

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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DIRECTORS' DUTIES AND ESG ACCOUNTABILITY **IN INDIA: REASSESSING SECTION 166 OF THE** **COMPANIES ACT, 2013**

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ABSTRACT

Corporate governance is increasingly evaluated not only by financial performance but also by a company's treatment of employees, communities and the environment. Indian company law recognises this broader perspective through Section 166(2) of the Companies Act, 2013, which requires directors to act in good faith in the interests of the company, its employees, shareholders, the community and for the protection of the environment. At the same time, sustainability reporting requirements developed by the Securities and Exchange Board of India (SEBI), including the Business Responsibility and Sustainability Report (BRSR) framework and BRSR Core, have strengthened the disclosure dimension of corporate accountability. This article examines the relationship between directors' statutory duties and ESG disclosures. Using doctrinal analysis of legislation, regulatory materials and judicial decisions, it argues that disclosure alone does not guarantee responsible decision-making. Challenges include the uncertain practical meaning of stakeholder interests, uneven capacity among companies, risks of selective reporting, and the difficulty of translating sustainability data into board-level action.

The article proposes a proportionate, evidence-based approach that links ESG risks to board oversight, internal controls, transparent reporting and meaningful accountability, while avoiding the assumption that every adverse ESG outcome automatically establishes a breach of directors' duties.

Keywords: Corporate Governance; Directors' Duties; Section 166; Companies Act, 2013; ESG; BRSR; SEBI; Stakeholder Accountability

I. INTRODUCTION

Corporate governance is commonly associated with board composition, financial reporting, shareholder rights and the prevention of managerial misconduct. Its contemporary scope is broader. Corporate decisions can affect employees, consumers, supply chains, local communities and the environment. Climate-related risks, workplace safety, data governance and responsible sourcing may also influence a company's long-term stability and reputation. These developments raise a central legal question: how far does Indian company law require directors to take account of environmental, social and governance (ESG) concerns when managing a company?

This article argues that Section 166 of the Companies Act, 2013 provides a statutory foundation for stakeholder-sensitive corporate governance, but its practical effectiveness depends on the way boards identify, assess, document and respond to material risks. SEBI's sustainability disclosure framework supports transparency, yet reporting cannot substitute for sound decisions or effective enforcement. The article uses doctrinal legal research, examining statutory provisions, regulatory materials and judicial decisions. It analyses directors' duties, considers ESG disclosure, identifies implementation gaps and proposes reforms.

II. THE STATUTORY FRAMEWORK: SECTION 166 AND DIRECTORS' DUTIES

Section 166 of the Companies Act, 2013 codifies important duties of directors. Section 166(1) requires a director to act in accordance with the company's articles. Section 166(2) requires a director to 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, the community and for the protection of the environment. Section 166(3) requires due and reasonable care, skill and diligence and the exercise of independent judgment. Section 166(4) addresses situations involving direct or indirect conflicts of interest. The provision therefore combines loyalty, care, independence and an express reference to stakeholder and environmental interests.¹

The inclusion of employees, the community and environmental protection is significant. It indicates that directors' decision-making cannot be understood exclusively through immediate shareholder returns. For example, a board considering a production facility may need to assess

¹ Companies Act, No. 18 of 2013, § 166 (India).

legal compliance, worker safety, pollution controls, community impacts and long-term operational risk. Such considerations may also protect the company's long-term interests.

However, Section 166 does not prescribe a single formula for balancing every competing interest. The statutory language requires good faith and attention to specified interests, while leaving directors room to exercise informed business judgment.

Section 166(5) provides a statutory consequence for contravention, including a monetary penalty. Yet the existence of a penalty does not itself resolve evidentiary and enforcement difficulties. A legal assessment must identify the relevant conduct, the applicable duty and the facts demonstrating contravention. Poor outcomes alone should not automatically be equated with a breach: business decisions can involve uncertainty, and the assessment must focus on good faith, care, independence and compliance with applicable duties.

