

Beyond 'friendly critics'

Independent directors need more accountability

Securities and Exchange Board of India (Sebi) Chairman Tuhin Kanta Pandey last week called for greater accountability on the part of independent directors on corporate boards, suggesting that they should not be treated as "honorary appointees or friendly critics". This blunt message was addressed to the 2025 Annual Directors Conclave months after Sebi had debarred Gensol Engineering promoters Anmol Singh Jaggi and Puneet Singh Jaggi, who also operated the BluSmart electric-vehicle cab-hailing service, from the market. It is noteworthy that Gensol's four independent directors resigned from the board just as Sebi flagged that the promoters had been diverting funds raised for electric-vehicle projects for upscale personal expenses. Over the past few years, questions about how seriously independent directors take their fiduciary duties have arisen repeatedly as the ambit of corporate misconduct has widened and deepened — from Satyam Computer Services to IL&FS, YES Bank, Gensol, and Paytm Payments Bank, to name prominent examples.

These serial examples of governance failures have occurred despite substantial changes introduced under the Companies Act, 2013, following the Satyam Computer scandal. Among other things, the law mandated that independent directors must account for at least one-third of the boards of listed companies and spelt out a code of conduct (acting in good faith, exercising due care and diligence, avoiding conflicts of interest, and so on). Since they head such committees as the nomination and remuneration committee (NRC) and audit committees under the Companies Act and Sebi rules, the role of independent directors is far from inconsequential. Yet, corporate-governance standards in India can hardly be said to have undergone a transformation for the better. The critical weakness in the lax application of directors' fiduciary duties is a structural one: India Inc remains largely family- and promoter-driven. Independent directors are technically appointed by shareholders in general-body meetings. But this is mostly a rubber-stamp exercise. In reality, independent directors are appointed by promoters and remain beholden to them. Armed with generous sitting fees and other perks, such directors tend not to question too deeply the governance practices of the company's executive management.

This era of the sinecure may be changing, however, with Sebi and the courts increasingly holding independent directors liable for corporate malfeasance. Earlier this year, the Supreme Court declined to interfere in a Securities Appellate Tribunal order upholding Sebi's decision to hold the independent directors of Setubandhan Infrastructure responsible for diversion of funds. The directors disclaimed knowledge of such fraud on the grounds that they did not interfere in the company's day-to-day functioning nor did they attend the NRC or audit-committee meetings. Sebi pointed to the Companies Act code of conduct and a 1973 Supreme Court decision holding independent directors liable for dereliction of duty and compelling them to make good the losses incurred due to their neglect, even if they took no active part in the fraud. Sebi's greater scrutiny appears to have prompted many independent directors to reassess their roles. As a result, they are resigning from boards in droves. In FY25 alone, 549 independent directors resigned voluntarily and since January this year, 154 independent directors have exited their roles. In that context, Mr Pandey's comments could well be taken as a friendly warning.