Page: 1000-1021 URL: www.lijdlr.com

ISSN: 2583-7753

LawFoyer International Journal of Doctrinal Legal Research

[ISSN: 2583-7753]

Volume 4 | Issue 1

2026

DOI: https://doi.org/10.70183/lijdlr.2026.v04.44

SHADOW DIRECTORS AND DE FACTO CONTROL OF INDIAN CORPORATE GROUPS: RE-EVALUATING ACCOUNTABILITY IN THE COMPANIES ACT, 2013

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I. ABSTRACT

The concept of shadow directors fills a vital yet underdeveloped place in corporate governance jurisprudence. In certain countries, including the United Kingdom, shadow directorship has been recognised in statute as a tool to hold persons actually in real influence or control over the board of a company liable, even though the person is not formally appointed to the board. Indian Company law under Companies Act, 2013, in its turn, does not give a detailed statutory definition of shadow directors, or de facto control in corporate groups. The exclusion is especially given to the Indian business world where the promoter-based structure, holding-subsidiary structure, and informal sources of power often allow directorship to become indistinguishable with effective control. This paper aims at providing a doctrinal study of the legal issues that shadow directors and de facto controllers have in Indian corporate groups. It looks into the aspects of whether the current provisions which deal with directors' responsibility, key managerial staff sections, and fraud responsibility are adequate to deal with those who wield control without being formally in office. The study assesses the effectiveness of existing accountability mechanisms through the construction of statutory provisions, judicial precedents and regulatory developments. The study adopts a limited but deliberate comparative analysis of the United Kingdom where shadow directorship is statutorily recognised as a methodological tool to illuminate structural gaps in the Indian framework. The paper concludes that the absence of a clearly articulated doctrine of shadow directorship in India creates a structural accountability gap, particularly in promoter-dominated corporate groups and related party contexts. It argues that existing statutory mechanisms are insufficiently integrated to address sustained de facto control, and advocates for a principled doctrinal framework judicially evolved and, where necessary, legislatively clarified to align

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effective control with fiduciary responsibility and strengthen corporate governance standards in India.

II. KEYWORDS

Shadow Directors, De Facto Control, Corporate Groups, Promoter Liability, Indian Company Law.

III. INTRODUCTION AND RESEARCH PROBLEM

The structure paradox describes corporate governance in India. On the one hand, the formal ownership of a board-based management, fiduciary responsibility, and statutory accountability are implemented through the Companies Act, 2013 defines a 'director' as 'a director appointed to the Board of a company' (Companies Act 2013, s 2(34)). Directors are assigned the powers to manage corporate affairs, and Section 166 prescribes their fiduciary duties and responsibilities. Conversely, the realities in the Indian corporate group set-ups indicate a governance arrangement bias towards promoters, controlling shareholders, and other relevant stakeholders that may not hold leadership roles in the corporate board but nonetheless have a strong influence on the corporate decision-making process.

This conflict between official power and real control tendencies leads to the creation of such a notion as the shadow director. The term shadow director is used in corporate jurisprudence to refer to an individual based on whose wishes or instructions the board of directors are used to follow, although the individual is not officially made a director. It is especially relevant to the concept in corporate groups where holding companies, promoter families, or other holders such as private equity investors or dominant shareholders have very strong influence although they do not take on formal fiduciary duties. This is an acute problem when corporate misconduct, mismanagement or repressive practice occurs: should there be liability only to directors formally appointed to the board, or should de facto directors also have a claim?

The Indian statutory framework does not expressly recognise 'shadow directors' as a distinct category, in contrast to jurisdictions such as the United Kingdom. However, the Companies Act, 2013 is not entirely silent on control-based responsibility. Section 2(59) defines 'officer' broadly, and Section 2(60)(e) includes within the meaning of 'officer who is in default' any person in accordance with whose directions or instructions the Board is accustomed to act (Companies Act 2013, ss 2(59), 2(60)(e)). While these provisions partially address de facto influence, they operate in a context-specific and liability-triggered manner rather than establishing a general doctrine of shadow directorship. The absence of a structured fiduciary framework for sustained control remains a significant doctrinal gap. This leads to a regulatory and accountability gap especially where the companies are run by Indian promoters as well as elaborate corporate group structures.

Indian business conglomerates often act on a structure of stratified shareholding, cross-directorship and extra informal influence. However, promoters frequently have decisive board power even in times they are not in the executive positions. On the same note, the control of companies through holding companies can have an effect of dictating the policy and financial decisions of subsidiaries. Formal board in these cases would work as an implementation tool and not as an independent decision-making entity. Under which situations accountability is crucial, when the disputes are to be noted, especially in the situations of oppression and mismanagement when the provisions of Sections 241-242 of the Companies Act, 2013 are considered; the issue of the actual control exerciser becomes a focal point.

