

BEHIND THE VEIL: PROMOTERS, POWER & LEGAL ACCOUNTABILITY IN CORPORATE FRAUD

THE ALCHEMY OF POWER—WHEN VISION TURNS VICIOUS AND LAW HUNTS THE INVISIBLE HAND

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ABSTRACT

In the evolving landscape of Indian corporate governance, the promoter emerges as a paradoxical figure—both the architect of enterprise and, at times, the orchestrator of its undoing. This paper undertakes a doctrinal and analytical exploration of promoter-led corporate fraud, dissecting the legal anatomy of fiduciary breach, regulatory evasion, and judicial accountability. Anchored in the statutory framework of the Companies Act, 2013, SEBI Regulations, and the Bharatiya Nyaya Sanhita, 2023, the study interrogates whether India's legal architecture is sufficiently robust to deter, detect, and prosecute promoter misconduct.

Through a meticulous examination of landmark cases such as Satyam Computers, DHFL, and IL&FS, the research traces patterns of fund diversion, insider trading, and shell entity creation—each revealing systemic vulnerabilities in enforcement and oversight. The paper also delves into judicial doctrines like piercing the corporate veil and promoter liability beyond incorporation, highlighting their inconsistent application and limited deterrent effect.

Comparative insights from jurisdictions like the UK, US, and Singapore offer a global lens on fiduciary standards, disclosure norms, and enforcement efficacy, underscoring India's need for reform. The study posits that while promoters wield disproportionate control over corporate affairs, the legal system often lags in holding them accountable—creating a chasm between statutory intent and enforcement reality.

Ultimately, this research advocates for a recalibration of India's corporate governance ethos—one that balances entrepreneurial freedom with ethical restraint, and innovation with integrity. By illuminating the legal fault lines and proposing targeted reforms, the paper contributes to the broader discourse on transparency, stakeholder protection, and the future of corporate accountability in India.

Keywords: *Promoter misconduct, corporate fraud, fiduciary breach, regulatory evasion, judicial accountability, veil piercing, SEBI regulations, Companies Act 2013, insider trading, governance reform*

PREFACE

“Power tends to corrupt, and absolute power corrupts absolutely”

—Lord Acton

British Historian & Philosopher

In the intricate tapestry of corporate India, promoters have long been celebrated as the architects of enterprise—visionaries who transform ideas into institutions. They initiate incorporation, mobilize capital, and steer governance during a company’s formative phase. Yet, beneath this aura of innovation lies a darker possibility: the misuse of power, the breach of fiduciary duty, and the orchestration of corporate fraud.

Recent financial scandals—from the Satyam Computers debacle to the DHFL and IL&FS crises—have exposed a troubling pattern of promoter-led misconduct. These cases not only shook investor confidence but also revealed systemic gaps in legal accountability and regulatory oversight. The promoter, once hailed as the lifeblood of corporate ambition, now stands at the crossroads of scrutiny and suspicion.

This paper seeks to explore the legal anatomy of promoter-led corporate fraud in India. It examines the statutory framework under the Companies Act, 2013 and allied regulations, analyses landmark judgments, and interrogates the evolving role of courts and regulators in piercing the corporate veil. By tracing the trajectory from entrepreneurial promise to legal peril, the study aims to illuminate the complex interplay between power, trust, and accountability.

In doing so, it raises a fundamental question: Can the law effectively balance the encouragement of enterprise with the deterrence of abuse? The answer lies not only in statutes and sanctions, but in a deeper cultural shift toward ethical governance and vigilant enforcement.

STATEMENT OF PROBLEM

Promoters occupy a foundational role in the corporate ecosystem, often serving as the visionaries who initiate, structure, and steer companies through their formative stages. However, this position of influence can also become a conduit for abuse. In recent years, India has witnessed a surge in corporate frauds where promoters have been directly implicated in financial misstatements, fund diversion, insider trading, and the creation of shell entities. These acts not only erode investor trust but also destabilize the integrity of financial markets and corporate governance.

Despite the existence of statutory provisions under the Companies Act, 2013, SEBI regulations, and criminal law frameworks, the enforcement of promoter accountability remains inconsistent and fragmented. Judicial doctrines such as piercing the corporate veil and promoter liability beyond incorporation have evolved, yet their application varies across cases. Moreover, the regulatory architecture often struggles to keep pace with the sophistication of fraudulent schemes, especially when promoters exercise disproportionate control over company affairs.

This research seeks to address the critical gap between **legal theory and enforcement reality**. It interrogates whether India’s current legal framework is adequately equipped to deter promoter-led fraud, ensure timely prosecution, and uphold fiduciary standards. The problem lies not only in the occurrence of fraud but in the systemic vulnerabilities that allow promoters to evade accountability—raising urgent questions about reform, transparency, and ethical governance.

OBJECTIVES OF THE STUDY

- **To examine the legal definition and functional role of promoters** under Indian company law, particularly as outlined in **Section 2(69)** of the Companies Act, 2013.

- **To analyse the fiduciary duties and ethical obligations of promoters**, both during pre-incorporation and post-incorporation phases.
- **To investigate the mechanisms and patterns of promoter-led corporate fraud**, including misrepresentation, fund diversion, and insider trading.
- **To evaluate the statutory and regulatory framework governing promoter accountability**, with reference to the Companies Act, SEBI Regulations, and Bharatiya Nyaya Sanhita, 2023.
- **To study landmark judicial decisions and interpretive doctrines**, such as piercing the corporate veil and promoter liability beyond incorporation.
- **To compare India’s legal approach with international models**, identifying best practices and enforcement strategies from jurisdictions like the UK, US, and Singapore.
- **To assess recent reforms and propose recommendations** for strengthening promoter accountability, enhancing transparency, and protecting stakeholder interests.
- **To contribute to the academic and policy discourse** on balancing entrepreneurial freedom with legal deterrence in the context of corporate governance.

