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Shadow Boards in Indian Corporates: Innovation in Governance or a Legal Grey Zone?

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Abstract

The emergence of shadow boards—advisory bodies of younger employees established by corporates to provide fresh perspectives—marks an evolving trend in corporate governance globally and in India. Unlike statutory boards and committees recognised under the Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 shadow boards operate outside the legal framework, raising important questions of accountability, transparency, and liability. This paper explores whether shadow boards, while innovative in fostering diversity of thought and strategic agility, occupy a legal grey zone under Indian corporate law.

This paper examines the risks of overlap when advisory roles influence board-level decision-making. The analysis considers statutory provisions and judicial interpretations to highlight both the opportunities and challenges posed by this governance innovation.

The paper argues that while shadow boards are not unlawful, their increasing adoption necessitates clearer governance safeguards. Without explicit recognition, these bodies risk creating ambiguities in fiduciary duty, liability, and disclosure norms. The paper concludes by suggesting possible pathways—such as regulatory guidance from SEBI or professional institutes—to balance corporate innovation with legal certainty in India's evolving governance landscape.

Introduction

A shadow board is a group of typically younger employees who work together within a company to advise the management team on important issues such as company culture, product marketing, technological developments, and sustainability activities. Naturally, they are not an official board, but their opinions frequently support those of C-suite executives and seasoned, much older corporate directors. [1]

One of the prime examples of shadow boards in a company is Gucci. From 3,497 million euros in FY2014 to 8,285 million euros in FY2018, the company's sales have increased 136%, mostly due to the success of its digital and internet strategy. [2] Other companies including The Body Shop and Mövenpick Hotels and Resorts have joined this trend. Mövenpick Hotels & Resorts first wanted to build a booking application but their shadow boards gave feedback based on the changing demographics and suggested to build web interface which saved the company a lot of time and money.

Similar to this, the Mahindra Group in India established a Shadow Board of Young Leaders as a component of its leadership development program, wherein high-potential staff members under 35 counsel upper management on emerging trends and business initiatives. The goal is to develop future leaders, bridge generational gaps, and provide new viewpoints while keeping the formal board aware of changing market conditions. The members have become "a part of the collective thought" of the company. This worked out for the company as its thriving and benefiting the company and managers. The members of shadow boards provide fresh ideas and perspective. The company's top management are involved and act as mentors for these members. This collaborative approach helped it to make it successful.[3]

In India, shadow boards are emerging as an experimental governance practice, particularly in large corporates and startups seeking younger perspectives. However, unlike statutory boards

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[1] Lila MacLellan, "Companies are turning to 'Shadow Boards' to keep in touch with the real world", *Fortune*, Sept. 12, 2023, *available at:* https://fortune.com/2023/09/12/companies-turning-shadow-boards-keep-touch-with-real-world/. (last visited on Oct. 9,2025).

[2] Jennifer Jordan & Michael Sorell, "Why You Should Create a "Shadow Board" of Younger Employees", *Harvard Business Review*, June 4, 2019, *available at:* https://hbr.org/2019/06/why-you-should-create-a-shadow-board-of-younger-employees (last visited on Oct. 9,2025).

[3] Lijee Philip & Kala Vijayraghavan, "Mahindra group follows management practice of shadow boards", *The Economic Times,* July 15, 2010, *available at:* https://economictimes.indiatimes.com/news/company/corporate-trends/mahindra-group-follows-management-practice-of-shadow-boards/articleshow/6169552.cms?from=mdr. (last visited on Oct. 9,2025).

and committees recognised under the Companies Act, 2013 and/or SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 these bodies operate outside any legal framework. This creates a governance grey zone**,** where their growing influence on strategic decisions raises unresolved questions of accountability, liability, and transparency.

