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## CORPORATE GOVERNANCE AND DIRECTORS' FIDUCIARY DUTIES IN INDIA: A COMPARATIVE ANALYSIS UNDER THE COMPANIES ACT, 2013

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### ABSTRACT

*Corporate governance has become a critical element of contemporary corporate law, especially in countries experiencing fast economic growth and growing numbers of investors. The passing of the Companies Act, 2013, in India has marked the transition from the traditionally prevalent compliance-based legal framework into a governance-oriented one, focusing on accountability, transparency, and fiduciary principles. This work provides a critical examination of the idea of corporate governance and fiduciary duties in India under the Companies Act, 2013, highlighting Sections 149 and 166, among others. The analysis looks into the development of duties of directors based on common law traditions and their implementation in Indian corporate law. Besides, the paper compares Indian legislation in terms of corporate governance with the United Kingdom and the United States and examines the gaps in the legislative framework. Moreover, judicial interpretation, independent directors' roles and responsibilities, and enforcement of corporate law in India and abroad are addressed in order to examine how effectively corporate law functions in India. Based on the findings obtained, it is concluded that while the Companies Act, 2013 has made significant contributions to governance principles, there is still much room for improvement.*

**Keywords:** *Corporate Governance, Fiduciary Duties, Companies Act, 2013, Directors' Duties, Independent Directors, Comparative Corporate Law.*

### INTRODUCTION

The concept of corporate governance has assumed great importance in recent times due to the growing complexity of business, globalised financial markets, and the separation of ownership from management. Corporate governance, in general, means the way in which a business is governed. It includes the relationships between the company's owners and the board of

directors, management, and other stakeholders.<sup>1</sup> It establishes the framework of relationships between shareholders, directors, management, and stakeholders while ensuring accountability, transparency, and ethical corporate conduct.

The importance of corporate governance grew substantially after some of the most notable cases of corporate scandals around the globe, like Enron, WorldCom, and Lehman Brothers. These events highlighted the problems associated with ineffective governance practices, auditing, and disclosure of financial statements. The negative effects on the confidence of investors were substantial.<sup>2</sup> Therefore, more rigorous governance rules and higher fiduciary duties have been implemented worldwide.

The development of corporate governance in India started post-economic liberalisation in the 1990s. The inclusion of the Indian economy within the larger world economy necessitated the use of corporate governance norms that were accepted on a global scale. Before then, the Indian Companies Act of 1956 was largely procedural in nature and had very little statutory recognition of the duties of directors.<sup>3</sup> Most fiduciary obligations were derived from common law principles and judicial interpretation.

The shortcomings of the earlier model were brought into sharp focus following the Satyam Computer Services scandal in 2009 that revealed major instances of financial fraud and poor oversight on the part of the company's board as well as its independent directors.<sup>4</sup> Such cases clearly indicated the need for a new governance model that could bring in some level of accountability and curb any potential misuse of managerial power. In response, the Companies Act, 2013, introduced significant reforms intended to strengthen corporate governance standards in India.

The codification of fiduciary duties of directors as per Section 166 of the Companies Act, 2013, is one of the most significant highlights of this law.<sup>5</sup> It mandates the directors to be honest, careful, diligent, and prudent while avoiding any conflict of interest. The statute has brought many governance mechanisms, such as the introduction of independent directors, an audit committee, increased disclosures, class actions, and corporate social responsibility.

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<sup>1</sup> Organisation for Economic Co-operation and Development (OECD), *G20/OECD Principles of Corporate Governance* (OECD Publishing 2015).

<sup>2</sup> John C. Coffee Jr., *Gatekeepers: The Professions and Corporate Governance* (Oxford University Press 2006).

<sup>3</sup> Companies Act, No. 1 of 1956, Acts of Parliament, 1956 (India).

<sup>4</sup> Ministry of Corporate Affairs, *Report on Corporate Governance and the Satyam Scandal* (2010).

<sup>5</sup> Companies Act, No. 18 of 2013, § 166, Acts of Parliament, 2013 (India).

