“Sustainability as a Director Duty: Beyond CSR Compliance”

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Table of Contents

INTRODUCTION

Sustainability, whose major focus is on environmental and economic practices to bring inclusive growth, has become a governance and legal issue and no longer remains a question of ethics, compliance and social responsibility. According to section 135 of the Companies Act 2013, every eligible company must spend at least 2% of its average net profits on social impact activities that benefit society at large. CSR by itself is a small part of sustainability, but it certainly makes companies more accountable to society, which is a positive step. However, CSR spending does not necessarily imply an extensive sustainable business.

Section 166 of the Companies Act of 2013, provides a legal basis for integration of sustainability. The directors duties codified in this section, promotes the objectives of the company wherein the director must act in good faith. The director are required to act towards promoting the objectives of the company for the benefit of the members as a whole. This idea has been further strengthened through judicial precedents[1] along with section (2)[2] wherein the below consideration came about:

1. The likely consequences of any decision in the long term,

2. Maintenance of the reputation of the company.

Corporate governance is playing an increasing role owing to ESG, climate-related disclosures and sustainability reporting requirements around the world. The Business Responsibility and Sustainability Reporting (BRSR) framework has been released by SEBI in India, which makes these sustainability disclosures compulsory for the top listed companies. These developments show that sustainability is now a key part of risk management, corporate strategy, and long-term value creation. The shift from CSR compliance to sustainability as a duty of a director marks a significant change. CSR tends to be reactive and focused on meeting specific spending requirements. In contrast, sustainability means actively incorporating environmental protection, ethical governance, climate risk assessment, supply chain responsibility, and social equity into the main decision-making processes of the company. This affects investment choices, resource distribution, corporate restructuring, and even executive pay policies.

The overarching question of research is: How far does section 166 of the Companies Act, 2013 go to define an enforceable duty that requires directors to consider and incorporate

[1] MK Ranjitsinh v. Union of India (2025),2025 INSC 1472 (Writ Petition (Civil) No. 838 of 2019)

[2] Section 166(2), Companies Act, 2013

environmental, social and governance in corporate decisions, and not just voluntary CSR compliance in their roles as fiduciaries? This question necessarily involves other questions such as whether directors can be held liable for ignoring climate-related risks, the implications of such a duty on the doctrine of "shareholder primacy" in Indian corporate law, and the transformative role of sustainability on the traditional understanding of fiduciary duty.

Thus, the topic “Sustainability as a Director Duty: Beyond CSR Compliance” looks at how sustainability has evolved from a legal CSR requirement into an important part of fiduciary and governance duties of a director. This change reflects the increasing overlap of corporate law, environmental responsibility, and long-term value creation.

THEORETICAL BACKGROUND

‘If corporate governance is understood as the system by which companies are directed and controlled, responsibility cannot be confined to formally appointed directors alone.’

The stakeholder theory contributes to the expansion of the concept of corporate responsibility, as it no longer sets shareholders as the primary priority, but provides a broader and more inclusive approach to the governance. This perspective assumes that the management of a company should be able to balance the diverse interests of all stakeholders both internal and external in cultivating the overall development of the business and not just profit to the owners. The main stakeholders include employees, customers, suppliers, civil society organisations and governmental entities. This philosophy believes that the interests and intentions in addition to ethics should be the driving forces in business. It emphasises the necessity to pay attention to the needs of every stakeholder, but local communities and environment should be prioritised. According to this school of thought, corporate social responsibility is the ethical and responsible management of the stakeholders in a company with the aim of achieving the twofold goals of maintaining profitability as well as improving the living standards of people in and outside the company. However, the voluntary system of CSRs often fails in creating accountability. Corporate social responsibility within the business sector is usually voluntary and not bound by any binding laws hence reducing its effectiveness. This voluntary status means that any company is not legally required to have social and environmental considerations in the firm beyond the immediate interests of the company.

However, the tension between the interest and power bases of stakeholder theory is not satisfactorily addressed in this descriptive account. A contractarian view of the corporation, and specifically shareholder primacy, is the view that the fiduciary duty of director is owed primarily to the shareholders who are the residual claimants, and that other interests are protected only indirectly via contract, regulation, or market discipline. Stakeholder theory, on the other hand, treats the corporation as a network of relationships between a variety of stakeholders—the interests of whom must be actively managed by the directors and whose interests are not treated as secondary to the interests of shareholders—instead of that one line of accountability. This tension is not abstract one; it is directly in the language of Section 166(2) of Companies Act 2013 which requires the Directors to act in good faith to promote the objects of the company for the benefit of all the members of the company, and at the same time must also have regard to the interests of the employees of the company, the community and the environment. Thus, the provision is not shareholder-centric, nor is it stakeholder-oriented, and directors will have room to interpret and balance competing claims. One way to try to balance this tension, albeit by subordinating stakeholder interests to shareholder value, is enlightened shareholder value theory, which views stakeholder interests as instrumental to the long-term value of the shareholders. This theoretical disagreement has a direct connection with the research question underlying this paper because it dictates the interpretation of sustainability integration in the context of section 166 – as a facilitating or instrumental duty to protect long term shareholder value, or as a standalone fiduciary duty owed to a wider range of stakeholders.

RESEARCH OBJECTIVES

The researchers seek to understand the following questions:

1. To examine the limitations of CSR Compliance in the incorporation of sustainability in corporate governance
2. To analyse the interpretation of Section 166 of Companies Act, 2013, in integrating sustainability
3. To review how reorienting fiduciary duties of director from shareholder interest to long-term, stakeholder-oriented value creation contributes to embedding sustainability in corporate governance.

RESEARCH METHODOLOGY

For this Research Analysis, the researchers have adopted for a doctrinal research methodology wherein the researchers have referred to systematic searches of electronic databases including Google Scholar, Springer, JSTOR and Cambridge University Press. The analysis follows a qualitative analysis where the deductive reasoning was used in identifying the lacunae and conducting a comprehensive evaluation.