Due to the lack of a clear definition of a doctrine of shadow directorship in India, there are certain legal issues that should be considered. At the outset, it weakens the principle of fiduciary symmetry, according to which the power and the accountability are supposed to be aligned. Those who hold actual power can be able to evade fiduciary obligations by not being formally appointed. Second, it undermines the protection of minority shareholders, in the sense that effective control can be exercised behind the board governance in the invisible structure. Third, it introduces enforcement difficulties when it comes to fraud, transactions with related parties and diversion of corporate opportunities whereby decision making may be biased based on people working behind the scenes.

Indian courts have occasionally accepted realities of the de facto control in certain situations, as in hoisting the veil of incorporation, or where the controller of a business organization should be deemed liable, but no coherent-theoretical evolution of the shadow director liability in mainstream company law jurisprudence has been adopted. What it yields is the conceptual fragmentation: liability can be suited in terms of fraud or oppression, or under securities laws, but one does not have a single theoretical base.

The present research problem therefore consists in the lack of tie with the realities of de facto control in the Indian corporate groups as reflected in the formal corporate governance structure. The main question is, do the current statutory mechanisms apply to the individuals who practice shadow directorship or is there need to develop doctrines that would lead to an efficient accountability.

The paper contends that the Indian company law, even though endowed with some indirect solutions in dealing with the issue of control liability, has no principled and systematic method of identifying and controlling the shadow directors. This gap is highly problematic to governance in an environment which is characterized by promoter power and group control in the corporate world. This is a major concern that not only needs to be addressed in terms of the coherence of the doctrine but depends on enhancing corporate responsibility and minority protection in the ever-changing regulatory environment in India.

A. Research Objectives

The current work aims at discussing doctrinal and institutional issues proposed by shadow directors and de facto control in Indian corporate groups. The purposes of the study are as follows:

1. To examine the statutory provisions of the Companies Act, 2013, specifically provisions relating to directors, officers in default, key managerial personnel, and fiduciary duties, in order to determine whether the law sufficiently covers individuals who exercise de facto control.
2. To investigate the notion of shadow directorship in comparative corporate jurisprudence, particularly in the United Kingdom where statutory

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recognition exists (Companies Act 2006 (UK), s 251), in order to understand its theoretical foundations and practical implications.

3. To analyse the regulatory framework administered by the Securities and Exchange Board of India (SEBI), particularly the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the regulatory regime governing related party transactions, to assess how promoter disclosure, control, and governance compliance are addressed in listed companies.
4. To examine the role of promoter dominance and corporate group structures in India, and to evaluate how informal influence operates within holding–subsidiary arrangements and promoter-led firms.
5. To evaluate Indian judicial precedents which, though not explicitly framed in terms of shadow directorship, address de facto control through doctrines such as lifting the corporate veil, oppression and mismanagement, and attribution of liability to persons in charge of company affairs.
6. To identify doctrinal gaps and accountability deficits arising from the absence of an organised recognition of shadow directors in Indian company law.
7. To recommend a principled legal framework judicially evolved or legislatively refined to align authority with responsibility and strengthen corporate governance standards in India.

With such objectives, the study will help bridge the gap between the ideal board set ups and the realities of corporate control in India.

B. Research Questions

The research is guided by the following central and subsidiary questions:

1. Does Indian company law adequately identify and regulate shadow directors and individuals exercising de facto control within corporate groups?
2. How is the distinction between formally appointed directors and shadow or de facto directors conceptualised in corporate jurisprudence?

3. To what extent do the provisions of the Companies Act, 2013 particularly those concerning directors' duties, officers in default, and personal liability apply to persons exercising control without formal appointment?
4. Does the absence of an explicit statutory framework on shadow directorship create accountability gaps in cases of misconduct, oppression, or mismanagement?

C. Research Hypotheses

1. The Companies Act, 2013 does not provide a coherent and systematic doctrinal framework for recognising and regulating shadow directors, resulting in structural gaps in fiduciary accountability.
2. Although certain statutory provisions such as those relating to "officers in default" and regulatory mechanisms governing promoter conduct partially address de facto control, they are insufficiently integrated to ensure consistent alignment between effective control and fiduciary responsibility.

