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## Independent Directors as Regulatory Shock Absorbers: Accountability without Authority in Indian Corporate Governance

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*The independent directors have taken a pivotal role in the Indian corporate governance system and have been given a wide range of oversight duties as per the Companies Act, 2013 and the listing regulations of the Securities and Exchange Board of India. They are supposed to protect the interests of the stakeholders, maintain financial integrity and avert corporate misconduct. But with this increase of responsibilities has not been an equal increase of power, of control, of informational independence. The article posits that the Indian corporate governance has created a structural paradox where the independent directors are tasked with the responsibility of governance outcomes that they are institutionally ill-positioned to affect. The paper conceptualises independent directors as regulatory shock absorbers, actors that absorb post-crisis scrutiny and reputational costs but lack effective decision-making power through an analysis of statutory design, regulatory architecture, and board-level procedures. Although the statutory framework focuses on procedural vigilance by the participation of boards, scrutiny by committees, and documented dissent, these measures are all working within management-dominated information channels and promoter-dominated power regimes. The article shows that the lack of substantive authority cannot be replaced by relying on procedural safeguards and that formalisation of compliance may only be used to cover the underlying governance asymmetry. It also places this issue in the context of the wider issue of promoter dominance and misplaced governance transplants, in which models designed to be used in dispersed-ownership jurisdictions are used in concentrated ownership systems. The article finds that any meaningful reform would entail a rebalancing of governance expectations so that accountability comes after authority and not an increase in the number of responsibilities placed on independent directors.*

**Keywords:** *independent directors, liability, shock absorbers, powerless.*

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## INTRODUCTION

**Independent Directors and the Governance Paradox in India:** The role of independent directors in the modern Indian system of corporate governance takes a central place. The role of statutory reforms in the Companies Act 2013, and the listing regulations of the Securities and Exchange Board of India, has increasingly grown, and the role of statutory reforms is now that of a neutral overseer mandated to protect the interests of the stakeholders, maintain financial integrity and curb managerial excesses. Theoretically, the independent director is supposed to act as a check on concentrated corporate power and add objectivity, expertise, and accountability to the decision-making process of the board. This notion is echoed in Section 149 of the Companies Act 2013<sup>1</sup> and the Code of Independent Directors in Schedule IV,<sup>2</sup> which carry with them a heavy burden of monitoring and fiduciary duties on such directors.

But the recent corporate failures and post-crisis regulatory measures have revealed a long-standing conflict between the demands placed on independent directors and the institutional reality in which they have to work. Such directors usually do not have operational control, investigative authority and independent access to information, although they are formally independent. These restrictions have been repeatedly recognised by judicial precedents, which have stated that no non-executive and independent directors may be held liable unless there are specific allegations of active participation or awareness of the offending behaviour, which was reaffirmed by the Supreme Court in *Sunil Bharti Mittal v Central Bureau of Investigation*<sup>3</sup> and *Pooja Devdasani v State of Maharashtra*.<sup>4</sup> These resolutions highlight the lack of managerial control of independent directors despite the growing governance roles.

However, when the failures of governance become evident, regulators often focus on the independent directors, who are often questioned about their hard work, supervision, and lack of ability to stop wrongdoing. This trend begs a basic question: can the independent

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<sup>1</sup> Companies Act 2013, s 149

<sup>2</sup> Companies Act 2013, sch IV

<sup>3</sup> *Sunil Bharti Mittal v CBI* (2025) 4 SCC 609

<sup>4</sup> *Pooja Ravinder Devidasani v State of Maharashtra and Ors* (2014) SCC OnLine SC 1020

directors be realistically said to be discharging the responsibilities that are bestowed on them under the Indian corporate law?

This paper claims that Indian corporate governance has created a structural paradox. The independent directors are becoming more and more a tool of regulatory assurance, supposed to predict, identify, and act on corporate misconduct and are denied the power and information independence to do so effectively. In this regard, independent directors can be seen as regulatory shock absorbers: they absorb institutional pressure, reputational damage, and enforcement attention after governance failures, thus shielding promoters and executive management against greater structural accountability.

## **HYPOTHESIS**

Independent directors in India possess a structurally limited capacity to fulfil their statutory governance duties, resulting in a persistent gap between regulatory expectations and effective oversight.