Approx. % (based on case studies)

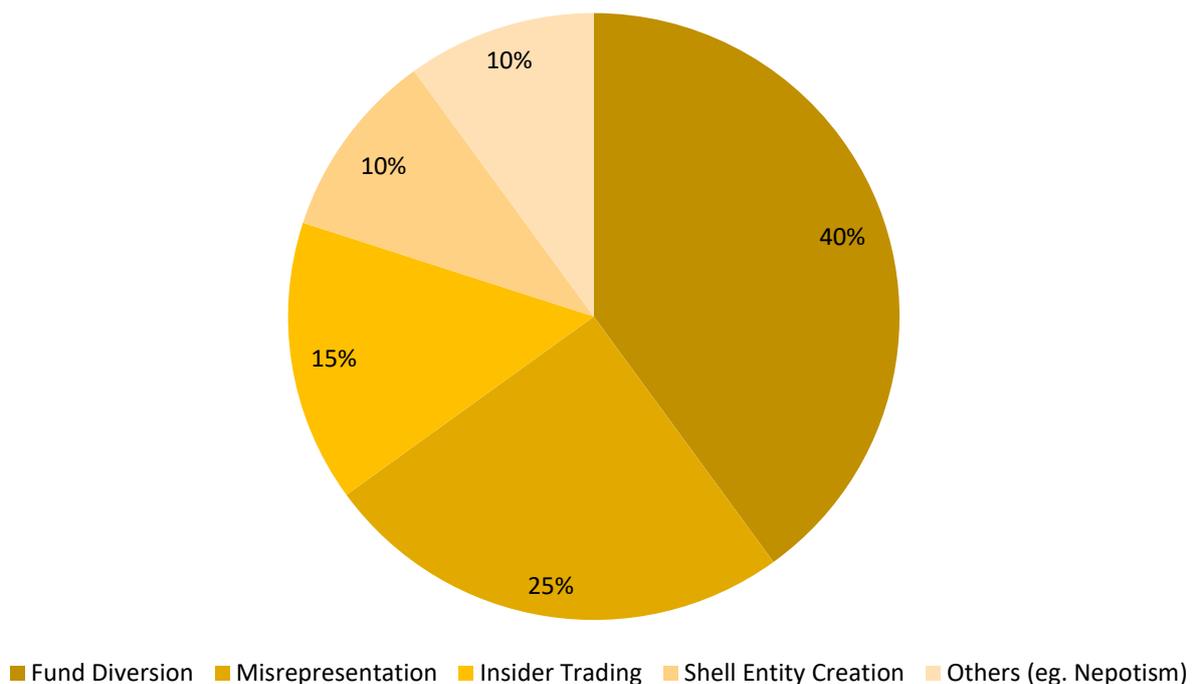


Fig 1: Distribution of Promoter Misconduct in Major Indian Corporate Fraud Cases

LITERATURE REVIEW

The role of promoters in corporate governance has been a subject of increasing scrutiny, especially in the wake of high-profile frauds that have shaken India’s financial ecosystem. Scholars and regulatory bodies alike have explored the intersection of promoter influence, fiduciary breach, and legal accountability.

A study by Deepak Kumar and Soumyadeep Chakrabarti titled *Regulatory and Governance Concerns in Promoter-Led Indian Corporate* emphasizes that promoters often occupy dominant positions in Indian companies, enabling them to bypass internal checks and manipulate financial disclosures. (Kumar & Chakrabarti, 2025) The authors argue that while corporate governance frameworks exist,

enforcement remains inconsistent, especially when promoters wield disproportionate control over board decisions.

Jayanthan V.T.S., in his paper *Corporate Fraud and White-Collar Crime: Challenges and Countermeasures*, provides a broader lens on fiscal crimes in India, highlighting how promoter-led frauds often involve complex networks of shell companies, insider trading, and fabricated financial statements. (Jayanthan.V.T.S., 2023) He underscores the challenges faced by law enforcement agencies in tracing such crimes due to lack of real-time disclosures and weak whistleblower protections.

Another critical contribution comes from *The Impact of Corporate Frauds on the Indian Economy*, published by Law Audience, which explores the economic and reputational damage caused by promoter misconduct. (Kumar V. , 2024) The review notes that while the Companies Act, 2013 and SEBI regulations provide a robust legal framework, the deterrent effect is diluted by procedural delays and limited cross-border enforcement capabilities.

Collectively, these studies reveal a recurring theme: **the legal framework is often outpaced by the ingenuity of fraudulent promoters**. They also highlight the need for judicial activism, enhanced transparency norms, and a cultural shift in corporate ethics. However, there remains a gap in literature specifically focused on **the doctrinal evolution of promoter liability and the comparative jurisprudence across jurisdictions**, which this paper aims to address.

RESEARCH QUESTIONS

1. What is the legal definition and functional role of a promoter under Indian company law, and how does this position enable potential misuse of power?
2. How do fiduciary duties imposed on promoters evolve across the pre-incorporation and post-incorporation phases of a company?
3. What are the common mechanisms and patterns of promoter-led corporate fraud in India, and how do they impact stakeholders and market integrity?
4. To what extent does the existing legal framework—including the Companies Act, SEBI Regulations, and Bharatiya Nyaya Sanhita—effectively deter and penalize promoter misconduct?
5. How have Indian courts interpreted and applied doctrines such as piercing the corporate veil and promoter liability beyond incorporation in fraud cases?
6. What lessons can India draw from international jurisprudence on promoter accountability, particularly from the UK, US, and Singapore?
7. What reforms are necessary to strengthen promoter accountability, enhance transparency, and restore investor confidence in India's corporate governance system?

SCOPE OF THE STUDY

This study focuses on the legal accountability of promoters in cases of corporate fraud within the Indian jurisdiction. It examines the statutory framework under the **Companies Act, 2013, SEBI Regulations**, and the **Bharatiya Nyaya Sanhita, 2023**, with particular emphasis on provisions related to fraud, misrepresentation, and fiduciary breach. The research is confined to promoter-led misconduct in **medium to large-scale companies**, where the impact on stakeholders and market integrity is significant

The study includes:

- o **Doctrinal analysis** of legal provisions and judicial interpretations concerning promoter liability.

- **Case studies** of major corporate frauds such as *Satyam Computers, DHFL, IL&FS, and Sahara India*, to understand patterns of misconduct and enforcement outcomes.
- **Comparative insights** from jurisdictions like the **United Kingdom, United States, and Singapore**, to identify global best practices and enforcement models.
- **Policy review** of recent reforms and regulatory trends aimed at strengthening promoter accountability.

However, the study does **not include empirical data collection** such as interviews or financial audits. It also excludes frauds unrelated to promoter misconduct, such as those involving only auditors, employees, or external agents. The scope is limited to publicly available legal and regulatory materials, judicial decisions, and scholarly commentary.

By narrowing its focus to promoter-led fraud and its legal consequences, the study aims to contribute meaningfully to the discourse on corporate governance, ethical entrepreneurship, and regulatory reform in India.

