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# **ANALYSING DIRECTOR'S DUTIES IN THE AGE OF ESG: AN INDIAN AND COMPARATIVE LEGAL PERSPECTIVE**

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(LLM 1st Semester)

## **Abstract**

Environmental, social, and governance (ESG)<sup>1</sup> denotes a set of standards used to analyse an organization's environmental and social impact aligning with how the organization is directed and takes corporate governance factors into consideration. It has become an important aspect of corporate governance and responsible investing. Significant ESG regulations have introduced new requirements on companies, investors, and regulators. Corporations are now expected to abide by these regulations and consider their environmental impact, social responsibilities and governance frameworks. Due to this global traction, it becomes necessary to consider the importance of ESG in India.

This paper analyses how Environmental, Social, and Governance (ESG) principles integrate and intersect with the fiduciary duties of directors under Indian corporate law. The study acknowledges the changing global trends and capital markets sustainability and responsible business conduct for which directors are expected to incorporate ESG considerations into strategic and operational decisions. The study also examines whether existing fiduciary duties under the Companies Act, 2013, and related regulatory frameworks, particularly SEBI's Business Responsibility and Sustainability Reporting (BRSR), implicitly or explicitly require ESG intersection alongside. Further, it analyzes landmark case laws, regulatory trends, and the doctrinal scope of directors' duties involving care, skill, due diligence, and good faith. It explores a comparative analysis of the United Kingdom, the United States, and the European Union underscoring evolving interpretations of directors' obligations towards stakeholders and sustainability. The paper argues that Indian corporate law, while open to ESG concerns, remains largely disclosure-oriented and should aim towards procedural transparency. Through

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<sup>1</sup> Kavya Agarwal, "ESG integration in India: challenges, progress and future directions," Jindal Global Law School, Sonipat, 2024, abstract

doctrinal and policy analysis approach, it suggests process-based statutory clarification, governance reforms and safe-harbor policies to align fiduciary duties with sustainable corporate governance and ESG guidelines.

**Keywords:** Directors' fiduciary duties, ESG, Regulatory Obligations, corporate governance, SEBI, Companies Act 2013, sustainability reporting, stakeholder model, India, UK, US, EU.

## Introduction

The growth of Environmental, Social, and Governance (ESG) frameworks has re-evaluated the global consideration of corporate responsibility. What once was comprehended as peripheral to financial performance, ESG factors are now essential to risk management, reputation and long-term business value. In India, this shift intersects with a strong corporate governance regime, increasing investor activity and real time regulatory emphasis on sustainability disclosure. Yet, the query remains: does Indian corporate law impose a legal duty on directors to consider ESG factors as part of their fiduciary duties?

The Directors of a Company have a crucial role in formulating corporate strategy and ensuring compliance. The fiduciary obligations, conventionally aimed towards boosting shareholder value, have expanded to consider broader stakeholder interests including employees, consumers and the environment. This change shows a gradual shift from the traditional "shareholder supremacy" model to a more inclusive "stakeholder" approach. Section 166 of the Companies Act, 2013<sup>2</sup>, codifies directors' obligations to act in good faith and act for the best interests of the company, its employees, the community and the environment accordingly. However, the explicit legal extent to which directors must incorporate ESG regulations into their decision-making process remains doctrinally unsettled.

ESG compliance in India has been majorly driven by regulatory tools rather than judicial intervention. SEBI's Business Responsibility and Sustainability Reporting (BRSR)<sup>3</sup> framework has led to sustainability disclosure mandates for the top 1,000 listed entities by market capitalization. Despite the fact that this promotes transparency, it does not necessarily enforce substantive duties on directors to indulge ESG factors into board contemplations. With regard to this, courts have consecutively recognized the corporate responsibility to safeguard

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<sup>2</sup> Companies Act, 2013, s.166(2)

<sup>3</sup> SEBI Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562 (10 May 2021)

the environment and public welfare though primarily within public law or environmental jurisprudence rather than corporate fiduciary obligations<sup>4</sup>.

In the contemporary world, ESG integration has become a crucial criterion for good governance. In the United Kingdom, Section 172 of the Companies Act, 2006<sup>5</sup>, obligates directors to promote the success of the company with regard to the long-term consequences of their decisions, employees' interests, community impact and environmental sustainability. Similarly, the United States, through SEC disclosure mandates and investor pressure, has converged to encompass ESG oversight as a component of the board's duty of care<sup>6</sup>. The European Union has made it mandatory to submit detailed ESG disclosures, external assurance, and governance accountability through its Corporate Sustainability Reporting Directive (CSRD<sup>7</sup>).

This study analyzes how these developments resonate and impact the Indian ESG perspective. It investigates whether the currently structured fiduciary duties compel directors to integrate ESG considerations and how India can follow and incorporate global best practices without stifling entrepreneurial judgment. By mapping the doctrinal, regulatory and comparative structures of this issue, the paper aims to contribute to an intricate understanding of sustainable governance under Indian corporate law.<sup>8</sup>

### Literature Review

Academic findings on directors' duties and ESG integration provides for three principal schools of thought.