## **CONCEPTUAL FRAMEWORK**

**Independent Directors as ‘Regulatory Shock Absorbers’:** The notion of independent directors as ‘regulatory shock absorbers’ offers a useful conceptual framework to understand their evolving position in Indian corporate governance. In mechanical terms, a shock absorber does not prevent impact but mitigates its force to protect the larger structure. Analogously, independent directors are increasingly positioned to absorb regulatory pressure, reputational damage, and enforcement scrutiny following corporate governance failures, without materially altering the underlying allocation of corporate power.

This role has emerged alongside the expansion of formal governance responsibilities imposed on independent directors. Under the Companies Act 2013 and the Code for Independent Directors contained in Schedule IV, independent directors are entrusted with extensive oversight obligations, including safeguarding stakeholder interests, ensuring the integrity of financial reporting, and preventing misconduct.<sup>5</sup> SEBI’s listing regulations further reinforce this role by assigning independent directors dominant positions within

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<sup>5</sup> Companies Act 2013, s 149 and sch IV

audit committees and mandating their approval for related party transactions.<sup>6</sup> These frameworks collectively construct the independent director as a key internal governance safeguard.

However, these expectations coexist with structural constraints that limit the capacity of independent directors to influence corporate outcomes. Independent directors do not exercise control over day-to-day management, lack independent investigative authority, and remain dependent on information supplied by executive management. Judicial precedents have repeatedly recognised these limitations, emphasising that non-executive and independent directors cannot be presumed to possess control or knowledge of corporate wrongdoing in the absence of specific allegations demonstrating active involvement.<sup>7</sup> This doctrinal position implicitly acknowledges the restricted operational role of independent directors within promoter-dominated boards.

From a regulatory perspective, reliance on independent directors serves an important signalling function. Their presence enables regulators and market participants to infer compliance with governance norms, even where substantive power asymmetries persist being in line with the doctrine of indoor management.<sup>8</sup> When governance failures later surface, scrutiny is often directed at whether independent directors exercised adequate oversight, rather than at whether the governance framework itself enabled meaningful intervention. In this sense, independent directors function as buffers that absorb institutional accountability, allowing systemic governance failures to be individualised.

This framework does not suggest that independent directors are inherently ineffective or negligent. Rather, it highlights a structural misalignment between the preventive and monitoring duties imposed on them and the authority and informational autonomy required to discharge those duties effectively. By conceptualising independent directors as regulatory shock absorbers, this paper shifts the analytical focus from individual culpability to the

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<sup>6</sup> SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, regs 17, 18 and 23

<sup>7</sup> *Sunil Bharti Mittal v Central Bureau of Investigation* (2015) 4 SCC 609; *Pooja Ravinder Devidasani v State of Maharashtra & Ors* AIR 2015 SC 675

<sup>8</sup> Ayush Amar Pandey, 'THE DICHOTOMY BETWEEN THE DOCTRINE OF INDOOR MANAGEMENT AND THE DOCTRINE OF CONSTRUCTIVE NOTICE' (2022) 2(6) *International Journal for Legal Research and Analysis* <<https://www.ijlra.com/details/the-dichotomy-between-doctrine-of-indoor-management-and-doctrine-of-constructive-notice-by---ayush-amar-pandey->> accessed 07 December 2025

institutional design of Indian corporate governance, which routinely produces accountability without authority.

## STATUTORY AND REGULATORY DESIGN

**The Corporate Structure of Independent Directorship:** Section 149(8) makes the Code of Independent Directors in Schedule IV legally binding, so that what was formerly a soft governance norm has become a statutory obligation,<sup>9</sup> Schedule IV states that the role of independent directors is to protect the interests of stakeholders, maintain the integrity of financial information, manage risks, and prevent fraud and mismanagement.<sup>10</sup> The requirements of independence in Section 149(8) are broader and more preventative, and implicitly assume access to timely information and material influence over the board's decision-making.

Concurrently, Section 166 of the Act provides fiduciary obligations on all directors, including the obligation to act in good faith, with due care, skill and diligence, and in the best interests of the company, its employees, shareholders and the community.<sup>11</sup> When taken together, Sections 149 and 166 create a normative expectation that independent directors will serve as watchful guardians who can curb managerial and promoter excesses. Nonetheless, the Act does not give independent directors any special powers to impose compliance, to investigate, or to gain access to corporate information in any other way than through management channels.