LIMITATIONS OF THE STUDY

While this research offers a comprehensive doctrinal analysis of promoter accountability in corporate fraud cases, certain limitations must be acknowledged:

1. **Absence of Empirical Data** – The study does not incorporate interviews, surveys, or financial audits. It relies solely on publicly available legal texts, judicial decisions, and secondary literature.
2. **Jurisdictional Focus** – The scope is confined to Indian corporate law and regulatory frameworks. Although comparative references to the UK, US, and Singapore are included, they serve only as illustrative benchmarks and not as exhaustive analyses.
3. **Case Selection Bias** – The case studies focus primarily on high-profile frauds involving large corporations. Smaller-scale or less-publicized promoter misconduct may not be adequately represented.
4. **Dynamic Legal Landscape** – Corporate law and regulatory mechanisms are continually evolving. Recent amendments, judicial interpretations, or enforcement trends may not be fully captured at the time of writing.
5. **Limited Access to Confidential Proceedings** – Some aspects of promoter misconduct, especially those under investigation or sealed litigation, remain inaccessible due to confidentiality or lack of public disclosure.
6. **Exclusion of Non-Promoter Fraud** – The study specifically targets promoter-led fraud and does not address misconduct by auditors, employees, or external agents unless directly linked to promoter actions.

RESEARCH GAP

While considerable scholarship exists on corporate fraud and governance failures in India, much of it tends to focus on auditor negligence, regulatory lapses, or broad systemic vulnerabilities. The specific role of **promoters as central actors in orchestrating fraud** remains underexplored, especially in terms of their **legal accountability across pre-incorporation and post-incorporation phases**.

Existing studies often:

- Treat promoters as part of a larger governance framework without isolating their unique influence and fiduciary obligations.

- Focus on individual fraud cases without synthesizing a doctrinal understanding of promoter liability.
- Lack comparative analysis with international jurisdictions that have more evolved enforcement mechanisms and clearer promoter declassification norms

Moreover, while judicial doctrines like **piercing the corporate veil** and **promoter liability beyond incorporation** have been invoked in landmark cases, there is limited academic engagement with how these doctrines are applied inconsistently—and what that means for legal deterrence.

This research fills the gap by:

- Providing a **focused legal deconstruction** of promoter-led fraud in India.
- Tracing the **evolution of statutory and judicial accountability mechanisms**.
- Offering a **comparative jurisprudential lens** to benchmark India's approach against global standards.
- Proposing **targeted reforms** to strengthen promoter transparency, ethical governance, and institutional enforcement.

THEORETICAL FRAMEWORK

A. WHO IS A PROMOTER?

As per **Section 2(69)** of the Companies Act, 2013 defines the term promoter as a person –

- who has been named as such in a prospectus or is identified by the company in the annual return referred to in **Section 92**; or
- who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act. (Section 2(69).Promoter, n.d.)

However, a person who is acting merely in a professional capacity shall not be treated as a promoter.

The aforesaid description of promoter does not bring out the nature of activities that the promoter is usually associated with. It may serve a good purpose for fixation of liabilities for wrongdoings by the company.

In USA, the Securities Exchange Commission **Rule 405(a)** defines a promoter as a person who, acting alone or in conjunction with other persons, directly or indirectly, takes the initiative and founding or organising the business enterprise.

To be a promoter, one need not necessarily be associated with the initial formation of the company, one who subsequently helps to arrange floating of its capital will equally be regarded as a promoter. (Lagunas Nitrate Co. v. Lagunas Syndicate, 1899) (Daulatani, n.d.)

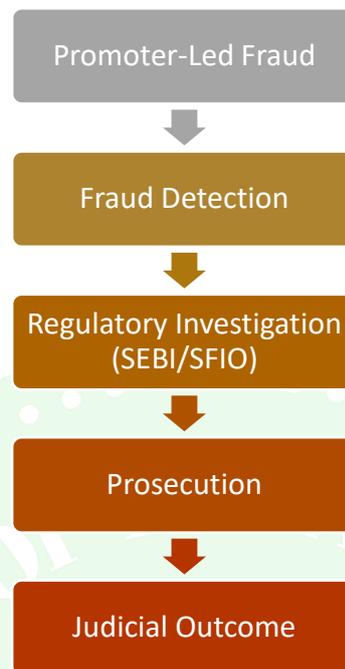


Fig 2: Legal and Regulatory Progression

B. WHEN PROMOTION BEGINS AND ENDS

The relationship between promoter and the company that he has floated must be deemed to be fiduciary relationship from the day the work of floating the company starts (CIT v. Bijili Cotton Mills Ltd., 1953) and continues up to the time that the directors take into their hands what remains to be done in the way of forming the company. (Twycross v. Grant, 1877) (Daulatani, n.d.)

The date upon which the person becomes a promoter can be a matter of great importance to him and the company. A number of sections impose civil as well as criminal liabilities on promoters for misrepresentations in a prospectus or a statement in lieu of prospectus, for misappropriation or misapplication of the monies collected.

The status of a promoter is generally terminated when the Board of Directors has been formed, and they start governing the company. Chronologically, the first persons who control or influence the company's affairs are its promoters. It is they who conceive the idea of forming the company and it is they who take the necessary steps to incorporate it, to provide it with share and loan capital, and acquire the business or property, which it is to manage. When these things have been done, they hand over the control of the company to its directors, who are often themselves under a different name.

On handing over the control of the company to the directors, the promoter's fiduciary and common law duties cease, and he is thereafter subject to no more extensive duties in dealing with the company than a third person who is unconnected with it. (Pennington's Company Law, 5th Edn., p. 607) (Daulatani, n.d.) Thus, where a promoter disclosed the profit which he made out of a company's promotion to the persons who provided it with the share capital with which it commenced business, it was held that he was under no further duty to disclose the profit to persons who were invited to subscribe further capital a year later, and so the company could not recover the profit from him for his failures to do so. (Re, British Seamless Paper Box Co., 1881) (Singh) Nevertheless, a promoter may remain subject to fiduciary and other duties to the company if he becomes a director or agent of it, but the duties are then owed only in that other capacity. (Teacher, 2013)

C. DUTIES AND TYPES OF PROMOTERS

The Companies Act, 2013 contains no provision regarding the duties of promoters. It merely imposes liability on promoters for untrue statements in prospectus they are parties to (**Sections 34 & 35**), and for fraudulent trading (**Section 339**) (Singh). The courts, however, have been conscious of the possibility of abuse inherent in the promoters' position and therefore laid down that anyone, who can properly be regarded as promoter stands in a fiduciary position towards the company with all duties of disclosure and accounting. *In particular*, the two fiduciary duties imposed on a promoter are:

- 1) not to make any secret profit out of the promotion of the company;
- 2) to disclose to the company any interest which he has in a transaction entered into by it. (Teacher, 2013)

Type	Description
Professional	Experts hired to promote companies for a fee (e.g., merchant bankers)
Occasional	Individuals who promote a company once, often for personal interest
Financial	Investors who promote companies for financial returns (e.g., venture capitalists)

Fig 3: Table Representing Classification of Promoters under Indian Company Law

D. REMEDIES AVAILABLE TO THE COMPANY AGAINST THE PROMOTER FOR BREACH OF HIS DUTIES

Since the promoter owes a duty of disclosure to the company, the primary remedy in the event of breach is for the company to bring proceedings for rescission of any contract with him, or for the recovery of any secret profits which he has made. (Daulatani, n.d.)