The **first school** sees ESG as an elongation of existing fiduciary duties. It argues that by virtue of their duties of care, due diligence, and good faith, directors must consider the material ESG risks that could affect long-term corporate value. Scholars such as Andrew Johnston and Beate Sjøfjell assert that ESG factors are not external to business but intrinsic to sustainable profitability and risk mitigation<sup>9</sup>. Within India, commentators elucidate Section 166(2) of the

<sup>4</sup> Ministry of Corporate Affairs, National Guidelines on Responsible Business Conduct (2019)

<sup>5</sup> Companies Act, 2006 (UK), s.172

<sup>6</sup> OECD, Principles of Corporate Governance (2015)

<sup>7</sup> Corporate Sustainability Reporting Directive (EU) 2022/2464

<sup>8</sup> Financial Reporting Council, UK Corporate Governance Code (2018)

<sup>9</sup> Andrew Johnston and Beate Sjøfjell, The EU's Corporate Sustainability Due Diligence Directive and Director's

Companies Act, 2013 which imposes a mandate on directors to act in good faith and in the interests of the company, employees, and the environment, as inherently ESG-sensitive.

The **second school** supports that ESG integration remains highly aspirational within Indian corporate governance. According to this viewpoint, statutory obligations under the Companies Act and SEBI regulations are insufficiently prescriptive. Scholars/Commentators such as Umakanth Varottil<sup>10</sup> and Vikramaditya Khanna<sup>11</sup> observed that, in the absence of judicial guidance, directors interpret ESG compliance primarily through the lens of disclosure rather than substantive governance reform. Therefore, the regulatory approach focuses more on reporting duties in comparison with shaping board-level accountability.

The **third school** emphasizes the global harmonization of ESG governance. Comparative research underscores how the UK's Section 172, the EU's CSRD<sup>12</sup> and the US's SEC rules collectively point towards a principle shift from voluntary sustainability initiatives to enforceable corporate governance guidelines. These frameworks actively require boards to treat ESG risks as part of fiduciary obligation and oversight, making process documentation, materiality assessment and assurance crucial to boardroom practice.

The concept of environmental, social and governance (ESG) factors in corporate governance is generally streamlined to be market-driven in the sense that investors express their expectations<sup>13</sup> of how portfolio companies should be managed in a sustainable manner. However, in many countries, including India, corporate and securities regulators have started to impose legal or regulatory instruments that mandate or at least regulate the manner in which companies adhere to their ESG responsibilities.

In the Indian context, scholarly writing has led to relating ESG oversight with directors' legal obligations. For instance, evaluations published in the Indian Journal of Corporate Law and Bar & Bench discuss how corporate boards must address ESG risks nowadays to satisfy

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Duties (2022)

<sup>10</sup> Umakanth Varottil, "The Evolution of Directors' Duties in India" (2021) Indian Journal of Corporate Law 43

<sup>11</sup> Vikramaditya S. Khanna, "Corporate Governance in India: Past, Present and Future" (2017) Journal of Business Law 249

<sup>12</sup> Corporate Sustainability Reporting Directive (EU) 2022/2464

<sup>13</sup> Umakanth Varottil, Professor, Faculty of Law National University of Singapore; "Director's Duties and ESG Considerations in India" (2025) Prime

investor and stakeholder expectations<sup>14</sup>. However, most literature remains descriptive rather than normative, offering limited guidance on how fiduciary duties should evolve doctrinally to incorporate ESG obligations. At the outset, ESG considerations are an integral part of directors' duties as codified in India's companies' legislation. One finds the best reflection of this approach in the codification of directors' duties in the 2013 legislation. Section 166(2) The Companies Act 2013 provides: A director of a company shall act in good faith in order 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, the shareholders, community and for the protection of the environment.

While the Indian legislature has taken steps to incorporate stakeholder- and ESG-related considerations into board decision-making, several questions have been raised on whether this amounts to mere rhetoric or whether the relevant duties of directors envisaged in section 166(2) of the Companies Act 2013 are enforceable. At the origin, the Indian corporate statute does not provide clarity on whether directors are bound by their duties to the company or directly to the shareholders or other stakeholders.

Thus, while academic and regulatory writings recognizes ESG's relevance to directors' functions, a comprehensive doctrinal framework linking ESG integration to fiduciary duty enforcement is still in progress<sup>15</sup>.

### *Research Gap*

Notwithstanding the swift regulatory and policy expansion of ESG norms in India, several research and doctrinal gaps are still persistent.

- 1. Lack of judicial Oversight:** The Indian court has not yet directly ruled or established that failure to consider ESG risks constitutes a breach of fiduciary duty under Section 166 of the Companies Act, 2013.
- 2. Disclosure-implementation divide:** Regulatory initiatives like BRSR<sup>16</sup> have contributed to enhanced transparency but does not certify substantive ESG integration at the board level.

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<sup>14</sup> Ministry of Corporate Affairs, Report of the Committee on the Business Responsibility (2018)

<sup>15</sup> World Economic Forum, Measuring Stakeholder Capitalism (2020)

<sup>16</sup> SEBI Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562 (10 May 2021)

3. **Process ambiguity:** There are no statutory guidelines on how directors should assess or conclude ESG-related decisions to satisfy fiduciary duties.
4. **Limited comparative adaptation:** Whilst the UK, US and EU have established clearer ESG-linked fiduciary standards, India's legal framework remains interpretive rather than prescriptive in terms of ESG.
5. **Absence of accountability mechanisms:** Enforcement of ESG directives remains weak with no clear standards for regulatory compliance or shareholder action against directors for ESG-related negligence.

