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Regulatory Enforcement and Corporate Governance: An Empirical Analysis

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The recent crackdowns in the jurisdictions have demonstrated institutional weak points in the corporate governance systems. Though a wider range of governance norms has been enhanced by statutory requirements and soft-law tools, the key defining factor of the success of this is the enforcement. This paper reviews the current trends in enforcement in the field of corporate and commercial law, and focuses in particular on the securities regulation regime in India, and places these trends in a comparative international context. It reasons that the problem of failure in enforcement is not just due to regulatory gaps, but, rather, structural problems such as dominance of the promoters, lack of strong board independence, lack of cultural compliance and fragmented regulatory control. The article is based on new enforcement cases and suggests a reformulated governance-enforcement paradigm, which focuses on early detection, whistleblower protection, board accountability, and institutional capacity-building.

Keywords: *corporate governance, regulatory enforcement, securities regulation, whistleblower protection.*

INTRODUCTION

The issue of corporate governance takes centre stage in the current corporate and commercial law, and it serves as the major institute of holding companies accountable to their shareholders, regulators and society in general. It works at the borderline of business and

state interests and makes sure that the managerial power is used within the boundaries, which are defined by law and ethics. Governance norms have grown over the last decade in the form of increased disclosure requirements, greater strictness in board composition criteria, increased fiduciary obligations and increased use of soft-law tools like a code of governance and principles of stewardship. These changes are indicative of a growing awareness that governance must be good in order to have a stable market, investor confidence and sustainable economic growth.

Although there is this normative extension, there are still recurring cases of corporate malpractice, accounting malpractices, and boardroom failures in different jurisdictions. When those compliance actions are high profile, it can be seen that the adherence to the governance norms is usually more procedural than substantive, and the companies resort to regulatory requirements as box-checking rather than as a set of behavioural norms. Although formal compliance with disclosure or board independence standards has often not stopped the misuse of corporate assets, conflicts of interest, or minority shareholder rights. This dynamic disconnect between regulation design and corporate practice highlights the shortcomings of governance systems that are more dependent on self-regulation as well as formal compliance.

This new regulatory focus on enforcement is indicative of a new agreement according to which governance lacking a credible enforcement is normatively empty. Enforcement is the process by which abstract governance obligations are given practical meaning; that is, aspirational standards are turned into enforceable obligations. In addition to their role in punishment, enforcement actions serve expressive and deterrent roles: they transmit regulatory expectations, internalise corporate culture and have an impact on the risk calculus of boards and senior management. Fast and conspicuous enforcement helps to maintain market discipline by creating a message that failures to govern effectively have actual consequences, whereas inconsistent action or slow action leads to the erosion of deterrence and regulatory legitimacy.

This paper posits that the current enforcement practice is showing not only the occasional failure but also institutional maladaptations within the current governance system. The article aims to determine the root causes of governance failure and also evaluate whether the present legal and institutional frameworks are in a position to handle these root causes

through reviewing the current patterns of enforcement, especially in securities regulation. It also examines the lessons which enforcement can provide in future reform, arguing in favour of a re-tuning of corporate governance to ensure that it incorporates strong enforcement systems, institutional capacity building and is more focused on ethical corporate culture. By so doing, the article adds to the current argument on how corporate and commercial law may transcend the formal compliance to real accountability.

ENFORCEMENT AS A GOVERNANCE TOOL

Enforcement is traditionally understood as the end stage of the regulatory intervention, which is triggered once the violation of legal or regulatory norms has taken place. In the context of corporate governance, however, such a sequential understanding fails. Enforcement plays a constitutive role in the sense that it provides operational content to vaguely defined governance requirements, including the requirement of board independence, the requirement of fiduciary responsibility, and the requirement of fair disclosure.[1] These standards are open-textured in nature, depending upon regulatory interpretation and application in practice to define the boundaries and practice of their application. In this regard, enforcement is not only a response to the failure of governance but also a construction of the norms of acceptable corporate behaviour.

Governance norms where there is delayed, uneven and institutionalised enforcement may be transformed into symbolic compliance. Firms can adhere formally to the rules of board composition or disclosure and still carry on with practices that contradict the substantive aim of those standards. When this is the case, the lack of plausible enforcement means that managerial discretion is free to run without any form of meaningful restraint to the detriment of shareholder confidence and the integrity of the market. Passivity on the part of the regulations, either because of resource constraints or because of procedural bottlenecks, therefore undermines the signalling role of the rules of governance and reduces their ability to affect corporate behaviour.

