
TRACING THE INVISIBLE OWNER: THE LIMITS OF INDIA'S SIGNIFICANT BENEFICIAL OWNERSHIP FRAMEWORK

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ABSTRACT

The identification of beneficial ownership has emerged as a central pillar of global corporate transparency reform, driven by concerns relating to money laundering, tax evasion, corruption, and illicit financial flows. The Indian regime seeks to pierce formal shareholding patterns and trace ultimate natural persons who own or exercise control over companies.

This article critically examines whether the Indian SBO framework effectively captures real economic control in contemporary corporate structures. It argues that while the regime is normatively justified and aligned with international transparency standards, its reliance on rigid ownership thresholds and formalized control tests reveals structural limitations. Modern corporations frequently separate ownership from control, diffuse economic interests across institutional investors, and embed governance authority within contractual arrangements rather than equity stakes. In such an environment, a threshold-driven compliance model risks both over-inclusion—capturing passive financial investors—and under-inclusion—failing to expose shadow controllers operating through layered, cross-border structures.

Drawing on real-world corporate episodes in India and comparative regulatory approaches, this article demonstrates how institutional intermediation, sovereign and fund-based ownership, and complex financial structuring complicate the identification of a single “ultimate natural person.” It further analyzes enforcement constraints, including reliance on self-declaration, limited verification mechanisms, and restricted public accessibility of ownership data, which collectively weaken the regime’s deterrent effect.

The article concludes that meaningful transparency requires a shift from formal percentage-based metrics toward a more substance-oriented and risk-based understanding of control. Without recalibrating its conceptual foundation and strengthening enforcement architecture, India’s SBO

framework may succeed in documenting ownership while failing to illuminate power.

Keywords: Significant Beneficial Ownership, Corporate Transparency, Beneficial Ownership, Corporate Control, Enforcement, Compliance, Veil Piercing.

Introduction

The architecture of modern corporate enterprise is increasingly defined by opacity. The proliferation of shell entities, layered holding companies, nominee arrangements, private investment vehicles, and cross-border ownership chains has made it progressively difficult to identify the natural persons who ultimately own or control corporate entities.¹ Corporate personality, once designed to facilitate economic organization and capital aggregation, now frequently functions as a mechanism of concealment. In a globalized financial ecosystem, the true locus of power within a company is often deliberately insulated from public scrutiny.²

This structural opacity has significant regulatory implications. Anonymous ownership structures facilitate money laundering, terror financing, tax evasion, corruption, sanctions evasion, and illicit financial flows. International standard-setting bodies, particularly the Financial Action Task Force, have consistently emphasized the need for transparency in beneficial ownership to combat these risks.³ The regulatory consensus is that behind every legal person lies one or more natural persons who ultimately own or control it, and that these individuals must be identifiable.

India's legislative response to this global transparency push is reflected in Section 90 of the Companies Act, 2013⁴ and the Companies (Significant Beneficial Owners) Rules, 2018.⁵ Together, these provisions create a mandatory disclosure framework designed to identify "Significant Beneficial Owners" (SBOs), that is individuals who ultimately hold or control prescribed thresholds of ownership or influence in a company. The framework seeks to

¹ John C. Coffee Jr., *Gatekeepers: The Professions and Corporate Governance* 1–25 (2006) (discussing modern corporate opacity and intermediary structures).

² See Adolf A. Berle Jr. & Gardiner C. Means, *The Modern Corporation and Private Property* 5–7 (1932) (articulating the separation of ownership and control thesis).

³ Financial Action Task Force (FATF), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* (2012, updated 2023) (Recommendations 24 & 25 on transparency and beneficial ownership of legal persons and arrangements).

⁴ Companies Act, No. 18 of 2013, § 90 (India).

⁵ Companies (Significant Beneficial Owners) Rules, 2018, G.S.R. 561(E), Gazette of India, June 14, 2018 (as amended).

penetrate formal shareholding patterns and identify the ultimate natural person standing behind corporate structures.

However, the premise underlying the SBO regime warrants scrutiny. The framework assumes that ultimate ownership and control can be traced through formal thresholds and definitional tests. Yet contemporary corporate practice frequently separates ownership from control, diffuses economic interest across institutional investors, and relocates governance power into contractual arrangements rather than equity stakes. The legal architecture of transparency may therefore be ill-suited to the economic architecture of modern enterprise.

This article examines whether India's SBO framework effectively identifies real controllers of companies. It interrogates whether fixed ownership thresholds are adequate in complex corporate structures, and whether the regime risks both over-inclusion, like capturing individuals without meaningful control, and under-inclusion, like allowing true controllers to remain undisclosed. The central thesis advanced is that India's SBO framework relies on rigid ownership and control tests that do not sufficiently reflect contemporary commercial realities, thereby producing structural regulatory gaps alongside unintended overreach.