This expectation is further enhanced by the regulatory environment of the Securities and Exchange Board of India (SEBI). The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, make independent directors' members of the central board committees, especially the audit committees and those charged with approving related party transactions.<sup>12</sup> Independent directors are expected to be the gatekeepers of the governance of the listed entities, although they are not in charge of their operations.

Simultaneously, the statutory scheme recognises, at least implicitly, the lesser role of independent directors. Section 149(12) limits their liability to acts of omission or commission

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<sup>9</sup> Companies Act, 2013, s 149(8)

<sup>10</sup> Companies Act 2013, sch IV

<sup>11</sup> Companies Act 2013, s 166

<sup>12</sup> SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, regs 17 and 18

that are committed with their knowledge, consent, connivance or where they have failed to act diligently.<sup>13</sup> This is because the legislature appreciates that independent directors do not manage the day-to-day operations of a corporation. Nevertheless, the norm of knowledge and diligence is open-textured and provides a lot of room for interpretation by the regulators and enforcement bodies.

The net result of this structure is the emergence of a supervisory position that is broad in scope but limited in power. The independent directors are charged with the responsibility of achieving governance results without being endowed with the means to achieve them. Although the law assumes vigilance, it lacks informational autonomy and enforcement ability. This institutional imbalance in the statutory and regulatory structure preconditions the post-crisis shift of the blame onto independent directors, even though the formal restrictions are recognised in other areas of the legal system.

**Board Dissent, Minutes, and the Limits of Procedural Safeguards:** The regulatory and statutory framework of independent directors implicitly presupposes that the material oversight can be affected by board-level procedures. Without operational control or investigative power, the independent directors are supposed to perform their functions by engaging in discussions, challenging the management, and documenting the objections or dissent in the board and committee minutes. These procedural mechanisms are regarded as the main instruments through which independent directors can be shown to be diligent, independent, and acting in accordance with their statutory duties.

This flows out of the Companies Act, 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015<sup>14</sup> structure. Code of Independent Directors in Schedule IV<sup>15</sup> focuses on active participation, control over financial integrity, and risk and compliance monitoring. On a similar note, committee-based governance as provided under the SEBI structure is founded upon discussion, review, and approval procedures, not control. Minutes of the board and documented dissent then gain greater value as indicators of participation and attention.

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<sup>13</sup> Companies Act 2013, s 149(12)

<sup>14</sup> Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015

<sup>15</sup> Companies Act 2013, sch IV

Nevertheless, these procedural safeguards have their own inherent limitations in their effectiveness, following the same structural constraints found in the statutory design. Dissent and deliberation are only allowed to work within the informational confines set by the management-controlled processes. The independent directors lack access to the corporate records, internal inquiries, or working data, and thus, they can only react to the issues that are formally presented to the board. Procedural compliance provides minimal substantive oversight in situations where disclosures are partial or skewed.

The documentation of dissent does not change the voting results or redistribute power in boards where the power is centralised. Although dissent can be a sign of disagreement, it does not offer the possibility to stop or undo the challenged decisions. Consequently, procedural mechanisms are more of documentary markers of oversight than of governance control.

The use of dissent and board minutes as proxy measures of effective oversight is a risk of over-formalisation of governance compliance. The framework assigns unequal weightage to record-keeping and formal objection and retains the power structures at the bottom of the process by equating procedural participation with substantive accountability. This strengthens the larger accountability-authority disparity: independent directors are judged based on their compliance with procedural expectations, but are not given tools to affect the outcomes in any significant manner.

In this perspective, the lack of authority and informational autonomy is not compensated for by board-level procedures. Rather, they demonstrate how the statutory regime replaces procedural vigilance with substantive control, which further entrenches the structural constraints of independent directorship that were found in the previous section.

## **JUDICIAL POSITION ON INDEPENDENT DIRECTOR LIABILITY**

Indian courts have often opposed the suggestion that independent or non-executive directors can be subject to liability, simply because they serve on the board. The judicial interpretation has pegged the director's liability to provable involvement, knowledge that can be attributed by board processes and lack of due diligence. This jurisprudence is an indication of a judicial knowledge of the narrow managerial and informational role held by independent directors in the corporate structures.