The deterrent effect of regulation has always been a focus of law-and-economics scholarship, especially about the extent to which harsh sanctions imposed are less significant than the

[1] John Armour et al., *Principles of Financial Regulation* (OUP 2016)

probability of those sanctions being realised.[2] Excessively harsh penalties will get attention, but do not change systemic behaviour when the probability of detection and enforcement is low. On the other hand, regular and predictive enforcement would also be a major factor in encouraging compliance, even in the case of moderate sanctions, because it raises the perceived risk of violation. This observation is especially relevant in the area of corporate governance, where the breaches can be intricate, informationally obscure and must be concealed within organisational decision-making processes.

Governance frameworks should therefore be evaluated not just based on the complexity of the statutory structure of the system but also on the effectiveness of the mechanism of enforcement. A good government needs regulatory bodies which have the capacity, are independent and have procedural efficiency to apply norms in a timely and transparent way. Devoid of such credibility, the governance rules may turn into a statement of aspiration as opposed to a binding rule. Enforcement, then, is not a subordinate part of corporate governance but a strong part of it, which will dictate whether the norms of governance are substantively restricting corporate power or forms of governance which are legitimising.

INDIAN ENFORCEMENT EXPERIENCE: EMERGING FAULT LINES

Promoter Dominance and Board Failure: Historically, enforcement by the Securities and Exchange Board of India (SEBI) has been used to give attention to systemic governance failures within promoter-managed companies. The interim orders that have been granted in the so-called cases of alleged diversion of funds, disclosure misstatement, and the so-called abusive related-party transactions are only a few examples of how concentrated ownership structures are likely to undermine internal accountability mechanisms. According to the Indian law, this kind of action directly involves sections 166 and 188 of the Companies Act 2013,[3] which forbid the fiduciary responsibilities of directors and control the related-party transactions, respectively. But practical experience in enforcement shows that statutory protections are often defeated in reality in cases where promoters obtain de facto control over the operations of the board.

[2] Gary S Becker, 'Crime and Punishment: An Economic Approach' (1968) 76(2) Journal of Political Economy 169 <https://www.jstor.org/stable/1830482> accessed 07 February 2026

[3] Companies Act 2013, ss 166 and 168

Domination of promoters is a weakness to an effective governance mechanism, as anticipated in Section 149[4], which requires that promoters of listed companies be appointed as independent directors. Although the provision aims to institutionalise open supervision, enforcement efforts indicate that the formal adherence to the requirements of board composition does not always result in actual accountability. Such abuses and diversion of funds by related parties are usually not stopped by board decision, thus there is a question of whether boards are acting as an independent decision-making body or acting as a promoter-ratifying body.

Even independent directors who are required to be in a position to protect minority shareholder interests often have elements in their structure that constrain their effectiveness. The responsibilities set on the independent directors by Schedule IV to the Companies Act, 2013, compel them to examine the performance of the management, protect the interests of the stakeholders, and bring integrity to the financial information. But in reality, the independent directors tend to have no significant access to the internal information. They tend to take management representations and encounter unspoken pressures that are associated with disapproval. The fact that independent directors resign after regulatory action has been taken in a variety of situations demonstrates a failure of the normative expectations of the company law to be fulfilled and illustrates the actual realities of the board operations in the promoter-controlled companies.

Whistleblowing and Information Asymmetry: The common feature of the key cases of enforcement in India is the slow identification of the misconduct. Although the companies currently have internal audit mechanisms in place in accordance with the provisions of Section 138[5], the mandatory disclosures under the rules of the SEBI (Listing Obligations and Disclosure Requirements), 2015 (LODR Regulations), and compliance reporting systems, the material violations are often uncovered after a significant number of people have already been harmed by the companies.[6] The trend is indicative of endemic information asymmetries between the management, boards, regulators and shareholders, especially in closely or promoter-dominated corporate systems.

