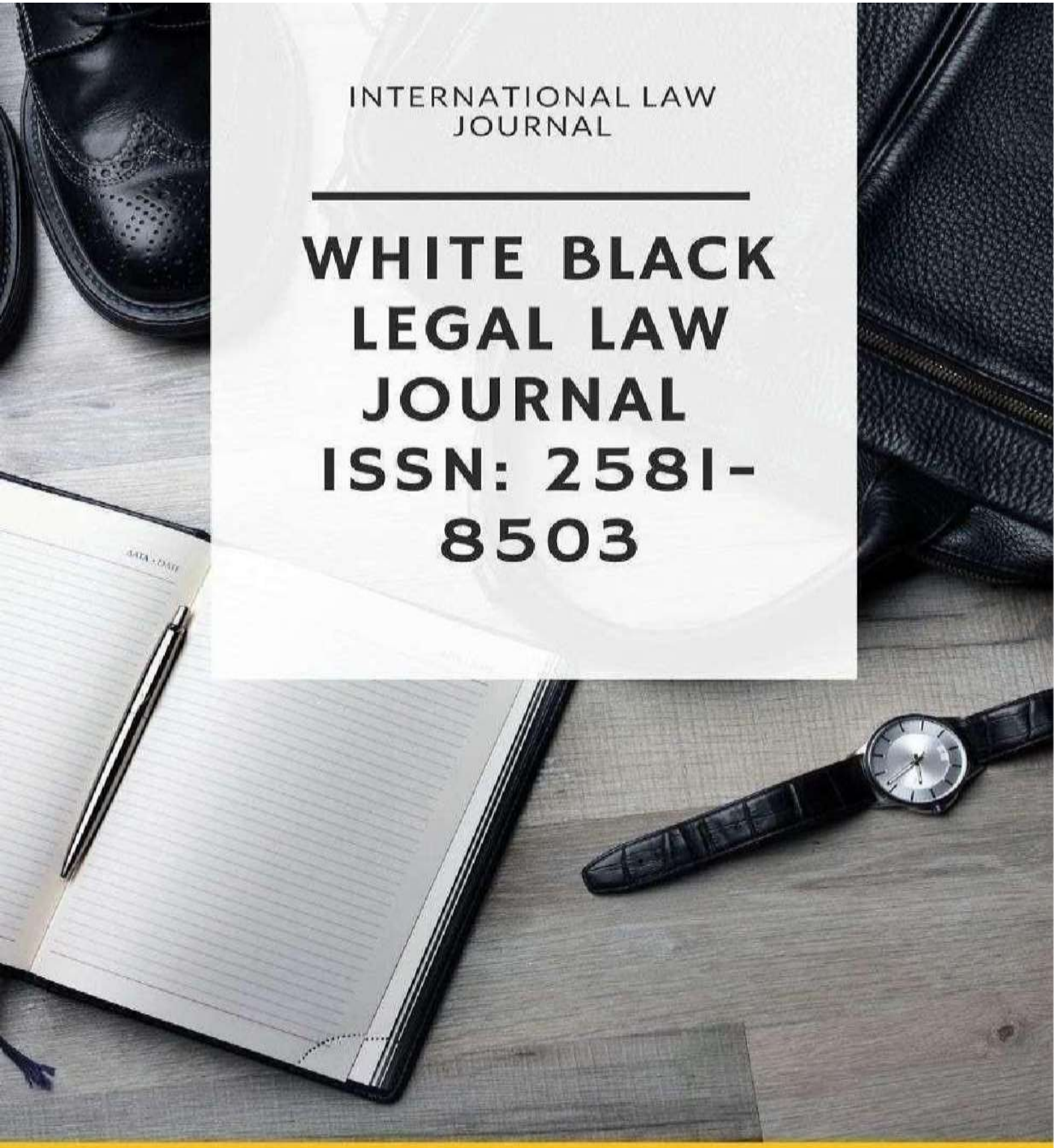

INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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CORPORATE ACCOUNTABILITY IN INDIA: WHERE THE COMPANIES ACT, 2013 MEETS SEBI REGULATIONS

A comprehensive Legal Analysis of Transparency Obligations for Listed and Unlisted Entities

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ABSTRACT

The intersection of the Companies Act, 2013 and SEBI's regulatory framework represents one of the most consequential nexuses in Indian corporate law. This article examines how these twin pillars of corporate governance collectively impose transparency obligations on both listed and unlisted entities, the jurisdictional overlaps and tensions between the Ministry of Corporate Affairs (MCA) and the Securities and Exchange Board of India (SEBI), the judicial interpretations that have shaped enforcement, and the emerging compliance landscape in light of recent amendments. The article argues that while the dual- regulatory architecture creates some redundancies, it ultimately strengthens corporate accountability by plugging the gaps that a single regulator would inevitably leave open.

