

DECENTRALISED AUTONOMOUS ORGANISATIONS AND THE COMPANIES ACT, 2013: CAN THEY COEXIST IN INDIA?

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Abstract

Decentralised Autonomous Organisations (DAOs) are this really interesting new type of organisation that runs on blockchain technology using smart contracts instead of having traditional managers and boards. They're becoming pretty popular globally, but India hasn't really figured out what to do with them legally yet. This paper looks at whether DAOs can actually work within our Companies Act, 2013. After analyzing the Act's requirements and how DAOs actually function, I've found that there are some serious mismatches. DAOs just don't fit into the way our company law is structured right now - things like needing directors, having a registered office, and all the compliance requirements just don't work with how decentralized these organizations are. My conclusion is that we need proper legal reforms if we want DAOs to have any real chance in India.

Keywords: Decentralised Autonomous Organisations, Blockchain Governance, Companies Act 2013, Corporate Personality, Smart Contracts, Indian Corporate Law

INTRODUCTION

Blockchain technology has really changed how we think about organizing businesses and economic activities. One of the most interesting innovations to come out of this is the Decentralised Autonomous Organisation - or DAO for short. Basically, a DAO is an organization that's governed by code (smart contracts) that runs on a blockchain, which means you don't need the usual hierarchy of managers and executives making all the decisions.¹

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DAOs are being used for all kinds of things around the world - managing investments, running DeFi protocols, making collective decisions about digital assets, and more. Some places like Wyoming in the US have actually passed laws recognizing DAOs as legitimate business entities.² But India? We're still being pretty careful about anything blockchain-related, and we don't have clear laws for cryptocurrencies or decentralized systems yet.

This creates an important question that I want to explore: can DAOs actually operate under our Companies Act, 2013?

I'm going to look at whether the Act's provisions can accommodate these decentralized entities, and if not (which seems likely), what kind of legal changes we might need to make it work.

UNDERSTANDING DAOs: WHAT ARE THEY REALLY?

The Basic Characteristics

A DAO operates through rules that are written in smart contracts - basically self-executing code that lives on a blockchain.³ These rules control everything important about the organization: who can be a member, how decisions get made, where money goes, how disputes are settled.

There are four main things that make DAOs different from regular companies:

Decentralization: Instead of having a CEO or board making decisions, control is spread out among all the participants (usually people who hold governance tokens).⁴ No single person or small group has all the power.

Transparency: Everything happens on the blockchain's public ledger. Anyone can see the code and verify all the transactions that have happened.⁵ There's nowhere to hide dodgy dealings.

Automation: When certain conditions are met, things happen automatically without anyone needing to approve it manually. The code just executes.

Immutability: Once the smart contract is deployed, you can't easily change it. The rules are pretty much locked in, though some DAOs do have mechanisms to upgrade through community votes.⁶

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How DAOs Make Decisions

Most DAOs use a token-based voting system. If you hold governance tokens, you can propose changes and vote on them.⁷ Usually, the more tokens you have, the more voting power you get - which honestly does raise some concerns about whether wealthy token holders end up controlling everything.⁸ But either way, this is completely different from how normal companies work, where shareholders elect directors who then make decisions on behalf of the company.

THE COMPANIES ACT, 2013: WHAT DOES IT REQUIRE?

Our Companies Act, 2013 is the main law that governs all companies in India. It replaced the old 1956 Act and was supposed to make things more transparent and easier for businesses.⁹ The Act covers pretty much everything - how to start a company, how to run it, what rights different stakeholders have, compliance requirements, and how companies get dissolved.

Section 2(20) defines what a "company" is, and it's pretty straightforward - it's something that's been incorporated (officially registered) under this Act or the previous company laws.¹⁰ So incorporation is mandatory. When you incorporate, the company becomes its own legal person, separate from the people who own it. This is a really fundamental principle that courts have been upholding since the famous *Salomon v. Salomon & Co. Ltd.* case.¹¹

The Act also says every company has to have a Board of Directors who manage everything (Section 149).¹² Sections 166 and 184 spell out what directors have to do - act in good faith, be careful and skilled in their decisions, avoid conflicts of interest, think about what's best for the company, employees, and shareholders.¹³ All of this assumes you have actual identifiable people who can be held responsible if something goes wrong.

On top of that, companies have to do a ton of compliance work - maintain statutory registers, file documents with the Registrar of Companies regularly, get audits done, disclose related party transactions, and more.¹⁴ The whole philosophy behind the Act is about making sure companies are accountable and the government can keep track of what's happening.