D. Research Methodology

This study adopts a qualitative doctrinal methodology grounded in statutory interpretation, case law analysis, and normative evaluation of corporate governance principles. The doctrinal method is preferred over empirical or quantitative approaches because the central inquiry concerns conceptual coherence, statutory structure, and fiduciary theory rather than behavioural or statistical measurement. The research seeks to examine whether Indian company law provides a principled framework aligning effective control with fiduciary accountability; such a question is fundamentally doctrinal in nature.

The primary statutory materials examined include the Companies Act, 2013, particularly Sections 2(34), 2(59), 2(60)(e), 166, 241–242, and relevant provisions concerning fraud liability and attribution of responsibility. In addition, the study analyses the regulatory framework administered by the Securities and Exchange Board of India (SEBI), including the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, especially provisions governing related party transactions and promoter disclosures.

For comparative purposes, the research engages with the United Kingdom framework under the Companies Act 2006 (UK), particularly Section 251, which statutorily defines shadow directors. The comparative analysis is limited and functional, serving to illuminate doctrinal contrasts rather than advocate wholesale transplantation.

Judicial precedents have been examined from the Supreme Court of India, various High Courts, the National Company Law Tribunal (NCLT), and the National Company Law Appellate Tribunal (NCLAT). Case law was identified through recognised legal research databases and official court repositories, focusing on decisions addressing lifting of the corporate veil, oppression and mismanagement, promoter liability, and attribution of control-based responsibility.

The methodology thus combines statutory construction, doctrinal synthesis, and limited comparative analysis to evaluate whether the Indian framework adequately addresses sustained de facto control within corporate groups.

E. Literature Review

Mohapatra (2016)[2] has studied the correlation between board independence and firm performance in India, and it has focused on the independent directors and how they enhance corporate governance outcomes.

Gupta and Singh (2018)[3] examined corporate governance in the context of transition economies (such as India), noting such issues as there being concentrated holding, promoters, and the lack of board independence.

Majeed, Basiruddin and Binsaddig (2021)[4] have undertaken a systematic review on corporate governance and culture and summarised literature on the global governance.

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[2] Pranati Mohapatra, "Board independence and firm performance in India," 9 *International Journal of Management Practice* 317 (2016).

[3] Pankaj Gupta and Shallu Singh, "Corporate Governance Structures in Transition Economies - Issues and Concerns for India," 66 *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis* 1459 (2018).

[4] Afkar Majeed, Rohaida Basiruddin and Ruaa Binsaddig, "Corporate Governance and Culture: A Systematic Review," 11 *International Journal of Academic Research in Business and Social Sciences* (2021).

Satish Kumar (2021)[5] analyzed the provisions of the Companies Act, 2013 of the regulatory rules with independent directors and the statutory protections that aimed to enhance the independence and accountability of the boards.

Kishore Kumar et al. (2022)[6] examined how the sustainability reporting is influenced by the ownership structures and governance attributes applicable within an Indian context. Their empirical study focused on formal variables of governance including that of the board composition and ownerships concentration.

Rajendran and Vethirajan (2022)[7] reviewed the corporate governance practices in listed corporations in Tamil Nadu and found out that a good corporate governance leads to higher stakeholder value.

Abhilash, Shenoy and Shetty (2023)[8] have given a bibliometric review of the literature on corporate governance in India. Their results showed that the areas of dominance are earnings management, board diversity, CSR, and performance of firms.

Singla (2023)[9] looked at corporate governance and legal compliance in India and especially in the post-Companies Act, 2013 business setting. The research knew the transformative quality in the 2013 Act of harmonizing the Indian corporate law with the global standards.

The existing Indian literature on corporate governance has predominantly focused on board independence, ownership concentration, sustainability reporting, and regulatory compliance under the Companies Act, 2013. While such scholarship—covering themes of promoter dominance, governance standards, and fiduciary

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[5] R. Satish Kumar, "Regulatory Provisions under Companies Act 2013 Related to Independent Director from Corporate Governance Perscpective" *SSRN Electronic Journal* (2021).

[6] Kishore Kumar et al., "Do ownership structures and governance attributes matter for corporate sustainability reporting? An examination in the Indian context," 33 *Management of Environmental Quality an International Journal* 1077 (2022).

[7] S. Rajendran and C. Vethirajan, "CORPORATE GOVERNANCE PRACTICES LEADS TO VALUE ENHANCEMENT OF STAKEHOLDERS OF LISTED COMPANIES IN TAMIL NADU" *PARIPEX-INDIAN JOURNAL OF RESEARCH* 40 (2022).

[8] Abhilash Abhilash, Sandeep S Shenoy and Dasharathraj K Shetty, "Overview of Corporate Governance Research in India: A Bibliometric Analysis," 10 *Cogent Business & Management* (2023).

