
GATEKEEPERS OF OWNERSHIP: REIMAGINING INDIA'S INSTITUTIONAL ARCHITECTURE FOR BENEFICIAL OWNERSHIP ENFORCEMENT

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ABSTRACT

The concept of corporate accountability in today's globalized economy is not merely a moral imperative but a fundamental necessity for ensuring sustainable economic development. It serves as the backbone of a healthy financial system, fostering trust among investors, stakeholders, and the general public. In India, following the economic liberalisation of the 1990s, the corporate sector has experienced exponential growth. With this expansion comes an increased demand for transparency, particularly in the context of identifying the natural persons who ultimately control or benefit from corporate entities.

This essay critically examines the challenges inherent in enforcing Significant Beneficial Ownership (SBO) norms in India. While the legislative framework—including the Companies Act, 2013, SEBI regulations, and the Prevention of Money Laundering Act, 2002—aims to create an architecture of transparency, implementation suffers from practical hurdles. These include convoluted corporate ownership structures, regulatory fragmentation, inadequate technological infrastructure, and weak penalties. Drawing upon comparative legal frameworks such as the UK's Persons with Significant Control (PSC) regime and FATF recommendations, this paper offers a roadmap for reform. It advocates for the creation of a centralised and interoperable SBO registry, enhanced regulatory coordination, and the strategic deployment of artificial intelligence and blockchain technologies. These interventions aim to render

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beneficial ownership transparent, verifiable, and enforceable, thereby positioning India as a credible and robust investment destination.

1. Introduction

Corporate accountability has evolved into a foundational pillar of modern economic governance. In a market-driven democracy like India, where the private sector plays an increasingly dominant role, the need for transparency in business operations cannot be overstated. The surge in economic activity post-1991 liberalisation has brought with it the dual challenge of fostering innovation while curbing financial malfeasance.

In India, this evolution has been particularly significant. The economic liberalisation of 1991 catalysed an unprecedented expansion of the corporate sector. With this expansion came the necessity for more robust regulatory mechanisms to ensure that economic growth does not come at the cost of financial integrity. The emergence of conglomerates, foreign portfolio investments, and cross-border corporate structures has necessitated a deeper understanding of ownership and control. It is no longer sufficient to identify who formally owns shares; the real challenge lies in unveiling the natural persons who exert ultimate control or derive significant benefit from corporate entities—often hidden behind layers of intermediaries, offshore accounts, or trusts.

Corporate opacity not only facilitates economic crimes such as tax evasion and money laundering but also erodes public trust, misleads investors, and undermines the stability of financial markets. This opacity is frequently weaponised by bad actors to obscure illicit wealth, manipulate financial disclosures, and even compromise national interests. Thus, transparency in corporate ownership is not a bureaucratic burden but a democratic imperative. It upholds the foundational principles of accountability, fairness, and integrity that underpin investor confidence and rule-based capitalism.

The issue of beneficial ownership transparency is particularly pressing in the Indian context given the prevalence of promoter-driven firms, limited shareholder activism, and regulatory arbitrage across jurisdictions. While India has made considerable progress in legislating for beneficial ownership disclosures through statutory reforms and regulatory circulars, these measures have yet

to translate into comprehensive enforcement. This disconnect between law and practice demands urgent scholarly and policy attention.

Among the key dimensions of transparency is the identification of Significant Beneficial Owners (SBOs)—natural persons who ultimately own, control, or benefit from corporate vehicles. These individuals often remain concealed behind opaque layers of shell companies, trusts, or foreign incorporations. In an era where financial crimes such as money laundering, terror financing, and tax evasion have global ramifications, beneficial ownership disclosure emerges as a powerful tool for both national security and economic stability.

India, to its credit, has taken commendable steps toward mandating SBO disclosures. However, enforcement remains a formidable challenge. This essay navigates through the legal, structural, and technological barriers that hinder the effective enforcement of SBO norms in India and proposes solutions tailored to Indian realities but inspired by global best practices.