The primary legal materials selected for this study include the Companies Act, 2013, particularly Section 166, relevant SEBI regulations relating to Business Responsibility and Sustainability Reporting (BRSR), and judicial decisions from Indian and comparative jurisdictions that interpret fiduciary duties of directors. These authorities were selected because they directly address the evolution of obligations of the directors towards environmental, social and governance (ESG) concerns. Secondary sources comprising peer-reviewed journal articles, books and policy reports published primarily between 2019 and 2025 were chosen to reflect recent developments in corporate sustainability governance. The collected materials were analysed through doctrinal and thematic analysis by comparing statutory provisions with judicial interpretation and scholarly opinions to identify the evolving legal position regarding sustainability as a fiduciary obligation.

LITERATURE REVIEW

In his paper, Quinn,J.(2019)[3], argues that the conventional primacy of the shareholders fail to apply in the modern society. While he acknowledges that the role played by the directors in ensuring that management was running the company in the right direction, as needed in the best interest. This subconsciously established the principle that the maximisation of shareholder wealth was the ultimate goal. Quinn however proposes that this can lead to a short term understanding or taking greater risks, which exacerbates global problems such as environmental problems or human right violations. He further reiterates that the past attempts at conquering this using Social Responsibility has failed in showing significant changes, often resulting in superficial 'boiler-plate reporting' or 'greenwashing' without fundamental changes in decision-making. Thus, he advocates for a thorough reform in the EU company law wherein there should be the duty of directors to be proactive in pursuing 'sustainable value creation'.

[3] Quinn, John. (2019). The Sustainable Corporate Objective: Rethinking Directors' Duties. Sustainability. 11. 6734. 10.3390/su11236734.

Suggestions for science-based frameworks like ‘planetary boundaries’ and assessment tools such as ‘sustainability assessment tool’ was made in order to provide objective benchmarks for process for assessing sustainability performance.

Similarly, Tjio,H.(2023)[4] believes that the conventional interpretation of director duties towards shareholder primacy has been challenged in order to ensure the directors also consider external limits such as environmental, social, and governance (ESG) issues along with wider corporate objectives which can sometimes contradict the traditional ideology of maximizing shareholder value. Although many argue that profit maximization can be done with sustainable objectives the author perceives a cognitive dissonance in the argument. He believes that that the duties of directors which are strictly oriented to the company provide difficulties in assigning the liability of negligence due to presumed duties to the third party. The European Commission has also observed that the definition of what constitutes as a company interest in the company law frameworks has not clearly been defined and thus the author believes that definition of what constitutes a company interest will have to undergo formation depending on the changing scenario. It was further added that going beyond the current status of simply following the principle of CSR is important in order to focus on how the directors can skillfully maneuver and balance different interests. The case of the failed derivative action against the directors of Shell[5] and try to implement a sustainable trend strategic approach exemplifies that the traditional best interest method might not be adequately applicable in circumstances where spoilage arises between shareholders. To address this Hans suggests the concept of ‘reasonable shareholder’ which can help in working towards a more inclusive and sustainable framework for corporate governance, wherein the responsibilities of directors are understood to embrace a wider array of interests and external limitations, rather than being exclusively centered on the maximisation of shareholder value.

The directors have a fiduciary duty to serve the best of a corporation and its shareholders which by the Delaware law clearly entails creating long term shareholder value. Thus, Ortega, M.(2024)[6] suggests a broader role For the directors which involves implementation of sustainability as a core part of the duties in addition to the adherence to fundamental corporate

[4] Tjio, Hans. (2023). Sustainable Directors’ Duties and Reasonable Shareholders. European Business Organization Law Review. 25. 10.1007/s40804-023-00304-3.
[5] Milieudefensie et al. v Royal Dutch Shell plc ECLI:NL:RBDHA:2021:5337,
[6] Mark Ortega, Finding a Core of Sustainability in Directors' and Officers' Fiduciary Duties, 34 *Duke Environmental Law & Policy Forum* 49-89 (2024)
Available at: https://scholarship.law.duke.edu/delpf/vol34/iss1/2

social responsibilities. It further states that there exists ‘a sustainability core’ to the fiduciary obligations of the directors and officers and that fair approach to all the investment horizons in the shareholders is required. This helps by increasing foreseeability of the ESG risks which to a shift towards the integrated understanding of value creation that takes into account the systemic risks and long-term sustainability.

Zhou, S.(2025)[7], believes integrating sustainability in the fiduciary duties of directors denotes a significant improvement over traditional adherence to corporate social responsibility in the pursuit of transforming the ESG principles into a regulatory framework of long term value creation. Believing the necessity of balance between global capital market and corporate governance, he advocates towards the incorporation of the Environmental, Social, and Governance (ESG) concepts into the Directors duty of care, thereby giving the notion of sustainability as an aspiration of CSR obligations into the framework of fiduciary standards. He emphasizes the need of institutionalization of ESG is realized when it is based on the duty of care and not just merely compliance, which requires directors to establish and maintain procedures of acknowledging evaluating and mitigating substantial ESG risks.

Biswas et.al.(2025)[8] suggests that sustainability includes the climate change, environmental protection, resources allocation, and it poses ethical dilemmas in the attempts to reconcile economic growth and environmental, social responsibility. Ethical leadership is considered critical in building a culture that extends beyond the minimum compliance, that promotes principles like fairness, accountability and integrity to increase trust and achieve positive outcomes in organisations. He further reiterates that the shift of the corporate social responsibility to a deeper level of the ethical focus requires the global outlook on the commitments of the firm toward social, economic, and environmental aspects. However, the paper points that in India, the lack of ethical standards is great, which implies that there is a need to shift to collaborative management. Thus it establishes that to ensure long-term benefits to both the society and the environment, organisations are encouraged to have sustainability and ethical considerations in their practice.