[9] Arun Singla, "Corporate Governance and Legal Compliance in Indian Business Sector," 1 *Indian Journal of Law.* 1 (2023).

accountability provides contextual background, it does not directly engage with the doctrinal concept of shadow directorship or sustained de facto control.

In comparative jurisprudence, the doctrine of shadow directorship has received structured judicial treatment. In *Re Hydrodam (Corby) Ltd* [1994][10], the English High Court clarified the distinction between de jure, de facto, and shadow directors, emphasising that a shadow director is a person in accordance with whose directions or instructions the board is accustomed to act. The decision laid down an analytical framework separating mere influence from operative control.

Similarly, in *Lo Shing Ching v Official Receiver* [2004][11], the Hong Kong Court of Appeal examined the evidentiary threshold required to establish shadow directorship, reinforcing the principle that sustained and habitual direction rather than isolated advice triggers liability. These authorities demonstrate the doctrinal consolidation of control-based accountability in jurisdictions that formally recognise shadow directors.

In the Indian context, although there is no explicit statutory doctrine of shadow directorship, courts have addressed questions of substantive control through veil-lifting jurisprudence. In *Tata Engineering and Locomotive Co. Ltd. v State of Bihar*[12], the Supreme Court of India acknowledged circumstances in which corporate personality may be disregarded to identify the real actors behind corporate conduct. While veil-lifting is not equivalent to shadow directorship, it reflects judicial willingness to prioritise substance over form where control is exercised indirectly.

Despite these doctrinal strands, there remains a noticeable absence of focused Indian scholarship systematically analysing shadow directorship within the framework of the Companies Act, 2013. Existing governance literature addresses promoter dominance and board accountability in general terms but does not examine whether sustained de facto control should attract fiduciary obligations analogous to those imposed under Section 166.

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[10] *Re Hydrodam (Corby) Ltd* [1994] 2 BCLC 180 (Ch).
[11] *Lo Shing Ching v Official Receiver* [2004] HKCA.
[12] *Tata Engineering and Locomotive Co. Ltd. v State of Bihar* AIR 1965 SC 40.

This paper therefore seeks to fill a doctrinal gap by synthesising comparative shadow director jurisprudence with Indian statutory interpretation and veil-lifting principles, thereby situating de facto control within a coherent accountability framework.

F. Research & Analysis

1. Theoretical Provisions of Shadow Directors in Corporate Law

The idea of the shadow director is an ideological reaction to a systemic flaw in corporate governance namely, the potential that an effective control can be executed without official responsibility. The classical theory of company law is based on the idea that the ones, who run the corporate activities, are the formally appointed members of the board that is going to act as directors. This equilibrium between power and responsibility will see that the fiduciary duties are mechanisms of accountability. But current practice in the corporate world, especially in the concentrated ownership and the close-tie companies, has shown that real control may no longer be in accordance with a formal design.

It is also often referred to as a shadow director who is expected to give directions or other instructions which are regularly adhered to by the board of directors, though that person may not be officially chosen in such a position. It is not the attendance of board meetings or even the presence of managerial activity but long-term influence that successfully determines corporate decisions. A shadow director is contrary to an open frontier de facto director who professes to perform the functions of a director directly without being appointed to the board. Their power is not by a position but through influence.

This principle identifying shadow directorship is based on the normative principle that responsibility should be drawn to control. Since directors make decisions at their own discretion concerning corporate assets and corporate interests, corporate law provides fiduciary duties. Exposing liability to the persons, other than the formal board in the event of such discretionary power, erosion of the sense of fiduciary doctrine is confined to the act of delegation. The shadow director doctrine is thus aimed at deterring structural manipulation to avoid responsibility evasion.

The doctrinal challenge lies in distinguishing legitimate influence from directive control. Corporate governance inevitably involves multiple actor's shareholders, lenders, advisors, and promoters who may affect board decisions. However, influence becomes legally significant when it displaces the board's independent judgment.

In *Secretary of State for Trade and Industry v Deverell* [2001] Ch 340 (CA), the Court of Appeal refined the Hydrodam formulation by holding that shadow directorship does not require control over the entirety of corporate affairs.[13] It is sufficient that the alleged shadow director exercises real influence over part of the company's activities, provided that the board is accustomed to act in accordance with that influence. This clarification materially broadens the analytical threshold and reinforces the principle that sustained and effective influence rather than total domination is the relevant inquiry. The major question is whether the board has independence or becomes subordinate in its functionality.