2. Legal Framework and Implementation Challenges

India's legal framework for beneficial ownership is primarily governed by Section 90 of the Companies Act, 2013³, read with the Companies (Significant Beneficial Owners) Rules, 2018, and subsequently amended in 2019. It mandates individuals holding 10% or more beneficial interest or exercising significant control in a company to disclose their details. Parallel provisions under the Prevention of Money Laundering Act, 2002⁴, and obligations imposed on regulated entities by the Reserve Bank of India (RBI) and the Securities and Exchange Board of India (SEBI) complement this regime.

However, a deeper analysis reveals that these legal provisions, while well-formulated on paper, are significantly compromised by lack of institutional muscle and operational coherence. The threshold of 10% itself, though arguably progressive when compared to global standards such as FATF's 25%, is frequently bypassed through layered structuring or proxy nominees. These

³ Companies Act, No. 18 of 2013, INDIA CODE (Ministry of Law and Justice)

⁴ Prevention of Money Laundering Act, No. 15 of 2003, INDIA CODE.

corporate veils, intentionally complex, are not adequately penetrated by regulators because the enforcement mechanisms operate in silos.

One of the central flaws lies in the **passivity of the regulatory architecture**⁵. The Registrar of Companies (RoC), being the nodal officer for corporate compliance, should ideally function as the anchor institution in a networked regulatory model. However, in practice, the RoC operates more as a filing repository than as an investigative or enforcement body. Its powers of inspection under Sections 206-209 of the Companies Act are rarely invoked with the rigour required for financial intelligence analysis. This inertia is particularly concerning in cases involving foreign entities, where the SBO is obscured behind jurisdictional walls.

In our view as law students, **strengthening the RoC's office must become a national priority**. This involves equipping the RoC not just with more personnel but with forensic accounting units, legal analysts, and AI-enabled verification tools. Moreover, the RoC should not function in isolation but as the final node in a multilayered, inter-agency framework that includes SEBI, RBI, FIU, and the Ministry of Corporate Affairs. Each of these institutions captures fragments of ownership and transactional data; only when these data pools are integrated and reconciled through a systemic pipeline can the true SBO be identified.

To institutionalise this multi-agency architecture, we propose a **compliance funnel** mechanism: SEBI and RBI should act as preliminary filters for listed companies and regulated entities, using KYC and UBO (Ultimate Beneficial Ownership) declarations. The FIU, with its investigative and transaction monitoring powers, should then cross-verify disclosures with Suspicious Transaction Reports (STRs). Finally, the RoC, with access to statutory filings, should be the certifying authority of truth—the entity that publicly validates the identity of SBOs and imposes penalties for any falsification or wilful suppression of data.

What India currently lacks is a **coherent narrative of ownership** that unifies economic regulation, corporate governance, and national security. Beneficial ownership disclosure is not merely about knowing who holds shares; it is about understanding who exerts power, who moves capital, and

⁵ John C. Coffee Jr., *Gatekeepers: The Professions and Corporate Governance*

who may influence policy behind corporate veils. Thus, the regulatory reform required is not merely procedural—it is paradigmatic.

The Companies Act must be amended to confer enhanced powers to the RoC, including:

- Real-time integration with SEBI, RBI, and MCA databases
- Power to initiate civil recovery proceedings for gains made through false ownership
- Issuance of show cause and debarment notices without requiring central clearance

Further, the government must institutionalise periodic **SBO audits** by independent regulators or audit panels, much like tax audits. This will infuse a culture of compliance and also create a deterrence structure based on reputational risk.

Finally, a national campaign for corporate transparency, led by the MCA and backed by digital media and investor platforms, can help shift the culture of opacity to one of integrity. Corporate India must be made to understand that transparency is not regulatory harassment; it is a constitutional value that fuels public trust and market legitimacy.

Third, **institutional fragmentation** between the MCA, SEBI, RBI, and Financial Intelligence Unit (FIU) results in siloed operations. The absence of a unified digital ecosystem hampers real-time information sharing, creating enforcement blind spots.

Fourth, **enforcement capacity is disproportionately weak** relative to the scale of non-compliance. The Registrar of Companies is not adequately equipped in terms of personnel or technological tools to investigate complex corporate networks.

