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RESHAPING DIRECTORS' DUTIES IN THE ESG AGE: A DOCTRINAL ANALYSIS OF INDIAN CORPORATE LAW WITH COMPARATIVE INSIGHTS FROM THE UK, US AND EU

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Abstract

Environmental, social and governance (ESG) issues are no longer simply corporate philanthropy, but part of the language of risk, resilience and board oversight. The key legal question in India is not whether ESG matters in business, but whether the law already requires directors to consider material ESG issues when fulfilling duties of good faith, care and diligence.[1] This paper contends that India has ESG-relevant but not ESG-determinative law. The Companies Act, 2013 explicitly mentions employees, community and the environment in section 166(2)[2] and the Securities and Exchange Board of India (SEBI)[3] has enhanced disclosure and assurance requirements for listed entities through its BRSR and BRSR Core reports.[4] However, this approach is still short of creating a fully-fledged ESG fiduciary duty. Doctrinally analysing Indian laws, regulations, cases and UK, US and EU materials, the paper argues that India currently has a mixed mode of stakeholder language, disclosure regulation and progressive board accountability. It argues that section 166 should not be dismissed as mere hype or overstated as a full-fledged ESG code. The preferred view is process-oriented: directors should be required to identify, monitor and disclose material sustainability risks, while regulations should offer greater clarity, more effective anti-greenwash enforcement and safe harbour provision for good faith long term business decisions.

Introduction

[1] Companies Act, No. 18 of 2013, § 166(2) (Ind.).
[2] Id.
[3] SEBI Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562, Business Responsibility and Sustainability Reporting by Listed Entities (May 10, 2021).
[4] SEBI Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562, Business Responsibility and Sustainability Reporting by Listed Entities (May 10, 2021). SEBI Circular No. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122, BRSR Core – Framework for Assurance and ESG Disclosures for Value Chain (July 12, 2023).

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ESG has changed the nature of corporate responsibility in contemporary company law. What was once considered voluntary ethics or investor sentiment is increasingly entering the law of disclosure, governance and board oversight.[5] The 2023 G20/OECD Principles acknowledge that sustainability-related disclosure and board responsibility are elements of modern corporate governance[6] and Indian regulators have shifted from reporting of business responsibility to more systematic sustainability disclosure and assurance for large listed companies.[7] This is important because climate, employment, human rights, supply chain and governance risks increasingly translate into financial, regulatory and reputational risks. Corporate directors can no longer reasonably consider such issues as beyond corporate law.

This is no mere change of name. It reflects a shift in the way corporate law now conceives of risk. Environmental hazards, labour rights, governance, supply chain and greenwashing are no longer seen as "external" to the enterprise. They increasingly impact enterprise value, regulatory risk, market perceptions and long-term sustainability. When these effects are recognised, board oversight cannot be limited to short-term financial management.

Indian law offers a potential foundation for ESG governance. Section 166(2) of the Companies Act, 2013 provides a director shall act in good faith to promote the objects of the company for the benefit of its members as a whole and in the best interests of the company, its employees, shareholders, community and the environment.[8] Indian company law, however, has not yet decided for sure whether directors' duties breach, without more, when they fail to address material ESG considerations. The statutory text is open to ESG-sensitive interpretation, but it does not in and of itself resolve questions of enforceability, standard of review or remedial outcome.

The flexibility of section 166 thus presents opportunity, as well as uncertainty. This means that the duties of directors can be interpreted in a way that is responsive to the different forms of corporate risk, but it does not provide clear guidance on when inattention to ESG becomes non-compliance. And this is at the heart of the current controversy.

It is important to appreciate that ESG is conflated with legal notions that are not quite the same. Corporate social responsibility (under section 135) is not the same as a general duty for

[5] ORG. FOR ECON. CO-OPERATION & DEV., G20/OECD PRINCIPLES OF CORPORATE GOVERNANCE (2023).
[6] Id.
[7] SEBI Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562, supra note 3; SEBI Circular No. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122, supra note 4.
[8] Companies Act, No. 18 of 2013, § 166(2) (Ind.).

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directors to build sustainability into corporate planning[9] and sustainability disclosure is not the same as fiduciary liability, though misleading disclosure may attract regulatory penalties. The present question, therefore, is narrower: is ESG already an important part of directors' duties in corporate India in a legally relevant way and if not, what type of reform would be most appropriate for corporate India?