Conceptual Foundations: Beneficial Ownership and the Corporate Veil

The concept of beneficial ownership cannot be meaningfully evaluated without situating it within broader theoretical understandings of ownership, control, and corporate personality. Corporate law has long recognized that legal ownership of shares does not necessarily equate to managerial control. The classical separation of ownership and control, a foundational principle of modern corporate governance theory, highlights that shareholders typically provide capital while managers exercise operational authority.⁶ In widely held corporations, dispersed shareholders possess economic rights but little day-to-day control.

This separation generates agency problems. Managers may act opportunistically, minority shareholders may be oppressed by controlling shareholders, and financial investors may remain passive despite substantial economic exposure. Beneficial ownership regimes attempt to identify the individual who ultimately exercises control or derives economic benefit from a company. Yet the assumption that ownership reliably maps onto control is increasingly tenuous. Institutional investors may hold significant stakes without exercising governance

⁶ *Salomon v. A. Salomon & Co. Ltd.* [1897] A.C. 22 (H.L.).

authority. Conversely, minority shareholders may wield disproportionate influence through contractual rights embedded in shareholder agreements.⁷

Historically, the notion of beneficial ownership originates in trust law, where legal and equitable interests are bifurcated.⁸ Trustees hold legal title, while beneficiaries enjoy the economic benefit. In anti-money laundering regulation, this distinction is repurposed: the “beneficial owner” refers to the natural person who ultimately owns or controls a legal entity, even if legal title is held by intermediaries. The regulatory objective is to look beyond nominal ownership and identify substantive power or benefit.⁹

The SBO framework operates as a regulatory analogue to veil-piercing. Traditional judicial veil-piercing is exceptional and remedial, invoked in cases of fraud, sham, or misuse of corporate personality. By contrast, beneficial ownership disclosure is ex ante and compliance-based. It does not depend on wrongdoing but seeks transparency as a structural safeguard. However, unlike judicial veil-piercing, the SBO regime relies on formulaic thresholds and statutory definitions. The question arises whether such formalized criteria can capture the fluid and contractually embedded forms of control characteristic of contemporary commerce.

Legislative Framework of India’s SBO Regime

The statutory foundation of India’s beneficial ownership regime lies in Section 90 of the Companies Act, 2013.¹⁰ This provision empowers the Central Government to require individuals who hold significant beneficial interest in a company to declare their interests. Companies, in turn, are required to maintain registers of such individuals and file prescribed returns with the Registrar of Companies. The provision also enables companies to issue notices seeking information regarding beneficial ownership and to approach the Tribunal in cases of non-compliance.

The Companies (Significant Beneficial Owners) Rules, 2018¹¹ operationalize Section 90. Under these rules, an individual is considered an SBO if he or she holds, directly or indirectly,

⁷ Life Insurance Corp. of India v. Escorts Ltd., (1986) 1 S.C.C. 264 (India).

⁸ Frank H. Easterbrook & Daniel R. Fischel, Limited Liability and the Corporation, 52 U. Chi. L. Rev. 89 (1985).

⁹ Vodafone Int’l Holdings B.V. v. Union of India, (2012) 6 S.C.C. 613 (India).

¹⁰ Companies Act, No. 18 of 2013, § 90 (India).

¹¹ Companies (Significant Beneficial Owners) Rules, 2018, G.S.R. 561(E), Gazette of India, June 14, 2018 (as amended by G.S.R. 675(E), Feb. 8, 2019).

not less than ten percent of shares, voting rights, or rights to distributable dividend, or exercises significant influence or control. The reduction of the threshold from twenty-five percent to ten percent reflects a deliberate policy decision to tighten disclosure obligations and expand the regulatory net.¹²

The rules define “control” in alignment with Section 2(27) of the Companies Act,¹³ encompassing the right to appoint the majority of directors or to control management or policy decisions, whether through shareholding, management rights, shareholder agreements, or otherwise. “Significant influence” is understood as the power to participate in financial and operating policy decisions without amounting to control, borrowing conceptual language from accounting standards and corporate governance norms.

Compliance obligations are extensive. Individuals must file declarations in prescribed forms, and companies must file returns with the Ministry of Corporate Affairs through the MCA21 portal. Companies must maintain an internal register of SBOs and update it upon any change. Non-compliance attracts penalties, and companies may seek restrictions on shares where declarations are not furnished.