Finally, the **penalty structure lacks deterrent value**. Non-compliance with SBO norms results in fines that are negligible for large corporations. In the absence of stringent criminal liability or operational consequences such as disqualification or debarment, compliance becomes optional rather than obligatory.

3. Statutory and Regulatory Framework: A Doctrinal Overview

The statutory and regulatory landscape governing Significant Beneficial Ownership (SBO) in India is wide-reaching but fragmented, with its doctrinal coherence still in the developmental phase. The Companies Act, 2013 lays the foundation for SBO disclosure under Section 90, and the accompanying SBO Rules, particularly the 2018 and 2019 iterations, attempt to flesh out the contours of ownership, control, and reporting obligations. These provisions obligate companies to maintain a register of significant beneficial owners and mandate filings through forms such as BEN-2 and MGT-6.

Parallel obligations arise from other statutory and regulatory sources. The Prevention of Money Laundering Act, 2002, specifically Section 66, permits the Director or designated authorities to share information gathered during investigations with other agencies. Simultaneously, SEBI's LODR Regulations⁶ enforce disclosure norms on listed entities, especially foreign portfolio investors, while RBI's KYC Master Directions⁷ ensure that banks and financial institutions identify and monitor beneficial ownership.

Despite the seemingly extensive coverage, there exists a doctrinal dissonance. The Companies Act focuses on structural control, while SEBI and RBI are more concerned with transactional transparency. Moreover, there is no common protocol for verifying the authenticity of disclosed information. This creates a dangerous scenario where compliance becomes more about form than substance.

To resolve this, I propose a structural shift: the **Registrar of Companies (RoC) must become the primary verifier of corporate legitimacy and beneficial ownership**. Every company's SBO disclosure should be subject to audit and validation by the RoC using automated cross-verification mechanisms linked with databases of SEBI, RBI, FIU, and the Income Tax Department. Once verified and authenticated, this certificate of verification must form the bedrock upon which other regulators base their risk profiling and monitoring.

This proposal, in effect, inverts the current model. Today, SEBI and RBI often undertake the first layer of scrutiny and flag discrepancies to the MCA or RoC. Instead, I propose that **RoC be**

⁶ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

⁷ Reserve Bank of India, Master Direction – Know Your Customer (KYC) Direction, 2016.

elevated to the apex certifying authority, with statutory power to set sector-specific thresholds, update beneficial ownership rules in consultation with the MCA, and mandate compliance formats suited to different classes of companies.

This centralised verification model will also eliminate redundancy. Once a company is verified and its SBOs authenticated by RoC, SEBI, RBI, and FIU should be mandated to rely on this verified data, subject to periodic alerts or red flags based on financial activity. This avoids the current regulatory loop where each agency operates in isolation, often duplicating efforts and missing coordinated red flags.

Additionally, the RoC must be empowered with the capacity to recommend criminal prosecution directly for repeated false disclosures and introduce a pre-approval mechanism for high-risk sectors like extractives, media, or political financing where ownership opacity can directly impact public policy.

In essence, the doctrinal shift must be toward treating SBO not just as a corporate law concern but as a **financial intelligence imperative**. This cannot happen unless one statutory authority owns the narrative of verification. The RoC, given its access to foundational incorporation data and filings, is structurally best suited to this role. But this vision requires legislative empowerment, political will, and robust technological infrastructure.

Without this paradigm shift, India's otherwise commendable legal architecture will remain a web of siloed compliance rather than an integrated defence against illicit corporate behaviour.

4. Comparative Perspectives and Best Practices

India is not alone in grappling with the enforcement of beneficial ownership transparency. Across jurisdictions, a range of legal innovations and regulatory frameworks have evolved to respond to the growing menace of shell companies, illicit finance, and opaque corporate control structures. However, what separates the successful models from the struggling ones is not merely the content of legislation but the coherence of enforcement architecture and institutional resolve.