Directors have a pivotal role in corporate governance since they have significant influence over the operations of the company and its management decisions. Thus, fiduciary duties act as legal requirements that are meant to ensure that the directors do not abuse their power by ensuring they conduct themselves in a responsible manner.<sup>6</sup> These duties include obligations relating to loyalty, good faith, reasonable care, independent judgment, and avoidance of personal conflicts.

Corporate governance in India follows an integrated system where, apart from the protection of the interests of shareholders, the interests of the stakeholders as a whole are also kept in mind. Contrary to the shareholder-focused approach adopted in many countries, the Companies Act, 2013 mandates that the directors have regard to their employees, public welfare, and environment while performing their duties.<sup>7</sup> This demonstrates the gradual transition of Indian corporate law towards a stakeholder-oriented governance structure.

However, despite these developments, certain problems persist that hinder the effective implementation of governance norms in India. Concerns such as promoter control, lack of board autonomy, ineffective enforcement measures, and overlapping regulatory frameworks continue to hinder the process of ensuring adequate corporate accountability. Moreover, there are still concerns about whether the legal obligations stipulated in Section 166 could adequately address corporate malpractices and safeguard minority stakeholders.

In this context, the present research seeks to analyse the concept of corporate governance and the fiduciary responsibilities of the directors under the Companies Act, 2013. This paper attempts to study the statutory framework governing the responsibility of directors, analyse the new governance measures adopted under the Act, and provide a comparative analysis of governance measures in the UK and the US.

## **CONCEPTUAL FRAMEWORK OF CORPORATE GOVERNANCE AND FIDUCIARY DUTIES**

Good corporate governance is based on the fundamental premise that the power of business enterprises should be used responsibly. In contemporary corporations, there exists a separation between ownership and management, which results in a situation where the management wields considerable influence in decision-making on behalf of the owners.<sup>8</sup> Such a situation

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<sup>6</sup> *Official Liquidator v. P.A. Tendolkar*, AIR 1973 SC 1104.

<sup>7</sup> Companies Act, 2013, § 166(2).

<sup>8</sup> Adolf A. Berle & Gardiner C. Means, *The Modern Corporation and Private Property* (Transaction Publishers 1932).

creates opportunities for abuse of power and management opportunism, and hence the need for good corporate governance practices.

It is generally accepted that the theory underlying corporate governance is mainly the agency theory. Under agency theory, the owners of the corporation (shareholders) are referred to as the principals, while the directors and management of the company are termed the agents who are responsible for managing corporate assets.<sup>9</sup> Managers can be interested in acting in their own best interests and not that of the corporation; hence, systems are put in place to control their actions.<sup>10</sup> Mechanisms such as independent directors, disclosure requirements, audit committees, and fiduciary obligations operate to supervise managerial conduct and protect shareholder interests.

In contrast, however, more recent governance theories have started moving away from a pure shareholder-based approach to governance. According to stakeholder theory, organisations have duties not just to their shareholders but also to their workers, creditors, customers, and society as a whole.<sup>11</sup> In this approach, corporate directors must ensure the balancing of conflicting demands and the continued growth of the organisation in a sustainable manner.

The Companies Act, 2013, has included the stakeholder principles in the company laws of India in a major way. The provision contained in Section 166(2), which clearly mandates the directors to act for the benefit of employees, shareholders, communities, and environmental protection, can be cited as an example.<sup>12</sup> Likewise, the inclusion of CSR provisions in Section 135 is yet another step.<sup>13</sup>

At the heart of corporate governance is the principle of fiduciary duties. “Fiduciary” refers to a situation of trust and confidence in which the person holding the position is under a legal obligation to represent another party’s interest.<sup>14</sup> Directors are considered fiduciaries due to their power to use the corporate authority and handle the corporation’s money, assets, and other important decisions. Fiduciary duties play a vital role in preventing the abuse of managerial power.

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<sup>9</sup> Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure*, 3 J. Fin. Econ. 305 (1976).