This study strives at bridging these gaps by exploring the doctrinal scope of directors' duties, regulatory structures, and comparative analysis to propose a unified ESG-fiduciary framework conforming to India's corporate environment.<sup>17</sup>

### Statement of Research Problem

To what extent do existing fiduciary obligations under Indian corporate law framework require directors to integrate ESG considerations into corporate decision-making and what reforms such as doctrinal, regulatory, or procedural, are essential to ensure that such integration is consistent, enforceable and aligned with global best practices?<sup>18</sup>

### Research Objectives

1. To examine whether directors' fiduciary duties under the Companies Act, 2013, implicitly or explicitly encompass ESG considerations.
2. To analyze the current legal framework and regulatory mechanisms that promote or restrict ESG integration in corporate governance.
3. To conduct a SWOT analysis of ESG-fiduciary alignment in India's corporate structure.
4. To assess the judicial and regulatory developments concerning ESG responsibilities of directors.
5. To conduct a comparative study India's approach with the UK, US and EU ESG Integration models and propose practical reforms for effective ESG integration.
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<sup>17</sup> Niti Ayog, India's SDG Index Report (2023)

<sup>18</sup> OECD, principles of Corporate Governance (2015)

### ***Research Questions***

1. Does Section 166 of the Companies Act, 2013 involving fiduciary duties require directors to consider ESG factors in decision-making?
2. How effective are SEBI's disclosure-based mechanisms, including BRSR, in translating ESG obligations into fiduciary practice?
3. What insights can India draw from the United Kingdom, the United States, and the European Union regarding ESG-oriented director obligations?<sup>19</sup>
4. What reforms or safe-harbour provisions can lead to strengthening directors' accountability for ESG integration while preserving business judgment?

### **Research Methodology**

This study is based on **doctrinal legal research** supported by comparative and analytical methods. It crucially analyses statutory provisions, regulatory frameworks and judicial decisions from India, the UK, the US and the EU. Secondary sources involve academic articles, regulatory reports, and corporate governance guidelines.

The paper employs a **qualitative approach**, focusing on textual interpretation, comparative reasoning, and normative evaluation. The study also includes SWOT analysis to assess fiduciary duties of directors with ESG integration's strengths, weaknesses, opportunities, and threats within India's current business scenario and legal environment.

### ***SWOT Analysis: ESG Integration in India's Corporate Governance***

In India, ESG integration throws light on the growing convergence of corporate responsibility, sustainable development and investor accountability. The legislative and regulatory framework, embedded in the Companies Act, 2013, and further substantiated by the Securities and Exchange Board of India (SEBI) has paved the way for establishing sustainability within business conduct. Nevertheless, as India's corporate sector shifts focus from voluntary to mandatory ESG practices, it faces structural, interpretational and operational challenges. A SWOT analysis of the ESG framework offers a balanced understanding of this evolving governance model.

#### **Strength**

One of the fundamental strengths of India's ESG integration lies in its statutory framework.

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<sup>19</sup> In re Caremark International Inc. Derivative Litigation (1996) 698 A. 2d 959 (Del. Ch.)

Section 166(2) of the Companies Act, 2013 provides that directors must not only act in the interests of shareholders but also consider and work for the welfare of employees, the community and the environment. This legislative recognition of stakeholder's interest establishes a strong foundation for intrinsically placing ESG principles into corporate decision-making.

Further, India's progressive step of introducing mandatory Corporate Social Responsibility (CSR) obligations under Section 135<sup>20</sup> of the Companies Act, 2013, has institutionalized the social component of ESG. Companies who meet the specified thresholds are required to spend at least 2% of their average net profits on CSR activities which result in encouraging corporate participation by companies in the social and environmental determinants.

The Securities and Exchange Board of India (SEBI) has also played a crucial role in this regard by introducing the Business Responsibility and Sustainability Report (BRSR)<sup>21</sup> framework. SEBI has ensured that sustainability reporting becomes a central part of corporate governance by mandating comprehensive ESG disclosures for the top 1000 listed companies. This underpinned a revolutionary shift from voluntary disclosures and declarations to a structured reporting regime aligned with global standards.

Furthermore, the increasing investor demands for sustainability-aligned businesses, both domestic and global, has led to market-driven incentives for companies to opt for the ESG strategies. Institutional investors and asset managers rapidly evaluate companies based on ESG ratings, rewarding those that demonstrate genuine environmental and social responsibility with higher valuation premiums and unburdensome accessibility to capital.

### **Weakness**

Notwithstanding the strength factors, the Indian ESG landscape faces significant weak points and gaps. A core weakness is the absence of statutory clarity on how directors should integrate and inculcate ESG considerations into their fiduciary duties. While Section 166 encourages stakeholder-oriented governance, it does not provide specifications on how to balance ESG factors against financial performance, leaving directors with uncertainty and vagueness about the legal boundaries of their responsibilities.

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<sup>20</sup> Companies Act, 2013, s.135

<sup>21</sup> Ministry of Corporate Affairs, National Guidelines on Responsible Business Conduct (2019)

Another concerning gap is the limited judicial guidance on ESG-related liability. Indian courts have still not taken any initiative to develop jurisprudence on directors' accountability for failures in meeting ESG obligations and ESG oversight. This absence of a ruling precedent in this regard leaves the corporate governance sector with ambiguity around potential personal or corporate liability in cases of environmental negligence, human rights violations or misleading sustainability claims.