The current investigation is thus not focused on whether ESG is normatively desirable. It is concerned with a more specific, doctrinal question: to what extent does Indian company law already accommodate ESG-related responsibility within the duties of directors, and is its accommodation currently too uncertain to give rise to legal accountability?

Statement of Research Problem

This study examines whether Indian company law has progressed beyond stakeholder-sensitive statutory language and disclosure-based sustainability regulation to create a legally significant duty on directors to consider material environmental, social and governance (ESG) factors in the discharge of their duties under the Companies Act, 2013.[10] While section 166(2) explicitly mentions employees, community and environment and SEBI's sustainability-reporting framework has brought more rigour to ESG disclosure, there remains a lack of clarity in India as to whether ESG considerations form part of substantive directors' duties or remain largely confined to reporting and governance expectations.[11] This research therefore explores the extent to which ESG is already part of Indian directors' duties and what moderate amendments are needed to make such responsibility more clear, coherent and enforceable.

Research Gap

Existing research acknowledges the growing significance of ESG in corporate governance and board monitoring and your previous paper correctly identifies the broad conflict between section 166, BRSR and stakeholder-sensitive governance. But the literature is still deficient in four ways.

First, there is a lack of doctrinal clarity as to whether directors are merely permitted to consider

[9] Companies Act, No. 18 of 2013, § 135 (Ind.).
[10] Companies Act, No. 18 of 2013, § 166(2) (Ind.).
[11] SEBI Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562, Business Responsibility and Sustainability Reporting by Listed Entities (May 10, 2021); SEBI Circular No. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122, BRSR Core – Framework for Assurance and ESG Disclosures for Value Chain (July 12, 2023).

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ESG concerns, or are legally obliged to do so where such concerns constitute material corporate risks under section 166.[12]

Second, many of the discussions in India are largely disclosure-focused and do not explain whether sustainability reporting translates into substantive board responsibility.[13]

Third, India is yet to develop adequate judicial and enforcement guidance, making it unclear when directors' failure to consider ESG concerns may constitute breach of duty, misgovernance or weak governance practice.[14]

Fourth, comparative references to the UK, US and EU are often used in a descriptive sense without distinguishing between stakeholder-sensitive language, disclosure requirements, oversight responsibility and enforceable fiduciary duty.[15]

This paper addresses this gap by providing a targeted doctrinal discussion of section 166 and India's ESG governance framework, complemented by a rigorous comparative analysis, to clarify the current legal status and suggest process-oriented reform measures suitable to the Indian corporate law environment.

Research Objectives

1. It examines if section 166 of the Companies Act, 2013 renders ESG considerations relevant to directors' duties in India.
2. It investigates whether India's ESG governance framework, in particular BRSR, BRSR Core and the NGRBC, gives rise to disclosure obligations or also to substantive board responsibility.
3. It engages in a comparative analysis with the UK, US and EU to determine what lessons are and are not doctrinally relevant to India.
4. It recommends process-oriented legal and regulatory changes to better clarify and enhance ESG-linked directors' duties while preserving commercial discretion.

[12] Mihir Naniwadekar & Umakanth Varottil, *The Stakeholder Approach Towards Directors' Duties Under Indian Company Law: A Comparative Analysis* (NUS Working Paper 2016/006; NUS Centre for Law & Business Working Paper 16/03, Aug. 2016).

[13] SEBI Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562, supra note 11; MINISTRY OF CORP. AFFAIRS, GOV'T OF INDIA, *NATIONAL GUIDELINES ON RESPONSIBLE BUSINESS CONDUCT* (2019).

[14] Official Liquidator, Supreme Bank Ltd. v. P.A. Tendolkar, (1973) 1 S.C.C. 602 (Ind.); N. Narayanan v. Adjudicating Officer, SEBI, AIR 2013 S.C. 3191 (Ind.).

[15] Companies Act 2006, c. 46, § 172 (U.K.); In re Caremark Int'l Inc. Derivative Litig., 698 A.2d 959 (Del. Ch. 1996); Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 Dec. 2022, 2022 O.J. (L 322) 15.

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Research Questions

1. What does Indian section 166 mean for ESG-related board decision-making in India?
2. Do BRSR, BRSR Core and the NGRBC convert ESG from a reporting framework to an effective board accountability mechanism?
3. What do the UK, US and EU actually show about the intersection between directors' duties, disclosure, oversight and sustainability governance?
4. How can India best clarify and increase ESG-related directors' duties without impinging on their commercial judgment?