<sup>10</sup> Id.

<sup>11</sup> R. Edward Freeman, *Strategic Management: A Stakeholder Approach* (Pitman Publishing, 1984).

<sup>12</sup> Companies Act, No. 18 of 2013, § 166(2), Acts of Parliament, 2013 (India).

<sup>13</sup> Companies Act, 2013, § 135.

<sup>14</sup> Paul L. Davies & Sarah Worthington, *Gower’s Principles of Modern Company Law* (10th ed., Sweet & Maxwell 2016).

The concept of directors' fiduciary duties is an evolution of common law and equitable principles arising out of the English corporate law.<sup>15</sup> The courts would generally characterise directors as trustees or agents of the corporation and make them subject to duties of good faith, honesty, and loyalty. These principles gradually evolved into modern statutory obligations governing corporate conduct.

Fiduciary duties of the board of directors usually include good faith, due care and diligence, avoiding conflicts of interest, and making independent judgments.<sup>16</sup> The duty of good faith involves ensuring that the directors work in good faith and serve the best interests of the company. The duty of care involves ensuring that the directors use their skills and diligence to make informed decisions when handling company matters. Conflicts of interest between personal and business interests must be avoided.

One such principle is the no conflict of interest doctrine. The board should not use company assets for its benefit or engage in any self-dealing practices.<sup>17</sup> Another duty that the board members owe to the organisation is that of independent judgment. Board members should be able to exercise independent judgment in decision-making without any undue pressure. These obligations collectively ensure that corporate powers are exercised responsibly and ethically.

Another major landmark in the development of Indian company law is the Companies Act, 2013.<sup>18</sup> Fiduciary obligations were previously derived from the case laws before the passing of this Act. In codifying the fiduciary obligations of the directors in Section 166 of the Act. The Act has introduced another milestone in Indian company law.

The governance structure within the 2013 Act is also characterised by the dual approach of considering the interests of the shareholders along with those of the stakeholders. Whereas the act strives to increase confidence and transparency in financial dealings, it equally considers the social aspect of the organisations as well. This dual perspective is what differentiates Indian governance from shareholder-only models.

However, the application of fiduciary duties remains problematic. The problems associated with promoter domination, lack of board independence, ineffective enforcement, and inadequate regulatory oversight often result in the deterioration of governance practices in

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<sup>15</sup> *Percival v. Wright*, [1902] 2 Ch 421 (UK).

<sup>16</sup> Companies Act, 2013, § 166.

<sup>17</sup> *Aberdeen Ry. Co. v. Blaikie Bros.*, (1854) 1 Macq 461 (HL).

<sup>18</sup> Companies Act, 2013, § 166.

Indian companies. In addition, the role played by independent directors, as well as their effectiveness in preventing corporate wrongdoings, may be questioned.

Thus, it is crucial to comprehend the theoretical background of corporate governance and fiduciary duties when studying the Companies Act of 2013. The connection between the two concepts plays an important role in developing a sustainable regulation system in Indian companies.

### **STATUTORY FRAMEWORK OF CORPORATE GOVERNANCE UNDER THE COMPANIES ACT, 2013**

The Companies Act of 2013 is an all-encompassing legal framework that was designed with the objective of bolstering the governance, transparency, and accountability mechanisms within Indian companies.<sup>19</sup> This Act was enacted to replace the previous Companies Act of 1956, which represented a notable shift from a compliance-based regime to a governance-based system. The passage of this law was heavily influenced by the growing instances of corporate fraud, poor disclosure policies, and governance failures exemplified by cases like Satyam.

The second aspect of the Companies Act, 2013, is the reform of board governance. Under Section 149, provisions have been made for the composition of the Board of Directors and the nomination of independent directors in certain categories of firms.<sup>20</sup> Independent directors are expected to serve as objective controllers who can hold others accountable, minimise promoter control, and safeguard the rights of small stockholders. In addition, the Companies Act, 2013, made provisions for the appointment of female directors in certain firms.

