

## CORPORATE GOVERNANCE IN PAKISTAN COMPARATIVE PERSPECTIVE: FROM FORMAL COMPLIANCE TO SUBSTANTIVE ACCOUNTABILITY

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### Abstract

This article examines corporate governance as a legal framework for allocating, supervising, and restraining corporate power. It argues that the principal weakness of corporate governance in Pakistan is not the absence of legal standards, but the continuing gap between formal compliance and substantive accountability. Using a doctrinal and comparative methodology, the study analyzes major international governance benchmarks, comparative fiduciary and oversight jurisprudence, and Pakistan's legal framework under the Companies Act, 2017 and the Listed Companies (Code of Corporate Governance) Regulations, 2019 as amended up to March 20, 2025. The article finds that Pakistan has developed a significantly stronger formal governance architecture, especially in relation to board structure, independent directors, and regulatory oversight. However, governance outcomes remain constrained by concentrated ownership, limited functional independence of boards, uneven disclosure quality, and weak deterrence. The article contributes to corporate law scholarship by reframing Pakistani corporate governance as a problem of institutional translation and enforcement design rather than merely legislative insufficiency.

### Introduction

Corporate governance lies at the heart of modern corporate law because it determines how corporate authority is conferred, exercised, supervised, and, where necessary, restrained. Although it is often described simply as the system by which companies are directed and controlled, that formulation does not fully capture its legal significance. Governance is not merely a set of internal managerial arrangements. It is the normative and institutional framework through which the corporation becomes answerable to law, investors, and the market.

The classical explanation of corporate governance emerged from the separation of ownership and control. Once shareholders supply capital but managers exercise decision-making authority, the risk arises that corporate power will be used in ways that do not serve investor interests. This concern gave rise to the familiar architecture of boards, audits, disclosure duties, and fiduciary accountability (Jensen & Meckling, 1976). Yet in many jurisdictions, especially emerging markets, the central governance problem is no longer limited to managerial opportunism alone. It more often concerns concentrated ownership,

controlling shareholders, related-party influence, and the vulnerability of minority investors. In such settings, governance must do more than discipline managers; it must also constrain controllers and preserve fairness within the company itself (Shleifer & Vishny, 1997; Ararat et al., 2021).

This shift is reflected in contemporary international standards. The G20/OECD Principles of Corporate Governance 2023 and the UK Corporate Governance Code 2024 both demonstrate that governance is now understood more broadly: as a framework of accountability linked not only to board structure, but also to sustainability, resilience, internal control, and long-term institutional legitimacy (OECD, 2023; Financial Reporting Council [FRC], 2024). The significance of this development is that governance can no longer be assessed solely by formal structure. The more important question is whether legal and institutional arrangements actually influence conduct.

That question is especially important in Pakistan. Over the last decade, Pakistan has undertaken substantial formal reform through the Companies Act, 2017, the Listed Companies (Code of Corporate Governance) Regulations, 2019 as amended up to March 20, 2025, the independent directors' databank mechanism, and increasingly visible regulatory enforcement (Securities and Exchange Commission of Pakistan [SECP], 2018, 2022, 2025). These developments show that Pakistan's governance framework has matured considerably at the legislative and regulatory levels. However, formal sophistication does not necessarily produce real accountability. A company may comply with requirements concerning independent directors, committees, and governance disclosures while still remaining effectively dominated by concentrated interests.

This article proceeds from the view that the central challenge of corporate governance in Pakistan is the distance between visible compliance and substantive accountability. The issue is no longer whether governance standards exist, but whether they meaningfully constrain power, improve board judgment, protect minority shareholders, and generate credible deterrence. The article therefore examines corporate governance through a

doctrinal and comparative lens, focusing on the relationship between legal form and operational reality. Its central claim is that Pakistan's future governance reform must move beyond procedural compliance and toward institutional mechanisms capable of producing genuine board independence, stronger minority protection, and more effective enforcement.

### Research Questions

This article addresses the following questions:

1. How has corporate governance evolved from a narrow managerial control mechanism into a broader legal framework of accountability?
2. What lessons do international standards and comparative judicial decisions offer for governance reform?
3. What are the principal features of Pakistan's present corporate governance regime?
4. Why does a gap persist between formal compliance and substantive accountability in Pakistan?
5. What reforms are most likely to strengthen governance outcomes in the Pakistani corporate sector?