Moreover, a significant number of companies also treat ESG compliance as a "tick-box"<sup>22</sup> exercise, focusing on formal disclosures over genuine transformation. Statutory reporting usually focuses on quantity, filling forms and uploading data rather than on assessing and improving the quality of governance and environmental performance.

In addition to this, there persists a shortage of technical expertise and reliable ESG data at the board level. Several directors lack training in sustainability issues, climate risk or social impact assessment. Without credible data and skilled analysis, it becomes challenging for the boards to make informed ESG-related strategic decisions which undermines the effectiveness of disclosure-based regulation.

### **Opportunities**

India stands at a propitious position where ESG integration can help in getting new economic and reputational advantages. With global capital rapidly streaming into ESG-compliant enterprises, Indian corporates that align with sustainability guidelines can attract foreign investment and improve market competitiveness. Nowadays, investors see strong ESG credentials as indicators of long-term value and risk management capability.

Institutional investors, proxy advisers, and ESG-focused funds are also putting immense pressure on companies to improve their governance standards. This shift encourages Indian boards to embed ESG as a strategic advantage that enhances brand trust and investor confidence instead of viewing it as a compliance burden.

On the regulatory side, multiple institutions such as SEBI, the Ministry of Corporate Affairs (MCA) and the Reserve Bank of India (RBI) are congregating towards creating a rational

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<sup>22</sup>Consultation Paper on ESG Disclosures, Ratings and Investing (2023)

national framework for ESG governance. The Reserve Bank of India's Discussion Paper on Climate Risk and Sustainable Finance<sup>23</sup> and NITI Aayog's Sustainable Development Goals (SDG) Index Report signifies a robust policy coherence toward sustainable governance. This incentive could lead to coordinated guidelines that provide unambiguous director duties, standardize disclosure metrics and introduce credible assurance mechanisms.

Lastly, integrating ESG considerations into enterprise risk management proposes the opportunity to refine long-term resilience. By identifying climate, social and governance risks sooner, companies can shield shareholder value, improve operational sustainability and build stakeholder goodwill all of which strengthen corporate durability and competitiveness.

### Threats

Despite the many strengths and opportunities, the path to ESG growth is not without challenges. One of the most actively pressing threats is **greenwashing**<sup>24</sup>. Greenwashing refers to the practice of exaggerating or misrepresenting sustainability efforts to appear compliant. In India, weak assurance mechanisms and inadequate third-party verification leads to formation of loopholes for companies to manipulate ESG reporting resulting in eroding trust in the system. An additional threat emerges from the conflict between ESG objectives and short-term profitability. Directors might be exposed to confusion about whether prioritizing ESG over immediate financial gains violates their obligation towards shareholders. This concern, if unaddressed, could result in litigation risks<sup>25</sup> or stakeholder disputes, especially as ESG duties progress.

The absence of a uniform global ESG benchmarks further complicates compliance<sup>26</sup>. Indian companies operating internationally must manoeuvre varying disclosure frameworks and rating criteria which elevate costs and administrative complexity.

Finally, smaller and mid-sized enterprises often face disproportionate compliance distress. Lack of financial and technical capacity makes it difficult for these enterprises to meet the same ESG reporting and assurance requirements as compared to large corporations. If regulatory

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<sup>23</sup> Reserve Bank of India, Discussion Paper on Climate Risk and Sustainable Finance (2022)

<sup>24</sup> OECD, Principles of Corporate Governance (2015)

<sup>25</sup> Bloomberg ESG Database (2023)

<sup>26</sup> Corporate Sustainability Reporting Directive (EU) 2022/2464

requirements are not assessed appropriately, it could widen the gap between large listed entities and smaller firms, oppressing the integrative ESG adoption.

## **Current Legal Framework of ESG Integration and Implications for Directors in India**

India's corporate governance structure has significantly and progressively evolved to adapt to ESG principles through statutory duties, regulatory guidelines and disclosure mechanisms. While ESG integration is not yet codified as an explicit fiduciary mandate, several legal and policy developments collectively impose ESG-linked responsibilities on directors.

### ***1. Companies Act, 2013***

The Companies Act, 2013, is the fundamental enactment governing corporate conduct and directors' duties in India. Section 166(2) explicitly poses a requirement for directors to act in good faith and in the best interests of the company, its employees, shareholders, the community and the environment. This provision points towards a significant shift from shareholder primacy to stakeholder inclusivity, aligning with the ESG principles. Directors are required to balance financial objectives with social and environmental considerations in exercising their business decision-making and judgements.

Section 135 of the Companies Act, 2013 standardize Corporate Social Responsibility (CSR), imposing a mandate on certain companies to spend at least 2% of their average net profits on socially advantageous activities<sup>27</sup>. It indirectly compels directors to engage with ESG-related decision-making processes and ensure board-level oversight of CSR implementation. Despite the fact that social and environmental welfare are the primary concerns of CSR, it indirectly obliges directors to engage with ESG-related decision-making processes and ensure board-level oversight of CSR implementation.

The National Guidelines on Responsible Business Conduct (NGRBC) issued by the Ministry of Corporate Affairs (MCA) in 2019 refined the implementation of ESG principles within the corporate structure. These guidelines are based on nine crucial principles, including ethical governance, sustainability, human rights and stakeholder responsiveness<sup>28</sup>. They act as a

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<sup>27</sup> Ibid., s.135

<sup>28</sup> Ministry of Corporate Affairs, National Guidelines on Responsible Business Conduct (2019)

voluntary code but progressively update the regulatory expectations under SEBI and the MCA.