[4] Companies Act 2013, s 149
[5] Companies Act 2013, s 138
[6] SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015

Sections 177(9) and 177(10)[7] officially recognise the value of whistleblowing, whereby some companies are expected to institute vigil mechanisms by which directors and employees may report on genuine issues. Yet, this does not mean that these mechanisms are not underutilised, as the experience of enforcement shows. Although SEBI launched an informer system in 2019 to motivate the reporting of securities law violations, its practicality has been limited due to weak financial incentives and comparatively inadequate anti-retaliation safeguards.[8] Conversely, in comparative practice, a well-developed whistleblower system has been shown to play a crucial role in timely detecting corporate malpractice by providing substantive whistleblower protection in the form of statutory anonymity, financial compensation, and substantial retaliation restrictions in the securities law.[9]

The result of these deficits in governance is often insolvency proceedings, where accountability is substituted with ex-ante regulatory regulation by ex-post accountability under the Insolvency and Bankruptcy Code, 2016 (IBC). In this regard, Section 66 is a very important governance-enforcement determinant.[10] It awards power to the resolution professional to instigate a case against past directors or management due to any false trading or wrongful trading, in which company actions were undertaken, either with the motive to defraud creditors or without reasonable consideration of the financial standing of the enterprise. The clause is effective in its attempt to lift the veil of limited liability by tying down the board of governance through reimbursement of the failure to act in good faith and fair dealing, thereby leading to insolvency.

Corporate governance-wise, Section 66 is an ex-post enforcement mechanism which compensates for the previous regulatory and board failures. It supports the idea that the responsibility of directors is not limited by the interest of the shareholders but also by the interest of the creditors, even when the insolvency is imminent. The provision establishes governance accountability by requiring the resolution professional to review the prior management practices and provide the relevant relief even when the board has lost control over the company.

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[7] Companies Act 2013, ss 177(9)-177(10)
[8] SEBI, *Discussion Paper on amendment to the SEBI (Prohibition of Insider Trading) Regulations, 2015 to provision for an informant mechanism* (2019)
[9] *Annual Report to Congress for Fiscal Year 2023* (US Securities and Exchange Commission Office of the Whistleblower 2023)
[10] Insolvency and Bankruptcy Code 2016, s 66

Institutional Capacity and Regulatory Delay: The institutional capacity of the regulator is also critical in the enforcement. In the SEBI Act 1992, SEBI has the mandate to investigate and impose penalties by adjudication proceedings in accordance with Chapter VIA and under Section 11B, which is to issue interim directions.[11] Nevertheless, within the adjudicatory and decision-making processes of SEBI, vacancies have led to the slowing down of issuing final orders in several high-profile cases. Vacancies in the latter undermine the deterring effect of enforcement by minimising the perceived regulatory outcomes.

Both the likelihood of deterrence and procedural fairness, as well as regulatory legitimacy, are not only a worry with protracted enforcement proceedings but also a concern. Legally speaking, the regulated parties have the right to hear charges in due time, and investors have the right to have regulations acted upon within a short period to ensure that the market does not collapse. Any postponement in enforcement compromises on achievement of both and leaves the governance failures alive, and introduces uncertainty in both the short-run and the long-run for market participants. The need to enhance institutional capacity, including through proper staffing, simplified adjudicatory processes and specialised enforcement benches, continues to be critical to the achievement of the goals of corporate governance as reflected in the Indian company law and securities regulation. Devoid of such reforms, even the sound statutory frameworks are bound to succumb to the strength of enforcement inertia.

GLOBAL COMPARATIVE PERSPECTIVES

United States: Incentive-Driven Enforcement: The enforcement strategy of the U.S. Securities and Exchange Commission (SEC) can serve as a good illustration of how corporate governance can be supported with the help of incentive-based compliance. The core part of this strategy is the whistleblower programme, which has been enacted under Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010, which has empowered the SEC to grant monetary rewards to those who provide original information willingly, which will lead to effective enforcement procedures. The programme directly solves the collective action and retaliation issues which normally deter internal reporting by providing rewards that vary between 10 and 30 per cent of monetary sanctions gathered.

[11] SEBI Act 1992

Governance-wise, SEC whistleblowers should be considered to improve the early identification of corporate malpractices, as it minimises the information asymmetry between insiders of the corporation and the regulators. It also gives a tremendous drive to companies to enhance internal compliance systems since there is a high probability of regulatory scrutiny due to the possibility of external reporting. Notably, the SEC regularly reports on the enforcement results, including the information about the violations and the fines charged pursuant to the statutes, such as the Securities Exchange Act of 1934 and the Securities Act of 1933.[12] Such transparency enhances the normative expectations as it indicates that the breach of governance would receive visible and predictable repercussions and, thus, would influence the board-level risk management and compliance processes.