Yet the framework relies heavily on self-declaration. The Ministry does not independently verify complex upstream ownership structures, particularly where foreign entities are involved. This reliance on formal filings introduces structural vulnerabilities into the regime.

The Control Tests: How the Law Identifies SBOs

The SBO regime employs two primary analytical routes to identify significant beneficial owners: ownership-based thresholds and control-based tests. The ownership-based test aggregates direct and indirect holdings.¹⁴ Where shares are held through corporate members, partnership firms, trusts, or pooled investment vehicles, the rules prescribe mechanisms for tracing through intermediate entities until a natural person is identified. In theory, this layered tracing should reveal the ultimate owner.¹⁵

¹² Ministry of Corporate Affairs, Gen. Circular No. 07/2018 (Sept. 6, 2018) (clarifying applicability of SBO Rules).

¹³ Companies Act, 2013, § 2(27).

¹⁴ Insolvency Law Committee, *Report of the Insolvency Law Committee* 94–96 (Feb. 2020)

¹⁵ Umakanth Varottil, *The Evolution of Corporate Law in Post-Colonial India: From Transplant to Autochthony*, 31 Nat'l L. Sch. India Rev. 253, 270–74 (2019).

In practice, tracing becomes exponentially complex in multi-tiered, cross-border structures. Intermediate entities may themselves be widely held, listed companies, or investment funds with no single controlling natural person. The assumption that every chain ultimately terminates in an identifiable individual holding at least ten percent may not reflect commercial reality.¹⁶

The control-based test seeks to address situations where ownership thresholds are not determinative. Control may arise through the right to appoint a majority of directors, to control management decisions, or through contractual arrangements such as shareholder agreements.¹⁷ This aspect of the regime recognizes that governance power can be decoupled from equity ownership.

However, evidentiary difficulties abound. Companies may lack visibility into upstream contractual arrangements among shareholders of intermediate entities. Determining whether an individual exercises control indirectly through complex contractual networks requires information that may not be readily accessible to the reporting company.

The “significant influence” standard further complicates matters. Participation in policy decisions may arise from minority veto rights designed as investor protections rather than instruments of control. Distinguishing between protective rights and substantive governance authority is inherently fact-sensitive. The statutory language provides limited guidance, leaving interpretive uncertainty and risk of inconsistent application.

Practical Challenges in Identifying the “Invisible Owner”

Layered corporate structures present one of the most formidable obstacles to effective beneficial ownership identification.¹⁸ Multinational enterprises frequently operate through chains of holding companies across jurisdictions. Special purpose vehicles are established for financing, risk isolation, or tax planning. Private equity structures typically involve limited partners providing capital, general partners exercising formal control, and fund managers making investment decisions. In such structures, it is not immediately clear who qualifies as

¹⁶ Securities & Exchange Board of India (SEBI), Substantial Acquisition of Shares and Takeovers Regulations, 2011, Reg. 2(1)(e).

¹⁷ *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*, (2019) 2 S.C.C. 1 (India).

¹⁸ Organisation for Economic Co-operation and Development (OECD), *Ownership and Control of Listed Companies in Asia* (2003)

the ultimate significant beneficial owner.¹⁹ Limited partners may lack control despite capital contribution. General partners may exercise control without substantial economic exposure. Fund managers may exercise discretion contractually rather than through equity ownership.

Nominee shareholding arrangements further complicate matters. Legal title may rest with a nominee acting on instructions from a principal. While the law attempts to look through nominees, enforcement depends on accurate disclosure. Where intermediaries fail to cooperate, the reporting company may lack independent means of verification.²⁰

The separation of ownership from control is particularly pronounced in the context of institutional investors. Mutual funds, pension funds, and index funds may collectively hold substantial stakes in companies while pursuing passive investment strategies. These entities may cross numerical thresholds without exercising meaningful governance authority. Conversely, minority investors equipped with veto rights or board representation may exert significant influence while remaining below statutory thresholds.

Trust structures introduce additional complexity. In discretionary trusts, beneficiaries are not fixed and distributions are contingent.²¹ Control may reside with settlors, trustees, or protectors. The SBO rules attempt to identify relevant individuals in such arrangements, but determining who truly exercises beneficial ownership may require nuanced factual analysis beyond formal positions.

Underlying these challenges is a pervasive information asymmetry. Companies are tasked with identifying and reporting SBOs but often lack access to detailed upstream ownership data, particularly in cross-border contexts. The framework assumes cooperation and transparency from shareholders, an assumption that may not hold in adversarial or opaque environments.

Over-Inclusion and Under-Inclusion Problems

The theoretical weaknesses of India's Significant Beneficial Ownership (SBO) framework become most visible when tested against real-world corporate structures. While Section 90 of

¹⁹ Companies Act, No. 18 of 2013, § 89 (India).