When you look at this framework - incorporation, centralized management, regulatory oversight - it becomes pretty obvious why DAOs would struggle to fit in.

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THE LEGAL PERSONALITY PROBLEM

Why Separate Legal Personality Matters

Separate legal personality is one of the most important concepts in company law. Once a company is incorporated, it becomes a legal person that can own property, sign contracts, sue people, and get sued - all in its own name, completely separate from its shareholders.¹⁵ The Supreme Court confirmed this in *State Trading Corporation of India Ltd. v. Commercial Tax Officer*, saying incorporated companies have legal personality that's distinct from their members.¹⁶

This principle is what makes modern business possible. It allows companies to continue existing even when shareholders change, makes it easier to transfer ownership, and creates a clear line between what the company is liable for and what the owners are personally liable for.

DAOs Don't Get Incorporated

Here's the problem: DAOs don't go through any incorporation process under Indian law. They just exist as decentralized networks running on blockchain infrastructure through smart contracts. Nobody registers them with the government or follows incorporation procedures. Without incorporation, DAOs can't get legal personality under Indian law, which means they can't independently own assets or enter into legally enforceable contracts in India.¹⁷

When Indian courts have dealt with unincorporated entities in the past, they've usually called them either unincorporated associations or partnerships (especially if there's profit-sharing and a common business purpose).¹⁸ This matters a lot because unlike incorporated companies, unincorporated associations don't have separate legal existence. The members could be personally liable for what the organization does.

Now, you could theoretically incorporate something that operates like a DAO under the Companies Act, 2013. But to do that, you'd need to identify promoters, appoint directors, set up a registered office, and follow all the incorporation procedures in Sections 7 and 12.¹⁹ These requirements completely contradict what makes a DAO a DAO - the pseudonymous participation, global membership, no physical presence, and algorithmic management instead

of human managers. The current incorporation framework just doesn't work for decentralized autonomous structures.

THE MANAGEMENT STRUCTURE PROBLEM

You Have to Have a Board of Directors

Indian company law clearly separates ownership from management. Section 149 says every company must have a Board of Directors who are collectively responsible for managing the company's business.²⁰ Section 179 gives the Board a lot of powers, basically making them the control center of the company.²¹

This whole setup assumes you have identifiable people in a hierarchical structure. Directors get formally appointed, they can be removed according to statutory procedures, and they're subject to oversight by shareholders, regulators, and courts.²² The law expects human beings to be making discretionary decisions within their fiduciary duties.

But DAOs reject this entire concept. They spread governance authority across all token holders who collectively decide things through proposals and votes. Smart contracts then automatically execute whatever gets decided.²³ There's no board of directors, no executives, no management hierarchy at all. This fundamental difference makes it impossible for DAOs to comply with the Companies Act's mandatory board requirements.

Who Owes Fiduciary Duties?

Section 166 establishes detailed fiduciary duties for directors - they have to act in good faith toward the company, use independent judgment with due care and diligence, avoid conflicts of interest, and not get undue personal benefits.²⁴ If directors breach these duties, they face civil liability and sometimes even criminal prosecution under Section 447.²⁵

With DAOs, it's really unclear who would owe these kinds of duties under Indian law. Token holders who participate in governance aren't in any statutorily recognized managerial position like being a director. They don't owe any legally enforceable duties to the organization or other participants. They don't have formal obligations to gather information or deliberate carefully. And there's no accountability mechanism like what directors face.²⁶ This creates a huge gap in governance accountability from a legal perspective, which could expose DAO

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participants and third parties to risks without having any legal protections or remedies available.

THE TOKEN VS. SHARES PROBLEM

How Shares Work Under the Act

The Companies Act has extensive regulations about share capital, which represents who owns the company. Shares give you specific rights like voting rights (depending on the class of shares), dividend rights, and claims on assets if the company gets liquidated.²⁷ Sections 42 through 62 govern how shares are issued, transferred, and everything else, with detailed procedures to ensure transparency and protect investors.²⁸

What About DAO Tokens?