### **2. SEBI's Business Responsibility and Sustainability Reporting (BRSR)**

The Securities and Exchange Board of India (SEBI) has been pivotal in integrating ESG principles into corporate reporting frameworks. In 2021, SEBI introduced the **BRSR** framework, which reinstated or replaced the former Business Responsibility Report (BRR). Under this mandatory regulation, the top 1,000 listed companies are required to disclose quantitative and qualitative information on their ESG performance across nine principles aligned with the NGRBC by way of market capitalization.

The BRSR highlights board accountability and stakeholder transparency by imposing a requirement for disclosure of policies on resource usage, diversity, human rights and climate impact. Even though BRSR remains disclosure-based, it significantly establishes **soft law** mechanisms on directors to monitor and report ESG-related risks. Failure to disclose or misrepresentation could amount to regulatory non-compliance, thereby stressing and underscoring the directors' duty of care and diligence.

### **3. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**

Regulation 4(2)(f) of the SEBI (LODR) Regulations, 2015, impose a mandate on the listed entities to accommodate principles of responsible governance, environmental stewardship and stakeholder inclusivity. Clause 49 of the erstwhile Listing Agreement; now reflected in LODR provisions, expects from the board to ensure transparency, ethical conduct and accountability<sup>29</sup>.

Recent SEBI circulars (2023–24) have reinforced that the board must oversee sustainability risks and embed them into enterprise risk management systems. Since investors highly demand ESG accountability in the contemporary world, these provisions indirectly link fiduciary responsibility with ESG performance<sup>30</sup>.

### **4. Reserve Bank of India (RBI) and Financial ESG Integration**

*The RBI has taken into consideration that ESG risks are material for financial stability. Its Discussion Paper on Climate Risk and Sustainable Finance (2022) focuses on urging financial institutions to integrate climate risk into governance structures. Just like the corporate*

<sup>29</sup> SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 4(2)(f)

<sup>30</sup> SEBI Consultation Paper on ESG Disclosures (Feb 2023)

*borrowers face increased ESG scrutiny, similarly the directors of lending institutions and borrowers alike bear enhanced responsibility to correspond governance and risk policies with ESG norms for better performance.*

### **5. National Company Law Tribunal (NCLT)**

Despite the mechanisms for shareholder and regulatory enforcement provided by the Companies Act, the NCLT has not yet directly adjudicated an ESG-related fiduciary breach. However, its expanding jurisdiction in cases relating to corporate governance failures (e.g., *Tata Consultancy Services Ltd. v. Cyrus Mistry*<sup>31</sup>) signals towards the potential for ESG-related accountability. In the future, there are significant possibilities that mismanagement or negligence leading to ESG non-compliance could be construed as a breach of fiduciary duties under Sections 166 and 241 of the Act.

## **Judicial and Regulatory Interpretation of ESG Duties in India**

When it comes to defining and integrating ESG obligations within directors' fiduciary duties in the corporate governance structure, the Indian jurisprudence has not taken any step so far explicitly in this regard. However, the courts and regulatory bodies have constantly expanded the interpretation of corporate accountability towards the environment and society for the same. By way of progressive readings of constitutional, environmental and corporate principles, Indian courts have institutionalised and laid the foundation for an ESG-oriented fiduciary framework.

### **1. Judicial Recognition of Embedded Environmental and Social Responsibilities in Business Activities**

Indian courts have a history of linking business activity with social and environmental obligations, often under the ambit of the constitutional mandates. Article 21 of the Constitution of India guarantees the Right to Life and Personal Liberty and has been extensively and expansively interpreted to accommodate the right to a clean and sustainable environment<sup>32</sup>.

In the landmark judgement of **M.C. Mehta v. Union of India**, the Supreme Court gave recognition to corporate responsibility to prevent environmental harm, establishing the

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<sup>31</sup> *Tata Consultancy Services v Cyrus Investments Pvt. Ltd.*, (2021) SCC Online SC 271

<sup>32</sup> Constitution of India, Art.21

“polluter pays” and “absolute liability” principles. Despite the fact that these principles arise in public law, these doctrines highlight that corporate conduct contains social obligations that cannot be divorced from economic purpose.

In **Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh**, the Court emphasized that sustainable development must guide all industrial activities. While this reasoning was applied to environmental policy, it implies the court's judicial expectation that directors must consider environmental and social impacts while making business decisions. Even if not clearly labelled or codified, such expectations closely align with ESG principles. Correspondingly, in **T.N. Godavarman Thirumulpad v. Union of India**, the Supreme Court addressed ecological preservation as an intrinsic duty of all actors, including corporations. These precedents collectively establish a prescriptive framework suggesting that directors must be in no position to disregard environmental and social consequences without breaching broader duties of care and prudence.

## ***2. ESG as an Extension of Fiduciary Duty***

While the Indian legal system has not yet declared ESG oversight to be a codified fiduciary obligation, several case laws reflect a progressive understanding of directors' duties that implicitly encompasses ESG factors and obligations.

In the case of **Tata Consultancy Services Ltd. v. Cyrus Mistry**, the Supreme Court reaffirmed the principle that directors must act with bona fide intention and in the best interests of the company as a whole rather than opt for the benefit of an individual shareholder group. This principle could expeditiously extend to the “company as a social organism,” covering the community and environmental concerns as well.