Rescission of contract: So far as the right to rescind is concerned, this must be exercised on normal contractual principles, that is to say, the company must have done nothing to show an intention to ratify the agreement after finding breach involving non-disclosure or misrepresentation.

To recover secret profit: If a promoter makes a secret profit or does not disclose any profit made, the company has a remedy against him (Daulatani, n.d.). This varies according to the circumstances which may be divided into the following two situations:

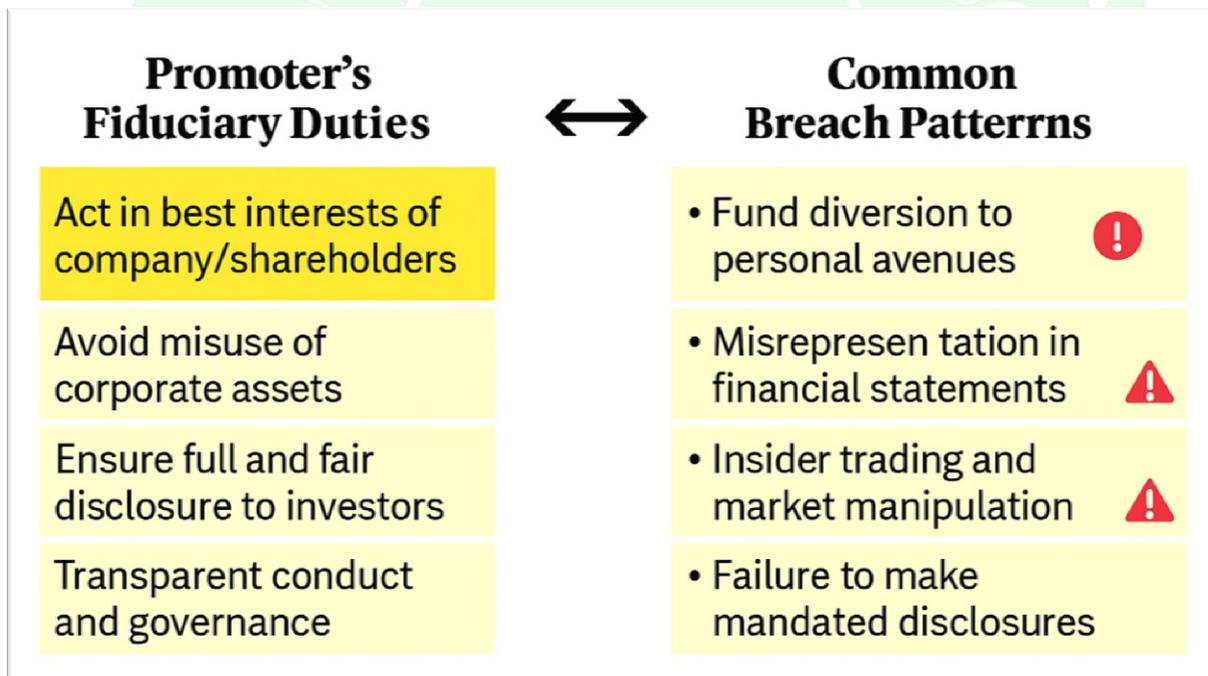
- 1) *Where the promoter was not in a fiduciary position when he acquired the property but only when he sold it to the company.* If the property on which the profit was made was acquired before the promoter became promoter, there can be no claim for the recovery of the profit as such. (Re Ambrose Lake Tin & Copper Co. , 1880) According to this view, it may be necessary for this purpose to make the determination of the exact moment of time at which the promotion began.

Thus, if a person acquires properties or had it before he takes any active steps in the promotion of a company and sells it to the company at a profit, he is entitled to retain that profit. Here, the promoter, as in *Solomon's* case, must have had the property for a certain length of time. He can hardly be said to be in a fiduciary relation to the company.

- 2) Where the promoter was in a fiduciary position when he acquired the property and when he sold it to the company. This may happen in any of the following circumstances:
- i. Where the promoter bought property with a view to selling it to the company which he intends to promote.
 - ii. Where the promoter resells to the company at an increased price, the property which he purchased after he commenced the promotional activities.
 - iii. Where a person is a promoter for acquiring the property for the company in the capacity of an agent.

In the aforesaid circumstances, the remedies of the company may include:

- a) rescission of the contract, and if the promoter has made a profit on some ancillary transaction that may also be recovered; or
- b) to retain the property, paying no more than what the promoter has paid for it, thus, depriving him of his profit; or
- c) where the above remedies would be inappropriate, say, where the property has been altered so as to render decision impossible and the promoter has already received the inflated price, the company may sue for misfeasance (breach of duty to disclose). The measure of damages in such a situation will be the difference between the market value



of the property and the contract price. (Thakur, 2018)

Fig 4: Promoter's Fiduciary Duties vs. Breach Patterns in India

E. LIABILITY OF PROMOTERS

A promoter is subject to following liabilities under the various provisions of the Companies Act:

1. **Section 26** enumerates the *matters that should be stated and the reports that should be set out in the prospectus*. If this provision is not complied with, the promoters may be held liable under **Section 35** to compensate the shareholders.
2. **Section 35** provides for *civil liabilities for any misstatements made in the prospectus*. Under this section, a promoter can be held liable for any false statements in the prospectus, by a person who has subscribed for the shares and debentures of the company, acting on the faith

of the prospectus. The promoter may be held liable to pay compensation to every person who subscribes for shares or debentures for any loss or damage sustained by him on account of the untrue statements made in the prospectus. However, Section 35 enumerates certain grounds on which the promoter can avoid his liability. These remedies are common to all persons who can be held liable for misstatements in the prospectus.

3. **Section 34** contains provisions relating to *criminal liabilities for issuing a prospectus which contains untrue statements*. It is clearly provided that, in addition to the civil liability mentioned in the above two cases, the promoters can be held criminally liable if the prospectus issued by them contained misstatements. They may thus be liable for imprisonment for a term which shall not be less than six months, but which may extend to ten years. Besides, the promoter shall also be liable to fine, which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. Further, the section provides that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years. (More, 2022)

The promoter may have to bear this criminal liability for misstatements unless he can prove that such statement or omission was immaterial, or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true, or the inclusion or omission was necessary.