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[7] Zhou, Sipei. (2025). Integrating ESG Principles into Directors Fiduciary Duties: A Legal Framework for Regulatory Application. Advances in Economics, Management and Political Sciences. 243. 66-71. 10.54254/2754-1169/2026.BJ30281.

[8] Biswas, P., Madaan, D. & Biswas, S. Special Issue of the Asian Journal of Business Ethics on Global Survey of Business Ethics (GSBE) reports 2022–2024 from Asia, Australia, and Russia—India. Asian J Bus Ethics (2025). https://doi.org/10.1007/s13520-025-00237-9

Vig,S.(2023)[9] points out that the role of corporate directors has expanded to incorporate multiple stakeholders, and firms have to take care of societal and environmental issues, which is supported by the stakeholder-agency theory that considers environmental disclosures as critical corporate responsibility tools. The paper shows that the shift implores towards a consistent and comprehensive environmental reporting that focuses on sustainability and involvement of stakeholders.

Satapathy et.al.(2019)[10] notes that India has shown a transition form the traditional system of philanthropic actions to the more systematic and stakeholder-oriented approach dictated by the influence of globalisation and legislative processes. The paper notes the idea of sustainable development as a 'guiding principle' of Corporate Social Responsibility as conveyed by the World Bank as a commitment to enhancing the quality of life, in the overall vision of sustainable development developed by the Brundtland Commission. While the paper recounts that the obligatory CSR under the Companies Act[11] has been less effective due to a lack of consideration on stakeholder engagement, the paper suggests that CSR should evolve into a transformational model that puts more emphasis on the qualitative social gains rather than the mere compliance with the rules or financial dealings.

Du et.al.(2025)[12], strengthens the idea that social and environmental aspects and boards of directors have become very instrumental in governance. They emphasize the interlocks between directors in spreading information about environmental responsibility, and this is the way the discourse in conventional corporate governance shifts into the domain of practices related to environmental responsibility. The paper also advocates that the responsibility of directors should not be limited to mere compliance with rules and regulations but to take initiative in the environmental sustainability and good corporate governance activities.

Wirba,A.(2023)[13], suggests a growing appreciation of the idea of going beyond mere compliance. The paper advocates for the stakeholder theory is a theory that was proposed by

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[9] Vig, Shinu. (2023). Environmental disclosures by Indian companies: role of board characteristics and board effectiveness. International Journal of Disclosure and Governance. 21. 1-16. 10.1057/s41310-023-00174-8.
[10] Satapathy, J., Paltasingh, T. CSR in India: a journey from compassion to commitment. Asian J Bus Ethics 8, 225–240 (2019). https://doi.org/10.1007/s13520-019-00095-2
[11] THE INSTITUTE OF COMPANY SECRETARIES OF INDIA, & Sridharan, R. (2014). Companies Act, 2013 A ready referencer.
https://www.icsi.edu/media/webmodules/companiesact2013/COMPANIES%20ACT%202013%20READY%20REFERENCER%2013%20AUG%202014.pdf
[12] Du, H., Fan, L., Hu, H.W. et al. Forewarned is Forearmed: Director Interlocks and the Shaping of Corporate Environmental Performance. J Bus Ethics (2025). https://doi.org/10.1007/s10551-025-06164-w
[13] Wirba, Asan. (2023). Corporate Social Responsibility (CSR): The Role of Government in promoting CSR. Journal of the Knowledge Economy. 15. 7428-7454. 10.1007/s13132-023-01185-0.

Freeman[14], which argues that companies have a duty to various groups that are affected by their operations, which include community engagements, creation of jobs, environmental protection and economic performance. Mohr et al.[15] agree with this school of thought as they describe CSR as a commitment to mitigating negative impacts in society and increasing long-term benefits. The paper suggests for a governmental intervention in order to enhance the power of corporate social responsibility which involves creating awareness, soft law, fostering relationships, and instilling transparency to address the societal concerns in a serious way.

On the other hand, Batty et al.[16], consider CSR to be a voluntary obligation that is beyond the obligation to comply with regulatory norms. In addition to that, the JURI Committee of the European Parliament[17] also focuses on the role of CSR in the business world, which underlines the fact that the principles of Environmental, Social, and Governance (ESG) stimulate human rights-oriented practices and enhance transparency and sustainable finance. Governmental intervention must occur in order to enhance the power of corporate social responsibility. This also involves creating awareness, soft law, fostering relationships, and instilling transparency to address the societal concerns in a serious way.

This literature, read together demonstrates convergence and disagreement among scholars. Despite their doctrinal differences on how it should reach this end, Quinn, Tjio, Ortega and Zhou agree that the fiduciary duties of directors are increasingly being reoriented from a narrow shareholder wealth maximisation concept to a broader duty of care, which includes long-term, ESG-related risk. Finally, Biswas et al., Vig and Du et al. provide an empirical and governance approach to the evaluation of sustainability commitments, revealing how board composition, director networks and ethical leadership operationalize the sustainability commitment in practice, complementing more doctrinal assessments from Quinn and Tjio. A major area of disagreement among scholars is that while some see CSR and the stakeholder theory as a suitable ground for sustainability integration, like Wirba, Mohr et al., JURI Committee, others like Satapathy and Paltasingh believe that the voluntary CSR frameworks, including the