### Research Objectives

This article seeks:

1. To conceptualize corporate governance as a legal framework of accountability.
2. To examine comparative governance standards and judicial approaches.
3. To analyze Pakistan's current statutory and regulatory governance framework.
4. To identify the structural and institutional causes of weak governance outcomes.
5. To propose a reform-oriented agenda for improving corporate governance in Pakistan.

### Review of Literature

The foundational literature on corporate governance is deeply shaped by agency theory. Jensen and Meckling (1976) argued that once decision-making authority is separated from

ownership, agency costs inevitably arise. Managers may pursue personal objectives, shirk responsibility, or make decisions that do not maximize firm value unless monitoring and incentive structures are properly designed. This line of analysis established the intellectual basis for boards, audits, executive compensation controls, disclosure rules, and shareholder oversight.

Shleifer and Vishny (1997) expanded the debate by focusing on how suppliers of finance protect themselves against expropriation. Their contribution remains especially important because it moves governance beyond narrow managerial monitoring and toward broader questions of investor protection, control, and legal enforcement. In practical terms, it reminds us that governance matters because investors need assurance that their rights and returns will not be undermined by those in control of the company.

The literature on emerging markets further complicates the traditional agency model. In many developing and transitional economies, ownership is often concentrated rather than dispersed, and the central governance conflict shifts accordingly. The dominant tension may arise not between managers and shareholders, but between controlling shareholders and minority investors. Ararat et al. (2021) show that emerging-market research has contributed significantly to governance scholarship precisely because it highlights concentrated ownership, weak institutions, family control, and the limits of transplanted models. This insight is particularly useful in the Pakistani setting, where governance cannot be adequately understood through a dispersed-shareholding framework.

Pakistani scholarship reflects this gradual shift in emphasis. Khan et al. (2022) observe that research on corporate governance in Pakistan has expanded over time and now includes firm performance, board structure, corporate social responsibility, tunneling, risk-taking, and ownership issues. Yet an important limitation remains. Much of the local research is empirical or finance-based, while comparatively fewer studies integrate legal doctrine, governance regulation, judicial reasoning, and enforcement practice into one analytical framework. In my view, this is one of the

central weaknesses in the existing literature. Governance in Pakistan must be studied as living law, not simply as a variable in corporate finance analysis.

Policy literature also plays an increasingly important role. The OECD (2023) has repositioned governance as essential to market confidence, economic efficiency, sustainability, and resilience. Likewise, the UK Code continues to show that governance can be principle-driven without being vague, provided that explanation, scrutiny, and board responsibility remain meaningful (FRC, 2024). These developments support the argument that modern governance scholarship must pay closer attention to process quality, risk oversight, and the institutional conditions under which governance norms actually work.

### Methodology

This study adopts a doctrinal, comparative, and qualitative methodology. The doctrinal component focuses on the interpretation and evaluation of primary legal materials, including statutes, regulations, judicial decisions, and regulatory orders. The comparative component places Pakistan's corporate governance regime alongside influential transnational standards and selected case law, particularly from the OECD framework, the UK model, and Delaware fiduciary jurisprudence. The qualitative component involves analytical engagement with scholarly and policy literature in order to identify conceptual developments, institutional weaknesses, and future research directions.

This article is not empirical in the econometric sense. It does not attempt to measure firm-level governance performance statistically. Rather, it is interpretive and normative. Its purpose is to examine whether Pakistan's governance architecture is conceptually sound, institutionally coherent, and practically capable of producing accountable corporate conduct. This approach is particularly appropriate because the key problem under examination is not whether governance rules exist, but whether those rules operate effectively in a concentrated-ownership environment.

The principal legal materials examined in this article include the Companies Act, 2017 (SECP, 2022), the Listed Companies (Code of Corporate Governance) Regulations, 2019 as amended up to March 20, 2025 (SECP, 2025), selected SECP enforcement actions, the G20/OECD Principles of Corporate Governance 2023 (OECD, 2023), the UK Corporate Governance Code 2024 (FRC, 2024), and relevant comparative judicial authorities. The methodology is therefore suited to a corporate law inquiry that seeks to connect governance theory with legal design and regulatory practice.