Courts in jurisdictions recognising shadow directorship focus on sustained patterns of conduct rather than isolated interactions. In *Re Hydrodam (Corby) Ltd* [1994] 2 BCLC 180 (Ch), Millett J articulated the foundational distinction between de jure, de facto, and shadow directors, clarifying that a shadow director is a person in accordance with whose directions or instructions the board is accustomed to act.[14] The judgment emphasised that the influence must be real, operative, and habitual, rather than sporadic or advisory in character.

The doctrine is not intended to penalise legitimate shareholder engagement or professional advice, but to identify circumstances where the board's discretion has effectively been supplanted by an external directing mind. The emphasis lies on whether the board has surrendered independent judgment in favour of structured obedience.

In the Indian corporate world, this conceptual framework is especially important. The promoter-based governance systems and well-knitted business groups give rise to those situations when the power can be informal but decisive. The fact that no

[13] *Secretary of State for Trade and Industry v Deverell* [2001] Ch 340 (CA).
[14] *Re Hydrodam (Corby) Ltd* [1994] 2 BCLC 180 (Ch).

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statutory recognition of shadow directors exists in India necessitates a meticulous doctrinal inquiry into the existence or absence of the use of sufficient legal mechanisms regarding de facto control or whether there are loopholes in accountability.

2. Statutory Position under Companies Act, 2013

The Companies Act, 2013 establishes a board-centric governance structure and defines a 'director' as "a director appointed to the Board of a company" (Companies Act 2013, s 2(34)). The statutory formulation ties directorial status to formal appointment. Consequently, fiduciary duties under Section 166 (Companies Act 2013, s 166) are imposed expressly upon those occupying the office of director. The structure thus reflects a formal alignment between appointment and fiduciary responsibility.

However, the Act is not entirely silent on control-based accountability. Section 2(59) defines "officer" broadly, and Section 2(60)(e) provides that an "officer who is in default" includes "every person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act" (Companies Act 2013, ss 2(59), 2(60)(e)). This language closely resembles the classical formulation of shadow directorship in comparative jurisdictions.

Section 2(60)(e) therefore creates a statutory basis for attributing liability to individuals exercising sustained directive influence over the board, even in the absence of formal appointment. Commentators have noted that this provision implicitly recognises shadow-director-type accountability within Indian company law. Yet its operation is confined to contexts where statutory contraventions trigger liability of an "officer in default." It does not elevate such persons into the status of directors nor subject them to the continuous fiduciary regime imposed under Section 166 (Companies Act 2013, s 166).

The distinction is doctrinally significant. Whereas Section 2(60)(e) enables attribution of responsibility in specific contraventions, it does not construct a general theory of control-based fiduciary obligation. In other words, Indian law contains an incidental or situational recognition of shadow-director-like influence, but it does not provide a consolidated doctrinal framework equating sustained de facto control with the fiduciary obligations of formally appointed directors under Section 166.

Properly understood, therefore, the statutory framework reflects partial recognition rather than complete silence. The absence lies not in total omission, but in the lack of systematic integration between control-based influence and fiduciary doctrine.

This formal approach has its implications especially in promoter-driven companies and corporate groups. Those individuals who exercise no board position and affect the process of strategic decision-making, might still be beyond the core fiduciary regime. Although certain violations of statutory will result in the liability, the continuing obligation of loyalty and care is limited to formally appointed directors.

We find that the statutory position in this case leads to support of the first research hypothesis; Indian company law lacks a coherent, systematic framework on the recognition of shadow directors. It also supports the second hypothesis because the lack of explicit recognition allows parties that engage in the assumption of de facto control to act without herein fiduciary limitation unless brought under certain penal provisions.

This discussion does not mean that the Indian law does not have the capacity to look at the de facto control. Instead, it hints that what is there is not doctrinally integrated and is in bits. The question here is whether judicial interpretation has helped overcome this gap.

3. Promoter Dominance and Corporate Group Realities in India

To take any serious look into shadow directorship in India, one should consider the structural realities of Indian corporate governance. Contrary to jurisdictions with dispersed shareholding and managerial independence, Indian companies especially listed ones tend to display concentration of ownership patterns that are dominated and controlled by identifiable promoter groups. This aspect of organization determines greatly the allocation of power within the corporate organizations.

In India, promoters often retain significant shareholding powers and have an autocratic influence on the formation of the board, strategy, and other important managerial decisions. Although promoters may not hold any executive office in the organisation, their leverage may be forceful through informal consultation procedures, voting rights, economic strengths, or reputation with the organisation. Under family businesses especially those that are owned by a small number of individuals, the line separating ownership and management can be unclear, and formal boards may serve as a promotion policy tool.