Shadow Boards

Shadow boards, sometimes referred to as advisory, horizon, or mirror boards, are set up in addition to the typical board structure. Those who typically aim to enhance strategic thinking by introducing other viewpoints; they frequently give their members the chance to advance their careers and create new connections. Shadow boards is constituted of young, below 30 and Gen Z people. The Shadow Board members do not vote at board meetings or perform duties that would normally be performed by directors.[4] They contribute to initiatives such as marketing plans, redesigning a business model, etc. both the seniors and rising young talent benefits. The younger employees get an idea about the complexities of the business, how decisions are made, also senior executives get fresher perspective and insights of the latest trends. [5] Shadow boards are vital for a business/ company as they provide honest feedback and provide innovative solutions to challenges. The shadow board may examine the same documents as the board, offering their viewpoint on pressing strategic issues.

Based on market or consumer trends, they can be assigned more general subjects, or they might be instructed to concentrate on an operational difficulty or they might be given the same voice as current board members and participate in decision-making. Whatever the format, the goal is to make room for fresh ideas to surface. They are supported by a senior official, usually the CEO. Shadow youth boards aim to explore new viewpoints and ideas, cultivate talent, and foster an inclusive atmosphere.[6]

Companies usually appoint Shadow Board members through an open application. The members eligible for the role are appointed.[7] As shadow board comprises of young Gen Z members company focuses on maintaining diversity. Shadow Board serve as an advisory

[4] Nina Johnson et al., "ESG AND THE ROLE OF SHADOW BOARDS", *ARMSTRONG CRAVEN*, June 24, 2022, *available at:* https://www.armstrongcraven.com/resources/download/esg-and-the-role-of-shadow-boards/ (last visited on Oct. 9,2025).

[5] *Supra* note 2

[6] *Supra* note 4

[7] *Supra* note 2

committee and their role is to provide feedbacks, pitch new ideas and give insights to the latest trends. They also provide creative solutions to the challenges. They review board papers, discuss the business strategy and/ or represent company. They help the company to grow in experience and expertise.[8] [9] [10]

Two of the organisations among the Big Fours have implemented Shadow Boards. KPMG's NGC (Next Generation Council) has a diverse mix of people under 35. Every NGC (Next Generation Council) member is told to form a peer group with 10–20 colleagues in their respective nations or territories in order to exchange ideas. The NGC (Next Generation Council) was established as a secure environment for learning, applying to important strategic problems, finding answers, and helping to enhance KPMG's strategic results. The NGC (Next Generation Council) supports world leaders by concentrating on strategic issues like ESG, growth, client and employee experience, external impact, talent acquisition and retention, and the future of work. After discussing the subject in networking conversations with world leaders, they break up into smaller groups and report back to the KPMG Global Board and management team three months later. Second one is EY Foundation Youth Advisory Board, The Youth Advisory Board is made up of 14 young people aged 16-25 from varied backgrounds, including gender, locality, ethnicity, and religion. The Youth Advisory Board guides the Foundation's decision-making process. The EY Foundation can use this tool to validate decisions, identify patterns, and acquire intelligence about the needs of the young people they serve, rather than making assumptions. Youth Advisory Board meets two weeks before the quarterly EY Foundation Board meeting and receives the same papers. Their review supports the EY Foundation Board discussions. Two Youth Advisory Board members have been appointed as trustees on the EY Foundation Board, allowing for greater involvement in decision-making processes.[11]

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[8] Mariya Rosberg & Christina Kyriakides, "How to Attract and Retain Workers with 'Shadow Boards'", *Marsh & McLennan*, *available at:* https://www.marshmclennan.com/insights/publications/2022/october/how-to-attract-and-retain-workers-with-shadow-boards.html. (last visited on Oct. 9,2025).

[9] "Shadow Boards as a development tool", *Management Consulted*, *available at:* https://managementconsulted.com/shadow-boards/ (last visited on Oct. 9,2025).

[10] ICAEW Insights, "How to reap the benefits of a Shadow Board", *ICAEW*, May 16, 2024, *available at:* https://www.icaew.com/insights/viewpoints-on-the-news/2024/may-2024/how-to-reap-the-benefits-of-a-shadow-board (last visited on Oct. 9,2025).

