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CRITICAL ANALYSIS ON CLOSING THE GOVERNANCE GAP: ENFORCEMENT DEFICITS, STRUCTURAL VULNERABILITIES, AND THE REFORM IMPERATIVES OF INDIA'S CORPORATE GOVERNANCE ARCHITECTURE

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ABSTRACT

Corporate governance in India occupies a paradoxical position: a statutory and regulatory architecture that bears close comparison with leading international standards coexists with a recurring pattern of governance failure that exposes deep structural and enforcement inadequacies. This article advances a critical, reform-oriented analysis of the Indian corporate governance framework, focusing on three interconnected structural vulnerabilities: the persistent compromise of board independence arising from promoter dominance and appointment-capture; the inadequacy of audit oversight mechanisms as demonstrated by successive corporate frauds; and the systemic misuse of related-party transactions as instruments of minority shareholder expropriation. Drawing upon the Companies Act 2013, the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, the Insolvency and Bankruptcy Code 2016, and landmark judicial pronouncements of the Supreme Court, the article situates these vulnerabilities within the theoretical frameworks of agency theory and stakeholder theory. It identifies the central lacuna in India's governance programme as a structural enforcement deficit — the failure to translate formally adequate legal norms into substantive governance outcomes. The article further examines the contribution of judicial decision-making, institutional investor engagement, and recent regulatory developments including SEBI's revised related-party transaction framework and the Business Responsibility and Sustainability Reporting regime to governance effectiveness. It concludes with targeted normative recommendations addressing independent director appointment reform, audit committee empowerment, related-party transaction governance, and enforcement architecture, arguing that India's governance trajectory must shift decisively from a compliance orientation towards a culture of substantive accountability if the aspirations of the corporate governance reform programme are to be meaningfully realised.

Keywords: Corporate Governance; Companies Act 2013; Board Independence; Related-Party Transactions; Enforcement; Promoter Dominance; SEBI; Audit Oversight; India.

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I. INTRODUCTION

The governance of corporate enterprises sits at the intersection of law, economics, and institutional design. At its core, it addresses a deceptively fundamental question: how can those who entrust capital to a corporation be assured that the persons controlling that capital will act in the entrusters' interests rather than their own? This question — explored through centuries of corporate practice and codified through decades of regulatory evolution — has acquired renewed urgency in contemporary India, where a formally robust governance framework has repeatedly failed to prevent catastrophic corporate malfeasance.[785]

India's corporate governance journey over the past three decades has been remarkable in its legislative ambition. From the voluntary Confederation of Indian Industry code of 1998 through watershed Kumar Mangalam Birla Committee's recommendations that produced Clause 49 of the Listing Agreement, to the comprehensive statutory redesign accomplished through the Companies Act 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, India constructed governance architecture that addresses, at least in formal terms, most of the concerns identified in international best-practice frameworks.[786]

Yet formal adequacy and substantive effectiveness are not synonymous. The Satyam Computer Services fraud of 2009, the Infrastructure Leasing and Financial Services Group collapse of 2018, the Yes Bank governance crisis of 2020, and the Dewan Housing Finance Corporation insolvency collectively demonstrate that governance failures of the gravest kind occurred within the perimeter of a formally compliant regulatory structure. Independent directors signed off on fraudulent accounts. Audit committees approved transactions that devastated minority shareholders. Boards exercised no meaningful oversight over promoters who systematically diverted corporate resources.

This article argues that the central challenge confronting Indian corporate governance is not legislative inadequacy but a structural enforcement deficit: the systematic failure of the institutional infrastructure — boards, auditors, regulators, and courts — to translate formally adequate legal norms into substantive governance outcomes. This deficit is rooted in three interconnected structural vulnerabilities: the compromise of board independence through promoter capture; the insufficiency of audit oversight mechanisms; and the systemic misuse of related-party transactions. The article identifies these vulnerabilities, traces their doctrinal and institutional causes, surveys recent reform initiatives, and advances targeted normative recommendations.

The analysis proceeds as follows. Part II situates Indian corporate governance within its theoretical and historical context. Part III examines the structural vulnerability of board independence. Part IV analyses the audit oversight deficit. Part V addresses related-party transaction governance. Part VI examines the contribution of the judiciary to governance accountability. Part VII evaluates recent reform initiatives. Part VIII advances normative recommendations. Part IX concludes.