There are also corporate groups that make the analysis even harder. The parent company can have effective control over the subsidiary in the holding-subsidiary arrangements by either the appointment rights, financial dependency or integration of the operations. Although the legal personality of the separate entities is preserved, in fact, decision-making interest may be restricted. The board of a subsidiary can operate or perform as per the expectation or guidance of the holding company which cast doubt on the locus of real control.

Such governance frameworks provide a good platform upon which shadow directorship issues are encountered. A disconnect between authority and accountability may be created where promoters or parent entities habitually and decisively make decisions without interpreting that they are in a formal position of directorship. Directors who are formally appointed enjoy fiduciary obligations and statutory liability; however, many be limited in their discretion by figures of larger magnitude. This gives an opportunity that the persons who exercise effective control will escape the fiduciary responsibilities that come with holding the directorial office.

The problem is especially acute when it applies to the situation of related party transactions, corporate opportunity diversion, or bias in relation to minor shareholders. Under these circumstances, it is essential to know who really influenced the disputable decision. When the promotion-directed board acted, to the extent that its board was acting in substantial compliance with the direction of promoters, capping the liability to formal directors may not be effective in dealing with the substantive source of decision-making authority.

Simultaneously, it is needed to understand that the influence of promoters is not necessarily illegal. The shareholders, especially the majority shareholders, have a right to manipulate the corporate policy by legal means including voting rights and share hold resolutions. The difficulty is how to be able to separate the legitimate shareholder influence within the company with directive control that replaces the independent judgment of the board. Corporate governance does not mean that boards must be closed off to the shareholders, but mandates directors to independently exercise fiduciary judgment.

The Indian regulatory system recognises the strength of promoters by way of disclosure and controls on related party transaction. Nevertheless, it does not go further to incorporate promoter control into the fiduciary structure of company law. It is possible that promoters who are not formally appointed may not directly fall under the umbrella of Section 166 responsibilities and, in particular, may be influential in corporate conduct.

This structural truth makes it even stronger that the lack of shadow director doctrine can potentially undermine accountability in promoter-driven systems of governance. Where practical authority is out of the boardroom, formal definitions may blind substantive accountability. The policy query is whether this silence of the law has been offset by the judicial interpretation.

IV. DE FACTO CONTROL IN INDIA: JUDICIAL APPROACH

The existence of shadow directors as a statutory category is not expressly recognised in the company law of India, although in some situations courts and tribunals have shown an inclination to go behind the nominal titles and probing of control reality. But this judicial involvement has been ad hoc and episodic in nature and not consolidated doctrinally.

Although Indian company law does not expressly codify shadow directorship, judicial decisions have recognised the relevance of substantive control beyond formal designation.

In *Tata Engineering and Locomotive Co. Ltd. v State of Bihar*, the Supreme Court acknowledged that the corporate veil may be lifted where the company structure is used to conceal the real actors controlling corporate affairs.[15] While veil-lifting is an exceptional doctrine, it demonstrates judicial willingness to look beyond formal corporate personality to identify effective control.

In *Dale and Carrington Investment (P) Ltd v P.K. Prathapan* (2005), the Supreme Court emphasised that directors and controlling shareholders owe fiduciary obligations and that corporate powers cannot be exercised for personal benefit at the expense of minority shareholders.[16] Although the case concerned formally appointed directors, the reasoning underscores the normative principle that control attracts fiduciary responsibility an idea central to shadow directorship analysis.

Further, in *LIC v Escorts Ltd*, the Supreme Court examined the role of promoters and controlling shareholders within corporate governance structures, observing the distinction between ownership power and board management while acknowledging the practical realities of dominance in corporate functioning.[17] The decision reflects judicial awareness of promoter influence within Indian corporate structures.

At the tribunal level, proceedings under Sections 241–242 of the Companies Act, 2013 have frequently required the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) to scrutinise whether individuals exercising influence behind the board have engaged in oppressive or prejudicial conduct. In several oppression and mismanagement petitions, tribunals have examined patterns of promoter-driven decision-making, diversion of corporate opportunity, and control overboard resolutions, even where such individuals were not formally designated as executive directors. While these decisions do not expressly invoke the language of "shadow director," they demonstrate functional recognition of de facto control in remedial contexts.

Notwithstanding these interventions, Indian jurisprudence has not crystallised a structured doctrinal test equivalent to the control-based standards articulated in comparative jurisdictions. Judicial engagement remains contextual and remedial

[15] *Tata Engineering and Locomotive Co. Ltd. v State of Bihar* AIR 1965 SC 40.
[16] *Dale and Carrington Investment (P) Ltd v P.K. Prathapan* (2005) 1 SCC 212.
[17] *LIC v Escorts Ltd* AIR 1986 SC 1370.

rather than constituting a generalised fiduciary doctrine applicable to sustained de facto controllers.