²⁰ Mihir A. Desai, *The Decentering of the Global Firm*, 32 *World Econ.* 1271 (2009).

²¹ John Armour, Henry Hansmann & Reinier Kraakman, *Agency Problems, Legal Strategies, and Enforcement*, in *The Anatomy of Corporate Law* 29 (3d ed. 2017).

the Companies Act, 2013²² and the Companies (Significant Beneficial Owners) Rules, 2018²³ attempt to trace ultimate natural persons through ownership and control thresholds, Indian corporate history demonstrates that economic power frequently escapes such formal metrics. The following case studies illustrate three recurring distortions within the regime: (i) dispersed public ownership masking coordinated control, (ii) institutional intermediation diffusing traceability, and (iii) contractual governance structures that decouple control from shareholding.

Satyam Scandal

The corporate fraud at Satyam Computer Services in 2009 remains one of India's most instructive governance failures. At the centre of the scandal was promoter dominance by Ramalinga Raju and his family, who exercised decisive control over the company despite a substantial public shareholding base.²⁴

Although Satyam's shareholding structure was publicly disclosed, the episode revealed how control may be entrenched through board influence, managerial dominance, and promoter networks rather than mere numerical thresholds. Promoters often hold stakes through layered entities, family members, or investment vehicles. Even where disclosures exist, identifying the true locus of decision-making authority requires contextual inquiry beyond percentage holdings.²⁵

If the SBO framework had been applied strictly through its ownership-based tracing mechanism, it would likely have identified promoter individuals crossing threshold limits.²⁶ However, the scandal demonstrates a deeper point: disclosure of beneficial ownership does not necessarily equate to meaningful regulatory visibility into control dynamics. The regime presumes that identifying natural persons holding 10% or more shares sufficiently captures governance power. Yet in promoter-driven companies, effective control may persist even if individual holdings are fragmented below statutory thresholds across relatives or controlled

²² Companies Act, No. 18 of 2013, § 90 (India).

²³ Companies (Significant Beneficial Owners) Rules, 2018, G.S.R. 561(E), Gazette of India, June 14, 2018 (as amended).

²⁴ *Satyam Computer Servs. Ltd. v. Directorate of Enforcement*, (2018) 13 S.C.C. 1 (India).

²⁵ Ministry of Corporate Affairs, *Report of the Serious Fraud Investigation Office on Satyam Computer Services Ltd.* (2012).

²⁶ Securities & Exchange Board of India, Order in the Matter of Satyam Computer Services Ltd., WTM/PS/IVD/ID-01/2014 (July 18, 2014).

entities.

Thus, the Satyam episode highlights a structural weakness: the SBO framework can identify formal promoters, but it does not meaningfully interrogate *how* control is operationalized within governance systems. Beneficial ownership disclosure may reveal identity without revealing dominance.

The IL&FS Collapse

The 2018 collapse of Infrastructure Leasing & Financial Services (IL&FS) presents a different transparency challenge.²⁷ IL&FS was not a classic promoter-controlled entity. Its shareholding was distributed among large institutional investors, including:

- Life Insurance Corporation of India (LIC)
- Orix Corporation
- Abu Dhabi Investment Authority

No single natural person stood visibly behind these institutions exercising individualized control. Instead, governance authority was embedded within a board structure influenced by institutional appointees and senior management networks.²⁸

Applying the SBO framework to IL&FS raises conceptual difficulties. Institutional shareholders such as LIC are state-owned entities with diffuse public ownership. Sovereign wealth funds like ADIA are ultimately state-controlled, but identifying a specific “natural person” as SBO becomes conceptually strained. Is the relevant individual a minister? A board nominee? A fund manager?

Here, the SBO regime’s insistence on identifying natural persons reveals a structural mismatch with institutional capitalism. Modern financial systems are characterized by layered intermediation: pension funds invest in funds, which invest in holding companies, which invest in operating companies. Control is committee-driven and bureaucratically exercised, not

²⁷ Union of India v. Infrastructure Leasing & Financial Services Ltd., (2019) 8 S.C.C. 265 (India).