Europe: Shareholder-Led Governance Enforcement: Unlike the enforcement-oriented approach of the United States, European corporate governance dwells extensively on the issue of shareholder participation and stewardship as the governance enforcement tools. It is supported by a complex of statutory intervention and soft-law tools, the most prominent of which is the EU Shareholder Rights Directive II (Directive (EU) 2017/828).[13] The Directive increases the rights of shareholders through transparency in shareholder policies, which include remuneration, shareholder voting, and institutional investors and asset managers must disclose their engagement policies.

European governance structures are also dependent on national schemes of corporate governance, as in the UK and various other stewardship codes known as the Corporate Governance Code or the European Scheme of codes of stewardship, which are on a comply or explain basis.[14] These tools enable shareholders, especially institutional shareholders, to have a lasting control over the composition of the boards, remuneration of the executive and strategic decision making. The recent examples of shareholder activism in large multinational companies show how a well-coordinated and well-informed shareholder action serves as a type of market-based enforcement, that is forcing boards to fix a gap in their governance capabilities when no regulatory sanctions are imposed.

[12] Dodd–Frank Wall Street Reform and Consumer Protection Act 2010 (US)
[13] Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement OJ L 132
[14] *OECD Corporate Governance Factbook 2023* (OECD Publishing 2023)

STRUCTURAL LESSONS FROM ENFORCEMENT

Governance is Cultural, Not Merely Procedural: Patterns of enforcement across borders are now more likely to indicate that the failures of corporate governance can be found to lie less in the failure of regulatory design and more in the organisational culture. Although the company can have elaborate compliance structures such as codes of conduct, board committees and internal controls, these are often just a formality but not a working restraint on managerial behaviour. Such cultural misalignment can still result in governance failures that remain important despite the apparent compliance with regulations and the interests of the stakeholders.

The Indian corporate law officially incorporates ethical and fiduciary expectations into the statutory responsibilities. Section 166[15] obligates directors to operate in good faith, to act with reasonable care and to act in the best interests of the company to further the company's objectives in the best interest of its stakeholders. Equally, disclosure-based requirements of the SEBI, 2015 regulations are aimed at promoting transparency and accountability. But most experience of enforcement shows that these requirements are not enough where corporate culture encourages aggressive risk-taking, lack of transparency, or promoter-based governance. Enforcement regulators such as SEBI have recognised the applicability of organisational culture in acting upon such enforcement (especially in instances of systemic misreporting or persistent failures to comply).[16] However, the task of evaluating culture is difficult by nature because it encompasses the subjective process of analysing the internal norms, incentives, and behavioural patterns instead of rule breaches.

Fragmentation of Regulatory Oversight: Enforcement of corporate governance is also complicated by the separation of regulatory control between various authorities. The responsibilities of governance are shared between several statutory and regulatory frameworks in India, the most prominent of which is the Companies Act, 2013, administered by the Ministry of Corporate Affairs; the Securities market and listed company regulator, called the SEBI Act 1992 and industry-specific regulatory frameworks, including banking,

[15] Companies Act 2013, s 66
[16] Lynn S Paine, 'Managing for Organizational Integrity' (1994) 72(2) Harvard Business Review <https://hbr.org/1994/03/managing-for-organizational-integrity> accessed 07 February 2026

insurance, and infrastructure. This proliferation of regulators brings overlapping jurisdiction, unequal standards and possible gaps in enforcement[1].

As an example, governance failures such as misstatements in financial disclosures could be subject to action under both the Companies Act, by provisions about fraud and mismanagement, and the securities law, by SEBI having the ability to seek to investigate market manipulations or disclosure abuses. In like manner, a related-party transaction is governed by Section 188[17] and Regulation 23, SEBI LODR Regulations, to create parallel compliance duties and incomplete enforcement.[18] A lack of a unified enforcement structure out there raises the likelihood of regulatory arbitrage, with actors stalling or watering down responsibility with the help of the jurisdictional overlaps between them.