Research Methodology

This paper uses a doctrinal approach. It uses statutory and regulatory analysis, judicial pronouncements and comparative law. Its Indian focus is section 166 of the Companies Act, 2013, the Securities and Exchange Board of India's (SEBI) Business Responsibility and Sustainability Reporting (BRSR) framework, Business Responsibility and Sustainability Report (BRSR) Core and the National Guidelines for Responsible Business Conduct (NGRBC). The comparative section employs the UK, US and EU merely as interpretive sources. It does not conduct empirical research into corporate practices, nor equate ESG with CSR, sustainability reporting or public environmental law. An additional hypothesis is not included as the inquiry is interpretive and normative, not empirical.

Literature Review

The literature is in three main categories. The first is more positive and suggests that ESG is already baked into directors' duties because contemporary duties of care, diligence and good faith cannot be discharged in ignorance of material sustainability risks. The significance of this stream is that it does not see ESG as an external constraint upon directors, but as integral to the internal logic of corporate governance. On this account, directors who fail to consider material sustainability risks may not be flouting social aspiration, but prudent long-term management.

Stephen Turner (2020) insists that directors' duties need to be examined in the broader corporate law framework that produces the ESG outcomes, rather than in abstract moral terms alone.[16]

[16] Stephen J. Turner, Corporate Law, Directors' Duties and ESG Interventions: Analysing Pathways Towards Positive Corporate Impacts Relating to ESG Issues, 4 J. BUS. L. 245 (2020).

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MacNeil and Esser (2022) also critique the dominant financial model of ESG and propose an entity model that emphasises the role of the board and the corporate entity itself in decision-making processes.[17]

The second strand is more sceptical.

Lan and Wan (2024) contend that it is hard to promote the ESG agenda through company law in the common law because directors' duties are still largely framed through the "interests of the company" formulation, which is often associated with shareholders either under traditional doctrine or the UK's section 172 model.[18] It points to the key doctrinal issue: company law can accept the idea of sustainability but not necessarily create a positive obligation to implement it in a particular manner. This work is helpful in that it highlights the institutional limits of fiduciary doctrine. It may not establish a justiciable duty to choose the best environmental or social option. The warning here is doctrinal.

The third strand is particularly pertinent to India.

Naniwadekar and Varottil (2016) demonstrate that the stakeholder language of Indian company law, especially section 166(2), needs to be read with care because the duties of directors are owed to the company and not to a nebulous group of stakeholders.[19] It means that the Indian statute cannot be read as directly requiring directors to promote the greatest ESG good. Indian theses on CSR and corporate social reporting offer helpful insights into the structure of the debate and show the broader academic trend towards responsible business practice, but they do not answer the narrower doctrinal questions of what section 166 means in the ESG era.[20]

Another weakness of the existing Indian literature is that sustainability reporting is sometimes conflated with substantive duty. However, reporting, disclosure, monitoring and enforceability are not the same. More clarity is needed in the doctrinal analysis as to how and to what extent,

[17] Iain MacNeil & Irene-marié Esser, From a Financial to an Entity Model of ESG, 23 EUR. BUS. ORG. L. REV. 9 (2022).

[18] Luh Luh Lan & Walter Wan, ESG and Director's Duties: Defining and Advancing the Interests of the Company (ECGI Law Working Paper No. 737/2023; NUS Law Working Paper No. 2023/026, rev. Mar. 27, 2024).

[19] Mihir Naniwadekar & Umakanth Varottil, The Stakeholder Approach Towards Directors' Duties Under Indian Company Law: A Comparative Analysis (NUS Working Paper 2016/006; NUS Centre for Law & Business Working Paper 16/03, Aug. 2016).

[20] Dinabandhu Mukhopadhyay, Corporate Social Responsibility: An Analytical Study of Global and Indian Perspectives and Practices (Ph.D. thesis, Rajiv Gandhi National University of Law, Punjab, 2018).
Nirupama Pandey, An Analytical Study of Corporate Social Reporting in India (Ph.D. thesis, Mahatma Gandhi Chitrakoot Gramodaya Vishwavidyalaya, 2021).

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they interact with section 166. This is what the current paper seeks to do.