DAO governance tokens often work a lot like shares - they give you voting rights and let you participate economically in what the organization does. But here's the thing: Indian company law doesn't recognize tokens as shares. They don't count as part of registered share capital, and they're not issued according to the statutory procedures that apply to equity securities.²⁹

It gets more complicated because depending on how DAO tokens are structured, they might actually be "securities" under Section 2(h) of the Securities Contracts (Regulation) Act, 1956, along with SEBI regulations.³⁰ The Supreme Court has interpreted "securities" pretty broadly, potentially covering new types of instruments that have investment contract characteristics³¹. If tokens are classified as securities, then issuing and trading them would require compliance with SEBI's disclosure requirements, intermediary regulations, and investor protection frameworks.

But SEBI hasn't issued clear guidance on how to classify cryptocurrencies or DAO tokens, which creates a lot of uncertainty.³² The SEBI Consultation Paper on Regulation of Crypto-Assets from 2022 acknowledged we need regulatory clarity but didn't actually provide comprehensive criteria for classification.³³ This ambiguity means DAOs face compliance risks, and participants don't know what their legal obligations and protections are.

THE COMPLIANCE NIGHTMARE

What Companies Have to Do

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The Companies Act requires a lot of compliance work to ensure transparency and protect stakeholders. Companies have to file annual returns (Section 92), maintain proper books of account (Section 128), prepare financial statements according to prescribed accounting standards (Section 129), get statutory audits done (Section 139), and make various disclosures about related party transactions, director interests, and significant events.³⁴

All of this assumes you have a centralized entity with identifiable management, a physical presence at a registered office, and the ability to interact with regulatory authorities through designated compliance officers. The regulatory framework works through prescribed formats, designated submission channels, and periodic interaction with government agencies.³⁵

Blockchain Transparency Isn't the Same Thing

DAOs do have transparency, but it's blockchain-based. Governance decisions and financial transactions are recorded on distributed public ledgers that anyone can verify.³⁶ While this is technologically solid, it doesn't satisfy what Indian corporate law requires for disclosure.

Regulatory authorities want information in specific formats submitted through specific channels to the Registrar of Companies and other government bodies. DAOs don't have registered offices, statutory auditors, or designated compliance officers, so they can't really do this.³⁷ Plus, the pseudonymous nature of blockchain transactions makes it hard for regulators to trace things and enforce rules - which are key goals of India's corporate disclosure framework.

This fundamental mismatch between blockchain transparency and statutory disclosure requirements is a major practical barrier to recognizing DAOs within the existing regulatory structure.

THE LIABILITY QUESTION: WHO'S ON THE HOOK?

Limited Liability Is Crucial

Limited liability is one of the defining features of incorporated companies under the Companies Act, 2013. Section 34 says that shareholders are only liable for the amount they haven't paid on their shares - their personal assets are protected from corporate creditors unless there are exceptional circumstances that justify piercing the corporate veil.[38] Indian

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courts have consistently upheld this principle because it encourages people to invest and take business risks without facing unlimited exposure.³⁹

The Privy Council (whose decisions used to be really influential in Indian law) reaffirmed in *Lee v. Lee's Air Farming Ltd.* that incorporation creates a legal person separate from its members, with corresponding liability separation.⁴⁰ Indian courts have applied similar reasoning in tons of cases, recognizing limited liability as fundamental to corporate personality.

DAO Members Could Face Unlimited Liability

Here's where it gets scary for DAO participants: without statutory recognition and formal incorporation, DAO members can't claim limited liability protection under Indian law. Based on how courts have dealt with unincorporated associations in India, when an entity doesn't have separate legal personality, members might face joint and several liability for organizational obligations.⁴¹

The Supreme Court in *A. Ramaiya v. Union of India* emphasized that limited liability comes from statutory incorporation, not just from organizing collectively.⁴² Applying this principle, courts could hold DAO participants personally liable for organizational debts, contractual obligations, or tortious acts that arise from DAO activities.

There's also Indian partnership law to worry about. It says that when multiple people carry on business together with profit-sharing objectives, a partnership might exist even if there's no formal partnership agreement.⁴³ Courts using substance-over-form analysis might characterize active DAO participants as partners, which means unlimited joint and several liability.⁴⁴ This risk especially affects governance-active token holders who regularly propose, vote on, and implement organizational decisions.

This liability uncertainty is probably the biggest legal barrier for DAOs in India. It creates unacceptable risk exposure for both participants and third parties.