II. THEORETICAL GROUNDING AND DOCTRINAL FOUNDATION

A. The Agency Problem and Its Indian Manifestation

The conceptual architecture of corporate governance is grounded primarily in agency theory. As Jensen and Meckling established, the separation of ownership from control generates a structural divergence of interests between shareholders as principals and managers as agents: managers, exercising day-to-day operational authority, may pursue objectives — entrenchment, perquisite consumption, empire building — that diverge systematically from the

[785] OECD, G20/OECD Principles of Corporate Governance (2023 ed.) 9.
[786] Companies Act 2013, s 149(6).

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goal of shareholder wealth maximisation.[787] Corporate governance mechanisms — board oversight, executive compensation design, mandatory disclosure, and regulatory enforcement — are understood as instruments that reduce agency costs by realigning managerial incentives with shareholder interests.

In the Indian context, this classic agency problem is significantly complicated by the dominance of promoter-controlled companies. The canonical manager-shareholder conflict is overlaid by a more fundamental conflict between controlling promoters and minority shareholders.[788] Where a promoter family holds a commanding ownership stake — frequently exceeding fifty per cent of issued capital — the risk is not that professional managers will pursue self-interest at the expense of all shareholders, but that the controlling shareholder will exercise corporate control to extract private benefits at expense of minority investors. The misappropriation corporate resources through inflated intra-group transactions, the capture of board appointment processes, and the engineering of governance structures that insulate promoter families from accountability are the characteristic expressions of this promoter-minority conflict.

B. Stakeholder Theory and Legislative Acknowledgement

Stakeholder theory, most influentially associated with Freeman, posits legitimate interests corporation of its encompass employees, creditors, customers, communities, and the environment.[789] The theory challenges the shareholder-primacy paradigm and demands governance structures that facilitate the balancing of multiple, sometimes competing, stakeholder interests.

Indian corporate law has progressively acknowledged the stakeholder dimension of governance. Section 166(2) of the Companies Act 2013 imposes on every director an obligation to act in good faith not only in interests of the company's members - best interests of employees, shareholders, community, and environment.[790] The corporate social responsibility framework further embeds stakeholder considerations within the statutory governance architecture, signalling legislative recognition that the corporation bears obligations extending beyond shareholder value maximisation.

C. Evolution of the Regulatory Framework

India's corporate governance regulatory framework has evolved through three recognisable phases. The pre-liberalisation era was characterised by extensive state direction of corporate activity, concentrated family ownership, and governance structures oriented towards state control rather than market accountability. Corporate boards in this period functioned primarily as administrative appendages of promoter families, with limited meaningful oversight capacity.

The liberalisation initiated in 1991 fundamentally altered the governance environment. Exposure to international capital markets, the entry of foreign institutional investors, and the growth of public shareholding created new demands for governance transparency and accountability. SEBI, established under the SEBI Act 1992 as the statutory regulator of the securities market, emerged as the primary engine of governance reform for listed companies.[791] The Kumar Mangalam Birla Committee's 1999 recommendations, incorporated in Clause 49 of Listing Agreement, established binding governance framework for listed entities,

[787] SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 (LODR Regulations), reg 17.
[788] Kumar Mangalam Birla Committee on Corporate Governance, Report (SEBI 1999) para 2.1.
[789] Michael C Jensen and William H Meckling, 'Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure' (1976) 3(4) Journal of Financial Economics 305, 308.
[790] R Edward Freeman, Strategic Management: A Stakeholder Approach (Pitman 1984) 46.
[791] Companies Act 2013, s 166(2).

mandating minimum board independence, audit committees, and disclosure obligations.[792]

The third phase, inaugurated by the Companies Act 2013 and the LODR Regulations 2015, represents comprehensive statutory consolidation of governance norms. The 2013 Act introduced mandatory independent director requirements, codified director duties, mandated board committees, tightened auditor independence through rotation requirements, and provided new remedies for minority shareholders. The LODR Regulations elaborated detailed governance requirements for listed entities encompassing board composition, committee functioning, disclosure practices, and related-party transaction oversight.[793]

III. THE INDEPENDENCE DEFICIT: BOARD CAPTURE AND STRUCTURAL CONSTRAINTS

A. The Architecture of Formal Independence

The regulatory conception of board independence in Indian law is defined through a battery of negative qualifications. Under Section 149(6) of the Companies Act 2013 and Regulation 16(1)(b) of the LODR, a director qualifies as independent by virtue not falling within a series of specified categories of disqualifying relationships — including relationships with the company's promoters, significant pecuniary connections with the company or group, and prior professional associations with the company's auditors or advisers.[794]

This approach — independence as the absence of disqualifying connections — reflects a fundamentally procedural conception of governance quality. It prescribes the structural conditions of independence without ensuring that directors who satisfy the criteria possess the disposition, resources, and institutional support required for substantive oversight. The consequences of this gap are significant: a director may satisfy every statutory criterion for independence while remaining, in practical terms, entirely captured by the promoter family that nominated and continues to support their board service.