[14] Freeman, R. E. (1984). Strategic management: A stakeholder approach [M]. Boston: Pitman
[15] MOHR, LOIS & WEBB, DEBORAH & HARRIS, KATHERINE. (2005). Do Consumers Expect Companies to Be Socially Responsible? The Impact of Corporate Social Responsibility on Buying Behavior. Journal of Consumer Affairs. 35. 45 - 72. 10.1111/j.1745-6606.2001.tb00102.x.
[16] Batty, R. J., Cuskelly, G., & Toohey, K. (2016). Community sport events and CSR sponsorship: Examining the impacts of a public health agenda. Journal of Sport and Social Issues, 40(6), 1–20. https:// doi. org/ 10. 1177/ 01937 23516 673189
[17] JURI Committee moves Corporate Sustainability Due Diligence Directive in the right direction - Fern https://www.fern.org/publications-insight/juri-committee-moves-corporate-governance-due-diligence-directive-in-the-right-direction-2667/
Accessed on February 28, 2026

Companies Act compliance framework for India, are structurally incapable of delivering the qualitative, stakeholder-oriented results that sustainability requires. The entire set of these works creates two major shortcomings that are filled by the current study. First, although some scholars have discussed the evolution of fiduciary obligations in a general manner, the dynamics of this evolution through the text of Section 166 of the Companies Act, 2013 has been left largely underexplored and this makes the Indian doctrinal position rather weak. Second, the literature is largely theoretical about the failure of CSR, and citation of real-life examples of Indian corporate or ESG failure is missing, which this paper aims to fill in the analysis that follows.

ANALYSIS

The concept of best interests of the company is largely concerned with the duty of the directors to follow what they believe in good faith, to be in the best interests of the company. This is a responsibility that has maintained a consistent focus on the shareholders until the company approaches insolvency when the creditors must be considered. However, this traditional view has been criticized and revised particularly following the decisions like BTI v Sequana NA[18].Although BTI v Sequana was decided under UK company law, its reasoning is useful in interpreting duties of the directors because it demonstrates that the concept of the company's best interests extends beyond immediate shareholder profit and requires consideration of long-term corporate sustainability. This comparative approach supports a broader interpretation of Section 166(2) of the Companies Act, 2013. The evaluation of what constitutes the best interest of the company, particularly in the context of derivative actions, is approached from the standpoint of a hypothetical director, considering the overall benefits for shareholders.

Shareholder primacy is becoming an idea that is often seen as inadequate in terms of the modern corporate governance, namely because of its inherent flaws. The excessive focus on the immediate short-term gains at the cost of the long-term value creation is often the consequence of this model which focuses on maximisation of shareholder wealth. This tunnel vision can make directors choose to focus on the reported earnings in the short-run rather than making long-term investments that are economically beneficial to the company and the economy in general. Furthermore, deep-rooted shareholder primacy norm can foster a corporate culture prone to excessive risk-taking which has cost firms in the past both significant failures in

[18] BTI 2014 LLC v Sequana SA & Ors [2022] UKSC 25

corporations and economic losses. This trend can undermine the legal systems that emphasise various aims, leading to superficial implementation of compliance mechanisms or misrepresentation of sustainability, but not real transformation as the case of the Non-Financial Reporting Directive.

However, the Companies Act, 2013 adopts a broader approach than the traditional shareholder primacy model. Section 166(2) expressly requires directors to act in good faith while promoting the objects of the company and, at the same time, to consider the interests of employees, shareholders, the community and the environment. Therefore, the statutory language itself demonstrates that fiduciary duties of directors in India extend beyond maximising shareholder wealth and require a balanced consideration of wider stakeholder interests.

The conflict that ensues between the short-term interests of the shareholders and their long-term goals is a significant challenge. Shareholder primacy as a theory, which has grown popular in the past forty years, often leads to a focus on distributing monetary gains to the form of stockholders rather than investing such funds into long-term development projects. This trend creates an attitude that is typified by a sense of a disposable corporation. The existing shareholders may be concerned with the disclosures that increase share prices, and the potential shareholders rely on the revelation of bad news on time. This deviation implies that the current shareholders might not censure poor performance of the company, as long as the trading prices are high until they are ready to sell their shares. The lawsuit against Shell[19] can be viewed as a relevant case as it focused on future-oriented ESG demands that did not involve a direct financial loss. This case highlights the conflicting views by shareholders in relation to long-term management strategies.

The suggested reasonable shareholder standard is one of the possible solutions to the conflicts in question. The standard aims to reconcile the interests of the present with the future through a lens to direct the duties of the directors to the expectation of a hypothetical reasonable shareholder, and therefore reflect the fundamental principles of the ESG objectives. Similarly to the reasonable investor standard used in continuous disclosure, this approach offers the flexibility required to support the deals of different commercial transactions and the market expectations changing with time. This standard helps companies to find their way through

[19] ClientEarth v Shell Plc [2023] EWHC 1137 (Ch)

external limitations and helps them mend sustainable paths by directing directors to act in accordance with the expectations of reasonable shareholders.

The proper purpose rule is an operating principle that enhances sustainability-based decision making. It requires the directors to exercise their power in accordance with the purpose, which the company was established to achieve, channelling the resources to the right corporate objectives instead of just seeking short-term gains to shareholders. This principle can be used to manoeuvre situations where there exist divergent interests among various corporate stakeholders. Fiduciary powers are important especially where the decision to be made affects the constitutional balance between different groups of shareholders. An extensive proper purpose rule, which considers the interest of reasonable shareholders, can be recognised in subjects like the disclosure and ESG provisions. This means that this can be used to tie in the private law with regulatory systems in the promotion of sustainable corporate governance.

Majority companies are large in size and have a great political, social and economic impact. They are largely focused on the interests of shareholders and cannot efficiently address the urgent international problems like environmental crisis and violation of human rights. As a result, the traditional law and economics paradigm is not adequate to deal with the intricacies of the modern society.