The law further enhances governance by having specialised committees like the Audit Committee, Nomination and Remuneration Committee, and Stakeholders Relationship Committee.<sup>21</sup> Committees enhance internal control and make for better supervision of accounting, remuneration of managers, shareholder complaints, and risk management systems. Of all the committees mentioned above, the Audit Committee is of utmost importance since it oversees accounting, internal control, and the independence of the auditor.

One important reform that was introduced by the Companies Act, 2013, is the codification of directors' duties through Section 166.<sup>22</sup> Before the passing of this law, the duties of the directors were generally determined based on common law rules and case law precedent. Under Section

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<sup>19</sup> Companies Act, No. 18 of 2013, Acts of Parliament, 2013 (India).

<sup>20</sup> Companies Act, 2013, § 149.

<sup>21</sup> Companies Act, 2013, §§ 177–178.

<sup>22</sup> Companies Act, 2013, § 166.

166, directors have been mandated to act in good faith, exercise reasonable care and diligence, not engage in any conflict of interest, and not earn any undue gains through the misappropriation of their positions.<sup>23</sup> They are also expected to take into account the interests of the employees, stakeholders, society, and the environment in the performance of their duties.

In addition, there are stricter disclosure and accountability rules for the companies. For example, corporations have to provide financial statements that accurately reflect their activities, keep proper accounting records, and report all the necessary details concerning board reporting, executive compensation, and related party transactions.<sup>24</sup> Such disclosures will allow shareholders and regulatory bodies to better assess corporate performance.

Another significant issue regarding the governance structure is the regulation of related party dealings as per Section 188.<sup>25</sup> Related party transactions present avenues for conflict of interest and potential misappropriation of organisational assets, especially in firms where promoters have significant influence. Thus, it mandates that certain transactions be reported and approved by the board or the shareholders of the firm.

The Companies Act of 2013 has introduced new measures to enhance protection for minority shareholders. The remedies provided under Sections 241 and 242 include those related to oppression and mismanagement where there is misconduct of the company in such a way that it becomes prejudicial to the interest of the general public or the shareholders.<sup>26</sup> Further, the concept of class actions is introduced through Section 245, which authorises the collective action of the shareholders or depositors against the management.<sup>27</sup>

The inclusion of corporate social responsibility (CSR) requirements through Section 135 is yet another unique aspect of the 2013 Act.<sup>28</sup> The eligible firms are mandated to create CSR committees and spend a certain percentage of their earnings in educational, healthcare, environmental, and social sectors. This demonstrates an insight by lawmakers into the fact that there exist social obligations of the corporates that transcend mere profit-making and shareholding return expectations.

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<sup>23</sup> Id.

<sup>24</sup> Companies Act, 2013, §§ 129–134.

<sup>25</sup> Companies Act, 2013, § 188.

<sup>26</sup> Companies Act, 2013, §§ 241–242.

<sup>27</sup> Companies Act, 2013, § 245.

<sup>28</sup> Companies Act, 2013, § 135.

In addition to the Companies Act, there is another statutory body, the Securities and Exchange Board of India (SEBI), which governs the corporate world in India. The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 lay down many such principles of governance concerning board structure, independent directors, disclosure requirements, related party transactions, and risk management.<sup>29</sup> These regulations supplement the Companies Act and serve an important purpose in governing listed companies.

Consequently, the Companies Act, 2013 creates an intricate system of governance incorporating elements such as trust responsibility, transparency, board autonomy, stakeholder protection, and regulation. While the Companies Act, 2013, marks an impressive step forward for corporate governance in India, there remain numerous obstacles to overcome in its execution.

### **COMPARATIVE ANALYSIS OF CORPORATE GOVERNANCE AND FIDUCIARY DUTIES: INDIA, UNITED KINGDOM, AND UNITED STATES**

The governance systems adopted by various countries vary based on the legal system, nature of ownership, regulatory system, and economic considerations of that country. Even though all three countries viz., India, the UK, and the USA have a similar common law background, the way each of them treats the role of directors and governance laws varies to a great extent. Thus, it is necessary to carry out a comparative study among all three countries.