Indian Framework on Directors' Duties and ESG

The Indian legal framework consists of three layers: the Companies Act, 2013, SEBI's sustainability reporting system on one hand and the NGRBC on the other. The statutory text is found in section 166. It includes employees, community and the environment in the directors' calculus. It confirms that the Indian company law does not embrace a narrow, short term view of shareholders. But the provision is also open ended. It does not say how directors must balance the interests, what level of attention is required, or when failure to consider the interests gives rise to liability. So, section 166 is enabling and guidance but not self-operating in the sense of a compliance standard.

The vagueness of section 166 is a feature of both its strengths and weaknesses. It is a strength because it does not lock directors' duties into a static notion of corporate purpose and allows for the law to adapt to new types of risk. But it is also a weakness because vague stakeholder language, unaccompanied by interpretive guidance, can become rhetorical. They may pay lip service to community and environmental concerns but not operationalize them in their decision-making.

The second limb is SEBI's reporting system. In 2021, SEBI required BRSR for the top 1,000 listed companies by market capitalisation[21] and in 2023 it introduced BRSR Core, a subset of key performance indicators, assurance and value chain disclosure expectations.[22] These measures are very important because they turn sustainability from narrative reporting to metrics and verification. But they still operate mainly via reporting and verification. They do not, in themselves, establish an independent civil standard that a director breaches her duty simply by not following a certain ESG strategy. Their binding power is more about requiring boards to structure, evaluate and disclose material sustainability information rather than imposing a specific substantive corporate outcome.

Despite all this, the significance of BRSR and BRSR Core should not be ignored. They embed ESG in the governance of listed companies in a systematic way, by requiring the generation, structuring and review of sustainability information in a more structured way. In this way they indirectly redefine board responsibility: not by dictating the one true approach to sustainability, but by making it more difficult for boards to be silent, ignorant and unsystematic.

[21] SEBI Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562, supra note 3.
[22] SEBI Circular No. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122, supra note 4.

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The NGRBC provides a third, policy information layer. It sets out nine principles of responsible business conduct and places ethical, transparent and accountable governance at the core of responsible business practice.[23] Alongside section 166 and SEBI's reporting system, it solidifies the notion of the board as the institutional home of sustainability. But the journey from policy to fiduciary duty is not over.

The NGRBC also is helpful because it helps to identify responsible business as a governance matter rather than a philanthropic or reputation management matter only. It helps to reinforce the normative framework to section 166, especially in relation to whether directors have taken into account the operational impact of the board's decisions.

Indian judicial precedents do not fully address the ESG issue, but they can serve as context. **Official Liquidator, Supreme Bank Ltd. v. P.A. Tendolkar** highlighted the duty of directors' office[24] and N. Narayanan v. Adjudicating Officer, SEBI highlighted the importance of disclosure and transparency to market integrity.[25] These are not contemporary ESG cases, but they are still relevant because they confirm that directors' legal functions cannot be limited to holding office passively. A modern understanding of those duties in a world of material sustainability risk makes it hard to justify board inaction towards significant ESG risks.

So, the current Indian situation is not one of total doctrinal vacuum. The statutory language, reporting framework, governance principles and present judicial interpretation of directors' duty offer a sufficient basis. What is missing is a refinement of how these components interact when ESG risks are relevant to corporate governance.

International Legal Perspectives: UK, US and EU

The UK is a stakeholder-friendly but still cautious model. Section 172 of the Companies Act 2006 refers to a director's duty to promote the success of the company for the benefit of its members as a whole and to have regard to the likely long-term consequences of any decision, the interests of employees, suppliers, customers and business relations, the impact on the community and the environment.[26]

The significance of the UK approach is that it demonstrates the possibility of incorporating stakeholder-focused concerns into the structure of company law while retaining company-

[23] MINISTRY OF CORP. AFFAIRS, GOV'T OF INDIA, NATIONAL GUIDELINES ON RESPONSIBLE BUSINESS CONDUCT (2019).
[24] Official Liquidator, Supreme Bank Ltd. v. P.A. Tendolkar, (1973) 1 S.C.C. 602 (Ind.).
[25] N. Narayanan v. Adjudicating Officer, SEBI, AIR 2013 S.C. 3191 (Ind.).
[26] Companies Act 2006, c. 46, § 172 (U.K.).

