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**SILENT CONTROLLERS, NO RESPONSIBILITY: LEGAL
ACCOUNTABILITY OF SHADOW DIRECTORS**

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ABSTRACT

This paper explores the concept of shadow directors as silent controllers and how there is limited scope for holding them accountable in Indian Legal System. It examines how the lack of proper definition and standards for holding the shadow dictators accountable can lead to erosion of justice and principles of fairness. This paper majorly analyses the legal precedents of the UK jurisprudence and the proper definition given under the China's legal spectrum. Through doctrinal and comparative research, it argues that absence of law, blind dependence on the foreign judgments and limited court's precedents can lead to misalignment of justice and open doors for the judicial terrorism in the garb of judicial activism. This paper concludes by recommending a proper draft for definitions and framework for holding them accountable, filling the loophole that stems from section 7 of Companies Act and laying down of explicit guidelines for courts to serve justice and equity.

KEYWORDS – Shadow directors, definition, liability and accountability, statutory test

I. INTRODUCTION

Behind major corporate decision or accidents that may lead to the end of life of the incorporation remains unseen hands, lurking in the shadow. Powerful yet invisible. These hands shape destinies without accountability. Why? Because they are invisible in the eyes of Indian Law. With growing number of corporate scams, the dirtier hands remain unaccounted, and it increases pressure to pierce the Indian jurisprudence and demand urgent scrutiny. These invisible hands are known as the shadow directors. They exert considerable influence on the affairs of the company such as taking financial and investment decision, influencing the recruitment and removal of personal and other equally important task that are in the interest of the company.

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The shadow directors are poorly defined in the Indian Companies Act be it of 1956 or 2013. Even though decades have passed, the legislation does not saw any major evolution, and the challenges persists. One of the major challenges is to define and outline the scope and liability of the shadow dictatorship. They could pave the way for judicial terrorism or these directors evading the liability by identifying the loophole that exist in the poorly defined concept. The goal of this article is to highlight the difference between the other jurisprudence (majorly the UK jurisprudence) with that of Indian one; identifying the major challenges or gaps and suggesting the possible reforms.

II. MATERIALS s METHODS

This paper uses doctrinal legal research method. It analyses provisions of the statute, of both Indian and international jurisprudence, foreign precedents, and academic literature. It also undertakes comparative analysis with the UK, the USA and the China's framework.

III. INCORPORATION AND THE BOARD: UNDERSTANDING THE BACKGROUND

A corporation or a company is an artificial entity that is invisible, intangible and exists only in the contemplation of law². It does not have a mind and a soul of its own³ to carry out its own operations. This makes it necessary for the business to be entrusted to some human agents.⁴ They are shareholders or owners who are associated with the incorporation and are shielded by limited liability. These owners concern themselves with the capitalization of the company. Law creates a specialized body of individuals who part-takes in the operation of the corporation.

Law delegates management through a board structure. The board structure defines the organization of the company's board of directors and the mechanisms used to govern the operations via formation of various committees. The board of directors have been termed as the key decision- making body withing the incorporation⁵. There is another body which is separate

² Trustee of Dartmouth College v. Woodward, 1819 SCC Online US SC 2.

³ Haldane LC in Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd., 1915 AC 705 (HL).

⁴ AVTAR SINGH, COMPANY LAW 295 (Eastern Book Company, 2025).

⁵ PAUL DAVIES, GOWER'S PRINCIPLE OF MODERN COMPANY LAW 355 (Sweet & Maxwell, 2016).

from the artificial person, called shareholders. They are responsible for providing the capital for the smooth functioning and they seldom participate in decision making. This distinction is essential as it promotes specialization.

As per the legislation, a company can have maximum of 15 directors which can be exceeded after passing a special resolution⁶. These directors are the professionals hired to direct the affairs of the⁷. They play the foremost role in the life of the incorporation and hence they are not the servant but officers. Their powers, duties, appointment and qualification are prescribed under the Company Act. However, their position and relationship between directors with that of company is not defined⁸.

In the case of *Ferguson v. Wilson*⁹(1866), the courts observed that “the company has no person; it can act only through directors, and the case is, as regards those directors, merely the ordinary case of principal and agent”. Therefore, they are recognized as the agents, trustee or representatives who act in their fiduciary capacity. When the directors act in the name of and on behalf of the incorporation, the company is held liable¹⁰.

Shadow director is a person who is generally not a member of the board, but he acts as a controller. They have huge and effective control over the affairs of the company¹¹. In other words, they have the real influence. In many cases the judiciary have recognized them as bodies who lurk in the shadows¹². The concept of shadow director was not expressly mentioned in the Indian Companies Act, 1913 but was introduced in the act of 1956 wherein it was embodied in the definition of the ‘officer’ under section 2(30)¹³. It means any person under whose directions

⁶ Company Act, 2013, § 149 (1)(b), No. 18 Acts of Parliament, 2013 (India).