This position has been definitively explained in *Neera Saggi v Union of India*,<sup>16</sup> where the Supreme Court construed Section 149(12) of the Companies Act, 2013<sup>17</sup> as a shielding provision that is calibrated, as opposed to an absolute shield. The Court decided that the independent directors can only be liable for their acts or omissions with their knowledge, consent, connivance or where they have not acted diligently and that the knowledge must be attributable by processes of the board. The simple understanding of a breach or even being indirectly involved with consequential actions was not enough to be subject to liability. The ruling, therefore, focused on causation, board-level blame, and diligence and shunned any concept of automatic or status-related liability.

This practice is in line with the previous and later judicial declarations. In *Pooja Ravinder Devidasani v State of Maharashtra*,<sup>18</sup> the Supreme Court set aside criminal prosecution against a non-executive director based on the fact that a non-executive director is not part of the day-to-day running of the company and cannot be held to have operational knowledge unless the prosecution pleads such knowledge. The Court once again stated that the liability should be based on specific claims showing control or involvement, not on general claims of failure in oversight. This rigidity of pleadings has been reiterated in the case of *Sunita Palita v M/s Panchami Stone Quarry*<sup>19</sup>, in which the Court stated that general and omnibus allegations against non-executive directors are not sufficient to prove criminal liability.

A similar stance has been taken by the High Courts. In *Shantanu Rastogi v State of Karnataka*,<sup>20</sup> the Karnataka High Court made it clear that attending board meetings or the position of non-executive cannot be considered as liability, and it will be necessary to prove the active role and, where it is necessary, the mens rea. Similar logic can also be observed in regulatory jurisprudence. Applied to the case of insider trading, the Supreme Court in *Chintalapati Srinivasa Raju v SEBI*<sup>21</sup> did not support status-based liability, declaring that access to unpublished price-sensitive information should be found in fact and not because of designation.

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<sup>16</sup> *Neera Saggi v Union of India & Ors* (2021) SCC OnLine SC 239

<sup>17</sup> Companies Act 2013, s 149(12)

<sup>18</sup> *Pooja Ravinder Devidasani v State of Maharashtra and Ors* AIR 2015 SC 675

<sup>19</sup> *Sunita Palita & Ors v M/S Panchami Stone Quarry* (2022) SCC OnLine SC 945

<sup>20</sup> *Shantanu Rastogi v State of Karnataka & Anr* (2021) SCC OnLine Kar 452

<sup>21</sup> *Chintalapati Srinivasa Raju v Securities and Exchange Board of India* (2018) 7 SCC 443

Taken together, this body of jurisprudence forms a consistent judicial stance: independent directors can only be liable in the event that there is a concrete nexus between the board-level action and the supposed wrongdoing. Nevertheless, although in this way courts restrain liability *ex post*, this restraint in the judiciary does not solve the greater governance paradox. Independent directors remain *ex ante* with broad oversight expectations that assume access to and control of information that the directors do not have. The jurisprudence laid by the judiciary thus softens the personal responsibility but does not discuss the structural dependence on independent directors as a tool of preventative governance, a strain that is most evident in regulatory enforcement practice.

### S.5 STRUCTURAL CONSTRAINTS ON INDEPENDENT DIRECTORSHIP

**Why Oversight Fails in Practice:** As illustrated in Section 3, the statutory framework places independent directors with broad monitoring and preventive obligations, whereas Section 4 indicates that the courts have deliberately limited liability by attaching culpability based on knowledge and provable absence of diligence. Combined, these sections demonstrate a very important assumption of Indian corporate law: independent directors are supposed to become watchful guardians, but only within the boundaries of the information and power they have. This premise is most frail in the actual functioning of corporate boards.

Information asymmetry is the greatest limitation to the position of independent directors. Independent directors lack independent access to corporate records and investigative systems and must depend on the information that is put in front of them by board procedures that are managed by executive management. The implication of judicial insistence, especially in *Neera Saggi v Union of India*,<sup>22</sup> that the liability must result from knowledge attributable through board processes, this dependence is what constrains the capacity of independent directors to identify irregularities independently, particularly when it comes to complex financial transactions or related party transactions. Where information itself is curated or incomplete, diligence becomes contingent rather than absolute.