III. JUDICIAL APPROACH: FIDUCIARY RESPONSIBILITY AND PROPER PURPOSE

Indian courts have long recognised that directors exercise powers in a fiduciary capacity. In *Dale & Carrington Investment (P) Ltd. v. P.K. Prathapan*, the Supreme Court considered the misuse of share-allotment powers to secure control. The Court emphasised that directors must act in good faith, exercise care and diligence, disclose material matters and use powers for proper purposes rather than personal advantage.² Although the case arose under the earlier company-law framework, its reasoning remains relevant to the principle that formal board authority cannot justify the improper use of corporate power.

In *Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd.*, the Supreme Court examined disputes concerning corporate management, oppression and mismanagement, and the limits of judicial intervention in board-level decisions.³ The judgment illustrates the importance of distinguishing legitimate corporate disagreement from conduct that meets the legal threshold for statutory relief. In the ESG context, courts should not replace every commercial judgment with their own preferred policy, but neither should business discretion immunise bad faith, conflicts of interest, disregard of statutory obligations or materially misleading disclosures.

² *Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan*, (2005) 1 S.C.C. 212 (India) (judgment dated Sept. 13, 2004).

³ *Tata Consultancy Services Ltd. v. Cyrus Invs. (P) Ltd.*, 2021 SCC OnLine SC 272 (India).

These principles support a process-oriented understanding of directors' accountability. A defensible board decision should be informed by relevant evidence, disclose conflicts, consider foreseeable legal and operational risks, and record the rationale for material decisions. ESG concerns should be integrated into ordinary governance processes where they are relevant to the company's operations, rather than treated as a separate public-relations exercise.

IV. ESG DISCLOSURES AND THE SEBI REGULATORY FRAMEWORK

The Companies Act sets out directors' duties, while securities regulation creates disclosure obligations for listed entities. SEBI introduced the Business Responsibility and Sustainability Report (BRSR) framework to improve standardised reporting on sustainability-related performance. The framework is intended to make information more comparable and help investors and other stakeholders assess a company's conduct beyond financial indicators.⁴

SEBI's July 12, 2023 circular introduced the BRSR Core framework for assurance of a selected set of key performance indicators and addressed ESG disclosures concerning the value chain of listed entities.⁵ SEBI subsequently issued industry standards on reporting of BRSR Core on December 20, 2024.⁶ These developments reflect a regulatory movement towards more structured, measurable and verifiable sustainability information. They also recognise that corporate impacts may arise not only from a company's direct operations but from upstream suppliers and downstream business relationships.

Disclosure can strengthen accountability in three ways. First, it can make board-level commitments visible and permit comparison over time. Second, consistent indicators can help investors identify risk and question unexplained performance gaps. Third, assurance and clear reporting methods can reduce the scope for unsupported sustainability claims. Nevertheless, disclosure rules and directors' duties are not identical. A company may submit a report and still make poor operational decisions; conversely, a negative ESG indicator does not by itself prove misconduct. Reporting is a tool for accountability, not a substitute for it.

⁴ Securities and Exchange Board of India, Master Circular on Compliance with the Provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 by Listed Entities (July 11, 2023), section on Business Responsibility and Sustainability Reporting.

⁵ Securities and Exchange Board of India, BRSR Core—Framework for Assurance and ESG Disclosures for Value Chain, Circular No. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122 (July 12, 2023).

⁶ Securities and Exchange Board of India, Industry Standards on Reporting of BRSR Core, Circular No. SEBI/HO/CFD/CFD-PoD-1/P/CIR/2024/177 (Dec. 20, 2024).

V. IMPLEMENTATION GAPS AND LEGAL CHALLENGES

A first challenge is the uncertainty surrounding the practical balancing of stakeholder interests. Section 166 refers to the company, members, employees, shareholders, community and environment, but does not establish a detailed hierarchy for every conflict. A board may face competing demands involving cost, employment, environmental impact and investment. The absence of a prescribed decision-making method can create uncertainty for directors and make retrospective assessment difficult. A reasoned record of the material factors considered can help demonstrate that a decision was informed and taken in good faith.