The Madras High Court in *Probir Kumar Misra v. Ramani Ramaswamy* [2010]⁵⁸², has held that to fix liability on a promoter, it is not necessary that he should be either a signatory to the Memorandum/Articles of Association, or a shareholder, or a director of the company. Promoter's civil liability to the company and also to third parties remain in respect of his conduct and contract entered into by him during pre-incorporation stage as agent or trustee of the company (as agent to third party and as trustee to the company). (Daulatani, n.d.)

HYPOTHESIS

This study is premised on the hypothesis that:

The existing legal framework in India, while comprehensive in theory, is insufficiently enforced and inconsistently interpreted to effectively deter and prosecute promoter-led corporate fraud.

It further posits that:

- Promoters, due to their disproportionate control and insider access, are uniquely positioned to manipulate corporate structures for personal gain.
- Judicial doctrines such as *piercing the corporate veil* and *promoter liability beyond incorporation* are underutilized or inconsistently applied, weakening the deterrent effect.
- Comparative legal systems offer more robust enforcement models that India can adapt to strengthen promoter accountability and restore stakeholder trust.

Aspect	India	United Kingdom	United States	Singapore
Definition of Promoter	Section 2(69), Companies Act, 2013	Not statutorily defined; inferred from fiduciary role	SEC Rule 405(a) – includes those initiating or organizing a company	Defined under Companies Act; includes those with control or influence

⁵⁸² *Probir Kumar Misra v. Ramani Ramaswamy*, [2010] 104 SCL 174.

Fiduciary Duties	Implied through judicial interpretation	Strong fiduciary obligations under common law	Codified under federal securities laws and case law	Codified duties under Companies Act and Code of Corporate Governance
Disclosure Requirements	Prospectus disclosures under Sections 26, 34, 35	Mandatory under FCA and Companies Act	SEC-mandated disclosures; Sarbanes-Oxley Act	Mandatory disclosures under SGX and Companies Act
Criminal Liability	Sections 34, 35, 447-449, BNS 2023	Fraud Act 2006; Companies Act	Sarbanes-Oxley Act; Securities Exchange Act	Penal Code and Companies Act
Enforcement Agencies	SEBI, SFIO, MCA	Financial Conduct Authority (FCA), Serious Fraud Office (SFO)	SEC, DOJ, FBI	Monetary Authority of Singapore (MAS), CAD
Whistleblower Protection	Limited and underutilized	Protected under PIDA 1998	Strong protections under Dodd-Frank Act	Whistleblower Protection Act
Veil Piercing Doctrine	Recognized but inconsistently applied	Well-established in equity jurisprudence	Applied in fraud and alter ego cases	Applied in fraud and abuse of corporate form

Fig 5: Comparative Enforcement Metrics in Promoter-Led Fraud Cases – India vs. UK, US, Singapore

RESEARCH METHODOLOGY

This study adopts a **doctrinal legal research methodology**, focusing on the systematic analysis of statutory provisions, judicial decisions, and regulatory frameworks that govern promoter accountability in cases of corporate fraud. The approach is qualitative and analytical, aimed at interpreting legal texts and evaluating their practical enforcement.

1. Nature of Research –

- ⊗ **Type:** Qualitative, doctrinal, and analytical
- ⊗ **Purpose:** To examine the legal anatomy of promoter misconduct and assess the effectiveness of existing accountability mechanism

2. Sources of Data –

a) Primary Sources

- ⊗ **Statutes:** Companies Act, 2013, SEBI Regulations, Bharatiya Nyaya Sanhita, 2023
- ⊗ Judicial decisions from Indian courts and tribunals (e.g., SEBI v. Sahara India⁵⁸³, CBI v. Ramalinga Raju⁵⁸⁴, Gilford Motor Co. v. Horne⁵⁸⁵)

b) Secondary Sources

- ⊗ Scholarly articles, law journals, and commentaries

⁵⁸³ Sahara India Real Estate Corporation Ltd. & Ors. v. Securities and Exchange Board of India, (2013) 1 SCC 1.

⁵⁸⁴ CBI v. Ramalinga Raju, Special CBI Court, Hyderabad (2015).

⁵⁸⁵ Gilford Motor Co. Ltd. v. Horne [1933] Ch 935 (CA).

- ⊗ Reports from SEBI, SFIO, and Ministry of Corporate Affairs
- ⊗ News archives and investigative reports on corporate fraud

3. Case Study Method –

a) Detailed examination of landmark promoter-led fraud cases:

- *Satyam Computers*
- *DHFL Scam*
- *IL&FS Crisis*

b) Each case is analysed for:

- Nature of promoter misconduct
- Legal provisions invoked
- Judicial reasoning and enforcement outcomes

4. Comparative Jurisprudence –

a) Selective study of promoter liability frameworks in:

- **United Kingdom** – fiduciary standards and veil-piercing doctrines
- **United States** – SEC enforcement and Sarbanes-Oxley Act
- **Singapore** – corporate governance and director accountability

5. Analytical Techniques –

- **Statutory Interpretation:** Understanding the scope and intent of legal provisions
- **Judicial Analysis:** Evaluating consistency, evolution, and impact of court rulings
- **Policy Review:** Assessing regulatory reforms and institutional responses

SAMPLING DESIGN

As this study follows a **doctrinal legal research methodology**, it does not employ statistical sampling in the conventional empirical sense. Instead, it adopts a **purposive sampling approach** to select legal materials and case studies that are most relevant to the research objectives.

1. Case Law Sampling –

- i. Criteria:** Landmark judgments involving promoter misconduct, judicial interpretation of fiduciary duties, and application of doctrines like piercing the corporate veil.
- ii. Selected Cases Include:**
 - *SEBI v. Sahara India*⁵⁸⁶
 - *CBI v. Ramalinga Raju (Satyam Computers)*⁵⁸⁷
 - *Delhi Development Authority v. Skipper Constructions*⁵⁸⁸
 - *Gilford Motor Co. v. Horne*⁵⁸⁹

2. Statutory Sampling –

- i. Criteria:** Provisions directly addressing promoter roles, fraud, and accountability.
- ii. Key Statutes:**
 - *Companies Act, 2013* – **Sections 2(69), 447, 448, 449**
 - *SEBI Regulations* – Insider trading, disclosure norms
 - *Bharatiya Nyaya Sanhita, 2023* – Criminal provisions relevant to corporate fraud

3. Jurisdictional Sampling for Comparative Analysis –

- i. Criteria:** Countries with robust promoter governance and enforcement mechanisms.
- ii. Jurisdictions Studied:**
 - United Kingdom

⁵⁸⁶ Sahara, *supra* note 2, at 13.