The United Kingdom's corporate governance system is based on principles that include board responsibility, shareholder protection, and management transparency. According to the Companies Act of the United Kingdom 2006, the duties of the directors and their responsibilities to act in good faith, exercise reasonable care, act independently, and avoid conflict of interest are defined.<sup>30</sup> Of importance in the UK Companies Act is Section 172, which stipulates that directors should ensure that the business of the organisation succeeds and takes into account its employees, suppliers, communities, and environment.<sup>31</sup>

Another aspect that affects the practice of corporate governance in the UK is the UK Corporate Governance Code. The code is based on the principle of "comply or explain." This principle requires listed corporations to comply with the standards of corporate governance or provide

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<sup>29</sup> Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

<sup>30</sup> Companies Act 2006, c. 46 (UK).

<sup>31</sup> Id. § 172.

explanations of why they fail to do so.<sup>32</sup> The independence of directors, committee structures, and reporting requirements constitute key elements of corporate governance in the UK.

However, the United States utilises a comparatively more shareholder and market-oriented system. The primary emphasis of corporate governance in the United States is on the maximisation of shareholder value, manager accountability, and financial disclosure.<sup>33</sup> Fiduciary obligations in the United States are regulated mainly by state corporate law, especially Delaware corporate law.<sup>34</sup> Managers have fiduciary duties to exercise reasonable care and act in good faith for the benefit of the company and its shareholders.

Regulations related to governance have been tightened considerably in the US following corporate scandals like those at Enron and WorldCom because of the passage of the Sarbanes-Oxley Act of 2002.<sup>35</sup> These regulations involved stringent financial disclosures, greater auditor independence, accountability on the part of executives, and punishments for any form of fraud. Regulator involvement is also significant as far as the Securities and Exchange Commission (SEC) is concerned.

The corporate governance system in India is a blend of characteristics of the British model and the American model. Like the UK Companies Act, the Companies Act of 2013 provides for the duty of directors under Section 166.<sup>36</sup> This section includes duties regarding honesty, exercise of due care, absence of conflict of interest, and independent judgment. However, unlike the traditional shareholder primacy principle, the Indian system extends its scope by including consideration of the interests of employees, social welfare, and environmental protection.<sup>37</sup>

In contrast to the “comply or explain” regime in the United Kingdom, India favours a more stringent regulatory framework, which is based on statutes and SEBI regulations.<sup>38</sup> The Companies Act, 2013, lays down mandatory provisions for corporate governance, which include the appointment of independent directors, the establishment of audit committees, and approvals of related-party transactions and CSR activities.<sup>39</sup> This reflects the Indian legislature’s preference for stronger statutory intervention in corporate governance.

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<sup>32</sup> Financial Reporting Council, *UK Corporate Governance Code* (2018).

<sup>33</sup> Stephen M. Bainbridge, *Corporate Governance after the Financial Crisis* (Oxford University Press, 2012).

<sup>34</sup> *Aronson v. Lewis*, 473 A.2d 805 (Del. 1984).

<sup>35</sup> Sarbanes–Oxley Act of 2002, Pub. L. No. 107–204, 116 Stat. 745.

<sup>36</sup> Companies Act, No. 18 of 2013, § 166, Acts of Parliament, 2013 (India).

<sup>37</sup> Companies Act, 2013, § 166(2).

<sup>38</sup> Companies Act, 2013, §§ 135, 149, 177, 188.

<sup>39</sup> Adolf A. Berle & Gardiner C. Means, *The Modern Corporation and Private Property* (Transaction Publishers 1932).