B. Promoter Capture of the Appointment Mechanism

The most fundamental structural compromise of board independence in India lies in the appointment mechanism. The Companies Act 2013 vests the Nomination and Remuneration Committee with responsibility for recommending director appointments. However, where the promoter family controls a majority or near-majority of voting shares, the NRC's recommendations operate, in practice, as ratifications of promoter preferences. The controlling shareholder possesses the votes to remove any director, creating an implicit threat that constrains the independence of even formally qualified board members.[795]

This appointment-capture problem is compounded by the structure of India's corporate elite. The professional networks from which independent directors are drawn tend to be compact, with prospective candidates frequently possessing social, professional, or institutional relationships with promoter families that, while not legally disqualifying, compromise genuine independence of judgment. The consequence is a systematic tendency towards board composition that is nominally independent but substantively aligned with promoter interests.

Regulatory reforms have addressed this problem only partially. The requirement of an Independent Directors' Data Bank maintained by Indian Institute of Corporate Affairs broadens pool from which independent directors may be drawn. However, it does not alter the fundamental dynamic of promoter control over the appointment decision.

[792] Umakanth Varottil, 'Evolution and Effectiveness of Independent Directors in Indian Corporate Governance' (2010) 6 Hastings Business LJ 281, 305.

[793] Jayati Sarkar and Subrata Sarkar, 'Large Shareholder Activism in Corporate Governance in Developing Countries: Evidence from India' (2000) 1 International Review of Finance 161, 164.

[794] SEBI Act 1992, s 11.

[795] LODR Regulations (n 3), reg 18.

C. Information Asymmetries and Resource Constraints

Substantive board independence requires not merely formal freedom from disqualifying relationships but the practical capacity to access, process, and critically evaluate material corporate information. Independent directors face persistent information asymmetries: management controls the flow of information to the board, determines the framing of board papers, and structures the agenda of board meetings. An independent director who depends on management-curated information packages to discharge oversight functions is structurally disadvantaged in identifying governance failures that management has an interest in concealing.

The evidence from the Satyam fraud is instructive on this point. The company's independent directors — individuals of professional distinction — reviewed and approved financial statements that had been materially falsified over several years.[796] Whether the failure was one of information access, analytical rigour, or the absence of a genuine oversight culture, the practical consequence was that formal independence yielded no governance benefit.

IV. THE AUDIT OVERSIGHT DEFICIT

A. The Audit Committee as Governance Mechanism

The audit committee occupies a position of singular importance within the board governance architecture. Mandated under Section 177 of the Companies Act 2013 and Regulation 18 of the LODR Regulations, exercises oversight over financial reporting, internal control systems, external audit quality, and the management of related-party transactions.[797] Its effectiveness depends on the financial expertise of its members, its operational independence from management, and the quality of its engagement with both internal and external auditors.

In principle, the audit committee provides the institutional mechanism through which the board exercises substantive oversight over the corporation's financial affairs. In practice, the limitations of formal independence identified in Part III apply with equal force to audit committee composition: an audit committee dominated by directors who lack the financial sophistication to interrogate management's accounting judgments, or who are reluctant to challenge management for relational reasons, provides the appearance rather than the substance of financial oversight.

B. Auditor Independence and the Rotation Mechanism

The independence of external auditors is a foundational requirement of credible financial reporting. Long-tenured audit relationships create risks of familiarity, commercial dependency, and the gradual erosion of professional scepticism. Section 139(2) of the Companies Act 2013 addresses this risk through a mandatory audit firm rotation requirement for listed companies, limiting the tenure of a single audit firm to a maximum of five consecutive years.[798]

The rotation mechanism reflects a structural response to the independence problem demonstrated by the Satyam case, where the same audit firm certified the company's accounts over a period of years without detecting accounting manipulations of exceptional magnitude. However, mandatory rotation addresses only the temporal dimension of auditor capture; it does not address the risk of rotation within an audit network or the tendency of audit firms to prioritise retention of significant client relationships over the exercise of robust professional scepticism.