²⁸ Reserve Bank of India, *Report of the Working Group on Core Investment Companies* (Nov. 2019).

concentrated in identifiable individuals crossing numerical thresholds.²⁹

The IL&FS crisis thus exposes under-inclusion risk. Real governance failures occurred, yet no obvious “invisible individual owner” stood behind the structure. The SBO framework, designed to detect hidden persons, struggles when control is systemic rather than personal.³⁰

The Yes Bank Crisis

The governance crisis at Yes Bank in 2020 further demonstrates how control may be exercised outside strict shareholding metrics.³¹ Founder Rana Kapoor held significant influence, but the bank also had substantial institutional and foreign investment.³² As regulatory scrutiny intensified, questions emerged regarding the influence of specific investor blocs and lending relationships.³³ In banking structures, leverage, debt covenants, and regulatory approvals can operate as instruments of control. Shareholding percentages alone do not map neatly onto effective governance authority.

Under the SBO regime, tracing 10% ownership stakes might identify certain individuals. However, control in financial institutions frequently arises through:

- Appointment rights negotiated in investment agreements
- Informal influence over credit decisions
- Concentrated lending exposures
- Regulatory capital structuring

These forms of influence are not always reducible to ownership percentages. The regime’s formal definition of “control” includes management rights or shareholder agreements, but in practice companies lack visibility into upstream agreements among institutional investors.³⁴

²⁹ Securities & Exchange Board of India, Interim Order in the Matter of IL&FS Financial Services Ltd., WTM/AB/EFD/1/2019 (Jan. 2019).

³⁰ Tarun Khanna & Krishna G. Palepu, *Emerging Market Business Groups*, 86 *Foreign Aff.* 41 (2007) (explaining layered group structures in emerging economies).

³¹ *Yes Bank Ltd. v. Rana Kapoor*, (2020) SCC OnLine Bom 321 (Bom).

³² *Enforcement Directorate v. Rana Kapoor*, ECIR/MBZO/05/2020.

³³ Reserve Bank of India, *Yes Bank Ltd. – Reconstruction Scheme, 2020*, Notification No. DOR.No.BP.BC.47/21.04.048/2019-20 (Mar. 13, 2020).

³⁴ Securities & Exchange Board of India (SEBI), *Substantial Acquisition of Shares and Takeovers Regulations, 2011*, Reg. 2(1)(e).

Thus, while the statutory language appears broad, operational detectability remains limited.

The Yes Bank episode highlighted a broader problem: financialized capitalism diffuses ownership but concentrates influence through complex instruments that elude straightforward tracing.

The Adani–Hindenburg Controversy

The 2023 allegations by Hindenburg Research concerning the Adani Group brought renewed attention to offshore structures and foreign portfolio investments.³⁵ Questions were raised regarding whether certain foreign entities investing in Adani companies were effectively connected to promoter interests.

While investigations remain contested and politically charged, the episode illustrates how layered offshore funds and foreign portfolio investors may obscure beneficial connections. Even where compliance filings exist, tracing through multiple jurisdictions with varying disclosure standards is administratively difficult.

Under the SBO Rules, companies must identify individuals holding significant indirect interests. Yet where foreign funds are involved, upstream information may not be fully accessible.³⁶ Disclosure obligations often depend on declarations by the entities themselves. If intermediaries are located in secrecy jurisdictions or structured as discretionary funds, identifying a natural person crossing the 10% threshold becomes challenging.

This scenario demonstrates a key under-inclusion risk: sophisticated structuring may ensure that no single individual appears to cross statutory thresholds, even where coordinated influence exists. The regime is designed to pierce nominal shareholding, but it may be outpaced by transnational capital engineering.³⁷

While under-inclusion captures public imagination, over-inclusion poses equally serious structural concerns. Consider large institutional investors such as:

³⁵ Securities & Exchange Board of India (SEBI), Substantial Acquisition of Shares and Takeovers Regulations, 2011, Reg. 2(1)(e).

³⁶ Securities & Exchange Board of India v. Hindenburg Research, Writ Petition (C) No. 162 of 2023.

³⁷ Ministry of Finance, Dept. of Econ. Affairs, *Press Note on Review of FPI Disclosure Norms* (Aug. 2023).

- Life Insurance Corporation of India
- Government Pension Fund Global

These entities routinely cross significant shareholding thresholds in listed Indian companies. Yet they operate as portfolio investors, not operational controllers. If the SBO regime aggressively interprets “significant influence,” senior officials or fund managers might theoretically fall within disclosure requirements, despite lacking individualized control over day-to-day management.

This produces compliance distortion. The law risks equating economic exposure with governance power. In diversified institutional holdings, influence is often passive or exercised collectively through voting policies rather than managerial direction. Treating such actors as SBOs dilutes the regime’s focus on opacity-driven risk and imposes disproportionate burdens on transparent institutional investors.³⁸

Across these case studies, three structural misalignments emerge:

1. **Personalization Bias:** The regime presumes that control ultimately resides in identifiable natural persons. Modern corporate governance often operates through committees, boards, and institutional bureaucracies rather than singular individuals.
2. **Threshold Formalism:** Numerical thresholds (10%) create certainty but ignore economic nuance. Control may exist below thresholds through contractual rights, or may not exist despite exceeding them.³⁹
3. **Information Asymmetry:** Companies are tasked with tracing upstream ownership without investigative authority. The system relies on self-reporting rather than independent verification.