⁷ Company Act, 2013, § 149 (1)(b), No. 18 Acts of Parliament, 2013 (India).

⁸ AVTAR, *supra* note 3, at 297.

⁹ *Ibid.*

¹⁰ *Ferguson v. Wilson* (1866) LR 2 Ch App 77.

¹¹ Samriddhi Mutha, *Role of Shadow Director*, INDIAN JOURNAL OF INTEGRATED RESEARCH, a - extension://kdpelmjpfafjppnhblofjcpeomlnpah/https://ijirl.com/wp-content/uploads/2023/05/ROLE-OF-SHADOW-DIRECTORS.pdf.

¹² Simon Whitney, *Duties owed by shadow directors: closing in on the puppet masters?*, JOURNAL OF BUSINESS LAW, (April 2016) <http://eprints.lse.ac.uk/66225/>.

¹³ Bharat Vasani, et. al., *Unseen Influence of Shadow Directors: Does it compromise corporate Governance?*, CYRIL AMARCHAND MANGALDAS, (08 July 2025, 13.00) <https://corporate.cyrilamarchandblogs.com/2025/05/unseen-influence-of-shadow-directors-does-it-compromise-corporate-governance/>.

or instructions the Board of directors is accustomed to act¹⁴. The enactment specifically prohibited the powers, duties and liabilities on the person under the direction of whom, the board is accustomed to act.

This provision was carried forward in the legislation of 2013 via section 2(59) with two major differences. Such as mandating the director to be appointed to the Board which is against the 1956 act that defines director as any person occupying that position. The second change is that the 2013 legislation does not mandate a person to register oneself as ‘shadow director’ with Registrar of Companies¹⁵.

IV. SHADOW DICTATORSHIP s NO REGULATION

All the directors are in fiduciary relationship and the acts on one can led to the liability of the others and the company. The consequences are direct and visible. The shadow directors do not have any formal agency and could be a family member, another institution, senior advisor or financiers who have substantial and real control over the decisions of the incorporation. They are not appointed professionals. Any direction given by them and implemented by the board, if proved to a liability on the company, these dictators can easily escape accountability in the eyes of law and the company’s assets suffers.

They can exercise considerable influence over the possession and use of assets, take significant decision on staffing, appointment and removal of personnel or can control transactions. In many cases the company have gone bankrupt or insolvent. This raises questions on the accountability of these unappointed dictators, and it also challenges the present legal regime where there is absence of formal and uniform standards for identifying these directors and holding them responsible.

The increased complexity of identifying shadow directors and holding them accountable is challenging. As this is a legal grey area with Indian Courts seldom holding the shadow directors accountable. The number of cases determined by the Indian judiciary is very limited. Lack of proper judicial interpretation and enactment of any code by the legislature have questioned the

¹⁴ Company Act, 1956, § 2(30), No. 1 Acts of Parliament, 1956 (India).

¹⁵ *Supra* note 12.

trust of citizens on Indian Legal System.

V. LEGAL POSITION OF OTHER NATIONS

Other jurisprudence has a more evolved judicial and legislative mechanism for holding the non-appointed board members accountable.

U.K. Jurisprudence

A shadow director is defined under section 251 of the Companies Act 2006 as “a person in accordance with whose directions or institutions the directors of the company are accustomed to act.” The legislation intended to not let the behind-the-scenes controllers evade their responsibilities. And their judicial framework has evolved to now accommodate broader definition and criteria as against the previous narrow ones. In the case of *Unisoft Group Limited* of 1994, the factors laid by the court for the identification of shadow directors include

1. “The outsider must have considerable influence over the board.
2. The governing majority is under his control.
3. The act must not be a one-time transaction but a regular one”.¹⁶

In *Re Hydrodan Limited* of 1994, Millett J. held that to establish that defendant is shadow director, it is necessary to prove that,

1. “The board of directors are validly appointed.
2. The defendant directed the board to act.
3. They were accustomed to act.
4. The board acted in accordance with the defendants”.¹⁷

In the case of *Secretary of State v. Deverell* (2001), the courts widened the scope of definition and laid down guidelines.

1. “The influence must be real.
2. It is not necessary that the influence extends to all affairs of the company.

¹⁶ Re Unisoft Group Ltd [1994] BCC 766.

¹⁷ Secretary of State v. Deverell [2001] Ch 340.