### Corporate Governance as an Accountability Framework

Corporate governance should be treated as the operating constitution of the corporation. It structures power internally while also making that power externally intelligible and legally reviewable. In this sense, governance performs constitutional work within private enterprise. It allocates authority among shareholders, boards, committees, and management; it establishes expectations for disclosure and accountability; and it provides legal pathways for challenge when corporate authority is used in a manner inconsistent with law or fiduciary responsibility.

The OECD's 2023 Principles reflect this more developed conception. They do not present governance as a simple checklist. Rather, they describe it as a structure through which objectives are set, performance is monitored, and accountability is maintained within a framework of checks and balances (OECD, 2023). This is a significant development because it helps shift the debate away from form alone. Governance is not exhausted by the existence of a board or the appointment of nominally independent directors. The real legal question is whether the governance system produces answerable power.

This distinction between visible governance and effective governance is one of the most important lessons for Pakistan. A jurisdiction may adopt sophisticated legal language and yet remain trapped in symbolic compliance if power continues to operate informally, if boards do not challenge dominant actors, or if the cost of non-

compliance remains low. Good governance therefore requires both architecture and activation. The first is legislative; the second is institutional.

### Comparative Governance Standards and Judicial Lessons

Comparative experience offers important guidance, particularly on the difference between procedural form and real fiduciary discipline. In *Smith v. Van Gorkom* (1985), the Delaware Supreme Court emphasized that directors cannot rely on superficial deliberation when making transformative corporate decisions. The case remains important not because it demands perfect board judgment, but because it insists on informed process. Directors must read, question, evaluate, and deliberate. In governance terms, it is a warning against passive approval.

That insight was extended in *In re Caremark International Inc. Derivative Litigation* (1996), where the court articulated the principle that directors must make a good-faith effort to ensure that reporting and information systems exist. Although the threshold for liability remained high, the case profoundly shaped governance doctrine by recognizing that oversight failure could itself become a fiduciary concern. *Stone v. Ritter* (2006) reinforced this by treating sustained failure of oversight as a form of bad faith, thereby bringing governance oversight into closer relationship with the duty of loyalty. *Marchand v. Barnhill* (2019) took the principle further by holding that directors must supervise mission-critical risks relevant to the company's business model.

These cases are not binding in Pakistan, but they are highly instructive. They show that corporate governance is not simply about board composition. It is about whether directors perform the work of directors. A board that receives weak information, asks no difficult questions, and fails to identify the company's mission-critical risks cannot claim to be well-governed merely because it satisfies formal structural requirements.

The UK model offers a different but equally useful lesson. The UK Corporate Governance Code

2024 continues the “comply or explain” approach and places sustained emphasis on board leadership, role division, composition, internal control, risk, and remuneration (FRC, 2024). The British model demonstrates that flexibility can coexist with accountability, but only where explanation is genuine and investors are capable of scrutinizing it. This model is instructive for Pakistan, although it cannot be transplanted mechanically. The practical success of “comply or explain” depends on market depth, investor activism, and disclosure culture, all of which vary significantly across jurisdictions.

### Pakistan’s Corporate Governance Framework

Pakistan’s contemporary governance framework is anchored in the Companies Act, 2017 and the Listed Companies (Code of Corporate Governance) Regulations, 2019, as amended up to March 20, 2025 (SECP, 2022, 2025). Together, these instruments regulate board composition, independent directors, gender representation, separation of the chair and chief executive functions, committee structures, directors’ training, and governance disclosures.

One of the most significant features of the current regime is section 166 of the Companies Act, 2017, which requires independent directors appointed under law, rules, regulations, or code to be selected from an authorized databank (SECP, 2022). This is a meaningful innovation. It reflects an attempt to formalize and professionalize independence in a jurisdiction where board appointments may otherwise remain confined to narrow business or family networks. The SECP’s 2018 announcement that the independent directors’ databank had become operational was therefore more than an administrative development; it marked an institutional effort to address a longstanding weakness in corporate governance practice (SECP, 2018).

The governance regulations further reinforce this architecture by specifying board and committee expectations for listed companies. In formal terms, Pakistan’s governance framework is now considerably more developed than older models that relied mainly on general company law and broad fiduciary principles. That development

should be acknowledged fairly. It would be inaccurate to describe Pakistan as legally underdeveloped in governance terms.

