a fully independent statutory institution with an enforceable mandate to appoint directors and CEOs on merit, free from ministerial direction. The existing Bank Board Bureau, established by administrative notification in 2016, lacks the statutory foundation necessary to resist political influence in appointment decisions.

Sixth, the Banking Regulation Act, 1949 should be amended to establish a personal accountability regime modelled on the UK's Senior Managers and Certification Regime,⁶³ imposing individually binding governance obligations, a duty to take reasonable steps to prevent regulatory breaches within respective areas of responsibility, and reversing the burden of proof in regulatory disciplinary proceedings against senior managers. Reliance on criminal law as the primary instrument of individual accountability is a blunt and cumbersome tool that requires supplementation by an effective civil regulatory accountability mechanism.

Seventh, the RBI's powers to commission special forensic audits of banks where governance concerns have been detected should be enlarged and placed on an explicit statutory basis, with a requirement that material findings be communicated to the concerned bank's audit committee and in cases of material public interest disclosed to the market and depositors within a prescribed timeframe. The practice of maintaining supervisory findings in complete confidence, as the Yes Bank case demonstrated, denied depositors and investors material information that would have compelled earlier corrective action.

IX. CONCLUSION

The banking scandals examined in this paper are not, at their deepest level, merely accounts of individual moral failure though they certainly represent that as well. They are, more fundamentally, narratives of structural governance breakdown: of legal frameworks that permitted dominant management personalities to exploit the gap between the formal propositions of corporate law and the operational realities of institutional governance; of regulatory systems that were reactive rather than anticipatory of board cultures ill-equipped for the rigorous and independent oversight that banking governance demands and of regulatory

⁶²BANK BOARD BUREAU NOTIFICATION, *supra* note 27.

⁶³Financial Services and Markets Act 2000, *supra* note 48.

relationships compromised by political and institutional pressures inconsistent with the disinterested supervision that equivalent governance requires.

The doctrinal analysis developed in this paper demonstrates that the existing legal framework governing banking governance in India, while formally comprehensive, is beset by substantial enforcement and normative gaps. The regulatory regime comprising the Companies Act, 2013, the Banking Regulation Act, 1949, and the RBI's governance guidelines would, with rigorous enforcement, provide significant safeguards against the governance failures documented in the case studies. The fundamental problem lies not in the formal rules but in the institutional and cultural conditions of their implementation conditions defined by regulatory under-resourcing, political vulnerability, governance culture pathologies, and the absence of an adequate personal accountability regime for individual bank directors and managers.

The comparative analysis confirms that India's governance reform process is broadly oriented in the right direction relative to international best practice, but that the pace of reform has not matched the urgency of the challenge. The SMCR in the United Kingdom and the SREP process in the European Union exemplify an international trend toward individualised, prospective, and culture-oriented banking supervision⁶⁴, a trend that India has not yet fully internalised. The Dodd-Frank whistle-blower programme represents a proven regulatory innovation⁶⁵ that India's governance reform agenda has thus far failed to replicate.

The lessons of the Yes Bank, PNB, ICICI Bank, and PMC Bank crises are neither obscure nor novel. They are precisely the lessons that the Basel Committee's governance principles,⁶⁶ the OECD's corporate governance framework,⁶⁷ and the RBI's own successive committee reports have been articulating with increasing clarity for more than two decades: genuine rather than nominal independence; governance accompanied by personal accountability; continuous rather than periodic supervisory oversight; structural exclusion of political influence from state-owned bank operations; and the protection and incentivisation of whistle blowers rather than their suppression. The reforms proposed in this paper are not radical innovations — they are the implementation of governance principles proven effective in comparable financial systems. Their adoption would represent not merely a technical legal

⁶⁴Financial Services and Markets Act 2000, *supra* note 48; CRD IV, *supra* note 49.

⁶⁵Dodd-Frank Wall Street Reform and Consumer Protection Act, *supra* note 46.

⁶⁶BASEL GOVERNANCE PRINCIPLES, *supra* note 8.

⁶⁷OECD PRINCIPLES, *supra* note 6.

adjustment, but a wholesale rebalancing of the relationship between India's banking institutions, their leaders and supervisors, and the depositing public in whose service they exist.

BIBLIOGRAPHY

I. Primary Sources

A. Statutes

Banking Regulation Act, 1949, No. 10 of 1949 (India).

Banking Regulation (Amendment) Act, 2020, No. 39 of 2020 (India).

Companies Act, 2013, No. 18 of 2013 (India).

Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub L No. 111–203, 124 Stat 1376 (2010) (USA).