3. Non-Professional advice can also be considered.
4. The shadow director can either 'direct', 'instruct', or 'advise'.
5. It is not necessary that the guidance given is followed by the board.
6. Directors must be 'accustomed to act' in accordance with the directions or instructions given".¹⁷

These guidelines lead to the laying down of 'statutory test'.¹⁸

The 2015 amendment to the act and imposed, on shadow director, fiduciary duty not based on their subjective intention but on the basis of the act in relation to the company's affair.

Jurisprudence of United States

Although there is no statutory definition of the term 'statutory directors', they are governed by the two doctrines namely, *de facto director* doctrine and the doctrine of *controlling person liability*. Section 9 of the Securities and Exchange act, 1934 provides for the "*liability of controlling person* and persons who aid and abet violations unless the controlling person has acted in good faith and did not directly or indirectly induce the acts constituting the violation of any provision under this title".

Jurisprudence of China

Article 192 of the Revised Company Act states that "where any controlling shareholder or actual controller of a company instructs any director or senior Executive to carry out any act damaging the interests of the company or the shareholders, it shall be a joint and several liability with director or senior executives." This provision explicitly addresses the liability of the controlling persons.

While the case laws are limited in China, the written and unambiguous definition clearly points out to the prevalence of the principle of 'substance over form'.

VI. CHALLENGES UNDER INDIAN JURISPRUDENCE

In 2005 a committee was set up under the chairmanship of Doctor Jamsheed J. Irani. The

¹⁸ *Supra* note 11.

committee submitted its report. “The report suggested for a legal framework that allows recognizing the presence of shadow director under whose direction the Board is accustomed to act. The report also recommended for the enactment of law to discourage shadow dictatorship and advocate a framework that requires disclosure of directors' background, education as well as relationships with managers and shareholders.”¹⁹ However, this has not been implemented by the legislation. Problem with the **lack of explicit definition** leaves the scope *judicial terrorism* which is highlighted as being opposed to the principles of the democracy by Hon’ble CJI B.R. Gavai.

Section 7 of the Companies Act 2013 Provide for exclusion of the persons, who give instruction or direction to the board, and the directors are accustomed to act. Distinction between mere advisers and shadow directors can be a **loophole** which could be exploited by the individuals who are accused of being the shadow directors.¹⁹ The individuals directing the board could claim themselves to be acting under their professional capacity and can escape their accountability.

There are no specific provisions in laws in India, which had made to hold shadow directors directly accountable. In the legislation they are being dealt as an ‘officer’. It is the code which decides their status and liabilities. Due to lack of Indian precedents, India defers to the precedent of English laws and other countries jurisprudence²⁰. This leads to **dependence on foreign jurisprudence** that seldom aligns with India's needs and requirements.

VII.RECOMMENDATION s SUGGESTION

India should provide **clear definition** to the term ‘shadow directors’ as has been noticed in China’s Jurisprudence. In the context of contemporary legislation, they are defined under the head of ‘officers’ and could lead to confusions and render the provision as ambiguous. This will remove any ambiguities and help in establishing a criterion for identifying these non-office dictators. These clear definitions Provides clear guidance for coach companies and individuals.

The UK jurisprudence draws a **clear boundary** to separate the advice or instruction given with

¹⁹ *Supra* note 10.

²⁰ *Supra* note 10.

mala fide intention with that of professional advice with *bona fide intention*. This separation protects the professional advisers from unintended liability. India could also draw the separation better so as to promote the idea of justice and fairness in Indian legal jurisprudence and to avoid any possibility of ending the loophole such as by creating the onus of proving the innocence onto that director that he is acting in professional capacity.

The judiciary in United Kingdom had laid down the **explicit guidelines** for identifying the shadow director in various cases Such as their habitual compliance or patterns of instruction. India could also help from these guidelines with amendments so as to suit Indian business environment. But this **cross-jurisdictional coordination**, must not be employed blindly, it must be amended to align with India's realities.

Enforcement of clear **penalties** in the statutory books, might help in creating deterrence and will lessen the scope of court's interpretation or judicial terrorism, in holding them liable.

VIII. CONCLUSION

The current Indian legal framework inadequately addresses the issue of shadow dictatorships who exerts the real influence over the affairs of the incorporation. Although the Indian Companies Act defines it but the definition lacks depth and clarity as the shadow directors are listed under the head of 'officers'. The shadow directors identify the legal lap and utilize these loopholes to escape their liability, and the board of directors are held accountable for being the 'puppets'. Unlike laws in UK and China jurisprudence, the absence of robust mechanism by the legislator and limited number of cases that assumes foreign precedents can lead to potential challenges, such as erosion of public trust, scope for judicial terrorism and shadow directors constantly evading their liability among others. It is high time that India drafts a proper provision to remove the definitional challenge and holds the 'puppet masters' accountable.