Ownership pattern is another key difference between American/UK firms and Indian firms. Firms in America and the UK have ownership patterns where management and ownership are distinct. Ownership is usually concentrated and promoter-dominated in Indian firms. Minority shareholders' rights issues, conflict of interest problems, and lack of independence of the Board of Directors form a big chunk of corporate governance issues in India.<sup>40</sup>

There is a divergence in the duties performed by independent directors in different countries as well. While in the UK and US, independent directors act as monitoring mechanisms that ensure managers' accountability and investors' confidence, in India, independent directors not only monitor the managers but also protect minority interests from promoters' influence.<sup>41</sup> Nevertheless, the independence of independent directors remains a subject of criticism.

India is different from both cases in that the mandatory Corporate Social Responsibility requirements have been integrated into the Companies Act, 2013, Section 135.<sup>42</sup> While neither the UK nor the USA mandates such requirements for corporate social responsibility spending, India's method takes greater account of the well-being of stakeholders in corporate governance.

Even with these variations, all three regimes acknowledge the significance of fiduciary responsibilities, corporate governance, financial reporting, and the protection of investors. Nonetheless, the success of governance systems lies in their enforcement procedures, regulatory oversight, legal interpretation, and institutional accountability.

As seen from the above analysis, the Indian corporate governance structure through the Companies Act, 2013, has been greatly modernised by embracing the international corporate governance norms. Despite this, issues like promoters' control, poor compliance, overlapping regulations, and ineffective board independence have continued to hinder the effectiveness of corporate governance reforms in India. This shows that although the Indian corporate governance structure is highly developed legally, there is still a need for better institutional enforcement.

## **JUDICIAL TRENDS AND CONTEMPORARY CORPORATE GOVERNANCE CHALLENGES**

Interpretation of the law by the judiciary has been an important factor in defining the principles of corporate governance and directors' fiduciary duties in India. Indeed, even before the

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<sup>40</sup> Afra Afsharipour, Corporate Governance Convergence: Lessons from the Indian Experience, 29 Nw. J. Int'l L. & Bus. 335 (2009).

<sup>41</sup> Umakanth Varottil, Independent Directors and Corporate Governance in India, 6 Indian J. Corp. L. 45 (2019).

<sup>42</sup> Companies Act, 2013, § 135.

enactment of the Companies Act, 2013, which provided for codifying the duties of directors, the judiciary in India has extensively applied common law principles in deciding the issue of fiduciary duties and standards of business conduct. Judicial decisions continue to influence the interpretation of Section 166 and other governance provisions under the Companies Act, 2013.

*Official Liquidator v. P.A. Tendolkar* is one such important case dealing with the duties of directors, in which the Supreme Court held that directors have to exercise reasonable diligence while conducting the affairs of the business.<sup>43</sup> It was further stated that directors could not escape their responsibilities on the grounds of being unaware of the functioning of the company when their negligence or failure to supervise the management leads to wrongful conduct. The judgment reinforced the principle that directors occupy positions of trust and responsibility within corporate administration.

In addition to the above, it has been consistently held by Indian courts that directors have a duty of fidelity towards the company, and they must not indulge themselves in any conflict of interest. It was held by the Supreme Court in the case of *Dale & Carrington Inv. (P) Ltd. v. P.K. Prathapan* that the use of corporate powers by directors for their own gain would amount to a breach of fiduciary duty and corporate good governance.<sup>44</sup> The Court stressed that corporate powers must be exercised in good faith and for legitimate corporate objectives rather than personal advantage.

In like manner, in *Sangramsinh P. Gaekwad vs. Shantadevi P. Gaekwad*, the Supreme Court reaffirmed the principle that majority stockholders and directors cannot abuse their superior position in such a way as to be oppressive to minority stockholders.<sup>45</sup> This case stressed the necessity of treating all parties involved equally and fairly.

Even with the aforementioned judicial trends, the implementation of corporate governance rules in India remains fraught with considerable difficulties. One of the most recurring issues pertains to promoter control in Indian companies. Whereas in other environments where ownership is widely diffused, control over Indian firms is normally exercised by either promoters or family groups that exert considerable managerial power.<sup>46</sup> Such concentration of

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<sup>43</sup> *Official Liquidator v. P.A. Tendolkar*, AIR 1973 SC 1104.