In **Union of India v. Association of Unified Telecom Service Providers of India**<sup>33</sup>, The Court acknowledged the concept of public trust in corporate and business operations affecting national resources. It observed that commercial decisions must reflect harmony and alignment with larger public interest considerations. This indicates that fiduciary supervision and management cannot be exercised in isolation from environmental and social dimensions.

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<sup>33</sup> Union of India v. Association of Unified Telecom Service Providers of India (2011) 10 SCC 543

In the recent past, the **National Green Tribunal (NGT)** in **Sterlite Industries (India) Ltd. v. Tamil Nadu**, Pollution Control Board emphasized that corporations intrinsically carry an affirmative obligation to prevent ecological damage and to act with due diligence regarding environmental repercussions. Even though this was an environmental proceeding, it can be applied to corporate governance as its reasoning resonates with fiduciary obligations of directors to anticipate and mitigate ESG risks.

### ***3. Regulatory Interpretation and Enforcement Trajectories***

*Regulatory bodies have started interpreting directors' duties in light of ESG framework and considerations. In the 2022 Report on Business Responsibility and Sustainability, the Ministry of Corporate Affairs (MCA) explicitly stated that directors' oversight of ESG disclosures embodies and integrates their fiduciary responsibility also. The SEBI Board Report (2023) further underscored that boards must ensure the accuracy of ESG data reported under BRSR, putting emphasis on directors' personal accountability for such disclosures.*

Moreover, SEBI's Committee on Corporate Governance (2017) headed by Uday Kotak put forward recommendations, one of which stated that ESG oversight should be an integral function of the board's risk and audit committees. This recommendation was backed by the 2023 Consultation Paper on ESG Disclosures when they reiterated this by proposing a "Business Responsibility and Sustainability Index (BRSI)" to measure ESG maturity across listed companies. Such policy initiatives solidify a trend towards treating ESG not merely as a voluntary standard but as an embedded governance responsibility within the scope of directors' fiduciary duties.

### ***4. Judicial Trends Towards Stakeholder-Centric Governance***

The Indian judicial system progressively favours a stakeholder-centric interpretation of fiduciary duties. In **National Textile Workers' Union v. P.R. Ramakrishnan**, the Supreme Court declared that employees have a legitimate interest in corporate managerial decisions, establishing a broader base for stakeholder consideration. The recognition of employee and community interests resonates and integrates closely with ESG's "S" (social) component.

In **Rajeev Suri v. Delhi Development Authority**, the Court explicitly associated sustainable development with governance accountability. Through this, the Court observed that development decisions must balance environmental protection and economic progress. Even

though this holistic approach is articulated in a planning context, it still reflects the logic underlying ESG integration into corporate fiduciary responsibility.

### ***5. Evolving Standards, Emerging Criterion and Future Roadmap***

The absence of a uniform, codified and definitive precedent linking ESG to directors' fiduciary duties does not imply a regulatory gap. In lieu, Indian judicial and regulatory reasoning has gradually developed a doctrinal foundation where ESG considerations are treated as integral to responsible corporate governance. Courts are progressively receptive to the idea that failure to manage material ESG risks could lead to imbalance amounting to negligence under Section 166's duties of care and diligence.

The coherent development of Indian case laws indicates an obligation that with growing regulatory focus on ESG, directors may likely be judicially expected to inculcate these factors as part of their decision-making obligations. Such a development would correspond to international developments in corporate fiduciary law, as explored in the next section.

## **Comparative Analysis of India's ESG Integration and Fiduciary Duties of Directors with UK, US AND EU**

### **1. ESG Regulations in the United Kingdom (UK)**

*The UK is eminently recognized as a forerunner in integrating ESG considerations into directors' statutory duties. Section 172 of the Companies Act, 2006, acts as the foundation of this trend. It imposes a mandate which states that a director must act in the way he or she considers but always in good faith, must promote the success of the company for the benefit of its members as a whole, while having regard to the long-term consequences of their decisions, interests of employees, the environment and the community<sup>34</sup>.*

This provision effectively integrates ESG principles into directors' fiduciary obligations by explicitly recognizing environmental and social factors as part of the "success" of the company. Judicial interpretation has supported this comprehensive notion. In **Regentcrest plc v. Cohen**, the court upheld that directors must exercise their duty of business decision making in good faith for the company's accomplishment and success. This was followed by commentaries and parliamentary reports clarifying that "success" will now inherently include sustainability and

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<sup>34</sup> Companies Act 2006 (UK), s.172

stakeholder impact.

Furthermore, the UK Corporate Governance Code (2018) demands from boards to establish effective frameworks for monitoring and integrating ESG risks. The Financial Reporting Council (FRC) has additionally directed that sustainability risks be demonstrated in annual reports, making ESG part of mainstream fiduciary accountability.

The “comply or explain” approach promotes flexibility and maintains transparency. Thus, ESG integration constitutes both a legal and normative expectation under UK corporate governance.

## 2. ESG Regulations in the United States of America (USA)

Traditionally, the United States corporate governance structure was shareholder-oriented, despite that it has experienced a gradual convergence towards ESG accountability through disclosure obligations and market pressure. Under Delaware law, Directors’ fiduciary duties is construed as the duty of care and the duty of loyalty and requires its directors that they act with informed judgment and in good faith. Even though ESG factors are not explicitly mandated, recent regulatory and judicial pronouncements recognize them as crucial and material to the board’s oversight responsibilities.