[11] *Supra* note 4

The Legal and Governance Perspective

At present there is no law which governs Shadow Boards. Companies Act, 2013 and SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 mandate statutory board committees. Some of the Committees are Audit Committee under section 177, Nomination and Remuneration Committee under section 178, Corporate Social Responsibility Committee under section 135, etc. Regulation No. 18, 19, 20 and 21 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 govern the constitution of these board committees. These committees are integral components of formal corporate governance and serve to institutionalize transparency, accountability, and oversight in listed companies.

Audit Committee set up under section 177 of Companies Act, 2013 states every listed public company has to constitute an audit committee. It shall consist of a minimum three directors with independent director must make up of 2/3rd of the committee. The members should be financially literate and at least one member shall have accounting or related financial management expertise. Audit committee must operate in accordance with the terms set by the Board in writing which also includes recommendation, remuneration and terms of appointment of auditors review and monitor the auditor's independence and performance, and effectiveness of audit process, examination of the financial statement and the auditor’s report thereon, approval or any subsequent modification of transactions of the company with related parties.[12] This framework ensures that financial scrutiny is both independent and specialized, protecting shareholder interests and upholding financial integrity.

Nomination and Remuneration Committee under section 178 of Companies Act, 2013 states that every listed public company shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors. Their main role is to guide a company's board on matters of director and executive appointments, compensation, and board performance.[13] By mandating independent

[12] Companies Act 2013, Ministry of Corporate Affairs, *available at:* https://www.mca.gov.in/content/dam/mca/pdf/CompaniesAct2013.pdf (last visited on Oct. 9, 2025)
[13] *Id.* s. 178

oversight on executive remuneration, the Nomination and Remuneration Committee acts as a safeguard against undue concentration of power and misaligned incentives.

Corporate Social Responsibility Committee under section 135 of Companies Act, 2013 states that every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. The main role of Corporate Social Responsibility Committee is to formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII, recommend the amount of expenditure to be incurred on the activities referred to in clause (a) and to monitor the Corporate Social Responsibility Policy of the company from time to time.[14] This reflects a broader shift in corporate governance—from shareholder-centric to stakeholder-oriented—emphasizing ethical responsibility and sustainable development.

The legal mandates governing Audit Committees, Nomination and Remuneration Committees, and Corporate Social Responsibility Committees show a clear regulatory intent to formalize corporate processes that impact transparency, accountability, and ethical conduct. Shadow Boards, despite their potential in bringing innovation and intergenerational insight to boardrooms, currently operate without any legal oversight, making them susceptible to manipulation, opacity, or even misuse.

A deeper legal concern arises when considering whether shadow board members could, in practice, be treated as "de facto directors" or "officers in default" commonly known as "shadow directors" under the Companies Act, 2013. Section 2(59)[15] defines an "officer" broadly to include any person in accordance with whose directions or instructions the Board of Directors is accustomed to act. If recommendations of a shadow board are routinely accepted without scrutiny, there is a real possibility that members could be construed as shadow directors, thereby attracting fiduciary duties and liabilities under Section 166. In the case of *Re Hydrodan (Corby) Ltd.*[16], the conditions necessary to determine whether a person is a shadow director

[14] *Id.* s. 135
[15] *Id.* s. 2(59)
[16] [1994] 2 BCLC 180

were established. It must be proven that the individual is not officially appointed as a director of the company but yet has provided instructions and directions to the appointed directors in matters of management of the company. It should be demonstrated that these instructions have been consistently given and intentionally adhered to on a regular basis.[17]

Judicial precedents in India, though sparse on this issue, point to a purposive interpretation of fiduciary duty. In *Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan*[18], the Supreme Court emphasized that directors must act in the interests of the company with utmost good faith. If shadow board members significantly influence strategic outcomes, it could be argued that similar fiduciary standards should apply, even absent statutory recognition. This possibility exposes both companies and shadow board members to legal uncertainty.