⁵⁸⁷ CBI, *supra* note 3, at 13.

⁵⁸⁸ Delhi Development Authority v. Skipper Construction Company (P) Ltd. & Anr., (1996) 4 SCC 622.

⁵⁸⁹ Gilford, *supra* note 4, at 13.

- United States
- Singapore

4. Literature Sampling –

- Criteria:** Peer-reviewed articles, legal commentaries, and regulatory reports focusing on promoter-led fraud and corporate governance.
- Sources Include:**
 - Law journals
 - SEBI and SFIO publications
 - Academic papers on fiduciary duties and corporate ethic

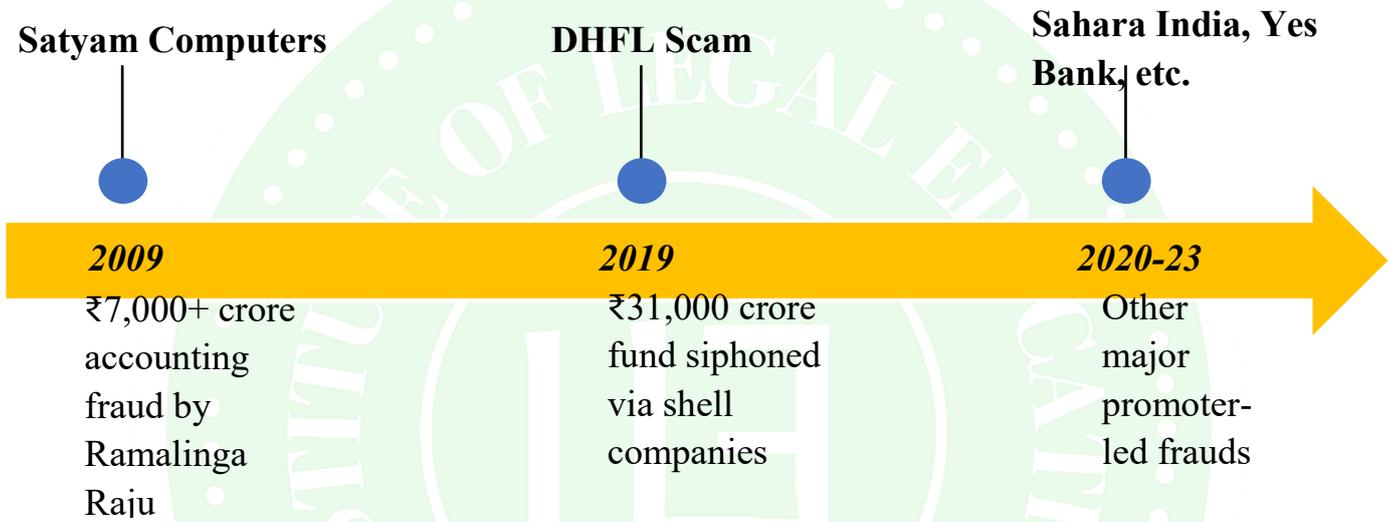


Fig 6: Timeline of Notable Promoter-Led Corporate Frauds in India

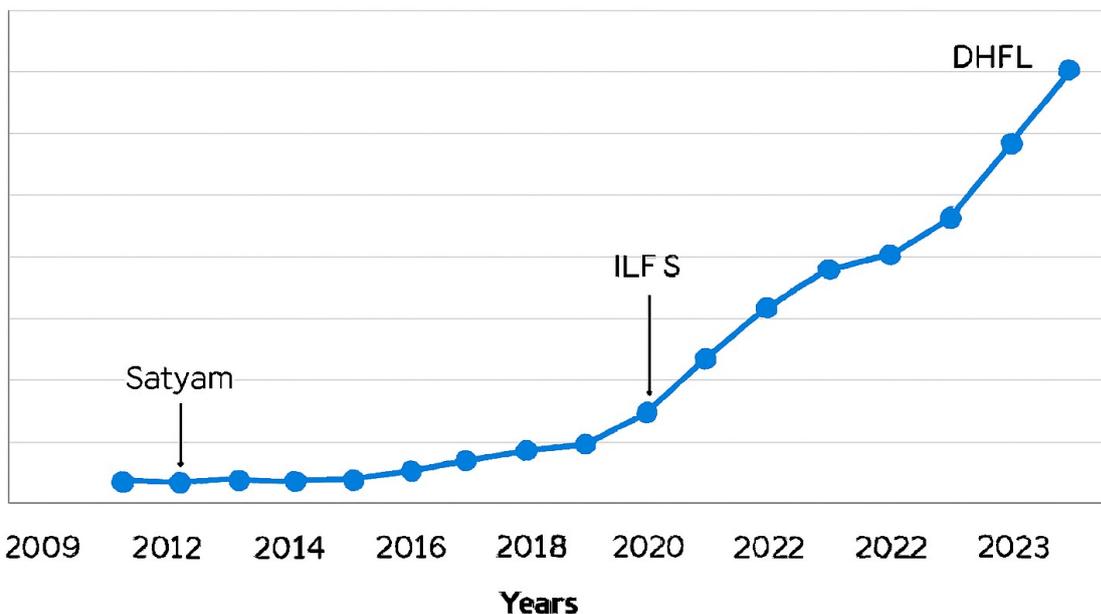


Fig 7: Escalation of Promoter-Led Corporate Fraud Cases in India (2009-2023)

TOOLS OF ANALYSIS

This study employs a set of doctrinal and interpretive tools to critically examine the legal framework governing promoter accountability in corporate fraud cases. These tools enable a structured evaluation of statutes, judicial decisions, and regulatory mechanisms.

1. Statutory Interpretation –

- ⊗ Analysing the language, scope, and legislative intent behind key provisions of the *Companies Act, 2013*, *SEBI Regulations*, and *Bharatiya Nyaya Sanhita, 2023*.
- ⊗ Focus on **Sections 2(69), 447, 448, and 449** to understand how promoter misconduct is defined and penalized.

2. Judicial Precedent Analysis –

- ⊗ Studying landmark judgments to trace the evolution of doctrines such as:
 - *Piercing the Corporate Veil*
 - *Promoter Liability Beyond Incorporation*
 - *Strict Scrutiny of Prospectus and Disclosures*
- ⊗ Evaluating consistency, reasoning, and impact of judicial interpretations on promoter accountability.

3. Case Study Method –

- ⊗ Detailed examination of real-world fraud cases involving promoters:
 - *Satyam Computers, DHFL, IL&FS, Sahara India*
- ⊗ Mapping the fraud mechanism, legal response, and enforcement outcomes.