HOW OTHER COUNTRIES ARE HANDLING THIS

Wyoming's Approach

Wyoming did something really innovative in 2021 with Senate File 38, amending their Limited Liability Company Act to recognize DAOs as a distinct type of LLC (they call them

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DAO LLCs).⁴⁵ This framework gives DAOs legal personality while letting them use blockchain-based governance through smart contracts. The statute allows algorithmically defined membership, decentralized management, and token-based voting, while still maintaining minimum disclosure requirements and member liability limitations.⁴⁶

Wyoming's approach shows that you can create specific legal recognition for DAOs without forcing them into traditional corporate structures. The legislation balances encouraging innovation with basic regulatory safeguards, providing a potential model for other jurisdictions.

What's Happening in the EU

The European Union has started exploring how to recognize decentralized entities through regulatory sandboxes under the European Blockchain Services Infrastructure (EBSI) initiative.⁴⁷ The EU's approach focuses on technology-neutral regulation - crafting frameworks based on what something does rather than the specific technology it uses. This accommodates innovation while preserving regulatory goals around investor protection, anti-money laundering, and consumer rights.⁴⁸

These international developments show that DAOs don't have to conform to old corporate structures. Progressive jurisdictions are experimenting with tailored legal frameworks that recognize decentralized characteristics while establishing appropriate oversight. India's continued reliance on conventional company law structures without trying to accommodate blockchain-enabled organizational forms risks putting us at a disadvantage in the global innovation ecosystem.

MY ANALYSIS: CAN DAOs ACTUALLY WORK UNDER OUR ACT?

The Fundamental Mismatches

The Companies Act, 2013 is built on assumptions that just don't match up with how DAOs work. The Act assumes: (1) formal incorporation that creates separate legal personality; (2) centralized management through a board of directors who have fiduciary obligations; (3) identifiable shareholders with defined rights and liabilities; (4) physical presence at a registered office; and (5) ability to interact with regulatory authorities through compliance mechanisms.[49]

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DAOs challenge every single one of these assumptions. They operate without formal incorporation, they govern through distributed token-holder voting instead of centralized boards, they involve pseudonymous participants without clearly defined legal relationships, they exist mainly in digital space without physical locations, and they don't have the structural capacity for conventional regulatory compliance.⁵⁰

How Courts Would Probably Look at This

Indian courts have consistently applied substance-over-form analysis when dealing with novel organizational arrangements. In *Bacha F. Guzdar v. CIT*, the Supreme Court emphasized looking beyond what something is called to examine its true nature and character.⁵¹ Applying this approach, courts looking at DAOs would probably examine how they actually function rather than just accepting what they call themselves.

Without statutory incorporation, I think judicial analysis would probably characterize DAOs as either unincorporated associations or partnerships, depending on the factual circumstances like whether there's profit-sharing and common enterprise elements.⁵² Either way, participants would be exposed to unlimited personal liability and couldn't claim the benefits of corporate personality.

My Conclusion on Whether They're Compatible

Based on my analysis of the law, DAOs in their typical form just can't operate successfully within the Companies Act, 2013 framework. The mismatch isn't just a technical problem - it's fundamental. It comes from completely different organizational philosophies: centralized versus decentralized authority, algorithmic versus human judgment, immutable code versus discretionary management.

While a DAO could theoretically incorporate as a company, doing so would require adopting characteristics that go against its decentralized nature - appointing directors, establishing centralized decision-making, maintaining a physical presence, and implementing conventional governance. These modifications would effectively eliminate what makes a DAO a DAO, transforming it into a regular company that just uses blockchain technology for some secondary functions rather than fundamental governance.

WHAT SHOULD CHANGE: REFORM IDEAS

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Where We Are Now

India's approach to blockchain and digital assets has been cautious. The Inter-Ministerial Committee on Virtual Currencies (2019) acknowledged that distributed ledger technology has potential but recommended restricting private cryptocurrencies because of concerns about consumer protection, money laundering, and macroeconomic stability.⁵³ However, the Committee did recognize that blockchain has legitimate uses in supply chain management, record-keeping, and governance.⁵⁴

The Ministry of Corporate Affairs has taken some preliminary steps acknowledging digital assets. Through amendments to Schedule III of the Companies Act (2021), companies now have to disclose cryptocurrency holdings in their financial statements, which shows gradual recognition of crypto-assets within corporate accounting frameworks.⁵⁵

SEBI hasn't issued comprehensive guidance on DAO tokens or cryptocurrency classification. The SEBI Consultation Paper on Crypto-Assets Regulation from 2022 asked for stakeholder input on regulatory approaches but didn't provide definitive frameworks.⁵⁶ This regulatory ambiguity makes it complicated for DAOs to operate in India.