I. INTRODUCTION

India's corporate regulatory eco system is built upon a fundamental legislative duality: the Companies Act, 2013, enacted by Parliament to govern corporate formation, management, and dissolution; and the SEBI Act, 1992, along with the voluminous regulations promulgated thereunder, designed to protect the integrity of securities markets. For listed entities, both regimes operate simultaneously, creating a layered compliance architecture that is simultaneously robust and complex.

This duality is not accidental. The architects of post-liberalisation of Indian economic law recognised that a company-as a legal person-must be accountable at two distinct levels: to its own shareholders and stakeholders as a corporate entity, and to the broader market as a participant in public capital formation. The Companies Act addresses the former; SEBI

regulations largely address the latter. The challenge and the legal richness lies where these two regulatory worlds collide.

The corporate governance failures that precipitated the Satyam scandal of 2009 and the IL&FS crisis of 2018 exposed deep fault lines in this framework, triggering waves of legislative and regulatory reform. Today, a company secretary or in-house counsel advising a listed entity must possess fluency in both regimes simultaneously. This article provides that integrated analysis.

II. THE STATUTORY ARCHITECTURE: A TALE OF TWO REGULATORS

A. The Companies Act, 2013: Universal Corporate Governance

The Companies Act, 2013, repealed the Companies Act, 1956 and introduced a fundamentally reformed corporate governance architecture. Its core transparency mandates operate through several interlocking mechanisms:

Section 134 mandates that the Board of Directors attach a comprehensive Director's Responsibility Statement to every annual report, confirming that applicable accounting standards have been followed, that internal financial controls are adequate, and that the directors have taken steps to prevent and detect fraud. This provision unprecedented in the 1956 Act personalises board accountability in a manner that cannot be delegated to management.

Section 135 introduced the mandatory Corporate Social Responsibility (CSR) regime applicable to companies meeting the prescribed financial thresholds. While CSR is not directly a transparency provision, the mandatory board-level CSR Committee and annual reporting obligations have significantly expanded the non-financial disclosure footprint of Indian companies.

Section 177, dealing with the Audit Committee, is perhaps the most consequential transparency provision of CA, 2013, for listed companies. Every listed company must constitute an Audit Committee with a majority of independent directors, and this committee must mandatorily review the financial statements, internal audit function, and related party transactions before board approval.

B. SEBI's Regulatory Framework: Market – Facing Disclosure

Enacted in the aftermath of the 1992 securities scam, the Securities and Exchange

Board of India Act, 1992 conferred statutory status on SEBI and entrusted it with a tripartite mandate under Section 11: protection of investor interests; promotion and development of the securities market; and regulation of the securities market. SEBI exercises quasi-legislative, quasi-executive, and quasi-judicial functions, enabling a comprehensive accountability regime for listed companies and market intermediaries.

The Supreme Court in SEBI v. Rakhi Trading Pvt. Ltd. (2018) 13 SCC 1 confirmed SEBI's board regulatory powers, holding that its mandate to protect investors is purposive and must be construed expansively. SEBI's powers are complemented by the Securities Contract (Regulation) Act, 1956, the Depositories Act, 1996, and numerous SEBI Regulations issued under section 30 of the SEBI Act.

III. Directory Accountability under the Companies Act, 2013

3.1 Fiduciary Duties: Section 166

Section 166 of the 2013 Act represents a landmark statutory codification of director duties previously articulated only through common law. Directors are obligated to: act in accordance with the articles of the company (s.166(1)); act in good faith to promote the objects of the company for the benefits of its members as a whole and in the best interests of the company, its employees, the shareholders, the community, and the protection of the environment (u/s 166(2)); exercise duties with due and reasonable care, skill, and diligence (u/s. (166(3)); not engage in a situation of direct or indirect conflict of interests (u/s166(4)); and not achieve any undue gain or advantage to themselves, their relatives, partners, or associates (u/s 166(5)).