The United Kingdom's **Persons with Significant Control (PSC)**⁸ regime, established under the Small Business, Enterprise and Employment Act, 2015, is often cited as a benchmark in this space. Unlike India's threshold-based approach, the PSC regime defines control through multiple indicators, including direct or indirect holding of more than 25% of shares or voting rights, or the right to appoint a majority of directors⁹. Most importantly, the UK regime goes beyond voluntary self-disclosure. It mandates companies to proactively investigate and record PSCs, backed by strong penal provisions for false or non-disclosure. The UK's Companies House provides a centralised public register, enabling cross-verification by regulators, civil society, and businesses alike. This real-time, interoperable registry reduces information asymmetry and enhances accountability.

In contrast, the **European Union's Fifth and Sixth Anti-Money Laundering Directives (AMLD)**¹⁰ have adopted a layered approach to beneficial ownership, requiring each member state to maintain a centralised register accessible to competent authorities and obliged entities such as banks and auditors. The EU mandates risk-based verification of beneficial ownership data and encourages data sharing between corporate registries and tax authorities. These directives explicitly link beneficial ownership compliance with corporate taxation and cross-border transaction monitoring.

India, while a signatory to FATF recommendations, lags behind in realising this level of harmonisation. The **FATF's 2022 Mutual Evaluation Report** on India flagged the absence of a centralised and verifiable register of beneficial ownership as a key vulnerability¹¹. Moreover, India's reliance on self-disclosure without a centralised audit function weakens the reliability of the data disclosed.

India must therefore learn from these models, not through mechanical transplantation but through principled adaptation. The **RoC should serve as the nodal certifying authority**, integrating the regulatory workflows of SEBI, RBI, FIU, and the Income Tax Department. The system must move

⁸ UK Small Business, Enterprise and Employment Act 2015, Part 7, ch. 4 (Persons with Significant Control)

⁹ Lucian A. Bebchuk & Assaf Hamdani, *The Powerful Antitakeover Force of Staggered Boards: Further Findings and a New Approach*, 54 Stan. L. Rev. 1547 (2002).

¹⁰ European Union, Directive (EU) 2015/849 and Directive (EU) 2018/843 (5th and 6th AMLD).

¹¹ Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (FATF Recommendations)*, 2023.

from passive receipt of data to active verification. A centralised SBO register, maintained by the MCA and powered by AI and blockchain, must be publicly searchable and capable of triggering red flags and alerts.

Moreover, India must draw from **Singapore's risk-tiering model**¹², which applies stricter norms to companies operating in sectors prone to financial abuse. This would ensure proportionality in enforcement while keeping compliance burdens in check for MSMEs and startups. Similarly, Canada's multi-jurisdictional cooperation through provincial registries offers an important lesson for India in balancing federalism with transparency¹³.

Most critically, comparative analysis reveals a common success factor: **political will and institutional cohesion**. Where beneficial ownership norms are seen not just as a bureaucratic formality but as national policy priorities linked to integrity in public life, enforcement becomes meaningful. In India's case, elevating the SBO regime to a core economic and security priority, anchored in a harmonised legal and institutional framework led by a restructured RoC, is essential for long-term success.

5. Technology as a Strategic Enabler

The digitalisation of the corporate governance ecosystem is no longer a luxury—it has become an existential necessity in an era marked by complex ownership webs and transnational financial flows. A robust, centralised, and publicly searchable SBO (Significant Beneficial Ownership) registry maintained by the Ministry of Corporate Affairs (MCA), interconnected via secure APIs with databases maintained by SEBI, RBI, the Financial Intelligence Unit (FIU), and the Income Tax Department, would revolutionise the state's ability to detect, trace, and enforce corporate accountability. This integrated platform would act as the central nervous system for India's fight

¹² ACRA, *Register of Registrable Controllers (RRC) Regime*, Accounting and Corporate Regulatory Authority, Singapore.

¹³ Government of Canada, *Strengthening Corporate Transparency*, Department of Finance, 2023.

against opaque ownership structures, enabling real-time verification, red-flagging, and analytics-driven investigations.

Artificial Intelligence (AI) holds immense potential in automating and elevating regulatory oversight. Machine learning algorithms can be trained to scan voluminous datasets and identify irregularities that human scrutiny would likely miss—such as sudden changes in shareholding patterns, indirect influence through voting agreements, or recurring nominee appointments across different companies. AI-powered compliance tools can automatically triangulate ownership declarations with financial disclosures, litigation histories, offshore data leaks (such as the Panama Papers and Pandora Papers)¹⁴, and tax filings, creating a robust web of accountability and pattern recognition.

