

Beyond Compliance: The Evolving Mandate of Independent Directors



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Periods of disruption and crisis inevitably amplify scrutiny of Independent Directors.

Today's corporate landscape is no exception, echoing concerns from past financial meltdowns and corporate scandals. Whether during the collapse of major institutions or the surfacing of high-profile fraud, the conversation around their relevance, contribution, and foresight intensifies.

India Inc. has witnessed an alarming pattern of misconduct—spanning

both regulated and unregulated sectors, from listed entities to privately held firms. Notably, many of these organizations were technically compliant with corporate governance norms. Yet questions persist around promoter integrity and leadership ethics. Whether involving a bank, an airline, or a housing finance firm, these failures raise deeper issues about Independent Directors' influence, their responsiveness during crises, and their ability to challenge management effectively. Comparable cases in the West—think Enron or Tyco—show that compliance alone is not enough.

From the vantage point of investigative firms, one recurring theme is passivity—many Independent Directors perceive their mandate as merely approving decisions. Regulatory oversight is intensifying, but a prescriptive approach risks reducing the role to a compliance checklist: board composition, gender diversity, tenure, remuneration. When qualitative aspects like judgment, courage, and ethical leadership are sidelined, governance becomes procedural rather than principled.

At the heart of a well-functioning board lies trust and transparency between management and Directors. In investigative scenarios—often triggered by whistleblower allegations—Boards tend to adopt a defensive posture rather than pursue objective analysis. Having distinguished professionals on the Board is futile if they don't foster open dialogue and mutual respect.

Boards rooted in trust are more inclined to embrace independent reviews, safeguard employee interests, and cooperate during sensitive investigations. For example, when examining leaks of Unpublished Price Sensitive Information (UPSI), Directors who willingly share access to devices and admit lapses contribute to swifter and more productive outcomes.

Strong professional camaraderie between Independent Directors trickles down to the company culture, instilling confidence among Executive Directors and encouraging

candid discussions. Empirically, such Boards ensure timely circulation of agendas, more engaged deliberations, and detailed minutes. In contrast, a fractured Board receives last-minute updates, often via informal channels like WhatsApp.

In today's ESG-conscious world, Board articulation on social and global matters is vital. A culture of openness fosters resilience and adaptability.

Equally important is the role of dissent. Healthy Boards encourage questioning, recognizing that disagreement isn't disloyalty—it's leadership. In one case, a CEO was ousted by institutional investors for ethical lapses. Ironically, these same investors had earlier endorsed questionable transactions and approved generous compensation without due scrutiny. Meeting minutes revealed superficial discussions, raising doubts about the Board's complicity.

Independent Directors must be equipped to raise flags and challenge status quo. That demands ongoing upskilling. A robust Independent Director profile should go beyond reputation—it should reflect crisis management capability, strategic insight, and the willingness to engage deeply with operations. Due diligence on Board hires increasingly focuses on contribution and responsiveness during upheaval.

Some Boards are now integrating skills like tech literacy and risk management—especially relevant in a turbulent geo-political environment. Cyber frauds, digital vulnerabilities and hastened adoption of AI have exposed the dangers of unprepared governance. Boards have approved large transfers based on spoofed emails and overlooked social media risks due to absence of protocol.

To meet these evolving expectations, Board evaluations are gaining traction. Yet four out of five Indian companies still don't evaluate their Boards—a glaring gap. Forward-thinking firms are adopting peer-review frameworks and self-assessments, particularly critical if ESOPs for Independent Directors are on the horizon.

Such evaluation mechanisms not only enhance accountability but also ensure the Board sets the right cultural tone. One investigation revealed a consumer tech firm with impressive growth, later discovered to be fueled by fictitious customers. The issue stemmed from cultural blind spots—an obsession with acquisition metrics overshadowing sustainable growth. Another case saw a fraudulent insurance claim sanctioned by the Board after the event had already occurred, raising serious ethical red flags. In both instances, Board behavior was central to the crisis.

Independent Directors, as custodians of governance and protectors of minority interests, must uphold not just legal mandates but moral responsibility. Encouragingly, in recent months, Board participation in strategic conversations has deepened. The challenge now is to transform this momentum into lasting cultural change.