<sup>44</sup> *Dale & Carrington Inv. (P) Ltd. v. P.K. Prathapan*, (2005) 1 SCC 212.

<sup>45</sup> *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad*, (2005) 11 SCC 314.

<sup>46</sup> Afra Afsharipour, Corporate Governance Convergence: Lessons from the Indian Experience, 29 Nw. J. Int'l L. & Bus. 335 (2009).

ownership frequently undermines board independence and weakens minority shareholder protection.

The performance of independent directors is another critical area of governance that requires further consideration. Even though Section 149 of the Companies Act, 2013 provides for the appointment of independent directors as a means of supervising operations in an unbiased manner, there remain queries concerning their independence in practice.<sup>47</sup> The appointment of independent directors may take place through promoters, thus restraining them from being able to oppose any decision made by management.

Another significant issue relates to the mechanisms of enforcement and regulatory effectiveness. Although the Companies Act, 2013, provides for various obligations in terms of governance, there have been many instances where enforcement has suffered due to procedural issues, overlapping jurisdiction, and lack of capacity on the part of regulators. Several regulators, such as the Ministry of Corporate Affairs, SEBI, National Company Law Tribunal, among others, overlap their jurisdictions in governance.

Corporate fraud and mismanagement of finances still pose threats to investors' confidence despite improved statutes on regulations. Instances of fraud, such as accounting manipulation, insider trading, misuse of funds, and disclosure of false information, show that legislative changes cannot guarantee good governance in the absence of proper supervision and ethical conduct by corporations.<sup>48</sup> Technological developments and increasingly complex corporate structures further complicate regulatory oversight.

Yet another governance challenge that is evolving is ESG (Environmental, Social, and Governance) accountability. Contemporary businesses are now expected to embrace sustainable and socially responsible corporate governance practices. While the Companies Act of 2013 reflects stakeholder-based provisions as well as CSR responsibilities, sustainability governance and environmental accountability principles in India are relatively less evolved.

The interpretation of Section 166 by the judiciary is still constrained since there has not been a comprehensive definition of statutory fiduciary duties in relation to Section 166 by Indian courts. There continues to be ambiguity on what level of care is required by directors and what

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<sup>47</sup> Umakanth Varottil, *Independent Directors and Corporate Governance in India*, 6 *Indian J. Corp. L.* 45 (2019).

<sup>48</sup> Sandeep Parekh, *Fraud, Governance and the Indian Corporate Sector*, 3 *NUJS L. Rev.* 1 (2010).

liability exists as a result of poor governance. In most cases, the courts rely on common law and foreign judicial systems in determining directors' liabilities.

Thus, despite the Companies Act, 2013, bringing about tremendous changes in the field of corporate governance in India, there is still scope for improvement in its practical application. The success of corporate governance lies not just in the existence of laws but in their effective implementation, judicial uniformity, board autonomy, and ethical management practices. Strengthening these aspects remains essential for ensuring transparent and accountable corporate administration in India.

### **REFORMS AND RECOMMENDATIONS**

Though there have been many improvements to corporate governance practices with the passing of the Companies Act of 2013, there still remain certain deficiencies that need to be addressed before an efficient application of these practices can be possible. Consequently, further reforms are necessary to ensure stronger accountability, transparent management practices, and effective enforcement of directors' fiduciary duties.

One of the important aspects that needs to be reformed pertains to the independence and efficiency of the boards. In other words, there is a need for the appointment of independent directors in a more transparent manner in order to limit the role of promoters and enhance the autonomy of the board.<sup>49</sup> The regulatory agencies might think of enhancing the requirements and adopting an independent approach in the selection process for listed companies. Periodic performance evaluation and mandatory governance training for directors may also improve board effectiveness and professional accountability.

It will also be important for there to be more clarity on the interpretation of the duty of directors under section 166. While this section provides a good foundation on governance matters, the vague wording of this section makes it unclear what is expected from directors in terms of their standard of care and liability. Judicial guidelines and regulatory clarifications may therefore assist in developing consistent standards relating to negligence, conflicts of interest, and good faith conduct.