At the same time, formal advancement does not resolve the deeper question of effectiveness. In the Pakistani context, the crucial issue is whether legal independence translates into actual independence, whether committees are genuinely supervisory, and whether compliance statements correspond to governance reality. This is where the present framework still encounters its greatest difficulty.

### Discussion: from formal compliance to substantive accountability

The most important conclusion emerging from this study is that Pakistan’s corporate governance system is stronger in form than in operation. This does not mean that the formal framework is unimportant. On the contrary, the existing legal architecture is a serious achievement. The problem is that governance quality depends not only on the rules that exist, but also on the incentives, institutional conditions, and power structures within which those rules operate.

The first structural difficulty is ownership concentration. In many Pakistani companies, especially where family or bloc control is strong, governance mechanisms may be absorbed into existing power structures rather than serving as independent checks upon them. Independent directors may be appointed formally, yet remain socially or economically dependent on the same interests they are expected to supervise. Where this happens, the governance framework retains its appearance while losing much of its disciplinary effect.

The second difficulty is the tendency to confuse structural compliance with governance effectiveness. A company may satisfy requirements regarding the number of independent directors, committee formation, training certification, and compliance reporting, yet still lack meaningful board debate, scrutiny, and oversight. Comparative governance law suggests that what matters most is not simply whether the organs of governance exist, but whether they function in a way that disciplines power. In practical terms, that

means directors must have real informational access, the confidence to record dissent, and sufficient autonomy to challenge controllers and senior executives.

The third difficulty concerns minority shareholder protection. Pakistan's company law provides remedies against oppression and mismanagement, and these provisions are normatively important because they recognize that internal company processes can themselves become instruments of unfairness. However, the availability of a legal remedy does not guarantee its practical usefulness. Minority shareholders often face evidentiary and procedural burdens in turning grievance into relief. The Sindh High Court's decision in *Shamim Feroz & another v. Feroz Feeds Limited & others* reflects this reality. The case shows that judicial oversight is available, but also that courts will require specific and sufficient proof before intervening in governance disputes. This is doctrinally understandable, but it also highlights the practical fragility of minority protection where access to internal information is limited.

The fourth difficulty is enforcement design. Recent SECP orders indicate a more active regulatory approach, particularly in relation to section 166 and governance obligations concerning independent directors. For example, SECP orders against listed entities such as Sally Textile Mills Limited demonstrate that non-compliance with board independence requirements can produce regulatory sanction (SECP, 2023). This is encouraging. It shows that governance rules are not merely symbolic. Yet a further question remains: Are sanctions strong enough to alter conduct? If the cost of non-compliance remains modest, firms may treat penalties as manageable rather than deterrent. Enforcement, to be effective, must be credible, visible, and escalating where repeated violation occurs.

The fifth difficulty relates to risk governance. Contemporary governance standards increasingly require boards to oversee internal controls, resilience, and mission-critical operational risks. The OECD's 2023 Principles and comparative case law both support this movement (OECD, 2023; *Marchand v. Barnhill*, 2019). In Pakistan,

however, the governance conversation still tends to be dominated by composition and certification rather than by the actual quality of board-level risk supervision. This creates an imbalance. A board may comply with structural requirements and still fail where it matters most: in understanding what could seriously damage the company and in ensuring that reporting systems are capable of surfacing danger in time.

For these reasons, the next phase of governance reform in Pakistan must be centered on substantive accountability. The issue is no longer whether governance standards exist. The issue is whether they can meaningfully restrain concentrated power, protect minority interests, and generate disciplined board behavior.

### Research Gaps

This study identifies several important gaps in the existing scholarship.

First, there remains a shortage of integrated legal scholarship on corporate governance in Pakistan. Much of the available literature is empirical, managerial, or finance-oriented. While this work is useful, it does not fully engage with governance as a field of law shaped by statute, regulatory intervention, judicial review, and institutional design.

Second, the controller-minority conflict has not received the doctrinal attention it deserves. Pakistani corporate governance cannot be understood adequately through a model that assumes dispersed shareholding and primarily managerial agency costs. The more pressing issue in many companies is the legal and practical dominance of controlling interests.

Third, enforcement practice remains under-analyzed. SECP orders, adjudicatory reasoning, and governance-related sanctions form part of the living body of corporate law, yet they are not sufficiently incorporated into academic legal analysis. This is a significant omission because enforcement reveals where governance fails in practice and how the regulator interprets the law beyond its abstract wording.