What I Think We Should Do

Given the incompatibilities I've identified, India basically has two choices: either completely exclude DAOs from our regulatory framework, or create tailored legal recognition that accommodates their decentralized characteristics while preserving core regulatory objectives. I think the second approach makes more sense for several reasons:

1. Create Specific Legislation for DAOs: Instead of trying to fit DAOs into the Companies Act, Parliament could pass dedicated legislation recognizing DAOs as distinct legal entities. This could draw on Wyoming's DAO LLC framework while adapting it to India's regulatory context. Essential elements might include:

- Granting legal personality when minimum registration requirements are met
- Recognizing smart contract-based governance alongside minimum human oversight for legal compliance purposes
- Limiting token holder liability subject to good faith participation

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- Requiring mandatory disclosures proportionate to organizational scale and risk profile
- Creating dispute resolution mechanisms that can handle blockchain evidence⁵⁷

2. Set Up Regulatory Sandboxes: The Ministry of Corporate Affairs or SEBI could establish regulatory sandboxes that let DAOs operate experimentally under supervised conditions. Sandboxes let regulators observe practical governance challenges, assess how risks are being managed, and develop informed regulatory frameworks based on actual evidence rather than just theoretical speculation.⁵⁸

3. Clarify Token Classification: SEBI really needs to issue comprehensive guidance classifying tokens based on what they actually do. A three-part classification might work: (a) payment tokens that mainly serve as exchange media; (b) utility tokens that provide access to products or services; and (c) security tokens that confer investment returns or governance rights. Clear classification would reduce uncertainty and enable proportionate regulation.⁵⁹

4. Establish Minimum Viable Compliance: Rather than imposing full Companies Act compliance, regulations could establish minimum viable compliance standards for DAOs - essential disclosures, basic governance safeguards, and consumer protection measures - without requiring comprehensive statutory compliance that's incompatible with decentralized structures.⁶⁰

These kinds of reforms would position India competitively within global blockchain ecosystems while maintaining regulatory oversight that aligns with policy objectives around investor protection, financial stability, and preventing illicit activities.

CONCLUSION

Decentralised Autonomous Organisations represent a fundamental rethinking of how we organize collective activity, using blockchain technology and algorithmic governance to eliminate traditional hierarchical management. While they offer potential benefits like reduced transaction costs, enhanced transparency, and democratized participation, DAOs pose serious challenges to legal frameworks that were designed for centralized, hierarchically managed entities with identifiable human decision-makers.

My analysis in this paper shows that DAOs can't effectively operate within the Companies Act, 2013 without abandoning their defining characteristics. There are fundamental

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incompatibilities across multiple dimensions: incorporation requirements, legal personality acquisition, mandatory board structures, fiduciary frameworks, liability allocation, and regulatory compliance mechanisms. Indian judicial precedents on corporate personality, partnership characterization, and unincorporated associations suggest that courts would struggle to accommodate DAOs within existing legal doctrines, likely exposing participants to unlimited liability and serious legal uncertainty.

However, the fact that DAOs don't fit with current corporate law shouldn't mean we reject them entirely. Instead, it highlights the need for Indian law to evolve alongside technological innovation. When you look at what other countries are doing, progressive jurisdictions are creating specific frameworks that recognize decentralized entities while preserving essential regulatory safeguards.

India is at a really important point right now. Proactive legal reform - through dedicated DAO legislation, regulatory sandboxes, clear token classification, and proportionate compliance frameworks - could enable India to harness the benefits of decentralized governance while managing associated risks. These reforms would align us with international best practices, support blockchain innovation, and maintain our regulatory objectives around investor protection and financial stability.

Without reform, DAOs will remain at the periphery of Indian corporate law, unable to achieve legal recognition or realize their potential within India's jurisdiction. The choice facing Indian policymakers isn't whether to permit or prohibit DAOs - they'll continue operating globally regardless. The real choice is whether to establish legal frameworks that enable their beneficial deployment while mitigating risks, or cede this innovative space to more accommodating jurisdictions.

I genuinely think the time for India to engage proactively with this challenge is now. If we delay, we risk not only lost economic opportunities but also reduced regulatory influence over entities that, with or without legal recognition, will increasingly interact with Indian businesses, consumers, and markets. We need to act while we still have the chance to shape how this technology develops, rather than being forced to react to developments happening elsewhere.

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