A second challenge is the gap between disclosure and performance. ESG reports may become exercises in presentation if they rely on broad commitments without clear baselines, measurable targets or explanations of adverse results. Selective metrics, inconsistent reporting periods and unsubstantiated claims can undermine the reliability of information available to investors and the public. Where statements are materially inaccurate, company-law and securities-law consequences may arise depending on the facts; liability must be assessed under the relevant legal provisions rather than presumed from the existence of a reporting error.

Third, supply-chain accountability is complex. A listed company may depend on smaller suppliers that lack the resources to collect detailed sustainability data. Demanding extensive reporting without support may shift compliance costs to small enterprises and create formal compliance without reliable information. At the same time, a company cannot sensibly ignore serious risks simply because they occur outside its immediate premises. Proportionate due diligence, risk-based supplier engagement and transparent explanation of data limitations can provide a more realistic approach.

Fourth, enforcement and expertise remain important. Effective ESG oversight may require environmental, labour, financial, technical and legal knowledge. Boards that treat sustainability as the responsibility of a single department may fail to connect it with procurement, capital expenditure, risk management and internal audit. Independent directors and audit or risk committees can play a role, but their effectiveness depends on access to accurate information, adequate time and the willingness to challenge management.

VI.RECOMMENDATIONS FOR A MORE ACCOUNTABLE GOVERNANCE MODEL

First, boards should adopt a documented ESG oversight process proportionate to the size, sector and risk profile of the company. The process should identify material legal and operational risks, allocate responsibility, specify reporting intervals and record significant decisions. This is not a proposal to convert every sustainability aspiration into an absolute legal guarantee. It is a practical method for showing that directors have exercised care and independent judgment in relation to foreseeable risks.

Second, ESG indicators should be connected with existing governance systems. Relevant data should be considered by the board or an appropriate committee, reviewed by internal audit where suitable, and linked to compliance and enterprise-risk registers. Targets should have defined measurement methods and timeframes. If a target is missed, the company should explain the reason and corrective action rather than simply omit the result.

Third, assurance and reporting should be credible and proportionate. Companies should clearly distinguish measured data, estimates and forward-looking commitments. Assumptions and limitations should be disclosed. Regulators and professional bodies can support consistent sector-specific methodologies, particularly for smaller companies and value-chain partners. Such support can improve reliability without imposing identical administrative burdens on businesses with very different capacities.

Fourth, directors should receive periodic training on Section 166, conflicts of interest, sustainability risks, disclosure responsibilities and the evidentiary importance of board records. Training should be practical and connected to the company's business model. Directors should also ensure that whistle-blowing mechanisms, grievance channels and internal escalation processes allow material concerns to reach the board without retaliation.

Finally, enforcement should distinguish between honest, evidence-based decisions that later prove unsuccessful and conduct involving bad faith, conflicts, reckless disregard of known risks or misleading disclosure. This distinction protects legitimate commercial judgment while preserving accountability. Regulatory guidance should encourage transparent reasoning and meaningful corrective action, without creating an assumption that every adverse environmental or social outcome automatically establishes personal liability.

VII. CONCLUSION

Section 166 of the Companies Act, 2013 provides a meaningful statutory basis for responsible corporate governance by requiring directors to act in good faith, exercise care and independent judgment, and take account of employees, the community and environmental protection. SEBI's BRSR and BRSR Core frameworks complement this duty by strengthening the availability and structure of sustainability information. Yet neither statutory language nor reporting requirements alone can ensure responsible conduct.

The central task is to connect disclosure with decision-making. Boards must consider material ESG risks, maintain reliable information, document their reasoning and respond to identified weaknesses. Regulators should promote comparable reporting, proportionate assurance and clear accountability, while courts should continue to distinguish legitimate business judgment from misuse of power or disregard of legal duties. A governance model built on evidence, transparency and reasoned oversight can make ESG accountability more than a reporting exercise and support sustainable, legally responsible corporate activity in India.