When considering the cases of prejudice or oppression in a certain conduct, tribunals can look at reports of power and the actual nature of decision-making. Nevertheless, this kind of discovery is usually placed in context of the remedial authority of the tribunal as opposed to being stated in terms of acknowledgment of shadow directorship.

The judicial application of the definition of persons in charge of and responsible of the conduct of the business in a number of statutory settings is also indicative of a show of willingness to impose liability outside of formal designation. In other instances, the language has been considered at the most possible extents by the courts to encompass those individuals who were running corporate affairs with the right mindset. These interpretations are, however, generated within the areas of penalty or regulation and is not an overall expansion of fiduciary duties.

What is remarkably lacking in the Indian jurisprudence is a well-defined test on which one can determine that de facto controllers are shadow directors. The courts have not invariably incorporated the standard that is similar to the one-off being used to act that is seen in comparative jurisdiction. Neither have they elaborated on grounds of sharing legitimate shareholder influence and directive control at the expense of board autonomy.

The outcome is the doctrinal inconsistency. Some courts follow a substantive approach and who really inspired corporate conduct. In others, they follow official directorial position. Such a variability creates confusion about the time and manner in which the influence becomes legal responsibility.

The legal methodology is a significant sign therefore of bearing an implicit awareness of the issue of de facto control but short of developing a coherent doctrine. The attribution of responsibility in specific situations can be performed, but there is no single theoretic framework that coordinates sustained control and fiduciary accountability. This disjointed involvement supports the hypothesis of the research that Indian company law does not provide an extensive mechanism of tackling shadow directorship.

V. DOCTRINAL DEFICIENCIES AND ACCOUNTABILITY CONSEQUENCES

The cumulative review of the provisions of law, corporate governance systems, and judicial interpretation demonstrates that there is a huge gap in the doctrines of Indian company law. Although the Companies Act, 2013 creates a more formal and board-based system of governance, corporates in India are often engaged in the distribution of effective control that is not vested in formally nominated directors. This deviation between form and reality is not completely explained by the fact that the law has used the form of designation as the foundation of fiduciary responsibility.

The first gap in the doctrinal considerations is based on the strict definition of statute on the meaning of a director. Section 166 fiduciary obligations are directly related to appointment. Shareholders who can affect the decisions of the board but are not sitting in office are not subject to the main fiduciary regime. Though some of the provisions and ideas of the penal law like the use of the term officer in default are designed to broaden the liability in some situations, this does not amount to a full-fledged principle of de facto control being synonymous to fiduciary accountability. Accountability is reactive and offence specific instead of integrated into the doctrine of corporate governance. The second gap is promoter dominance and corporate group influence. Indian firms are normally run in concentrated ownership setup where promoters or holding companies enjoy significant power.

The regulatory framework recognizes promoters to make promoter disclosure and compliance but fails to systematize promoter control into the company law fiduciary architecture. Because of this distinction, there is an opportunity that the persons with decisive influence can escape the never-ending fiduciary duties on directors by not being formally appointed as directors. The third loophole is the inconsistency of judicial rulings. Laws have seen the courts/ tribunals test substance over form like during veil-lifting and oppression cases. These interventions are, of course, contextual in nature, and not doctrinally unified. No consistently defined criterion exists on when

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influence is so great as to create the control necessary to justify fiduciary responsibility. Consequently, the results can be subject to judicial discretion and not to the legal standards.

VI. RECOMMENDATIONS AND SUGGESTIONS

The discussion shows that Indian company law has not specifically acknowledged the existence of shadow directors, even though the governance arrangements whereby effective control can exist outside of appointment to the board can exist. Reform should then aim at balancing authority with responsibility but with no sacrifice of legitimate participation of the shareholders.

The analysis undertaken in this paper suggests that reform should proceed along two distinct yet complementary tracks: (A) short-term judicial clarification within the existing statutory framework; and (B) medium- to long-term legislative refinement to integrate control-based accountability into Indian company law.

A. Short-Term Judicial Measures

In the immediate term, Indian courts and tribunals can adopt a more structured control-based interpretative approach within the ambit of the Companies Act, 2013. In cases where evidence demonstrates that the board is accustomed to act in accordance with the directions of a particular individual, tribunals may invoke Section 2(60)(e) (Companies Act 2013, s 2(60)(e)) purposively to attribute responsibility to such persons as "officers in default."