The Caremark line of cases, especially *In re Caremark International Inc. Derivative Litigation and Marchand v. Barnhill*, it was held that failure to implement adequate compliance and risk-monitoring systems can be considered as a breach of the duty of loyalty. These precedents are progressively applied to contend that boards must oversee climate, social and governance risks as a component of enterprise-wide risk management.

The US Securities and Exchange Commission (SEC) has taken significant steps to codify ESG disclosure norms. The SEC’s 2022 proposed rule on climate-related risk disclosures<sup>35</sup> obligates companies to provide granular data on emissions, governance oversight of sustainability risks, and climate impact on operations. Similarly, shareholder activism and institutional investors (such as BlackRock and State Street) have embedded ESG into proxy voting and stewardship guidelines. Consequently, while the US model remains market-driven rather than statutory, ESG integration now functions as a **de facto fiduciary expectation** within corporate

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<sup>35</sup> US SEC, Proposed Rule on Climate-Related Risk Disclosure (2022)

governance.

### ***3. ESG Regulations in the European Union (EU)***

*The European Union has established ESG governance through an exhaustive and comprehensive legislative framework. The Corporate Sustainability Reporting Directive (CSRD) (2022) and the Sustainable Finance Disclosure Regulation (SFDR) jointly propose mandatory ESG disclosures and governance accountability for companies functioning within the EU.*

The CSRD commands directors to ensure that sustainability risks, opportunities, and impacts are incorporated into strategic management as well as risk frameworks. It replaces voluntary non-financial reporting with legally binding obligations leading to the addition of ESG considerations as a statutory component of directors' duties. Additionally, the proposed Corporate Sustainability Due Diligence Directive (CSDDD) imposes a legal duty on directors to identify, prevent and mitigate adverse human rights and environmental consequences in their global operations.

These reforms establish a paramount shift from ESG as a reporting exercise to ESG as a **duty of vigilance**. EU jurisprudence progressively conforms ESG oversight with directors' fiduciary accountability to the company's stakeholders, including society and the environment. This approach addresses aspects that go beyond compliance framework as it specifies sustainable governance as an ethical and legal imperative.

### ***4. Global Comparative Study Analyses: Learnings for Indian Policy***

When the Indian ESG structure is weighed and paralleled with the UK, US and EU frameworks, it can be observed that India's ESG integration remains at an intermediate stage, conceptually recognized but still not doctrinally integrated. The UK presents a statutory model where ESG is explicitly a component of fiduciary law; the US framework illustrates how market and litigation forces can shape directors' responsibilities; and the EU showcases a regulatory model where ESG considerations are codified and enforceable.

In contrast, India's approach is **disclosure-oriented** and not **duty-based**. Section 166 of the Companies Act, 2013, implicitly recognizes stakeholder welfare and environmental protection but devoids procedural clarity on how directors must incorporate these obligations in

operations. The SEBI BRSR framework being extremely valuable, focuses on transparency rather than substantive integration of ESG into governance decision-making.

Indian ESG framework can adopt several key lessons can be drawn from comparative study insights which can be adopted by Indian ESG framework:

- From the **UK** framework, the incorporation of ESG-related obligations within the statutory definition of directors' duties (e.g., amending Section 166 to expressly quote sustainability and stakeholder value) can be taken into consideration.
- From the **US** regulation, the recognition of ESG risk oversight as part of the board's duty of care and diligence is in coordination with regulatory incentives for compliance.
- Out of the **EU** structure, the introduction of mandatory due diligence obligations and assurance mechanisms to ensure authenticity and accountability of ESG practices, can be inferred.

In conjunction, these frameworks signifies that ESG integration within fiduciary obligations is no longer a voluntary concept but intrinsic to responsible corporate governance in contemporary global markets. India's progressing jurisprudence and regulatory impetus it well to transition from disclosure compliance to duty enforcement, aligning with international best practices while adjusting reforms to its socio-economic scenario.

## **Findings and Recommendations**

### ***1. Core Findings***

#### **1. ESG is explicit rather than implied under Indian fiduciary law**

Section 166 of the Companies Act, 2013, incorporates stakeholder and environmental considerations but lacks procedural or operational clarity. Consequently, ESG considerations become a moral and regulatory expectation instead of a legally enforceable fiduciary obligation.

#### **2. Disclosure dominates over Accountability**

The SEBI Business Responsibility and Sustainability Reporting (BRSR) framework has immensely developed and increased ESG transparency among large corporations. However, it operates primarily as a reporting tool as a result of which it lacks mechanisms to evaluate the board's substantive amalgamation of ESG into strategy and risk management.

#### **3. Judicial Interpretation still remains direct**

4. Indian courts have acknowledged corporate environmental and social responsibility under constitutional and environmental jurisprudence but despite this these principles are not explicitly tied to directors' fiduciary duties under corporate law.
5. **Global Jurisdictions are more efficient and advanced comparatively**  
The UK and EU has expressly incorporated ESG into statutory and regulatory definitions of directors' duties. Even though the US model is more market-driven, it has evolved through litigation and investor activism. In contrast to this, India relies heavily on soft law mechanisms and voluntary disclosure.
6. **Considering Investors and stakeholders expectations which reshapes governance**  
Institutional investors and global capital markets rapidly demand ESG accountability. Enterprises with weak ESG integration often face reputational damage and loss of investor trust and confidence. Thus directors have to face growing practical pressure to comply with governance practices in alignment with sustainability objectives.
7. **Deterrence of proactive ESG action due to absence of safe harbor provisions**  
Due to the fear of shareholder litigation and regulatory scrutiny, directors often hesitate to pursue aggressive ESG measures. This "duty-risk paradox" obstructs creativity, innovation and long-term sustainability planning.