In tandem, blockchain technology can be leveraged to establish an immutable, tamper-proof, and time-stamped record of ownership data, director appointments, shareholder decisions, and disclosure events. Once integrated with corporate filing systems, blockchain would eliminate the possibility of retroactive alterations and data obfuscation, thereby ensuring data reliability and audit integrity. Every update would carry a verifiable digital trail, thereby raising the evidentiary value of regulatory enforcement.

However, the deployment of these advanced technologies must be accompanied by well-defined governance frameworks. AI systems must be auditable, transparent, and capable of producing explainable outputs. They must be regularly audited for fairness, bias, and accuracy. Further, cybersecurity infrastructure must be fortified with end-to-end encryption, firewall redundancy, and continuous intrusion detection systems to protect sensitive corporate and personal information, especially when registry access is made public. India must not only build smart systems but also secure ones, resilient against breaches, manipulation, and misuse.

A technology-first but human-supervised compliance infrastructure could ultimately redefine India's corporate ecosystem. It can empower regulators to act preemptively, reduce compliance

¹⁴ International Consortium of Investigative Journalists, *Panama Papers and Pandora Papers Database*, ICIJ.

costs for good-faith entities, and sharply limit regulatory arbitrage. In doing so, it transforms transparency from a bureaucratic burden into a national advantage.

6. Towards a Balanced Reform Strategy

While aggressive transparency is desirable, it must be tempered with **proportionality and due process**. A tiered approach can be adopted wherein:

- High-risk sectors (e.g., extractives, real estate, and political lobbying) are subjected to enhanced disclosure norms.
- Low-risk MSMEs are provided simplified compliance templates.
- Penalties are graded by the materiality of non-disclosure, with wilful suppression attracting criminal sanctions.

Moreover, **whistleblower protections** and incentive schemes can encourage voluntary compliance and reporting.

Regulatory agencies must be adequately staffed and trained. Judicial and quasi-judicial forums like NCLT and SAT must be equipped with specialised benches for expedited adjudication of SBO-related disputes.

India should also engage in **bilateral and multilateral treaties** for automatic exchange of beneficial ownership information, especially with tax havens and secrecy jurisdictions.

7. Conclusion

Corporate transparency, especially in the context of enforcing Significant Beneficial Ownership (SBO) norms, has moved beyond being a mere regulatory formality—it is now a cornerstone of credible economic governance. In an increasingly globalised economy, opacity in corporate structures not only invites financial crime but also deters investment and undermines public trust.

For a nation with aspirations of becoming a \$5 trillion economy, the risks of weak enforcement are not just reputational—they are structurally destabilising.

India's existing framework, while conceptually sound, suffers from institutional fragmentation, technological lag, and a lack of verification-based accountability. The burden of enforcement currently rests on a patchwork of under-coordinated regulators with overlapping but disconnected mandates. This undermines the efficacy of even the most well-drafted laws.

India does not need piecemeal reform. What it requires is a structural recalibration—placing the Registrar of Companies (RoC) at the centre of a certifying and verifying authority. A unified, digital, and intelligent compliance ecosystem must underpin this transformation, connecting SEBI, RBI, FIU, and other arms of the state through real-time, AI-powered interfaces. The enforcement of SBO norms must evolve from passive declarations to active, technology-backed validations.

While international models such as the UK's PSC regime or the EU's AML directives offer instructive templates, India must develop a governance paradigm rooted in its own legal, economic, and federal complexities. The goal is not to blindly replicate, but to synthesise.

Ultimately, corporate transparency should not be viewed as a compliance burden but as a strategic enabler¹⁵—an essential ingredient of economic resilience, institutional legitimacy, and democratic trust. With the right reforms, India can transform its corporate regulatory regime into one that is simultaneously investor-friendly, fraud-resistant, and globally respected.

¹⁵ Frank H. Easterbrook & Daniel R. Fischel, *The Economic Structure of Corporate Law* (Harvard University Press 1991).