Fourth, governance scholarship in Pakistan has not yet fully absorbed the implications of sustainability, resilience, and mission-critical risk

oversight. International standards have clearly moved in this direction, but local legal research still tends to focus on conventional board structure issues. This leaves a gap between global conceptual development and domestic scholarly treatment.

#### **Contribution to Research and the Field of Law**

This article contributes to the field in several ways. First, it reframes Pakistani corporate governance as a problem of institutional translation. The core difficulty is not simply weak legislation, but the incomplete conversion of legal mandates into meaningful conduct. This helps explain why governance may appear strong in form and weak in practice at the same time.

Second, the article contributes a comparative legal perspective that places Pakistan's framework alongside the OECD model, the UK code-based approach, and fiduciary oversight jurisprudence from comparative jurisdictions. This does not suggest that foreign models should be copied mechanically. Rather, it provides interpretive resources for understanding what makes governance effective and what limits its performance.

Third, the article contributes to corporate law scholarship by treating governance as a constitutional structure within the corporation. This broadens the relevance of the topic beyond company management and connects it to questions of investor protection, regulatory legitimacy, commercial adjudication, and market development.

Finally, the article identifies a future research direction for Pakistani legal scholarship: governance should increasingly be studied through the combined lenses of doctrine, enforcement, ownership structure, and risk oversight.

#### **Conclusion**

Corporate governance is one of the principal legal means through which corporate power is made answerable. It is not a decorative supplement to company law, nor should it be treated as a purely technical management issue. In legal terms, governance determines how authority is

constituted, how discretion is supervised, and how abuse is corrected. For that reason, it occupies a central place in any serious study of corporate law. Pakistan has made real and measurable progress in the formal architecture of corporate governance. The Companies Act, 2017, the amended 2019 governance regulations, the independent directors' databank framework, and recent SECP enforcement practice all show that the law has moved significantly forward. However, the most difficult part of governance reform remains unfinished. Formal rules do not automatically produce meaningful oversight, functional independence, or strong protection for minority investors.

The central weakness of the present regime is therefore not normative emptiness but operational incompleteness. Governance fails when independent directors are independent only in name, when committees meet without challenge capacity, when disclosure is technically sufficient but practically uninformative, and when sanctions are too limited to change incentives. In that sense, the future of corporate governance in Pakistan lies not in symbolic reform, but in institutional seriousness.

If governance is to perform its proper legal and market function, Pakistan must now move from visible compliance to substantive accountability. That shift requires deeper enforcement, clearer transparency of control, stronger minority remedies, and boards that understand governance as an active fiduciary responsibility rather than a procedural formality.

#### **Recommendations**

**Several recommendations follow from this analysis.**

First, Pakistan should strengthen beneficial ownership transparency so that actual control structures become more visible to investors, regulators, and courts. Without clarity about who truly controls the company, governance protections remain easier to evade.

Second, related-party transactions should be subjected to more rigorous scrutiny. In concentrated-ownership environments, these transactions present one of the clearest avenues for

abuse and value diversion. A stronger disclosure and approval framework is therefore essential.

Third, the law should move toward a more functional understanding of independence. Formal criteria remain important, but they are not sufficient. Independence should be evaluated in light of relational, commercial, and social proximity to controlling interests.

Fourth, governance reform should give greater weight to board-level risk oversight. Audit committees and boards should be expected to understand mission-critical risks, internal control systems, whistleblowing mechanisms, and resilience planning in more concrete and demonstrable ways.

Fifth, enforcement design should be strengthened. Repeated governance non-compliance should trigger sanctions that escalate in seriousness. This is necessary if governance rules are to influence behavior rather than merely produce paperwork.

Sixth, minority shareholder remedies should be made more practically accessible through stronger information rights, clearer judicial standards, and more timely adjudication.

Seventh, future research in Pakistan should pay closer attention to SECP enforcement orders and judicial decisions as sources of evolving governance law. Governance should not be studied only through abstract norms, but through how those norms are interpreted and applied.

#### Author

Mr. Ayaz Khan is a Research Scholar in the field of Law wherein a module on corporate law and regulatory governance was taught. This manuscript examines corporate governance through doctrinal and comparative legal analysis, with particular emphasis on board accountability, minority shareholder protection, enforcement design, and the distinction between formal compliance and substantive accountability in Pakistan.

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