Corporate Social Responsibility (CSR) has undoubtedly increased corporate engagement with social and environmental concerns. However, its predominantly voluntary and expenditure-oriented structure has limited its effectiveness in embedding sustainability within corporate decision-making. While CSR encourages socially responsible practices, it does not impose a continuing fiduciary obligation on directors to consider long-term environmental, social and governance (ESG) risks. Consequently, CSR operates as a complementary governance mechanism rather than a substitute for statutory duties of directors under Section 166 of the Companies Act, 2013. This demonstrates the need to shift sustainability from a voluntary compliance framework to an enforceable fiduciary obligation. Under this legal framework, ethical and ecological considerations are incorporated in fiduciary responsibilities, as opposed to being put on the periphery of corporate social responsibility as voluntary activities. In Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd.[20] the Supreme Court accepted a

[20] Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd. , AIRONLINE 2021 SC 179

broader interpretation emphasising that the long-term sustainability and interests of the stakeholders are critical elements of corporate governance.

This change is reflected in a more detailed interpretation of Section 166(2) in statute. A director must act in good faith, as a promoter of the objects of the company in the interests of the company as a whole, taking into account the interests of the shareholders, the community and the protection of the environment as well as the interests of the employees of the company. MK Ranjitsinh v. Union of India directly addressed this language, determining that Section 166(2) shifted the traditional role of a director to maximise shareholder value to a "broader" fiduciary duty that places the community and environment on equal footing with the members of the company.[21] That interpretation precludes any interpretation of Section 166(2) that ensures that environmental and community interests are secondary to shareholder interests, something that is not required under the UK Companies Act, 2006, Section 172, which will only be satisfied if acting in that way is likely to promote the success of the company for the benefit of its members. Indian courts have also interpreted the doctrinal content of the duties of the directors as a fiduciary beyond the four corners of Section 166. In Rajeev Saumitra v Neetu Singh, the Delhi High Court refused to accept Section 166 as a complete code and found that a director who has benefitted from a conflict between his interest and duty to the company will be required to account for such benefits, and relied on the approach of the Court of Appeal in England in Foster Bryant Surveying Ltd v Bryant to hold that a fiduciary duty of a director also includes duties of loyalty, good faith and to avoid conflict of interest.[22] These rulings taken together indicate that Section 166 provides a statutory foundation for an evolving fiduciary standard that does not just provide a tick-box compliance standard, but which also allows for a long term stakeholder and environmental perspective. This doctrinal premise is important in the context of the current research question, as it indicates that the expansion of the duties of the directors in relation to sustainability issues does not require any new law, but rather can be achieved, step by step, through judicial interpretation of the statutory text.

Recent examples of corporate and governance failure in India, where there was a facade of CSR and disclosure, show how inadequate CSR is as a stand-alone tool for sustainability integration. The collapse of Infrastructure Leasing & Financial Services (IL&FS) in 2018 in

[21] MK Ranjitsinh v. Union of India (2025), 2025 INSC 1472 (Writ Petition (Civil) No. 838 of 2019), interpreting Section 166(2) of the Companies Act, 2013 as displacing a narrow shareholder-maximisation conception of director duty.

[22] Rajeev Saumitra v. Neetu Singh & Ors., I.A. No. 17545/2015 in CS(OS) No. 2528/2015, Delhi High Court, Order dated 27 January 2016; Foster Bryant Surveying Ltd v Bryant [2007] EWCA Civ 200.

particular is instructive, notwithstanding, formal governance framework of IL&FS, weak oversight by the board, concentrated decision-making at the senior management level, and inadequate monitoring of risk, IL&FS was able to build up unsustainable levels of debt, leading to a default that threatened systemic contagion in financial and infrastructure sectors of India and ultimately required the Government of India to reconstitute its board[23]. As this demonstrates, CSR compliance on its own, and formal governance structures that do not reflect a meaningful fiduciary responsibility on the part of the manager for long-term and ESG-related risk, can prove to be inadequate to stop governance failure. A similar case is that of Vedanta Limited Sterlite Copper plant in Thoothukudi, Tamil Nadu, which was found to be in operation for more than two decades despite multiple environmental violations like an unauthorised sulphur dioxide leak and failure to meet conditions imposed by the pollution control board. In May 2018, the police killed twelve people and injured one person in the course of the protests, which continued for a long time, finally resulting in the Madras High Court in August 2020 affirming the closure of the plant on the basis that the Sterlite had been operating without proper environmental clearance for a significant period and had failed to comply with the green-belt and disclosure[24]. As pointed out, environmental non-compliance continued, despite the CSR spending and its articulation of sustainability goals, and was therefore further evidence that CSR spending cannot be equated with substantive sustainability performance, since the spending is not connected to any fiduciary responsibility to perform on environmental risk. Both episodes argue for enforceable director-level duties under company law for sustainability integration, as CSR is a voluntary and expenditure-based approach. These examples demonstrate that compliance with CSR obligations under Section 135 cannot substitute the broader fiduciary obligations imposed upon directors under Section 166.

With these limitations, it is crucial that the issue of sustainability should be officially incorporated in the role of directors, and not as an incidental part of the role. As argued by many[25], a significant step towards the transition between shareholder primacy and sustainable value creation requires the incorporation of sustainability directly into the company law

[23] Kukreja, G., Gupta, S., & Bhatia, M. (2021). The Failure of Corporate Governance at Infrastructure Leasing and Financial Services Limited: Lessons Learnt. South Asian Journal of Business and Management Cases, 10(1), 63-76. https://doi.org/10.1177/2277977921991897

[24] Vedanta Limited v. State of Tamil Nadu, Madras High Court, Order dated 18 August 2020 (W.P. Nos. 8248 & 33127 of 2018, upholding the closure of the Sterlite Copper plant, Thoothukudi); see also Vedanta Ltd. v. State of Tamil Nadu, Supreme Court of India, SLP(C) No. 010159 of 2020, Order dated 2 December 2020.