Furthermore, the jurisprudence around "lifting the corporate veil" could become relevant if shadow boards are perceived as instruments to bypass formal governance checks. Courts have repeatedly held that substance must prevail over form in corporate governance. If companies use shadow boards to rubber-stamp decisions or insulate directors from accountability, regulatory or judicial intervention could pierce the veil of informality. In *Saloman v. Saloman & Co. Ltd.*[19]*,* the court established the principle of corporate veil. *In State of U.P. v. Renusagar Power Co.*[20]*,* The Supreme Court lifted the veil to determine whether Renusagar was merely an instrumentality of Hindalco. and held that if a company is completely controlled by another, veil can be pierced to reveal the true nature of the relationship.

The Governance Grey Zone

OCED defines corporate governance as "guides how a company is directed and its relationships with its shareholders and stakeholders. With the right structure and systems in place, good corporate governance enables companies to create an environment of trust, transparency and

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[17] Hetal Pandya et al., "The Unseen Influencers: Shadow Directors"*, Nishith Desai Associates*, Jan. 5, 2023, *available at:* https://www.nishithdesai.com/fileadmin/user_upload/Html/Hotline/Yes_Governance_Matters_Jan0524_M.htm (last visited on Oct. 9, 2025)

[18] (2005) 1 SCC 212

[19] [1896] UKHL 1

[20] (1988) 4 SCC 59

accountability, which promotes long-term patient capital and supports economic growth and financial stability."[21]

Corporate governance refers to how corporations are controlled and directed. business governance includes decision-making norms and procedures, as well as processes for setting and achieving business objectives within the social, regulatory, and market environments. Governance systems supervise the policies, procedures, and decisions of corporations, agents, and stakeholders. Governance structures and principles define the rights and obligations of many actors in a corporation, including the board of directors, managers, shareholders, creditors, auditors, regulators, and stakeholders. Corporate governance prioritizes fairness, openness, accountability, and responsibility.[22]

In one of the case, Bombay High Court stated that, " *We must remember that at the heart of corporate governance lies transparency …." "…… We strive today to greater transparency; that means that more should be given the opportunity to speak and to exercise their rights as shareholders. But that cannot come at the price of their right to speak, to be heard, to persuade, even to cajole. What corporate governance demands is the government of the tongue, not the tyranny of a finger pressing a button."*[23] The Court emphasized that governance is not merely about formal procedures or compliance checklists—it is fundamentally about creating systems that foster dialogue, accountability, and responsible decision-making. It warned against reducing governance to mechanical or symbolic actions, stressing instead that true governance requires thoughtful engagement, ethical restraint, and clarity in communication and conduct.

The absence of any specific legislative or regulatory recognition of shadow boards in India has created a significant grey zone in corporate governance. While these informal bodies may be designed to foster innovation, tap into younger talent, or simulate diverse strategic thinking, their operation outside the purview of corporate law gives rise to critical concerns related to accountability, authority, and legality.

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[21] "G20/OECD Principles of Corporate Governance", *OECD,* Sept. 11, 2023, *available at:* https://www.oecd.org/en/topics/policy-issues/corporate-governance.html. (last visited on Oct. 9, 2025)

[22] ROBIN, "Corporate Governance in India: Issues and Importance"*,* 6 International Journal of Research and Analytical Reviews 922z (2019), *available at:* https://ijrar.com/upload_issue/ijrar_issue_20543494.pdf. (last visited on Oct. 9,2025)

[23] Indian Kanoon, *available at:* https://indiankanoon.org/doc/63355168/ (last visited on Oct. 9, 2025)

One of the most pressing issues is the unclear delineation of duties, responsibilities, and liabilities of shadow board members. Unlike directors formally appointed under the Companies Act, 2013, or those sitting on statutory committees, members of shadow boards operate without a defined legal status. This lack of codification means that there is no clarity on whether such members owe fiduciary duties to the company, such as acting in good faith, avoiding conflicts of interest, or exercising reasonable care and diligence. The informal nature of these boards makes it difficult to assess where their influence ends and where legal responsibility begin.