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focused governance. And its cautious judicial stance demonstrates that statutory acknowledgement of wider interests need not result in muscular fiduciary enforcement.[27]

UK lessons also come from its limits. In **ClientEarth v. Shell plc**, the High Court rejected a derivative action against Shell directors when it found alleged climate risk management failures.[28] Rather, it reflected a judicial reluctance to turn directors' duties into micro-management of disputed business decisions about transition plans. This is a serious caution for India. Even with glaring sustainability issues, courts still fear displacing board discretion with general fiduciary innovation.

This is particularly important for India. A comparative model is not just read for the words, but how they are applied by the courts. The UK experience shows that even when climate and stakeholder issues are explicitly acknowledged, judicial review is wary when directors can demonstrate deliberation, process and commercial judgement.

The US is different. It lacks a general duty of ESG. It has a role in oversight doctrine. In **re Caremark International Inc. Derivative litigation,** it was confirmed that directors can be held liable for totally failing to implement information or reporting systems[29] and **Marchand v. Barnhill** reiterated the need for board oversight of mission-critical risks.[30] It is a risk oversight model. It matters for ESG because a climate, product, labour or supply chain accident might become a mission critical risk for a company. But the shifting sands of US climate-disclosure policy, including the US Securities and Exchange Commission (SEC) announcement in 2025 that it would no longer defend climate-disclosure rules, demonstrate that the US remains in disarray and contestation.[31]

The US approach is therefore valuable not for the framework it provides for ESG, but for the way it provides one avenue for ESG to be relevant: where the failure to address sustainability issues reveals shortcomings in board oversight, information and compliance systems. This is a more limited but doctrinally specific contribution.

The EU is the furthest along with hard-law sustainability regulation. The CSRD brought about broader sustainability reporting requirements[32] and the 2024 Corporate Sustainability Due Diligence Directive introduced structured obligations relating to negative human rights and

[27] FIN. REPORTING COUNCIL, REPORTING ON STAKEHOLDERS, DECISIONS AND SECTION 172 (2021).
[28] ClientEarth v. Shell plc, [2023] EWHC 1137 (Ch); ClientEarth v. Shell plc, [2023] EWHC 1897 (Ch).
[29] In re Caremark Int'l Inc. Derivative Litig., 698 A.2d 959 (Del. Ch. 1996).
[30] Marchand v. Barnhill, 212 A.3d 805 (Del. 2019).
[31] SEC Votes to End Defense of Climate Disclosure Rules, Press Release No. 2025-58, SEC (Mar. 27, 2025).
[32] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 Dec. 2022, 2022 O.J. (L 322) 15.

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environmental effects.[33] But it is also more difficult to transplant. Even the EU model has recently been fine tuned in the 2026 simplification package, which watered down aspects of the sustainability reporting and due diligence frameworks.[34]

But the EU experience also reminds us that the legalisation of sustainability governance is institutionally dependent and regulatory sensitive. The EU model is not useful for India in a transplant sense, but is useful to show how reporting, due diligence and assurance can be more tightly integrated into a governance structure.

Critical Analysis: Is India's ESG Embedded in Directors' Duties?

The most accurate way of interpreting the Indian law is that ESG is already embedded in directors' duties, but only to a certain extent. It is embedded textually because section 166(2) makes explicit reference to community and environment.[35] It is embedded institutionally because SEBI's BRSR framework and BRSR Core mean that companies are now required to collect, organise and report on sustainability data at scale.[36] It is embedded functionally because it would be difficult for boards to reasonably claim to act with care and in good faith while overlooking material sustainability risks that affect long-term value creation, compliance or accurate disclosure. In these ways, ESG is no longer "external" to Indian company law.

But acknowledging that ESG is legally relevant, is not acknowledging it as an independent fiduciary duty. In the current Indian framework, it is not the case that a poor sustainability outcome is ipso facto evidence of a breach of duty. It does provide more support for the claim that directors cannot remain deliberately ignorant of ESG risks once they are material to the interests of the company or its disclosures or governance.

However, Indian law does not yet impose a well-identified, standalone ESG fiduciary duty. The duties are still owed to the company; it is not the case that the courts have held that failing to adopt a particular climate or social business strategy, without more, violates section 166; and the current regulatory framework remains focused more on disclosure and governance process, than on judicially enforceable sustainability goals.