[25] Osuji, O.K. et al. (2023) ‘CSR, Directors and Top Management Officers: Responsibility and Accountability Pathways’, in Corporate Social Responsibility Across the Globe: Innovative Resolution of Regulatory and Governance Challenges. Cambridge: Cambridge University Press, pp. 99–131.

framework. This will require the creation of a new duty, which is defined objectively and is supported by the system of the state, not leaving its reliance on individual institutions. In addition, the directors are the ones who have the power to decide whether or not any actions are taken against them. Shareholder derivative actions are described by their high level of narrowness, the lack of direct financial benefits of the shareholders, and related expenses, which make them an ineffective way of enforcing it. Public enforcement on the other hand has the ability to enforce compliance to regulations even without direct economic returns thus facilitating the introduction of broader concerns such as sustainability into the equation. The imminent threat of social implementation, such as disqualification of directors, is an effective incentive that inspires directors to comply with emerging sustainability duties, thereby changing the managerial behavior. Additionally, the global problem of climate change is rather urgent, and legal frameworks should be created that are not limited to individual states. This is where global guidelines become necessary and the concerted action towards the implementation of the sustainability principles so that the impact that transcends the borders can be adequately tracked.

The perception of ESG risks has also changed where they are viewed as foreseeable financial problems that go beyond the ordinary definitions of social responsibility and is eventually becoming fundamental to the survival of corporations. Under German[26] law, there is a significant change of perception of the corporate interest. This legal structure reinvents corporate viability in terms of sustainable value generating and thus incorporates environmental stewardship and social responsibility as key elements of corporate being. According to the framework, climate exposure, supply-chain labor risks, and data-ethics gaps are some of the systemic threats that have financial implications, just like liquidity shortfalls. Ignoring material ESG information can be construed to flout the informed rule of the business judgement rule, based on the examples where it was recognised that food safety was central to the mission.

Since ESG risks constitute foreseeable business risks, the duty of care of the directors extends to establishing effective compliance and monitoring systems capable of identifying and managing such risks. According to the Caremark doctrine[27] formulated in the state of Delaware, the supervisory duty implies that directors must establish compliance systems that cover the

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[26] Mark Ortega, Finding a Core of Sustainability in Directors' and Officers' Fiduciary Duties, 34 *Duke Environmental Law & Policy Forum* 49-89 (2024)
Available at: https://scholarship.law.duke.edu/delpf/vol34/iss1/2

[27] In re Caremark International Inc. Derivative Litigation is 698 A.2d 959 (Del. Ch. 1996).

new areas of regulation, which are carbon regulation and supply-chain due diligence, and make sure that the compliance systems are actively operated and incorporated into the corporate strategy. Such proactive monitoring ensures that the directors do not just participate in the decision-making process but also in monitoring the operations of the company, which leads to sustainability in the long run.

Best management of ESG risks requires formulation of good governance frameworks. These encompass the establishment of special purpose committees, establishment of comprehensive information platforms as well as standardisation of incentives to make the committees accountable and responsive. To achieve their increased care responsibility, the directors must put concerns about staying informed and participating in training on ESG issues first. It includes the use of information pipelines, which will draw attention to the problems and then discuss them with the board, and thus avoid conscious decisions to ignore substantial risks. To ensure that there exists effective oversight, it is critical to put in place a remuneration framework that ties a quantifiable portion of executive compensation with plausible ESG measurements, which are aligned to the creation of long-term value.

Different jurisdictions are increasingly integrating sustainability in the mandate of directors but at varying approaches. The Indian legal system has been limited in a forming a comprehensive legal framework or corporate environment disclosure regulations in the country, since disclosures have hitherto been voluntary in India. Most recently, the Securities and Exchange Board of India (SEBI) that regulates the capital market has issued a directive that mandates leading 1000 listed companies to state information on environmental, social, and governance (ESG) factors on an annual basis. It was expected to ensure that ESG disclosures are consistent and measurable hence improving the comparative powers against companies that operate in the same industry. This is in stark contrast to the previous ideology wherein in most cases the developed economies required the company to publish information on environmental and social factors. According to the Companies Act, 2013, annual reports are required to include a Board of Directors report on energy conservation as well as report on the opportunities, threats, and risks, but without specifically considering environmental viewpoints.

The difference between the framing of sustainability as the duty of care and the duty of loyalty is not explicitly stated in the given text. Nevertheless, it indirectly conforms to the duty of care, because it emphasises the responsibility of the board of management to monitor and disclose the risks to the environment. The values of the stakeholder-agency theory adopted in this study explain the board of directors as an essential governance tool that monitors the managerial activities to make sure that they are consistent with the interests of the stakeholders. This implies the need to consider broader impacts that are not just limited to profit by shareholders. The role of the board includes proper oversight of the environmental risks and providing a full disclosure of the risk of the investors and other stakeholders. Environmental disclosures are an important tool of communication of companies to stakeholders and their households in meeting their commitments towards the environment. It is an activity that evidences a broader requirement of a duty of care that is not merely limited to the need to make financial gains.

Governance regimes are important in getting compliance as they use various mechanisms but focus specifically on the nature of the board and board processes. The board traits that influence the environmental disclosures include the board independence aspects as well as the dual role of the chairman and the CEO. An increased number of independent directors is associated with a high degree of voluntary environmental disclosed information. The absence of the difference between the functions of the chairman and CEO positively influences the disclosure of environmental matters. Board regulations, such as frequency and attendance of the meetings, separate meetings of the independent directors and the orientation and continuous education programmes of the board members are crucial in making the board more effective in general.[28] The internal processes involved, including the board of directors and other board committees play the important role of making sure that the managers consider the interest of all stakeholders.