The presence of promoter dominance, which is a characteristic of Indian corporate ownership structures, adds to this informational constraint. Independent directors will tend to operate on boards where the controlling shareholders have a decisive say on the strategy, disclosures

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<sup>22</sup> *Neera Saggi v Union of India & Ors* (2021) SCC OnLine SC 239

and appointment of managers. The non-executive directors, as identified by the courts in *Pooja Ravinder Devidasani and Shantanu Rastogi*, are not part of the day-to-day affairs of the company and cannot be assumed to have operational control over what is going on.<sup>23</sup> But the regulatory expectation remains that independent directors can still be effective in restraining the misconduct at the board level, despite their minority status and voting power.

The conflict between expectation and ability becomes more acute when viewed with a view to diligence. The courts have ruled that independent directors must participate actively, challenge management, and exercise due care, and that their failure to do so can be used to impose liability under Section 149(12);<sup>24</sup> however, this is typically applied retrospectively. Where misconduct is identified, the lack of opposition or protest is interpreted as an indication of poor supervision, even in cases where the independent directors did not have access to the underlying information. The diligence inquiry thereby runs the risk of becoming an assessment based on hindsight, which is not pegged on the actual ability of the director to act in advance.

In even the most regulatory regimes, which are marked by strict liability, the courts have opposed attributing responsibility, wholly based on status. In *Chintalapati Srinivasa Raju v SEBI*,<sup>25</sup> the Supreme Court overturned the assumption that liability could be imposed simply based on designation and that there were to be factual links of access to unpublished price-sensitive information. This restates the general rule that liability should be based upon factual association, rather than formal position.

Combined, these limitations indicate that the performance of independent directors is structurally contingent as opposed to guaranteed. Although statutory obligations and judicial norms assume vigilance, the governance setting in which independent directors act in a systematic way restricts their ability to meet these demands. Such detachment is the reason why the independent directors often become the centre of post-crisis accountability, even though the judicial system acknowledges that they have a limited role. It is in this disjuncture between the formal responsibility and practical authority that the independent

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<sup>23</sup> *Pooja Ravinder Devidasani v State of Maharashtra and Ors* AIR 2015 SC 675; *Shantanu Rastogi v State of Karnataka & Anr* (2021) SCC OnLine KAR 452

<sup>24</sup> Companies Act 2013, s 149(12)

<sup>25</sup> *Chintalapati Srinivasa Raju v Securities and Exchange Board of India* (2018) SCC OnLine SC 586

directors play the role of regulatory shock absorbers - absorbing the consequences of governance failures without having the resources to stop them.

## **MISPLACED GOVERNANCE TRANSPLANTS AND PROMOTER DOMINANCE**

**Why the Independent Director Model Travels Poorly to India:** The ongoing discrepancy between the duties that are imposed on independent directors and their actual ability to perform them is not a coincidence. It is based on a model of governance in the dispersed-ownership economies, which is transplanted into the corporate environment where concentrated ownership and control by promoters are the norms. The independent directorship conceptualised in Anglo-American corporate governance presumes institutional conditions that are mostly lacking in India.

In jurisdictions with dispersed shareholding, independent directors work hand in hand with vigorous institutional investors, sound disclosure systems, and reputable shareholder litigation. Oversight failures are counterbalanced by external enforcement mechanisms, including derivative actions and market discipline, which reduce the burden placed on board-level independence alone. In such contexts, independent directors complement a broader accountability architecture rather than substitute for it.

The Indian corporate governance, by contrast, is characterised by promoter dominance, low activism by shareholders, and weak private enforcement. Board composition, major managerial appointments, and strategy decisions are usually made by promoter groups. In this system, the independent directors are to play a role that was not institutionally designed for them, that of holding the controlling shareholders in check, in the absence of countervailing power. The consequence is excessive dependence on board independence to do the work that in other jurisdictions is shared by the markets, shareholders, and courts.

This institutional misalignment is why the independent directors are loaded with extensive preventative expectations when they do not have the power to address them. Instead of reallocating power or tightening the control over the controllers, the governance structure is relying on independent directors as a sign of compliance. Board independence thus becomes a proxy for governance quality, masking deeper asymmetries of power and information.