Which is why a process-oriented interpretation is preferable to an outcome-oriented one. Courts

[33] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence, 2024 O.J. (L, 2024/1760).
[34] Council Signs Off Simplification of Sustainability Reporting and Due Diligence Requirements to Boost EU Competitiveness, COUNCIL OF THE EUR. UNION (Feb. 24, 2026).
[35] Companies Act, No. 18 of 2013, § 166(2) (Ind.).
[36] SEBI Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562, supra note 3; SEBI Circular No. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122, supra note 4.

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are better positioned to assess whether directors were properly informed, set up control systems, considered material risks and acted in good faith than to determine a company's sustainable business strategy. A process-based approach therefore, ensures both accountability and avoids business judgement on the basis of judicial hindsight.

The 2025 Standing Committee on Finance report is particularly significant as it recommends amending the Companies Act to incorporate ESG objectives in directors' duties, thereby suggesting that the existing framework is not yet complete.[37] An analysis that proceeds on the basis of section 166 as already equivalent to a fully-fledged ESG code is therefore overreaching.

It also enables Indian company law to grow organically. Rather than saying that section 166 already contains a full ESG code, a process-based approach recognises the current state of the law more accurately: ESG has entered the sphere of directors' duties, but primarily in the language of materiality, oversight, disclosure integrity and long-term governance.

Suggestions

First, India needs an authoritative clarification, legislative, regulatory or through formal governance guidelines, that directors should consider the material sustainability-related risks and impacts to the extent they impact the company's long-term interests, compliance, the truthfulness of information disclosed and the resiliency of the enterprise.[38] The goal here should not be to turn directors into social trustees, but rather to remove the ambiguity between the rhetoric of stakeholders and the reality of board overseeing. This would also enhance the certainty of the law for directors. Currently, the doctrinal vagueness risks ESG being overlooked as aspirational, or overvalued as an open-ended source of liability. A clearer statement would avoid both mistakes.

Second, India should enhance responsibility for ESG at the board level. It may be overkill to mandate a separate ESG committee for all companies, but listed companies should at least disclose which board or board committee is responsible for sustainability oversight, the frequency of material issues being discussed and how sustainability-related risks are managed and integrated into risk management and internal control processes.[39] This would turn

[37] STANDING COMM. ON FIN., 21ST REP., MINISTRY OF CORPORATE AFFAIRS (2025–26) (India).
[38] Id.
[39] SEBI Circular No. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122, supra note 4.

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disclosure into a governance tool. OECD's 2015 report on board oversight and sustainability-related disclosure in Asia is consistent in this regard by highlighting the board's responsibility for credible sustainability-related disclosures.[40] This change would be important because what is everyone's responsibility can become no one's responsibility. Traceable board responsibility for ESG oversight would make it easier to monitor, easier to audit and less likely to be relegated to low priority compliance roles.

Third, we must better police against greenwash. Unassured disclosure attracts form. BRSR Core has already taken a step towards assurance and key performance indicators (KPIs).[41] Enforcement would also send a signal. It would send a message that sustainability disclosure is not just public relations spin, but an aspect of the integrity of the information available to investors, regulators and other stakeholders.

The next step must be to ensure that greenwash attracts the same regulatory attention as other misleading disclosures. This is especially important in India, where a form-driven compliance culture would erode ESG reporting. Hence, a safe harbour approach would be a balancing act. It would provide an incentive for directors to take long-term sustainability into account without being liable for doing so just because the issues are uncertain, predictive or involve imperfect markets. It would, however, maintain liability where there is dishonesty, inattention or fraudulent misrepresentation.

Conclusion

The true importance of the current debate is that it represents a transition in the understanding of directors' duties in relation to corporate risk. India is not in a position where it is possible for boards to treat environmental, social and governance concerns as external to the exercise of fiduciary duties. But neither is it at the stage of a formalised sustainability-duty regime. This intermediate state of affairs needs to be recognised in doctrinal terms.

India is at an evolutionary stage. ESG is no longer a legal outlier to the duties of directors because section 166, SEBI's reporting framework and the NGRBC have already embraced sustainability as a governance issue.[42] But we have not yet arrived in India at a point where failure to pursue an ESG strategy can be easily equated with a fiduciary duty breach. The

[40] ORG. FOR ECON. CO-OPERATION & DEV., BOARD RESPONSIBILITY AND SUSTAINABILITY-RELATED DISCLOSURE IN ASIA (2025).
[41] SEBI Circular No. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122, supra note 4.
[42] Companies Act, No. 18 of 2013, § 166(2) (Ind.); MINISTRY OF CORP. AFFAIRS, GOV'T OF INDIA, NATIONAL GUIDELINES ON RESPONSIBLE BUSINESS CONDUCT (2019).