The duty under section 166(2) is notable in its explicit acknowledgment of stakeholder's interests beyond shareholders- a departure from the Friedmanite shareholders primacy model and aligns with the 'enlightened shareholder value' approach. Violation of section 166 attracts a fine of not less than rupees one lakh which may extend to rupees five lakhs under section 166(7).

3.2 Independent Directors: Section 149 and Schedule IV

Section 149(4) mandates that every listed public company shall have at least one-third of the total number of directors as independent directors. Schedule IV to the

Act prescribes a Code for independent Directors, delineating their role, functions, duties, manner of appointment, resignation, and removal. Independent directors are expected to bring objectivity to board deliberations, protect the interests of minority shareholders, and provide oversight over management.

The 2017 Amendment introduced sub-section 12A to section 149 requiring independent directors to pass an online proficiency self-assessment test, reflecting growing concerns about the quality and preparedness of independent directors. The Companies (Amendment) Act, 2020, further allowed independent directors to be appointed for one term of up to five consecutive years, with a mandatory cooling-off period of three years before reappointment.

3.3 Audit Committee and Financial Accountability: Sections 177-178

The 2013 Act mandates Audit Committee for listed companies and prescribed classes of companies (section 177), vesting them with wide powers including oversight of the financial reporting process, review of internal financial controls, and scrutiny of related party transactions. The Nomination and Remuneration Committee (section 178) ensures transparency in executive remuneration a perennial governance concern.

Section 134 requires the Board of Directors to provide a formal responsibility statement confirming the preparation of annual accounts on a going-concern basis, adherence to accounting standards, the maintenance of adequate internal financial controls, and compliance with applicable laws. The directors' responsibility statement reinforces accountability by creating a documented acknowledgment of governance obligations.

3.4 Related Party transactions: Section 188

Related Party Transactions (RPTs) have been a major conduit of tunneling of corporate resources in India. Section 188 requires prior approval of the Board and, for transactions above specified thresholds, ordinary or special resolution of shareholders, with interested parties being prohibited from voting. SEBI's Listing Obligations and Disclosure Requirements Regulations, 2015 (LODR Regulations) impose additional materiality thresholds and independent shareholder approval requirements for listed entities, creating a reinforced accountability layer for publicly traded companies.

IV. Auditor Independence and Accountability

Auditor independence and accountability under the Companies Act, 2013 and the SEBI framework are designed to safeguard the integrity of financial reporting and protect investor interests. Section 139 of the Companies Act mandates rotation of auditors for listed and certain other classes of companies, while section 144 prohibits auditors from rendering specified non-audit services, thereby reducing conflicts of interest and reinforcing independence in fact and appearance. Section 141 prescribes eligibility and disqualification criteria, debarring auditors with financial or managerial ties to the company, which further insulates the audit function from management influence.

Section 143 empowers auditors to access books of account and imposes a statutory duty to report whether financial statements present a true and fair view, thus embedding a strong accountability framework. For listed entities, SEBI (through LODR and related regulations) requires audit committees to periodically review and monitor auditor independence, including the assessment of non-audit fees and relationship, and to report any material lapses to the Board and regulators. Together, these provisions establish a dual regime in which substantive independence is backed by institutional oversight and enforceable accountability, thereby enhancing market confidence.

CONCLUSION

The intersection of the Companies Act, 2013 and SEBI's regulatory framework represents one of the most sophisticated corporate governance architectures in the emerging market world. Its dual-regulatory design while creating compliance complexity provides a multi-layered transparency enforcement system that is more resilient than any single-regulator model could be. The Companies Act and SEBI regulations, working in concert, address each of these failure modes.

The current moment calls for consolidation of these gains through structural reform: coordination mechanisms between MCA and SEBI, harmonisation of key definitions, extension of meaningful governance obligations to large unlisted entities of public interest, and continued investment in digital surveillance infrastructure. India's aspiration to be a preferred destination for global capital requires not merely a technically compliant corporate governance framework, but one that is demonstrably effective wgere the letter and spirit of transparency

obligations are enforced with equal vigour for listed and unlisted entities alike.

Corporate accountability, in the final analysis, is not merely a matter of regulatory compliance; it is a constitutive element of the social contract between corporations and the society that grants them the privilege of separate legal personality and limited liability.