



# Independent Directors

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**ROLES AND RESPONSIBILITIES**

**BY PRACHI DAVE**

# Companies Act 1956

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- No definition of Independent Directors

Could be treated as “officers in default”?

- knowingly guilty of the default/ non-compliance/ failure/refusal
- knowingly and willfully authorizes or permits such default
  
- Corporate Governance Voluntary Guidelines- Voluntary

# Evolution of Corporate Governance

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## **Shri Kumar Mangalam Birla, Member, SEBI Board**

- Non-Executive / Independent Directors introduced
- Chairman (Executive) : 50% Independent Directors  
Chairman (Non-Executive): 33% Independent Directors
- Independent Directors- no material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries,
- Audit Committee: Majority IDs, Chairman ID

# Evolution of Corporate Governance- contd...

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## Narayan Murthy Committee Report 2003

New criteria included

- ◆ not related to promoters or management at the board level or at one level below the board;
- ◆ not an executive of the company for preceding three financial years;
- ◆ not a partner / executive of the statutory audit firm / law firm/ consulting firms /internal audit firm associated with the company for the last 3 years.
- ◆ not a supplier, service provider or customer of the company.
- ◆ not a substantial shareholder of the company, i.e. owning two percent or more of the block of voting shares.

# Clause 49

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- Recommendations of the Narayan Murthy Committee adopted
- Nominee Directors however to continue as Independent Directors
- Periodically review the legal compliance reports and steps taken to improve the taints.
- In case of any proceedings against him, defence of ignorance of this responsibility **shall not be permitted.**

# Liability under Negotiable Instruments Act, 1881

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- Vicarious Liability
- Normally in criminal law, one person cannot be held liable for the acts of another
- Company – a juristic person
- **Bhardwaj T. Vankataraghavan Vs. Ashok Arora**
- Director, Secretary, CFO- No magic words
- **SMS Pharmaceuticals vs Neeta Bhalla & Ors**
- Pepsi Foods v. Special Judicial Magistrate and Ors. - Summons cannot be casual

# Wilful Defaulter- RBI

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- Cheating, Criminal breach of trust, Stealing, misappropriating
- Names of all directors to be published
- Distinguishing Remark – ‘**Nom**’ and ‘**Ind**’
- **Ionic Metalliks vs/ Union of India (Guj HC)**
- 2015 – Limited to promoter / whole-time director
- Non- wholetime directors under Section 2(60) of Companies Act 2013
- But in very rare cases

# International Case Laws

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- UK's Companies Act 2006, City Code,
- **Robert Lee vs. Clark Osborne & Ors-** Conflict of Interest
- **Wilding Vs. Te Mania Livestock Ltd.** – Independent opinion in Disputes



# Present position under Companies Act 2013

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Section 149 adopted Clause 49 broadly

*‘Officer in Default’*: largely not applicable to IDs except where shown to be aware or participating (without objecting) or gives consent or shows connivance or not diligent

MCA Circular dated 2 March 2020 SOPs:

- **Ascertain the nature of the default:**
- **Ascertain officers in default:**
- **Proceedings against IDs or NEDs: avoidable** unless sufficient evidence exists to the contrary.
- **Seek Guidance from MCA on proceedings**

# Roles and Responsibilities

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1. To strive to attend all general meetings, meetings of the Board of Directors and the Board committees of which he is a member;
2. To keep themselves well informed about the company and the external environment in which it operates;
3. To pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;
4. To ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;
5. To report concerns about unethical behavior, actual or suspected fraud or violation of the company's code of conduct or ethics policy;
6. To act within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;
7. To undertake appropriate induction and regularly update their skills and knowledge.

To seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;

## **Other laws with criminal liability**

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**FEMA/ FERA:** Ajay Bagaria Vs. UOI (Delhi HC)

**Enforcement Directorate:** Parag Dalmia Vs Special Director of Enforcement (Delhi HC)

**Central Excise:** Krishna Kumar Bagla v. B L Sharma

**SEBI :** C.S. Raju v. SEBI

# Remedies

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- Writ Jurisdiction under Article 32 and Article 226 of the Constitution of India
- Quashing Order under Section 482 of the Criminal Procedure Code

*482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.*

**THANK YOU**