The independent directors are considered to be one of the most important elements of internal corporate governance that are expected to control the management and protect the interests of the stakeholders. To improve their role, it is possible to offer them training and opportunities to improve their skills, which will help to monitor and disclose information easier. According to the Indian Companies Act 2013, an independent director has to conduct separate meetings which should not be in the presence of executive or non-independent directors. This is aimed at increasing their involvement and spreading more responsibility and power to them. This provision enhances their ability to act as a checkpoint to the managerial decisions on issues to do with the environment. Further, board development processes including selection, recruitment, training and orientation are very significant in building a strong and effective board. Aggregation of these actions creates a framework, which helps direct to fulfil their

[28] Vig, Shinu. (2023). Environmental disclosures by Indian companies: role of board characteristics and board

requirements in regard to environmental disclosures and sustainability. Also, it provides some level of defence in terms of clear mandates and enhanced capacity.

Compliance with statutory requirements alone does not ensure sustainable corporate governance.[29] Although laws are used to define the basic ethical principles in the business environment, an ethical and sustainable conduct require a commitment, which is beyond regulatory compliance. Even though there is a plethora of laws that ensure these fundamental guidelines, the development of comprehensive ethical codes and practises strongly depends on the leadership in organisations to go beyond compliance with the law. Ethical dilemmas often arise when a certain choice or action is oppositioned to the ethical norms which are practised in a certain organisation or society. Such disagreement may lead to cases of non-compliance even where there is already set up legislation. In addition, one of the major challenges, particularly in India, is that ethical values are not developed or instilled in the various organisations, including learning institutions, consultancy firms and business corporations. This indicates that a progressive ethical culture cannot be developed by simply following the required legal standard.

Beyond statutory duties, effective implementation of sustainability also depends upon ethical leadership within corporate governance. The board workings and availability of ethical leadership play a critical role during the incorporation of sustainability. They establish the ethical tone, inculcate integrity and ensure accountability within the organization. The leadership factor plays a vital role in developing an ethical culture whereby businesses carry out their activities in a responsible way. By leading the corporate agendas with a powerful and influential but ethical leadership, it will help in developing a culture of integrity among the employees and develop a sense of trust with critical stakeholders, such as the investors and consumers. Accountability is another important aspect as it helps in understanding that there is a need to be answerable to actions, decisions, and policy-making and transparency to the operations which are open to scrutiny by the general population. Thus, even though laws provide a basis, the commitment of leadership to develop codes of ethics that goes beyond legal mandates is what develops a greater adherence to sustainability and responsible business practises.

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[29] Aleixo, A. M., Leal, S., & Azeiteiro, U. M. (2018). Conceptualization of Sustainable Higher Education Institutions, Roles, Barriers, and Challenges for Sustainability: An Exploratory Study in Portugal. Journal of Cleaner Production, 172, 1664-1673.
https://doi.org/10.1016/j.jclepro.2016.11.010

However, corporate social responsibility (CSR) expenditure alone has not been effective in promoting sustainability because many initiatives remain poorly designed and inadequately aligned with stakeholder needs. The limited involvement of affected communities during the formulation and implementation of CSR policies often reduces their effectiveness. Moreover, an excessive emphasis on financial expenditure rather than measurable social and environmental outcomes undermines the long-term impact of CSR initiatives.

The CSR framework under the Companies Act, 2013 continues to face structural limitations, particularly the absence of effective stakeholder consultation and robust mechanisms for assessing the actual impact of CSR initiatives. Limited engagement with beneficiary communities often weakens the effectiveness of corporate interventions, while inadequate disclosure and reporting mechanisms reduce transparency and accountability.

It is the call to the directors to transform the role as a manager of the CSR spending into a more holistic way of governing a company. This is a necessary change because a purely financial delivery is often not enough to achieve true social and economic growth. In the post globalisation era, businesses have no choice but to protect the interests of all stakeholders and not just the shareholders. This change points towards the need to have accountability and transparency in their operational structures. To be truly effective in Corporate Social Responsibility, the Corporate Social Responsibility must be incorporated into a sustainable business strategy. This plan must be able to produce a harmonious relationship between financial performance and sustainability with the focus on interrelated concepts of people, planet and profit. To have a transformative effect instead of the transactional effect, CSR should be strongly incorporated into management operations of the enterprise. It is the task of directors to make certain that the policies addressing corporate social responsibility are carefully developed and that they encourage sustainable business conduct and safeguard economic, environmental, and social concerns in an overall manner. This includes the adoption of a participatory and people-oriented approach which can be used to address developmental issues successfully.

Until now, the support of governments on corporate social responsibility in most of the developing countries is low and not united in terms of policy and there is no well-organised structure which can promote its development. The fact that companies can successfully carry out their corporate social responsibility plans without government interference is a big challenge. This tends to lead to lack of transparency and allows the people in authority to enjoy the fruits of the CSR resources, instead of steering such resources to the local communities who are actually the beneficiaries. The perception of CSR as a purely philanthropic activity, and not as a tool of promoting sustainable development, limits its responsibility and limits its effectiveness.

Inclusion of stakeholder governance in fiduciary relationships is crucial in improving corporate responsibility. Governments should become more proactive in promoting corporate social responsibility. This includes the shift of voluntary encouragement to the setting of soft laws, regulations and financial incentives that compel corporations to operate with their neighbourhoods. This involves the setting up of minimum performance criterion of businesses, advancement of the corporate social responsibility agenda, partnership with various sectors, and recognition of best practises. It is aimed that corporate social responsibility should be part and parcel of the business operations with the environmental, social, and governance principles playing a pivotal role in determining corporate purpose. This includes the advancement of due diligence in the supply chains, protection of human rights, promotion of transparency and promotion of sustainable finance. These broader social obligations incorporated into fiduciary obligations would require directors to consider the interests of all stakeholders. This will provide assurance that corporate social responsibility practises go beyond voluntary practises and become critical elements of sustainable development that eventually lead to the communities and the society at large.