Further, the absence of formal frameworks governing the composition, selection process, meeting procedures, and codes of conduct for shadow boards results in a governance vacuum. Without transparency around how these boards function—who sits on them, how decisions or recommendations are made, and what oversight mechanisms (if any) are in place—it becomes nearly impossible to ensure their operations align with the broader interests of shareholders and stakeholders. This opacity poses a fundamental challenge to the principles of transparency and accountability that underpin effective corporate governance.

As shadow boards begin to exert real influence on boardroom decision-making, the issue of accountability becomes even more critical. It remains ambiguous whether the recommendations of shadow boards require shareholder approval or board ratification, and what legal standing such recommendations hold. This informal influence, when unchecked, risks undermining the authority and fiduciary responsibility of the official Board of Directors. In situations where the formal board merely rubber-stamps ideas generated by an unaccountable body, the sanctity of collective decision-making—and by extension, the governance process—is compromised.

This ambiguity further dilutes the structure of corporate accountability. When decisions are influenced or guided by individuals who are not legally recognized, not subject to regulatory scrutiny, and not accountable to shareholders, the potential for conflict, confusion, and liability increases. For instance, if a company suffers financial or reputational harm as a result of shadow board recommendations, it is unclear whether such members can or should be held accountable. This legal blind spot introduces significant risk exposure—both for the company and its formally appointed leadership.

Additionally, because shadow boards operate outside any existing compliance architecture, companies may unknowingly breach governance best practices or open themselves up to regulatory scrutiny or litigation. The informal nature of these boards does not shield them from the broader implications of their influence. In fact, the lack of oversight and documentation may amplify the risk of governance failures, unethical practices, or selective decision-making, especially if these bodies are used to circumvent formal procedures or bypass dissent within the official board.

The reputation risks are also notable. In a corporate environment increasingly attuned to ESG (Environmental, Social, and Governance) metrics, the discovery that strategic decisions are being shaped by bodies operating without transparency or accountability could erode investor trust and damage the company's public standing. Stakeholders, particularly institutional investors, expect adherence not just to the letter of the law but also to its spirit—anchored in ethical governance and procedural fairness.

In sum, the operation of shadow boards in a legal vacuum presents multifaceted risks: legal, ethical, reputational, and strategic. Without clear guidelines or regulatory oversight, companies risk blurring the line between informal innovation and formal governance, potentially compromising the very frameworks that ensure responsible corporate conduct.

Conclusion & Way Forward

As shadow boards continue to increase in prevalence, it has become imperative to establish clear regulations or guidelines to ensure robust corporate governance. Like other board committees, shadow boards should include independent directors to enhance transparency and impartiality in their workings. To align with good governance practices, these boards ought to be required to disclose their composition, roles, and activities in the company's annual report just as statutory committees do.

In addition to formal recognition, regulatory frameworks should define the duties, responsibilities, and liabilities of shadow board members to avoid ambiguity and protect all stakeholders. Such clarity would also address concerns about whether shadow board members carry fiduciary duties and how their influence interacts with that of officially appointed directors. Moreover, incorporating shareholders' roles in ratifying or being informed about shadow board decisions will enhance accountability and investor confidence.

In conclusion, codifying the role and governance of shadow boards will eliminate the current grey areas in corporate governance, enhance transparency, and build trust among investors and stakeholders. Clear laws and guidelines will ensure these emerging advisory bodies contribute positively to strategic decision-making while preserving the principles of accountability and fiduciary duty fundamental to corporate governance. This will ultimately promote healthier, more resilient corporate ecosystems aligned with modern business complexities and stakeholder expectations.