A significant field for reforms would include making improvements in the mechanism of enforcement. There is a tendency for delays in decision-making in regulatory authorities and tribunals, which makes the implementation of the governance legislation less efficient.

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<sup>49</sup> Companies Act, No. 18 of 2013, § 149, Acts of Parliament, 2013 (India).

Improvement in the institutional capacity of the National Company Law Tribunal and better cooperation among regulators like SEBI and the Ministry of Corporate Affairs can help to improve the enforcement regime.<sup>50</sup> Penalties for disclosure of false information and other violations can be made stricter.

Provisions to protect minority shareholders must also be tightened by facilitating better access to the courts and simplifying procedural requirements in class action suits. Minority shareholders in promoter-controlled firms suffer from information asymmetries and are seldom involved in decision-making processes within the company. Tighter disclosure requirements and stringent regulations on related-party transactions can help curb the abuse of majority power.

The significance of ESG criteria also necessitates the need for more stringent regulation. Although Corporate Social Responsibility requirements have been included in the Companies Act of 2013, environmental reporting systems are still relatively underdeveloped. Indian corporate law regulations must, therefore, progressively incorporate stronger ESG guidelines in accordance with international practices.

New technologies and digital business activities also necessitate governance systems that can manage cybersecurity issues, data privacy, and digital finance transparency. The regulatory system must thus be updated to include new forms of compliance management systems that can monitor the ever-changing corporate structures and digital business models.

Ultimately, efficient corporate governance cannot be attained simply via statutory means. The culture of ethics, ethical leadership, investor consciousness, and corporate accountability continue to play an equally vital role in fostering transparency in business organisations. It is for this reason that any reform efforts should concentrate not just on meeting legal requirements but also on improving governance ethics and corporate responsibility.

## **CONCLUDING OBSERVATIONS**

Governance practices in corporations have developed from an approach that focuses merely on managerial oversight to a broader system that encompasses accountability and transparency. Directors hold considerable influence in corporations, where they are involved in finance and strategy making as well as the interests of various stakeholders in the modern business scenario, which makes the role of fiduciary responsibility crucial in governance practice in corporations.

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<sup>50</sup> Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

The Companies Act, 2013, is a noteworthy law that attempts to modernise corporate governance in India.

The inclusion of fiduciary duties within statute by way of Section 166 represents one of the most significant aspects in the history of corporate law in India. Through its stipulations for duties of good faith, due diligence, independent decision-making, and non-conflict of interest, the law endeavours to guarantee that corporate powers are wielded in a manner that is both responsible and beneficial to the corporation. The introduction of concerns such as employees' interests, societal benefits, and environmental protection highlights the process of transition within corporate governance in India from being purely stockholder-driven to more encompassing governance practices.

It is interesting to note that even though India has adopted several governance principles recognised globally, its framework is still unique due to its concentration of ownership along with promoter control. In many cases, issues of governance in India go beyond the need for management accountability and involve issues such as minority shareholder rights, transactions involving related parties, and director independence. While significant changes were brought about under the Companies Act, 2013, with regard to independent directors, audit committees, class actions, and corporate social responsibility, their implementation still faces several hurdles.

The role of court decisions in helping interpret the duties of directors and the concept of corporate fairness has been significant. Nevertheless, issues such as inconsistency in the enforcement of regulations, delays in legal procedures, lack of board autonomy, and corporate misdeeds persist. Such issues suggest that legislative reforms cannot guarantee corporate accountability in the absence of sound regulatory bodies, ethical managers, and judicial oversight.

In the end, effective corporate governance requires a fine balance between business independence and legal responsibility. Indeed, while the passage of the Companies Act, 2013, can be regarded as an important step towards improving the regulatory regime for corporations in India, there is always a need for reform to respond to changing times. In this regard, the future of corporate governance in India does not lie in regulation alone, but in building an ethical corporate culture.