The interpretation of independent directors as casualties of an ill-placed governance transplant puts the debate in a different perspective. The issue is not lack of independence or lack of diligence, but the fact that independent directors are expected to offset structural weaknesses in other areas of the governance system. This diagnosis supports the main argument of the paper, namely, that accountability has been delegated to actors who are not vested with the power to make a significant change, and independent directorship is a weak alternative to substantive corporate accountability.

## **RECALIBRATING ACCOUNTABILITY AND AUTHORITY**

**Towards Realistic Corporate Governance Expectations:** The above discussion shows that the challenges that come with the independent directorship in India are not the result of an individual failure, but rather a structural mismatch between the responsibility and authority. Any constructive answer should henceforth move away from broadening responsibilities or heightening monitoring expectations, and rather focus on recalibrating the role of independent directors within the broader governance framework.

To begin with, there is a need to be more explicit in the interpretation of Section 149(12) of the Companies Act, 2013. Although judicial interpretation has restricted liability to acts of board-process-based on knowledge and lack of diligence, regulatory enforcement would be better served by clearer standards. Clear advice on what is meant by acting with diligence on the part of independent directors, especially regarding relying on management representations and expert opinion.

Second, recalibration should focus more on informational authority rather than on extra formal responsibility. The independent directors would not be able to perform preventive governance roles without access to critical information in a timely and unfiltered fashion. Enhancing the mechanisms of direct access to the internal audit findings, risk assessment, and whistleblower complaints without filtering such access through the executive management would increase the substantive value of the board-level independence without changing the control structures.

Third, the emphasis of enforcement should be directed to individuals who effectively control the affairs of the corporations. Promoters and key managerial staff have the power and ability to affect the results and are in a better position to thwart misconduct. The use of independent

directors as guarantors of governance is prone to over-dependence, which may lead to the loss of accountability by focusing on the main decision-makers.

Lastly, normative level expectations regarding independent directorship should be repositioned. Independent directors should be understood as complementary safeguards within a multi-layered governance ecosystem, not as substitutes for shareholder enforcement, regulatory supervision, or promoter accountability. Treating board independence as a proxy for governance quality obscures deeper structural vulnerabilities and places undue pressure on actors ill-equipped to bear it.

The less sustainable course of action is expansion, and the more sustainable course of action is recalibration. Accountability and authority would not only cushion the independent directors against disproportionate exposure but also enhance the effectiveness and credibility of the entire corporate governance regime in India.

## CONCLUSION

The independent directors have taken a central and contradictory role in the Indian corporate governance system. Although statutory reforms and regulatory practice are increasingly describing them as key custodians of transparency and accountability, institutional architecture in which they operate still deprives them of significant authority, informational independence, and control over corporate performance. As has been shown in this paper, the resulting discrepancy between expectation and capacity is not accidental, but structural.

The Companies Act, 2013, statutory design imposes broad oversight responsibilities on independent directors, although judicial doctrine is right to oppose automatic and vicarious liability by fixing responsibility on board-process-based knowledge and provable lack of diligence. Nonetheless, the actualities of corporate governance, which are characterised by information asymmetry, dominance of promoters, and decision-making by management, make effective oversight contingent and not assured. Independent directors are therefore supposed to stop wrongdoing without having the institutional instruments to do so with any degree of certainty.

This discussion reinvents independent directors as instruments of misaligned governance, rather than as failed fiduciaries. The governance framework, in its attempt to treat board

independence as a proxy of good corporate accountability, runs the risk of individualistic systemic failures and taking attention away from those who actually control corporate affairs. In that regard, independent directors play the role of regulatory shock absorbers - absorbing institutional pressure and post-crisis scrutiny but leaving underlying power structures mostly intact.

Sustainable reform is not in increasing the responsibilities or liabilities of independent directors. Instead, it needs the recalibration of governance expectations so that accountability is the successor to authority. It would be more appropriate to clarify the standards of diligence, reinforce independent access to information, and redirect enforcement at controlling shareholders and key managerial staff to make legal responsibility more in line with corporate reality. In the absence of such recalibration, independent directorship may continue to be a compliance instrument of governance and not a substantive accountability instrument.