The result is a transparency architecture that may succeed in identifying straightforward promoter control but struggles in precisely those complex, high-risk structures that motivated its creation. India’s SBO framework aspires to pierce the corporate veil *ex ante*. Yet these case

³⁸ Organisation for Economic Co-operation and Development (OECD), *Opacity of Ownership and Control in Listed Companies* (2019).

³⁹ Companies Act, No. 18 of 2013, § 2(27).

studies suggest that the veil is no longer merely corporate; it is financial, contractual, and transnational.⁴⁰ A regime built around shareholding percentages risks confronting a world in which control is exercised through leverage, influence networks, and institutional layering.

The paradox is stark: the law searches diligently for invisible individuals, while modern capitalism increasingly operates through visible institutions and invisible governance mechanisms.

Unless the definition of control evolves from formal shareholding metrics to a more substance-oriented, risk-based inquiry into actual decision-making authority and economic benefit, the SBO framework will remain simultaneously over-inclusive in routine cases and under-inclusive in complex ones.

Comparative Perspective: Global Approaches

A comparative examination reveals both convergence and divergence in global beneficial ownership regimes. The United Kingdom's Persons with Significant Control (PSC) framework, established under the Companies Act 2006, requires companies to identify individuals who hold more than twenty-five percent of shares or voting rights, or who otherwise exercise significant influence or control.⁴¹ The PSC register is publicly accessible, enhancing transparency. Statutory guidance elaborates on what constitutes significant influence, providing interpretive clarity absent in many jurisdictions.⁴²

Within the European Union, Anti-Money Laundering Directives mandate member states to maintain beneficial ownership registers. While thresholds generally align with FATF's twenty-five percent benchmark, member states vary in implementation and public accessibility.⁴³ Recent judicial developments within the EU have recalibrated public access to beneficial ownership registers in light of privacy concerns, illustrating the tension between transparency and data protection.⁴⁴

⁴⁰ Lucian A. Bebchuk & Scott Hirst, *The Specter of the Giant Three*, 99 B.U. L. Rev. 721 (2019).

⁴¹ Companies Act 2006, c. 46, §§ 790A–790ZG (U.K.).

⁴² U.K. Dep't for Bus., Energy & Indus. Strategy, *Statutory Guidance on the Meaning of "Significant Influence or Control" over Companies* (2017).

⁴³ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 (Fourth Anti-Money Laundering Directive), 2015 O.J. (L 141) 73.

⁴⁴ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 (Fifth Anti-Money Laundering Directive), 2018 O.J. (L 156) 43.

In the United States, the Corporate Transparency Act establishes a federal reporting regime requiring certain entities to disclose beneficial owners to the Financial Crimes Enforcement Network (FinCEN).⁴⁵ The U.S. framework emphasizes individuals who exercise substantial control or own twenty-five percent or more of ownership interests. Unlike the UK model, the U.S. database is not publicly accessible; it is available to law enforcement and specified authorities. This centralized reporting approach shifts compliance away from public registers toward regulatory databases.⁴⁶

Comparatively, India's ten percent threshold is more stringent than FATF's baseline. However, like other regimes, it relies on formalized definitions that struggle to capture contractual and institutional forms of control.

Commercial Reality vs. Regulatory Design

Modern corporations operate within global capital markets characterized by dispersed ownership, institutional intermediation, and contractual governance. Control is often exercised through shareholder agreements, financing covenants, board representation rights, and management contracts rather than simple shareholding thresholds. Financial investors may prioritize economic return without seeking operational control.⁴⁷ Venture capital and private equity investors may demand protective rights to safeguard investment without intending to manage day-to-day affairs.

India's SBO regime presumes that ultimate control is traceable to identifiable natural persons meeting quantifiable thresholds.⁴⁸ Yet in global investment structures, control may be diffused among committees, institutional managers, or collective investment schemes. Requiring companies to identify individual SBOs in such contexts may be conceptually misaligned with economic reality.⁴⁹ Moreover, the compliance burden falls primarily on companies, which must conduct inquiries, maintain registers, and file returns. Controllers may face limited direct scrutiny unless enforcement actions are initiated. Excessive compliance obligations may also

⁴⁵ Joined Cases C-37/20 & C-601/20, *Luxembourg Business Registers*, 2022 E.C.R.