Financial Services and Markets Act 2000 (as amended by Financial Services (Banking Reform) Act 2013) (UK).

Prevention of Money Laundering Act, 2002, No. 15 of 2003 (India).

Whistle blowers Protection Act, 2014, No. 17 of 2014 (India).

Directive 2013/36/EU of the European Parliament and of the Council (Capital Requirements Directive IV) [2013] OJ L 176/338.

B. Regulatory Instruments

Reserve Bank of India, "Master Circular—Guidelines on Corporate Governance in Banks" (RBI/2015–16/54, 1 July 2015).

Reserve Bank of India, "Circular on SWIFT–CBS Integration" (DBS.CO.OSMOS/BC/4/33.01.001/2017-18, 20 February 2018).

Reserve Bank of India, "Directive under Section 35A of the Banking Regulation Act, 1949 to Punjab and Maharashtra Co-operative Bank Ltd" (RBI/2019-20/88, 23 September 2019).

Reserve Bank of India, "Circular on Corporate Governance in Banks—Appointment of Directors and Constitution of Committees of the Board" (RBI/2021-22/24, 26 April 2021).

Reserve Bank of India, "Guidelines on Risk Management Framework for Banks" (RBI/2021-22/112, October 2021).

Reserve Bank of India, "Master Direction on Fit and Proper Criteria for Elected Directors on the Boards of Primary (Urban) Co-operative Banks (Reserve Bank) Directions, 2019" (updated January 2021).

Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Securities and Exchange Board of India, Adjudication Order No. Order/SB/SB-1/2022-23/15524 (against Chanda Kochhar, September 2022).

C. Reports and Policy Documents

Financial Stability Board, "Thematic Review on Corporate Governance: Peer Review Report" (April 2017).

Government of India, "Notification Constituting the Banks Board Bureau" (Ministry of Finance, 28 February 2016).

Indian Banks' Association, "Report of the IBA Task Force on Corporate Governance in Banks" (November 2019).

Parliament of India, Standing Committee on Finance, "Twenty-Seventh Report: Banking Sector in India—Issues, Challenges and the Way Forward" (Seventeenth Lok Sabha, 2019).

Parliamentary Commission on Banking Standards, "Changing Banking for Good" (First Report, HL Paper 27-I, HC 175-I, 2013).

Reserve Bank of India, "Discussion Paper on Governance in Commercial Banks in India" (June 2020).

Reserve Bank of India, "Report of the Committee to Review Governance of Boards of Banks in India" (P.J. Nayak Committee Report, May 2014).

Reserve Bank of India, "Report on Trend and Progress of Banking in India 2019–20" (RBI, 2020).

Reserve Bank of India, "Report on Trend and Progress of Banking in India 2021–22" (RBI, 2022).

Reserve Bank of India, "The Yes Bank Ltd Reconstruction Scheme, 2020" (Gazette of India, 13 March 2020).

Uday Kotak Committee on Corporate Governance, "Report of the SEBI Committee on Corporate Governance" (October 2017).

II. Secondary Sources

A. Books and Monographs

Cadbury Committee, *The Financial Aspects of Corporate Governance* (Gee Publishing, 1992).

Goswami O, *Corporate Governance in India* (The Task Force on Corporate Governance, OECD Development Centre, 2001).

Solomon J, *Corporate Governance and Accountability* (4th edn, Wiley 2013).

B. Journal Articles

Acharya V V, "Some Ways to Decisively Resolve the NPA Crisis of Indian Banking" (2017) FICCI-IBA Annual Conference Address, Mumbai.

Diamond D W and Dybvig P H, "Bank Runs, Deposit Insurance, and Liquidity" (1983) 91(3) *Journal of Political Economy* 401.

Jensen M C and Meckling W H, "Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure" (1976) 3(4) *Journal of Financial Economics* 305.

Macey J R and O'Hara M, "The Corporate Governance of Banks" (2003) 9(1) *FRBNY Economic Policy Review* 91.

Subramanian R and Mahalakshmi S, "Corporate Governance in Indian Banking Sector: Issues and Challenges" (2016) 7(1) *Journal of Commerce and Management Thought* 127.

C. International Standards

Basel Committee on Banking Supervision, "Corporate Governance Principles for Banks" (Bank for International Settlements, July 2015).

Basel Committee on Banking Supervision, "Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems" (Bank for International Settlements, revised June 2011).

Financial Stability Board, "Supplementary Guidance to the FSB Principles and Standards on Sound Compensation Practices: The use of compensation tools to address misconduct risk" (March 2018).

OECD, G20/OECD Principles of Corporate Governance (OECD Publishing, 2015).