## 2. Recommendations

### A. Legislative Reforms

1. **Amendment of Section 166 of the Companies Act, 2013**  
Incorporation of an explicit clause stating that directors must contemplate environmental, social and governance impacts in discharging their duties of care, diligence and good faith. This would eliminate ambiguity and uncertainty while aligning Indian law with the UK's Section 172 model.
2. **Codification of ESG governance requirements**  
The MCA and SEBI must collectively issue exhaustive rules defining the board's responsibility for ESG oversight including setting measurable goals, ensuring data integrity and intersecting ESG into risk frameworks.
3. **Establishing safe-harbour provisions**  
Taking inspiration from the US corporate jurisprudence, Indian law must strive to protect directors acting in good faith to implement ESG measures from personal

liability in order to encourage proactive sustainability initiatives<sup>36</sup>, provided such measures are informed, transparent and documented.

## **B. Regulatory Improvements**

### **1. Strengthening SEBI's BRSR Framework**

SEBI should shift BRSR from a disclosure-oriented to a performance-based mechanism by obligating listed companies to demonstrate board-level integration of ESG in decision-making. Independent evaluation of ESG data should be made compulsory for top-tier firms.

### **2. Institutionalisation of ESG training and Board Assessment**

The Institute of Directors (IOD) and Indian Institute of Corporate Affairs (IICA) should improvise and develop certification standards for ESG governance and directors must undergo periodic ESG capacity-building programs.

### **3. Imposing ESG oversight mandate on board committees**

Listed companies should introduce and establish dedicated ESG committees with independent directors to keep a check on sustainability risks, similar to audit or risk committees.

#### **Improve investor engagement mechanisms**

Regulatory authorities should facilitate ESG-focused shareholder resolutions and delegate advisory opinions to facilitate and strengthen accountability.

## **C. Judicial and Policy Measures Judicial intervention and Policy initiatives**

### **1. Judicial Recognition of ESG-related fiduciary violations**

The National Company Law Tribunal (NCLT) and higher courts must take steps to interpret Section 166 duties expansively including the acknowledgement of failure to manage big ESG risks as a potential breach of fiduciary duty.

### **2. Promote public interest litigation (PIL) IN ESG governance**

NGOs and civil society should be empowered to bring representative actions against corporations for serious ESG violations, especially where environmental harm or human rights breaches occur.

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<sup>36</sup>In re Caremark International Inc. Derivative Litigation, 698 A.2d 959 (Del. Ch. 1996)

### 3. **Integration of ESG standards into public procurement and financing**

Government tenders, financial assistance and credit access should emphasize ESG-compliant companies. This would build an ecosystem where responsible governance is rewarded rather than being optional or voluntary.

## **D. Long-Term Structural Plans**

### 1. **Shift to ESG Compliant Framework**

India should adopt an exhaustive graded ESG compliance model (similar to the EU taxonomy) that differentiates between basic, intermediate and advanced ESG integration levels.

### 2. **Opt for unified and uniform reporting standards**

Balance BRSR with global frameworks like the Global Reporting Initiative (GRI), SASB and Task Force on Climate-Related Financial Disclosures (TCFD) to make a certain sense of comparability for international investors.

### 3. **Promote a sustainable corporate culture**

ESG must become part of organizational DNA beyond compliance. Regulatory authorities should promote voluntary leadership programs, disclosure of board ESG KPIs and performance-based sustainability incentives.

## **Conclusion**

The evolution of Environmental, Social, and Governance (ESG) norms signifies an integral transformation in the philosophy of corporate governance. Directors, once perceived primarily as custodians of shareholder wealth, are nowadays expected to act as stewards of sustainable corporations. In India, this trend is brought through statutory developments like Sections 135 and 166 of the Companies Act, 2013, SEBI's Business Responsibility and Sustainability Reporting (BRSR) framework, and the National Guidelines on Responsible Business Conduct (NGRBC). However, the existing framework is not enforceable and remains primarily declaratory leaving directors' ESG obligations in a zone of ethical and moral persuasion rather than legal compulsion.

The comparative breakdown with the United Kingdom, the United States, and the European Union reveals that India's approach is still not fully advanced and in its early stages. The UK's explicit inclusion of sustainability within statutory fiduciary obligations, the US's progressing jurisprudence connecting ESG oversight to the duty of care and diligence and the EU's binding

sustainability reporting and due diligence directives cordially illustrate how ESG integration can become a crucial legal responsibility instead of a voluntary standard.

Though Indian courts were historically progressive on environmental and social justice, they still have the responsibility to connect these principles directly to directors' fiduciary duties. As the corporate ecosystem develops and becomes more complex and globally interconnected, the fiduciary obligations of directors must evolve from a narrow financial focus to a broader mandate encircling long-term sustainability, stakeholder interests and ethical governance standards.

Moving forward, India should:

1. Codify ESG model among directors' statutory obligations to gain legal clarity;
2. Fortify SEBI's BRSR framework into a performance-based model;
3. Consider ESG negligence as a serious breach of fiduciary duty under Section 166;
4. Establish safe harbor protections for directors acting in good faith on sustainability matters.

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