⁴⁶ Corporate Transparency Act, Pub. L. No. 116-283, §§ 6401–6403, 134 Stat. 3388 (2021) (codified at 31 U.S.C. § 5336).

⁴⁷ John Armour, Henry Hansmann & Reinier Kraakman, What Is Corporate Law?, in *The Anatomy of Corporate Law* 1 (3d ed. 2017).

⁴⁸ Organisation for Economic Co-operation and Development (OECD), *Corporate Governance Factbook 2021*.

⁴⁹ Bernard S. Black, The Legal and Institutional Preconditions for Strong Securities Markets, 48 UCLA L. Rev. 781 (2001).

create friction for foreign investment, particularly where investors are accustomed to different disclosure regimes.

Enforcement and Compliance Issues in India

The normative ambition of India's Significant Beneficial Ownership (SBO) framework—to identify the natural persons who ultimately own or control corporate entities—cannot be evaluated solely by reference to statutory design. The effectiveness of any transparency regime depends not only on definitional precision under Section 90 of the Companies Act, 2013⁵⁰ and the Companies (Significant Beneficial Owners) Rules, 2018, but equally on the institutional capacity to verify, enforce, and operationalize those provisions. In practice, enforcement and compliance gaps substantially dilute the regime's deterrent potential.

At the core of India's SBO framework lies a structural limitation: it is fundamentally declaration-based. Individuals who qualify as SBOs are required to file declarations (in prescribed forms), and companies are obligated to maintain internal registers and submit filings to the Registrar of Companies. However, the system largely presumes voluntary compliance.

The Ministry of Corporate Affairs (MCA) does not routinely undertake independent forensic tracing of layered ownership chains.⁵¹ Instead, it relies on:

- Self-declarations by individuals;
- Information furnished by reporting companies;
- Documentary submissions uploaded on the MCA21 portal.

In complex corporate structures, particularly those involving cross-border holdings, foreign portfolio investors, discretionary trusts, or multi-layered private equity vehicles, the reporting company itself may not possess complete upstream information. Where disclosures depend on representations made by shareholders, the regime effectively shifts the epistemic burden onto private actors without equipping regulators with systematic verification tools.⁵²

⁵⁰ Companies Act, No. 18 of 2013, § 90(7)–(11).

⁵¹ Ministry of Corporate Affairs, *Annual Report 2022–23* (discussing MCA21 system and regulatory capacity).

⁵² Comptroller and Auditor General of India, *Report on Compliance with the Companies Act, 2013* (Performance Audit).

This creates what may be termed a *verification deficit*: the law mandates disclosure but lacks consistent institutional capacity to test the accuracy of that disclosure. In the absence of proactive audits, cross-agency data integration, or algorithmic anomaly detection, the deterrent value of reporting obligations is weakened. Transparency regimes function not merely through rules, but through credible enforcement expectations. Where verification appears unlikely, compliance risks becoming formalistic rather than substantive.

Although penalties exist for non-compliance, including fines and potential restrictions on share transfers or voting rights, the enforcement record has been uneven. Regulatory action has typically been reactive rather than systematic, often triggered by broader investigations rather than routine compliance audits.⁵³ The Companies Act empowers companies to issue notices to suspected SBOs and, upon failure to respond, to approach the National Company Law Tribunal (NCLT) for restrictions on shares. In theory, this provides a coercive mechanism. In practice, however, companies may hesitate to initiate adversarial proceedings against significant investors, especially where commercial relationships are at stake.

Several structural realities temper enforcement intensity:

1. **Regulatory Prioritization:** The MCA oversees millions of registered companies. Resource constraints limit its ability to scrutinize every filing for substantive accuracy.
2. **Complexity of Tracing:** Investigating layered ownership structures often requires cross-border cooperation and access to foreign regulatory databases.
3. **Litigation Costs:** Enforcement proceedings before the NCLT entail time and cost, discouraging aggressive pursuit in borderline cases.

The result is a compliance environment in which formal adherence (filing of forms) may be achieved, but deeper interrogation of economic control structures remains sporadic.⁵⁴

Another structural weakness lies in the architecture of disclosure itself. While companies are required to maintain registers of SBOs and file returns with the Registrar, India does not operate a fully integrated, publicly searchable, independently verified beneficial ownership database

⁵³ Umakanth Varottil, *Corporate Governance in India: A Retrospective and Prospective Analysis*, 1 Indian J. Corp. L. 1 (2012).

⁵⁴ Financial Action Task Force (FATF), *Mutual Evaluation Report – India*

comparable in accessibility to the United Kingdom's PSC register.