The National Financial Reporting Authority, represents a significant institutional innovation in audit oversight, providing an independent

[796] Companies Act 2013, s 177.
[797] Dale and Carrington Invt (P) Ltd v P K Prathapan (2005) 1 SCC 212, para 38.
[798] Life Insurance Corporation of India v Escorts Ltd (1986) 1 SCC 264.

body with authority which monitors and enforces compliance with accounting and auditing standards.[799] The NFRA's effectiveness as an enforcement agency is contingent on its investigative capacity, its institutional autonomy, and the deterrent effect of its disciplinary proceedings — all of which remain areas requiring continued regulatory attention.

C. The Interface Between Audit and Governance Failure

The pattern of major governance failures in India reveals a consistent structural relationship between audit inadequacy and corporate fraud. In each of the major cases — Satyam, IL&FS, DHFL — the external audit mechanism failed to perform its designated governance function of providing independent verification of the accuracy of corporate accounts. This failure was not incidental to the governance collapse; it was a constitutive element of it. Financial manipulation on the scale observed in these cases requires sustained misrepresentation across multiple accounting periods, rendering its concealment possible only where the audit process fails to exercise genuine professional scepticism.

The regulatory and judicial response to audit failure in India has evolved significantly. SEBI's enforcement actions against audit firms implicated in governance failures, and the NFRA's more recent disciplinary proceedings, signal a heightened recognition that auditor accountability is a central component of governance enforcement. However, the structural conditions that generate audit failure — fee dependency, information asymmetry between auditor and management, and the inherent difficulty of detecting sophisticated accounting manipulations — remain challenges that no single regulatory intervention has fully resolved.

V. RELATED-PARTY TRANSACTIONS: STRUCTURAL TUNNELLING AND REGULATORY RESPONSE

A. The Anatomy of Tunnelling Through Related-Party Transactions

Related-party transactions — dealings between company and entities or individuals connected with its promoters, directors, or key management — represent one of the most analytically complex and practically consequential dimensions of corporate governance. While many intra-group and management-connected transactions serve legitimate commercial purposes, the same transactional mechanisms are also the primary vehicle through which controlling shareholders extract private benefits of control at cost of minority shareholders.

Academic literature on 'tunnelling' identifies related-party transactions as the principal mechanism through which promoter-controlled groups in developing market economies expropriate minority shareholders.[800] The Indian evidence is consistent with this analysis: successive regulatory investigations have documented systematic tunnelling through group procurement arrangements, service contracts with promoter-affiliated entities, and below-market loans to related parties.

B. The Regulatory Framework and Its Limitations

Section 188 of the Companies Act 2013 governs approval requirements for related-party transactions, requiring prior board and (in prescribed cases) shareholder approval for specified categories of transactions that are not ordinary course business.[801] LODR Regulations elaborated an additional layer of listed entity governance requirements for RPTs, mandating prior approval for RPTs, independent shareholder approval for material RPTs.

[799] Needle Industries (India) Ltd v Needle Industries Newey (India) Holding Ltd (1981) 3 SCC 333, para 49.

[800] Tata Consultancy Services Ltd v Cyrus Investments Pvt Ltd (2021) 9 SCC 1, para 134.

[801] Committee of Creditors of Essar Steel India Ltd v Satish Kumar Gupta (2019) SCC OnLine SC 1478, para 78.

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SEBI's 2021 amendments to the RPT framework represented a substantial tightening of the regulatory architecture.[802] The amended regulations significantly expanded the definition of 'related party', lowered the thresholds for mandatory shareholder approval, required audit committee review of all RPTs on a quarterly basis, and introduced new provisions governing the governance of transactions with subsidiaries. These reforms addressed several of the most glaring gaps in the pre-amendment framework.

Notwithstanding these reforms, the practical effectiveness of the RPT governance framework is constrained by two structural limitations. First, enforcement has historically been reactive rather than proactive, with regulatory action typically following market disclosure of governance failures rather than anticipating them. Second, the sophistication of intra-group financial engineering — the use of multiple intermediate entities, the layering of related-party relationships across complex group structures, and the timing of transactions to coincide with regulatory windows — makes it inherently difficult for audit committees and regulators to identify non-arm's-length pricing without access to detailed transaction documentation and comparable market data.