Integrated governance implementation is not well established, even after periodic attempts at inter-regulatory coordination. There is frequently an ad hoc nature to information sharing between regulators, and enforcement actions are usually in silo. This disintegration cripple's deterrence and coherence because governance failures can be subject to different regulatory approaches. To improve regulatory effectiveness, strengthening coordination by use of formal memoranda of understanding, joint investigation, and harmonised standard enforcement would improve effectiveness. In the absence of this kind of integration, corporate governance implementation will only be responsive and fragmented, thus failing to have the capacity to respond holistically to systemic governance failures.

REFORM PROPOSALS AND ALTERNATIVES

Strengthening Board Accountability: Corporate governance reform should not be formalistic in terms of independence, but rather a model of functional accountability that sensibly limits managerial and promoter power. Although the Indian law provides that the board is independent by giving separate sections like Section 149[19] and specifying the responsibility of the independent directors, in Schedule IV, the experience in the enforcement shows that structural independence is not enough. Functional accountability demands an

[17] Companies Act 2013, s 188
[18] Ministry of Corporate Affairs, *Report of the Company Law Committee* (2022)
[19] Companies Act 2013, s 149

apparatus that allows the independent directors to proactively question the choices of the management and affect the corporate policy.

Among them is the increased disclosure of board discussions, especially the material transactions, related party transactions and the risk management decisions. Confidentiality issues are always pertinent; to enhance transparency and discourage rubber-stamp approvals, limited disclosure, in the form of board reports or regulatory filings, can be considered. Furthermore, compulsory and regular training on governance of directors, which is either conducted or accredited by regulatory bodies, would tighten the knowledge about fiduciary duty and regulatory expectations by the directors, and change and develop standards of enforcement by the directors. Lastly, the standards of liability ought to be redefined to handle passive condoning of promoter wrongdoing. In cases where the independent directors have not acted in response to strong warning signals, proportionate liability, not the type that would befall the executive management, would be used to enhance accountability without scaring away qualified professionals from serving on the board.

Institutionalising Whistleblower Protection: Institutionalisation of strong whistleblower protection mechanisms is also necessary to have good corporate governance reform. Even though the Indian law acknowledges the existence of vigil mechanisms under Section 177(9)[20], and SEBI has formed an informant mechanism in the case of breach of securities law, they do not provide any remedy of real anti-retaliation and any incentives that matter. As a result, the future whistleblowers can continue being afraid of reporting the wrongdoing since they fear both professional and personal repercussions.

Legal reforms should therefore also contain explicit preventive measures against retaliation, like provisions on reinstatement, damages in the event of victimisation, as well as fines for retaliatory acts. The need to provide confidentiality should be intensified in order to protect the identity of the whistleblower during the process of enforcement. In addition, the implementation of monetary rewards, based on enforcement results, as in international best practice, would put incentives back into the early disclosure. These reforms would not just improve the detection of governance failures, but also whistleblowers as central participants in the enforcement ecosystem, as opposed to peripheral informants.

[20] Companies Act 2013, s 177(9)

Predictive and Preventive Enforcement: Conventional enforcement strategies within the context of corporate governance are largely reactive in nature, in which the enforcement strategy responds to the violation once it has taken place, and the investor has suffered. Greater attention should be paid to predictive and preventive enforcement methods by regulators to better counter systemic governance risks. This entails the application of data analytics, risk-based supervision, and ongoing tracking of corporate disclosures to detect red flags of governance at an early stage.

Examples include some frequency-related party transactions, sudden reversals in auditor opinions, recurring delays in disclosures, or excessive promoter share pledging and are considered some of the earliest warning signs of governance stress. Through the incorporation of such data-driven knowledge into the supervisory frameworks, regulators can launch specific questions, send prior warnings, or instruct corrective governance procedures before the violations may go out of control. Preventive enforcement thereby turns the focus of regulation to risk reduction instead of the deterrent goal, which is safeguarding the stakeholders and maintaining the market integrity by intervening in time.

CONCLUSION

The critical point upon which the effectiveness of corporate governance hinges is enforcement. The current enforcement activities show that failure in governance is not really accidental; it is structural, cultural, and in most cases, it can be anticipated. The message here is evident: corporate governance reform should incorporate enforcement capacity, the institutional design, and the moral standards.

With a constantly developing concept of both corporate and commercial law, the enforcement should not be seen as a corrective aspect, but rather an aspect of the governance structure. It is only at this point that governance structures can live up to their mandates of accountability, transparency and profit creation practices that are sustainable by corporate standards.