The directors play an important role in shaping the performance of corporations in environmental matters and compliance maintenance, and it is enhanced by an inhibitory learning process.[30] This may be the case when firms that are interconnected via director interlocks note the environmental fines imposed to other firms in the network. This finding pushes focal firms to take remedial actions especially in cases where the directors possess informational advantages or experience in environmental settings and thus enhance their ability to process and act on information about environmental punishment. The measures that have been taken include improvement of environmental investments, increased concern of environmental issues, refining of management practise, and cutting of pollution emission. The greater awareness of the potential consequences of non-compliance that are being enhanced by

[30] Okoye, Adaeze. (2019). CSR and a Capabilities Approach to Development: CSR Laws as an Allocative Device?. 10.1017/9781108579360.005.

the existence of director interlocks motivates companies to adopt proactive measures and enhance their environmental governance.

The independence of the directors in sustainability oversight is of utmost significance, due to their vast external networks and informational benefits they have. The availability of important information on environmental penalties increases their sensitivity on ecological issues. Directors possessing expertise in environmental governance are better equipped to identify material ESG risks, assess potential regulatory liabilities, and communicate these risks effectively to the board. This highlights the urgent concern over the need to counter and curb the violations of the environment. Timely use of regulatory information strengthens organisational compliance systems and reduces future environmental violations.

Effective sustainability governance, which is embodied by the dedication of responsible directors and emphasis on inhibitory learning, is important to alleviate financial risk as well as reputational risk experienced by the firms. Environmental fines especially the related emissions are often followed by huge fines, legal costs and operational disruptions all of which may severely impact the financial performance of a company. By actively decreasing the emission levels and improving the environmental management processes, the companies optimally control these immediate expenses. The occurrence of the information of penalty matches as a stimulus to the firms to focus on investments on the environment, hence, reducing the likelihood of incurring fines and avoidance of increasing costs. Additionally, increased monitoring by the directors helps in building the image of responsible and effective custodians, thus increasing the market worth of the firm and protecting the image of a firm against damages caused by environmental irresponsibility. This is a proactive measure that ensures that environmental regulations are adhered to as well as creating an image that the organisation is fully dedicated to environmental responsibility.

CONCLUSION

The paper proves how sustainability in corporate governance is no longer just the compliance-driven CSR concept under Section 135 of the CA 2013. Sustainability in corporate governance is now well beyond the CSR concept under the CA 2013. The paper proves this by interpreting Section 166(2) of the CA 2013 as a legal obligation for directors to consider the long-term consequences of corporate decisions. Directors must now consider environmental, social, and governance (ESG) factors in their duty of care. These developments are in accordance with stakeholder theory and the reasonable shareholder doctrine.

Research proves that ESG factors are the real financial risks companies must consider. Failure to comply with ESG considerations may result in a breach of the duty of care in accordance with the Caremark doctrine and the rules of reasonable purpose. Further research proves how the amendments in corporate law, such as the SEBI BRSR initiative, also support ESG reporting requirements. To further solidify the importance of sustainability in corporate governance in the Indian context, the paper also makes recommendations such as the addition of a sustainability duty in the CA 2013, enhancing the power of public enforcement through disqualification of directors who fail to comply with ESG considerations, and the standardization of ESG reporting to prevent greenwashing. Improving the capabilities of boards through ESG education and the creation of best practice toolkits for different industries are also recommended. Further research should focus on the financial implications of integrated sustainability practices in the Indian context and further perfect the reasonable shareholder standard.

SUGGESTIONS

1. Codify a new "Sustainability Duty." Revise Section 166(2) of the Companies Act. The revised section shall require directors to consider the long-term environmental, social, and governance impacts while discharging their fiduciary duties. By incorporating sustainability into a legal framework, it becomes a normative requirement as opposed to a voluntary activity under corporate social responsibility (CSR).

2. Impose penalties for non-compliance with ESG. Authorize the Securities Exchange Board of India (SEBI) and the Ministry of Corporate Affairs (MCA) to disqualify directors or impose civil penalties for non-compliance with ESG. The imposition of penalties is likely to act as a deterrent and reinforce the sustainability duty.

3. Implement a uniform framework for ESG disclosure. Mandate all listed companies to disclose their ESG information using a single reporting form that is aligned with the Business Responsibility and Sustainability Report (BRSR) framework proposed by SEBI. The uniformity of ESG disclosure shall help instill greater confidence among investors and reduce the incidence of greenwashing.

4. Make ESG education compulsory for directors. Mandate every director, including independent directors, to undergo an accredited ESG course every year and present certification

with their returns. The objective is to ensure that boards are equipped with requisite knowledge to discharge their sustainability duties.

5. Establish dedicated sustainability committees. The government shall require each of the aforementioned companies to establish a sustainability committee. The committee shall be headed by an independent director. The charter of the committee shall specify ESG strategy oversight, risk management, and performance monitoring. This shall ensure prioritization of sustainability at the board level.

6. Develop sector-specific ESG toolkits. The government shall publish best practice manuals for different sectors of industry. This shall be particularly relevant for sectors such as manufacturing, information technology, and pharmaceuticals. This shall ensure the translation of ESG goals and objectives into actionable items.

7. Fund research on ESG financial impacts. The government shall provide government/SEBI-sponsored research grants for studies that assess the financial impact of integrated ESG practices. This shall be particularly relevant in assessing the 'reasonable shareholder' test. The financial impact of ESG shall be a vital factor in policy reforms in the future.

8. Strengthen monitoring and whistleblower mechanisms. The government shall enhance SEBI and MCA surveillance. The government shall ensure that whistleblower policies for ESG-related issues are in place. This shall ensure that sustainability obligations are not just stated but monitored.

These eight measures collectively elevate the status of sustainability from a secondary CSR addition to a directors duty, bringing Indian corporate governance in line with the rest of the world and embedding long-term ESG considerations into the decision-making process.

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