Reform Proposals

Reform of the SBO framework should begin with a recalibration toward substance-based analysis. Rather than relying primarily on rigid percentage thresholds, the regime could place greater emphasis on actual decision-making authority and economic benefit. Statutory guidance clarifying the distinction between protective investor rights and genuine control would reduce interpretive ambiguity.⁵⁵

Safe harbors for passive institutional investors could mitigate over-inclusion. Conversely, enhanced scrutiny of high-risk sectors, complex cross-border structures, and politically exposed persons could address under-inclusion through a risk-based supervisory approach aligned with anti-money laundering principles.⁵⁶

Improved disclosure mechanisms are also essential. A centralized beneficial ownership database with enhanced verification protocols, inter-agency coordination, and cross-border information exchange could strengthen enforcement. Leveraging technology for data analytics and anomaly detection may further enhance regulatory effectiveness.

Conclusion

India's Significant Beneficial Ownership (SBO) framework reflects a serious and normatively justified commitment to corporate transparency. In an era marked by shell entities, layered investment vehicles, and transnational capital flows,⁵⁷ the objective of identifying the ultimate natural persons behind corporate structures is both economically rational and democratically necessary. Section 90 of the Companies Act, 2013 and the Companies (Significant Beneficial Owners) Rules, 2018 embody India's alignment with global transparency standards and anti-money laundering commitments. At the level of legislative intent, the regime is difficult to fault.⁵⁸

⁵⁵ Financial Action Task Force (FATF), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* (updated 2023) (Recommendations 1 & 24).

⁵⁶ U.K. Dep't for Bus., Energy & Indus. Strategy, *Statutory Guidance on the Meaning of "Significant Influence or Control"* (2017).

⁵⁷ Corporate Transparency Act, Pub. L. No. 116-283, 134 Stat. 3388 (2021).

⁵⁸ Organisation for Economic Co-operation and Development (OECD), *Beneficial Ownership and Control – A Comparative Study* (2019).

Yet the central difficulty lies not in aspiration, but in design.

The framework is built upon an implicit assumption: that ownership, control, and economic power can be meaningfully traced through fixed percentage thresholds and formalized definitions. Contemporary corporate reality challenges that assumption. Modern enterprises are characterized by dispersed shareholding, institutional intermediation, sovereign and pension fund participation, private equity layering, and governance authority embedded in contractual rights rather than simple equity stakes. Control is frequently diffused, bureaucratized, or exercised indirectly through financial leverage and board influence. Economic benefit and decision-making authority do not always converge in identifiable individuals holding ten percent or more of shares.

In this environment, a regime grounded predominantly in numerical thresholds produces a structural paradox. It risks over-inclusion by classifying passive institutional investors or portfolio holders as significant beneficial owners despite their lack of operational control. Simultaneously, it risks under-inclusion by failing to capture shadow controllers, coordinated influence networks, or sophisticated cross-border arrangements deliberately structured to remain below statutory thresholds. The result is a transparency architecture that may succeed in routine promoter-driven companies but struggles in precisely those complex structures that generate the greatest opacity concerns.

Enforcement constraints compound these design limitations. A declaration-based system reliant on self-reporting, without robust verification mechanisms or fully integrated data infrastructure, may generate formal compliance without ensuring substantive transparency. Disclosure, in such circumstances, risks becoming procedural rather than revelatory.

This does not render the SBO framework redundant. On the contrary, it emphasizes the need for doctrinal and institutional recalibration. Transparency regulation must evolve from rigid threshold formalism toward a more substance-oriented and risk-based understanding of control, one that interrogates actual decision-making power, economic benefit, and governance influence rather than relying primarily on percentage ownership. Strengthened verification capacity, clearer guidance on “significant influence,” and calibrated differentiation between passive investment and effective control would better align regulatory intent with commercial reality.

Ultimately, the challenge confronting India's SBO regime is conceptual as much as technical. The corporate veil it seeks to pierce is no longer merely a juridical fiction shielding individual shareholders; it is a multilayered structure composed of financial engineering, contractual governance, and institutional intermediation. If the law continues to equate visibility of shareholding with visibility of power, it may trace formal ownership while leaving the true architecture of control obscured.

The task ahead is not to abandon beneficial ownership transparency, but to refine it—so that the search for the “invisible owner” does not end with those who are merely visible on paper, but reaches those who actually wield influence within the contemporary corporation.

Unless the concept of control is recalibrated to reflect economic substance rather than formal metrics, India's SBO framework risks conflating ownership with power and transparency with compliance formalism. Without such recalibration, the law may continue to trace formal shareholding patterns while the true architecture of corporate control remains concealed behind layers of contractual and institutional design.