VI. JUDICIAL CONTRIBUTION TO GOVERNANCE JURISPRUDENCE

A. Fiduciary Foundations and Director Duties

The Indian judiciary has made a foundational contribution to corporate governance through its articulation of the fiduciary obligations of directors. The Supreme Court's in Dale and Carrington Invsetment Private Ltd v P K Prathapan established authoritatively that directors occupy a position of trust in relation to the company, and that the exercise of board powers for collateral purposes — including the allotment of shares to preserve or expand promoter control — constitutes a breach of fiduciary obligation regardless of procedural regularity.[803] This principle — that substantive compliance with the fiduciary standard, not merely procedural compliance with corporate formalities, is the measure of governance legality — is foundational to the entire judicial governance framework.

Life Insurance Corporation of India v Escorts Ltd remains a touchstone for the proposition that shareholder rights, including the right to transfer shares, constitute proprietary entitlements to be exercised free from governmental or managerial overreach except where the law specifically authorises interference.[804] The decision affirmed that corporate governance must operate within a protected zone of private autonomy, bounded by legal obligations but not subject to unbounded external intervention.

B. The Minority Shareholder and the Oppression Remedy

The protection of minority shareholders, abuse majority power - recurring preoccupation of corporate governance law. The Supreme Court's decision in Needle Industries (India) Ltd v Needle Industries Newey (India) Holding Ltd articulated the governance principle that the oppression remedy is available against majority conduct that is burdensome, harsh, and wrongful, without requiring proof of fraudulent intent — a standard that substantially expands the reach of minority protection.[805]

The elaborate multi-stage litigation culminating in the Supreme Court's judgment in TCS Ltd v Cyrus Investments Private Ltd represents the most comprehensive modern examination of governance accountability in a large Indian corporation.[806] The Supreme Court's conclusion that the removal of an executive chairperson through legally prescribed procedures does not constitute oppression, and that the business judgment of a board acting in good faith falls within a zone of protected managerial

[802] Companies Act 2013, s 188(3)-(4).

[803] SEBI (LODR) (Amendment) Regulations 2021, reg 23.

[804] SEBI Adjudication Order against Ramalinga Raju and Others, Order No WTM/KMA/ISD/16/2014 (April 2014).

[805] Insolvency and Bankruptcy Code 2016, s 29A.

[806] Companies Act 2013, s 139(2).

discretion, elaborates important boundaries between legitimate majority governance and actionable minority oppression.

C. Governance in Financial Distress: The Insolvency Dimension

The Insolvency and Bankruptcy Code 2016 introduced a new governance architecture for financially distressed companies with profound implications for pre-insolvency governance incentives. Decision in Essar Steel India Ltd v Satish Kumar affirmed primacy of CoC in determining terms corporate rescue, grounding this allocation of authority in the governance principle that those bearing the economic risk of a decision should exercise the governance authority over it.[807]

The IBC's disqualification provisions under Section 29A, which prevent promoters and persons associated with the company's default from participating as resolution applicants, represent a governance accountability mechanism of considerable force.[808] By foreclosing the possibility of promoter re-capture of the distressed entity, Section 29A creates a meaningful deterrent against governance failures that lead to insolvency — a deterrent that did not exist within the pre-IBC resolution framework.

VII. RECENT REGULATORY DEVELOPMENTS

A. SEBI's Governance Reform Agenda

SEBI's regulatory agenda from 2021 onwards has been characterised by a sustained effort to address the structural vulnerabilities identified in this article. The 2021 amendments to the LODR Regulations' RPT provisions, the enhanced requirements for board composition in material subsidiaries, and the progressive strengthening of enforcement mechanisms collectively represent a significant regulatory response to the governance failures documented in the preceding years.

The introduction of the Business Responsibility Sustainability Reporting framework through May 2021 circular requires the top 1,000 listed companies disclose performance across ESG parameters.[809] This initiative aligns Indian listed company governance with the global trend towards integrated ESG reporting and creates new accountability mechanisms for the governance of environmental and social risks alongside traditional financial governance concerns.