4. Policy and Regulatory Review –

- ⊗ Assessing the effectiveness of reforms and institutional responses by SEBI, SFIO, and MCA.
- ⊗ Identifying gaps in enforcement, transparency, and stakeholder protection.

5. Doctrinal Synthesis –

- ⊗ Integrating statutory provisions, judicial doctrines, and scholarly commentary to build a cohesive understanding of promoter accountability.
- ⊗ Highlighting tensions between entrepreneurial freedom and legal deterrence.

DATA COLLECTION & ANALYSIS

1. DATA COLLECTION

As this study follows a **doctrinal legal research methodology**, data collection is centred on gathering authoritative legal materials and case-specific information from publicly available sources. The process involves:

Primary Legal Sources –

▪ Statutory Provisions

- *Companies Act, 2013 (Sections 2(69), 447–449)*
- *SEBI (Listing Obligations and Disclosure Requirements) Regulations*
- *Bharatiya Nyaya Sanhita, 2023* (relevant criminal provisions like cheating, forgery and conspiracy)

▪ Judicial Decisions

- Landmark cases such as *SEBI v. Sahara India*⁵⁹⁰, *CBI v. Ramalinga Raju*⁵⁹¹, *Delhi Development Authority v. Skipper Constructions*⁵⁹², and *Gilford Motor Co. v. Horne*⁵⁹³

⁵⁹⁰ Sahara, *supra* note 2, at 13.

⁵⁹¹ CBI, *supra* note 3, at 13.

⁵⁹² Delhi, *supra* note 7, at 14.

⁵⁹³ Gilford, *supra* note 4, at 13.

Secondary Legal Sources –

- Academic journals, legal commentaries, and law review articles
- Reports from regulatory bodies like SEBI, SFIO, and the Ministry of Corporate Affairs
- News archives and investigative reports on corporate fraud

Comparative Jurisdictions –

- Legal frameworks and enforcement models from the UK, US, and Singapore, accessed through international law databases and scholarly publications.

2. DATA ANALYSIS

The collected data is analysed using the following doctrinal and interpretive tools:

- **Statutory Interpretation**
 - Evaluating the language, scope, and legislative intent of legal provisions related to promoter duties and fraud penalties.

- **Judicial Reasoning**

Analysing how courts have applied doctrines such as:

- *Piercing the Corporate Veil*
- *Promoter Liability Beyond Incorporation*
- *Strict Scrutiny of Prospectus and Disclosures*
- **Case Study Analysis**
 - Mapping the fraud mechanism, legal response, and enforcement outcomes in selected cases
 - Identifying patterns of misconduct and regulatory gaps
- **Comparative Legal Evaluation**
 - Benchmarking India's promoter accountability framework against global standards
 - Highlighting best practices and enforcement models from foreign jurisdictions
- **Policy Review**
 - Assessing the effectiveness of recent reforms and institutional responses
 - Identifying areas for improvement in transparency, whistleblower protection, and cross-border enforcement

FINDINGS OF THE STUDY

1. Promoters Hold Disproportionate Power in Indian Corporations –

- Promoters in India often retain significant shareholding and board control, enabling them to influence key decisions, override internal checks, and suppress dissenting voices.
- This concentration of power creates a structural vulnerability, especially in family-owned or closely held companies.

2. Legal Definitions are Broad but Enforcement is Narrow –

- While **Section 2(69)** of the Companies Act, 2013 provides a wide definition of “promoter,” enforcement agencies often struggle to establish intent and direct involvement in fraud.
- The gap between legal theory and prosecutorial practice allows many promoters to evade liability through technicalities or procedural delays.

3. Judicial Doctrines are Underutilized or Inconsistently Applied –

- Doctrines such as *piercing the corporate veil* and *promoter liability beyond incorporation* exist in Indian jurisprudence but are applied inconsistently.

- Courts have shown reluctance to hold promoters personally liable unless fraud is egregiously proven, as seen in *Delhi Development Authority v. Skipper Constructions*⁵⁹⁴ and *Satyam Computers v. CBI*⁵⁹⁵.

4. Regulatory Bodies Face Institutional Constraints –

- Agencies like SEBI and SFIO have made strides in investigating promoter-led frauds, but their efforts are often hampered by:
 - Limited manpower and forensic capacity
 - Jurisdictional overlaps
 - Political and corporate interference
- Delays in adjudication and weak whistleblower protections further dilute the deterrent effect.

5. Case Studies Reveal Recurrent Patterns of Misconduct –

- In cases like *Satyam*, *IL&FS*, and *DHFL*, promoters engaged in:
 - Fabrication of financial statements
 - Diversion of funds through shell companies
 - Misuse of public money and regulatory arbitrage
- These cases highlight systemic failures in early detection and risk management.

6. Comparative Jurisdictions Offer Stronger Deterrent –

- The United States enforces promoter and executive accountability through the Sarbanes-Oxley Act and aggressive SEC oversight.
- The United Kingdom applies fiduciary standards more stringently, with courts more willing to lift the corporate veil.
- Singapore emphasizes director and promoter accountability through swift regulatory action and clear disclosure norms.
- These models demonstrate the importance of proactive enforcement, real-time disclosures, and personal liability.

7. Recent Reforms are Promising but Require Strengthening –

- Amendments to the Companies Act and the introduction of the Bharatiya Nyaya Sanhita, 2023 show intent to tighten fraud provisions.
- However, without faster adjudication, cross-border cooperation, and stronger institutional autonomy, these reforms may fall short of their deterrent potential.

LANDMARK JUDGMENTS

Sahara India Real Estate Corporation Ltd. & Ors. v. Securities and Exchange Board of India, (2013) 1 SCC 1

CASE BACKGROUND

The dispute arose when Sahara India Real Estate Corporation Ltd. and Sahara Housing Investment Corporation Ltd. mobilized over ₹24,000 crores from nearly 30 million investors through **Optionally Fully Convertible Debentures (OFCDs)**.

- Sahara claimed these were **private placements**, exempt from SEBI's oversight.
- SEBI argued that the scale of the issue (to more than 50 persons) made it a **public issue** under **Section 67** of the Companies Act, 1956, requiring regulatory approval.

⁵⁹⁴ Delhi, *supra* note 7, at 14.

⁵⁹⁵ CBI, *supra* note 3, at 13.

FINDINGS OF THE SUPREME COURT

The Court, in *Sahara India* case, delivered a landmark ruling:

- **Public Issue Test:** Any offer to more than 50 persons is a public issue, regardless of how it is labelled.
- **SEBI's Jurisdiction:** SEBI has authority over **all companies, listed or unlisted**, if they raise funds from the public.
- **Investor Protection:** The Court prioritized investor interests, ordering Sahara to **refund ₹24,000 crores with 15% interest**.
- **Promoter Accountability:** The veil of incorporation was pierced, holding Sahara's promoters personally responsible for misleading investors.