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doctrinal stance is between denial and overstatement. Section 166 should be understood as rendering ESG relevant, particularly when issues of sustainability intersect with risk, compliance, strategy or disclosure. But this relevance has to be ventilated currently in terms of process, oversight and accountability, not in terms of a substantive ESG duty.[43] In that respect, the future of ESG in Indian company law does not lie in revolutionary shifts but in clarifying the nature of responsible directorship. It is not so much a case of creating a new duty as clarifying time and again the obligations that an ESG-sensitive interpretation of Section 166 suggests progressively.

References

Statutes and Regulations

Companies Act, No. 18 of 2013 (Ind.).

Companies Act 2006, c. 46 (U.K.).

Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 Dec. 2022, 2022 O.J. (L 322) 15.

Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence, 2024 O.J. (L, 2024/1760).

SEBI Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562, Business Responsibility and Sustainability Reporting by Listed Entities (May 10, 2021).

SEBI Circular No. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122, BRSR Core – Framework for Assurance and ESG Disclosures for Value Chain (July 12, 2023).

Cases

ClientEarth v. Shell plc, [2023] EWHC 1137 (Ch).

ClientEarth v. Shell plc, [2023] EWHC 1897 (Ch).

In re Caremark Int'l Inc. Derivative Litig., 698 A.2d 959 (Del. Ch. 1996).

Marchand v. Barnhill, 212 A.3d 805 (Del. 2019).

N. Narayanan v. Adjudicating Officer, SEBI, AIR 2013 S.C. 3191 (Ind.).

Official Liquidator, Supreme Bank Ltd. v. P.A. Tendolkar, (1973) 1 S.C.C. 602 (Ind.).

[43] STANDING COMM. ON FIN., supra note 33; ORG. FOR ECON. CO-OPERATION & DEV., G20/OECD PRINCIPLES OF CORPORATE GOVERNANCE (2023).

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Journal Articles

Iain MacNeil & Irene-marié Esser, *From a Financial to an Entity Model of ESG*, 23 EUR. BUS. ORG. L. REV. 9 (2022).

Stephen J. Turner, *Corporate Law, Directors' Duties and ESG Interventions: Analysing Pathways Towards Positive Corporate Impacts Relating to ESG Issues*, J. BUS. L. 245 (2020).

Published Papers

Luh Luh Lan & Walter Wan, ESG and Director's Duties: Defining and Advancing the Interests of the Company (ECGI Law Working Paper No. 737/2023; NUS Law Working Paper No. 2023/026, rev. Mar. 27, 2024).

Mihir Naniwadekar & Umakanth Varottil, The Stakeholder Approach Towards Directors' Duties Under Indian Company Law: A Comparative Analysis (NUS Working Paper 2016/006; NUS Ctr. for Law & Bus. Working Paper 16/03, Aug. 2016).

Reports and Official Documents

COUNCIL OF THE EUR. UNION, Council Signs Off Simplification of Sustainability Reporting and Due Diligence Requirements to Boost EU Competitiveness (Feb. 24, 2026).

FIN. REPORTING COUNCIL, Reporting on Stakeholders, Decisions and Section 172 (2021).

MINISTRY OF CORP. AFFS., GOV'T OF INDIA, National Guidelines on Responsible Business Conduct (2019).

ORG. FOR ECON. CO-OPERATION & DEV., G20/OECD Principles of Corporate Governance (2023).

SEC. & EXCH. COMM'N, SEC Votes to End Defense of Climate Disclosure Rules, Press Release No. 2025-58 (Mar. 27, 2025).

Scholarly Works

Dinabandhu Mukhopadhyay, *Corporate Social Responsibility: An Analytical Study of Global and Indian Perspectives and Practices* (Ph.D. thesis, Rajiv Gandhi Nat'l Univ. of Law, Punjab, 2018).

Nirupama Pandey, *An Analytical Study of Corporate Social Reporting in India* (Ph.D. thesis, Mahatma Gandhi Chitrakoot Gramodaya Vishwavidyalaya, 2021).