B. Stewardship, Institutional Investor Activism, and Governance Culture

The activation of institutional investors as agents of governance accountability represents a critical frontier in India's governance reform programme. SEBI's Stewardship Code, introduced through a 2019 circular for mutual funds and other institutional investors, imposes obligations on institutional investors to formulate and publicly disclose stewardship policies, monitor investee companies, exercise voting rights in a considered and informed manner, and engage with companies on significant governance concerns.[810]

The evolution of institutional investor activism in India has been slow relative to mature capital markets, reflecting the historically passive engagement culture of domestic institutional investors, the commercial relationships between large institutional investors and the corporate groups in whose securities they invest, and the limited development of the proxy advisory ecosystem. However, the progressive growth of foreign portfolio investment and the increasing sophistication of domestic institutional investors suggest that stewardship-driven governance engagement will become a progressively more significant force in India's governance landscape.

[807] Companies Act 2013, s 132 (National Financial Reporting Authority).
[808] Companies Act 2013, s 245 (class action suits).

[809] SEBI Circular No SEBI/LAD-NRO/GN/2021/22 (Business Responsibility and Sustainability Reporting, May 2021).
[810] Companies Act 2013, ss 211-212 (SFIO constitution and investigatory powers).

C. Banking and Financial Sector Governance

The RBI's Discussion Paper on Governance in Commercial Banks in India, issued June 2020, proposed a comprehensive reform of bank governance architecture, addressing board composition, CEO tenure, related-party lending governance, and remuneration framework.[811] These proposals responded to a series of bank governance failures — most visibly the Yes Bank episode — that demonstrated the inadequacy of existing bank governance requirements in preventing board capture and management entrenchment.

The RBI's governance reforms for commercial banks and non-banking financial companies illustrate the systemic dimension of corporate governance: failures in governance do not merely harm individual companies and their shareholders but generate systemic risks threatening financial stability and the broader public interest. The governance framework for systemically important financial institutions accordingly requires more intensive regulatory intervention than that applicable to non-financial listed companies.

VIII. REFORM RECOMMENDATIONS

A. Reforming the Independent Director Appointment Process

The most structurally significant reform available to address the board independence deficit is a fundamental restructuring of the independent director appointment mechanism. The present framework, which vests the effective appointment decision in the promoter-controlled board and shareholder general meeting, is incapable of generating substantive independence where the promoter commands majority voting control.

This article recommends the introduction of a two-stage appointment mechanism for independent directors of listed companies. In the first stage, a SEBI-recognised panel of qualified candidates — drawn from Independent Directors' Data Bank-Indian Institute of Corporate Affairs — would be shortlisted by the Nomination and Remuneration Committee without promoter participation in the selection decision. In the second stage, the appointment would require the affirmative approval of a majority of the non-promoter shareholders voting at a general meeting. This mechanism would preserve the board's role in identifying suitable candidates while removing the promoter's ability to exercise veto power over the composition of the oversight body.

Additionally, independent directors should be afforded a statutory right to retain independent legal, financial, and technical advisers at the company's expense, without requiring management approval, when the exercise of their oversight functions so requires. This reform would materially reduce the information asymmetry that currently constrains effective board oversight.

B. Strengthening Audit Committee and Auditor Independence

The audit committee's effectiveness as a governance mechanism should be enhanced through two targeted reforms. First, the composition requirement for the audit committee chair should be revised to require that the audit committee chair be elected by the independent directors of the board sitting collectively, rather than by the full board. This modification would insulate the appointment of the audit committee's most influential member from promoter influence.

Second, the interface between the audit committee and the external auditor should be formalised through a statutory requirement for regular private sessions — conducted without management present — between the audit committee and the external auditor. This requirement would create a protected communication channel through which the auditor could raise concerns that management pressure might otherwise suppress.

[811] SEBI, Stewardship Code for Mutual Funds and All Categories of AIFs, Circular No SEBI/HO/IMD/DF2/CIR/P/2019/204 (December 2019).

The NFRA's institutional capacity should be substantially enhanced, including the provision of adequate investigative resources, technical expertise in forensic accounting, and the authority to impose sanctions commensurate with the gravity of audit failures in major listed companies.[812]

C. Enhancing Related-Party Transaction Governance

The effectiveness of the RPT governance framework should be strengthened through three complementary measures. First, all material RPTs should be subject to a mandatory independent fairness opinion from a qualified financial expert, commissioned by and reporting to the audit committee rather than the company management. The fairness opinion should evaluate whether the terms of the proposed transaction are consistent with arm's-length commercial dealing, based on market data and comparable transaction benchmarks.