Judicial articulation of a consistent test for identifying sustained de facto control focusing on habitual influence, displacement of independent judgment, and involvement in strategic decision-making would reduce doctrinal uncertainty. In proceedings under Sections 241–242 (Companies Act 2013, ss 241–242), tribunals should expressly analyse whether oppressive conduct originates from individuals exercising substantive control behind the board, thereby strengthening minority shareholder protection without immediate legislative amendment.

B. Medium- and Long-Term Legislative Reform

While judicial development can mitigate immediate accountability gaps, a more durable solution would involve legislative clarification. Parliament may consider expressly recognising shadow directors within the Companies Act, 2013, aligning fiduciary responsibility under Section 166 (Companies Act 2013, s 166) with sustained de facto control rather than limiting it to formally appointed directors under Section 2(34) (Companies Act 2013, s 2(34)).

A comparative model may be drawn from the United Kingdom, where shadow directors are expressly incorporated into regulatory consequences, including disqualification. Section 22(5) of the Company Directors Disqualification Act 1986 (UK) extends the disqualification regime to shadow directors, thereby ensuring that those exercising real control cannot evade regulatory sanctions by avoiding formal appointment.[18] This model demonstrates how legislative design can integrate control-based accountability without undermining legitimate shareholder participation.

A calibrated statutory amendment in India carefully distinguishing legitimate shareholder influence from directive control that supplants board autonomy—would enhance doctrinal coherence and align authority with responsibility in promoter-dominated corporate structures.

VII. CONCLUSION

The current paper has discussed whether the company law in India is sufficient to identify and regulate shadow directors and individuals who have de facto control over corporate groups. Statutory interpretation, practical governance and inference have shown that there is a structural dislocation between formalistic position taken by directors and the dispensation of control in Indian enterprises.

The Companies Act, 2013 is more formal as it connects the fiduciary duties with the appointment as a director. Although some have the effect of embedding the liability on persons involved in the actions of business in particular situations, no consistent doctrine exists that links sustained control to the fiduciary liability. Promoters and

[18] Company Directors Disqualification Act 1986 (UK), s 22(5).

 (ISSN: 2583-7753)

controlling bodies could have a strong influence on the decisions taken by the boards without being liable to the prevailing responsibilities that are enforced under Section 166 unless they are formally in office.

In other areas of judicial practice, like veil-lifting cases and oppression cases, de facto control is partially recognised, yet the interaction has never been doctrinally consolidated. Courts have failed to express any repetitive assessments of identifying shadow directors or when influence goes beyond a threshold to control, which assumes fiduciary liability.

The findings of this study confirm the two research hypotheses formulated at the outset.

First (H1), the Companies Act, 2013 does not provide a coherent and systematically integrated doctrinal framework for recognising and regulating shadow directors. Although Section 2(60)(e) extends liability to persons in accordance with whose directions the Board is accustomed to act, this operates in a context-specific and offence-triggered manner and does not amount to a comprehensive fiduciary regime equivalent to that imposed on formally appointed directors under Section 166 (Companies Act 2013, s 166).

Second (H2), while certain statutory provisions and judicial interventions partially address de facto control through the concept of "officer in default," veil-lifting jurisprudence, and oppression and mismanagement remedies—they remain fragmented and insufficiently integrated to ensure consistent alignment between effective control and fiduciary responsibility.

The central normative concern, therefore, is the misalignment between authority and accountability. Indian corporate governance continues to operate within a formal appointment-based structure under Section 2(34) (Companies Act 2013, s 2(34)), even though practical control in promoter-driven and group-based enterprises may extend beyond the boardroom.

The study demonstrates that Indian law exhibits partial recognition of control-based liability but lacks doctrinal consolidation. Judicial clarification and calibrated legislative reform drawing on comparative models where appropriate would enhance coherence, strengthen minority shareholder protection, and ensure that those who effectively determine corporate policy are not insulated from fiduciary responsibility merely by avoiding formal designation.

The main normative issue would be the consistency of responsibility and authority. The principles of corporate governance insist that those who efficiently make corporate policy should not just be locked out of accountability simply because they are not formally appointed. Simultaneously, reform should attentively differentiate authoritative shareholder impact and directive control, which will replace independent board judgment.

A judicial statement of principles of control-type accountability, with a legislative elaboration where needed, would facilitate doctrinal integrity and improve corporate governance in India. The identification of the realities of de facto control is not a renunciation of corporate law theory but doubles the ability that the fiduciary integrity is a cornerstone of corporate law.

VIII. REFERENCES

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