CBI v. Ramalinga Raju, Special CBI Court, Hyderabad (2015)

CASE BACKGROUND

The *Satyam Computer Services scandal* (2009) is one of India's most infamous promoter-led frauds.

- **Promoter Role:** B. Ramalinga Raju, the founder and chairman, admitted to falsifying accounts for several years, inflating profits and assets to mislead investors and regulators.
- **Scale of Fraud:** Nearly ₹7,000 crores of fictitious assets and revenues were reported, making it one of the largest corporate frauds in India.
- **Investigation:** The Central Bureau of Investigation (CBI) filed charges of criminal conspiracy, cheating, forgery, falsification of accounts, and breach of trust against Raju and other executives.
- **Trial Court:** The case was tried before the Special CBI Court, Hyderabad, culminating in a judgment in April 2015.

FINDINGS OF THE COURT

The Special CBI Court convicted Ramalinga Raju and nine others, holding them guilty of orchestrating a massive fraud.

- **Criminal Liability:** Raju was convicted under **Sections 120B** (criminal conspiracy), **420** (cheating), **467, 468, 471** (forgery), and **477A** (falsification of accounts) of the Indian Penal Code.
- **Sentence:** He was awarded **7 years of rigorous imprisonment** along with fines.
- **Promoter Misconduct:** The Court found that Raju, as promoter, abused his fiduciary position by manipulating financial statements to sustain stock prices and attract investments.
- **Impact:** The judgment underscored that **promoters cannot escape liability by hiding behind corporate structures**, and that fraudulent intent at the top can destabilize entire markets.

N. Narayanan v. Adjudicating Officer, SEBI, (2013) 12 SCC 152

CASE BACKGROUND

The case arose from the **Pyramid Saimira Theatre Ltd. (PSTL) fraud**, where the company's promoters and directors were accused of publishing **inflated financial results** to mislead investors and artificially boost share prices.

- **Role of Appellant:** N. Narayanan, a promoter and whole-time director of PSTL, was held responsible for approving and disseminating false financial statements.
- **SEBI's Action:** SEBI investigated and concluded that the company and its directors had violated **Section 12A of the SEBI Act, 1992** and provisions of the **SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (PFUTP Regulations)**.
- **Appeal:** Narayanan challenged SEBI's adjudication order, arguing that he should not be personally liable for the company's misstatements.

FINDINGS OF THE SUPREME COURT

The Supreme Court dismissed Narayanan's appeal and upheld SEBI's order, making several important observations:

- **Fiduciary Duty of Promoters/Directors:** The Court emphasized that promoters and directors owe a **fiduciary duty of honesty and transparency** to investors. Misleading disclosures amount to a breach of this duty.
- **SEBI's Powers:** The Court reaffirmed SEBI's wide powers under the SEBI Act to protect investors and maintain market integrity, even against unlisted or promoter-driven misconduct.
- **Investor Confidence:** The judgment highlighted that **investor confidence is the bedrock of capital markets**, and any attempt to manipulate disclosures undermines the system.
- **Personal Accountability:** The Court held that Narayanan, as a promoter-director, could not escape liability by shifting blame to the company or other officers.

CONCLUSION

Promoter-led corporate fraud in India reveals a paradox at the heart of corporate governance: the very individuals entrusted with nurturing enterprise often become the architects of its betrayal. This study has shown that while the Companies Act, SEBI Regulations, and the Bharatiya Nyaya Sanhita provide a comprehensive legal framework, enforcement remains inconsistent and reactive. Landmark scandals such as Satyam, IL&FS, and DHFL demonstrate how fiduciary duties are routinely compromised, and how institutional inertia allows misconduct to flourish behind the veil of incorporation.

Comparative insights from the UK, US, and Singapore highlight that India's challenge is not the absence of law, but the absence of certainty in its application. Stronger whistleblower protections, faster adjudication, and clearer codification of promoter duties are essential to bridge the gap between legal theory and enforcement reality. More importantly, the culture of corporate governance must evolve beyond compliance to embrace transparency and ethical accountability as non-negotiable norms.

Ultimately, the future of India's corporate ecosystem depends on whether ambition can be balanced with responsibility. The law must not merely respond to fraud after it occurs, but anticipate and prevent it. Only then can the veil of incorporation cease to be a shield for abuse and instead become a framework for trust, innovation, and sustainable enterprise.

SUGGESTIONS & RECOMMENDATIONS

1. Strengthen Statutory Clarity and Enforcement –

- Amend **Section 2(69)** of the *Companies Act, 2013* to provide a more precise and enforceable definition of "promoter," especially in post-incorporation contexts.

- Introduce specific provisions for promoter liability in cases of fund diversion, misrepresentation, and shell company creation.
- 2. Enhance SEBI's Investigative and Enforcement Powers –**
 - Empower SEBI with real-time surveillance tools and forensic capabilities to detect promoter-led fraud early.
 - Establish fast-track adjudication mechanisms for promoter misconduct to reduce procedural delays.
- 3. Mandate Transparent Disclosures and Declassification Norms –**
 - Require promoters to disclose beneficial ownership, related-party transactions, and offshore holdings in a standardized format.
 - Introduce time-bound declassification norms for promoters who no longer hold controlling interest, to prevent regulatory arbitrage.
- 4. Institutionalize Whistleblower Protection –**
 - Create an independent whistleblower protection authority under the Ministry of Corporate Affairs.
 - Offer legal immunity and financial incentives to insiders who report promoter-led fraud.
- 5. Apply Judicial Doctrines More Consistently –**
 - Encourage courts to invoke *piercing the corporate veil* and *promoter liability beyond incorporation* in cases involving egregious fraud.
 - Develop judicial guidelines for assessing promoter intent and fiduciary breach.
- 6. Promote Cross-Border Cooperation –**
 - Strengthen India's participation in international enforcement networks like IOSCO and FATF to trace promoter assets and shell entities abroad.
 - Sign bilateral treaties for mutual legal assistance in corporate fraud investigations.
- 7. Learn from Global Best Practices –**
 - Adapt elements of the **Sarbanes-Oxley Act (USA)** for promoter accountability, including CEO/CFO certification of financial statements.
 - Emulate the **UK's fiduciary enforcement model** and **Singapore's swift regulatory action** to build a culture of ethical governance.
- 8. Foster Corporate Ethics and Governance Culture –**
 - Introduce mandatory ethics training for promoters and directors during incorporation and listing.
 - Encourage independent board oversight and shareholder activism to counter promoter dominance.

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