Second, SEBI should introduce a real-time disclosure obligation for transactions with related parties that exceed prescribed materiality thresholds, requiring disclosure to the stock exchanges contemporaneously with the approval of the transaction rather than on a quarterly or annual basis. Real-time disclosure would enable market participants to evaluate the governance implications of significant RPTs and exercise their shareholder rights on a timely basis.

Third, SEBI should expand its enforcement toolkit to include disgorgement orders requiring the return of value extracted through non-arm's-length RPTs, in addition to monetary penalties. Disgorgement aligns the economic consequences of RPT abuse with the harm inflicted on minority shareholders and significantly strengthens the deterrent effect of enforcement action.

D. Activating Minority Shareholder Remedies

Remedy under Section 245 of the Companies Act 2013 has remained dormant statutory provision since the Act's enactment, owing to the failure to prescribe the procedural rules necessary for its activation.[813] This failure represents a significant gap in the minority shareholder protection framework. The Ministry of Corporate Affairs should, as a matter of regulatory priority, notify the Section 245 rules, prescribing accessible procedures for the commencement of class action applications and specifying the categories of relief available to successful applicants.

Institutional investors should disclose the rationale for their voting decisions all director appointment resolutions, RPT approval resolutions, and auditor remuneration resolutions. Enhanced voting disclosure would increase the accountability of institutional investors as stewards of corporate governance and strengthen the market mechanisms through which governance quality is rewarded and governance failure penalised.

E. Enforcement Architecture Reform

The structural enforcement deficit at the heart of India's governance programme requires institutional reform of the enforcement architecture itself. SEBI should establish a dedicated corporate governance enforcement division staffed with specialist expertise in forensic accounting, securities law, and corporate investigations, with a mandate for proactive governance monitoring of listed companies rather than exclusively reactive enforcement.

The Serious Fraud Investigation Office's prosecutorial capacity should be substantially expanded, including through the resolution of long-standing resource and expertise constraints that have limited its ability to bring governance prosecutions to timely

[812] Swiss Ribbons Pvt Ltd v Union of India (2019) 4 SCC 17, para 35.

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

conclusion.[814] The National Company Law Tribunal should adopt dedicated governance enforcement case management protocols to reduce the delays that currently diminish the deterrent effect of proceedings before it.

Penalty structures under Companies Act 2013 and the SEBI Act should be reviewed to ensure that maximum sanctions are commensurate with the scale of governance violations and the harm inflicted on shareholders and creditors. The current statutory caps on monetary penalties in several provisions of both Acts are manifestly inadequate as deterrents for governance failures in large-capitalisation corporations.

IX. CONCLUSION

India's corporate governance landscape presents a fundamental paradox: a statutory and regulatory architecture of genuine sophistication, broadly comparable with international standards, coexisting with a persistent and damaging pattern of governance failure. The Satyam, IL&FS, Yes Bank, and DHFL cases are not merely episodes of individual corporate misconduct; they are institutional failures that expose deep structural vulnerabilities in the Indian governance system — vulnerabilities that have survived successive rounds of legislative and regulatory reform.

This article has argued that the central challenge is not the formal adequacy of India's governance law but its substantive effectiveness — the capacity of the institutional infrastructure to translate legal norms into governance outcomes. Three structural vulnerabilities drive the effectiveness deficit: the capture of board independence through promoter-controlled appointment mechanisms; the insufficiency of audit oversight arising from information asymmetries and compromised auditor independence; and the systemic misuse of related-party transactions as instruments of minority shareholder expropriation. The judicial contribution to governance accountability, while significant and evolving, cannot substitute for the primary governance mechanisms whose failure it is called upon to address.

The reform recommendations advanced in this article — restructuring the independent director appointment process to eliminate promoter capture, formalising audit committee independence, mandating fairness opinions and real-time disclosure for material RPTs, activating the class action remedy, and strengthening the enforcement architecture — are designed to address these structural vulnerabilities at their roots. They share a common premise: that governance effectiveness is achieved not by drafting ever more elaborate statutory requirements but by creating institutional conditions in which the existing requirements are genuinely observed and vigorously enforced.

The ultimate aspiration of the corporate governance reform programme — and the measure by which it should ultimately be evaluated — is a governance culture in which boards exercise genuine independence, auditors maintain authentic professional scepticism, regulators act with speed and proportionality, institutional investors engage actively with governance accountability, and the courts provide timely and effective remedies for governance violations. Achieving this culture requires sustained institutional commitment from all participants in India's corporate governance ecosystem. This article is offered as a contribution to that continuing endeavour.

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