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Directors as Fiduciaries: Examining Duties, Liabilities, and Corporate Accountability under the Companies Act, 2013

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Abstract

The directors are placed at the forefront of the corporate governance as fiduciaries charged with the responsibility of managing and regulating the corporate affairs. The Companies Act, 2013 is a monumental change in the Indian corporate law as it clearly codifies the fiduciary responsibilities of directors, and so, the Indian corporate law is not based on a common law, but rather, a common law-based framework. The paper will critically analyse the nature, scope, and application of fiduciary duties of directors under Companies Act, 2013, especially focusing on statutory fiduciary duties in Section 166, judicial interpretation, and developing accountability in companies.

This paper evaluates the fundamental fiduciary duties including the duty of good faith, duty of care and diligence, duty to prevent conflicts of interest and the duty to act in the best interest of the company and its stakeholders. It also assesses the level of civil and criminal penalties to be charged on directors in case of breach of these obligations, such as the problem of vicarious liability, personal responsibility, and the safety of independent and non-executive directors. The paper sheds light on the issues of applying fiduciary standards, and in particular, the conflict between the need to facilitate sound corporate governance and the need to prevent too much criminalisation of board decisions through an analysis of judicial precedents and regulatory practices.

This paper posits that although the Companies Act, 2013 has enhanced the accountability of the directors, the statutory interpretation as well as conflicting court practices remain to be an impediment to effective implementation. It ends by implying that more explicit doctrinal provisions, balanced liability frameworks, and fined-tuning governance structures might have to be put in place to make sure that fiduciary accountability is a means of ethical corporate management and not a penalty against making responsible risk-taking.

Keywords: *Directors; Fiduciary Duties; Corporate Governance; Directors' Liability; Corporate Accountability; Companies Act, 2013*

1. Introduction: Directors as Fiduciaries in Indian Corporate Law

The contemporary corporation is typified by the disconnection of ownership and management where the shareholders are the ones who contribute capital and the directors are the ones who are in charge of the affairs of the corporation. This functional division though necessary in the effective running of a corporation poses an implicit danger of misuse of authority by the individuals charged with running the organization. Company law has been created to rectify this imbalance and places fiduciary duties on directors that they must act in good faith and with due care and in the best interests of the company. Normative basis of corporate governance and accountability on directors in Indian corporate law is the fiduciary nature of directors[1].

Under the company law, fiduciary relationship exists as one party is given discretionary authority to act in the best interests of another and at the same time the authority is subjected to following duty of loyalty and good faith. It is inherent in the role of the directors who are endowed with vast powers to operate corporate resources, sign contracts and make strategic decisions that directly impact shareholders and other stakeholders. The Indian courts have always known that directors are in a fiduciary relationship with the company, and that such relationship calls them to bear the interests of the company ahead of their own interests[2]. Fiduciary duties are of a higher standard of conduct unlike the normal contractual duties, which are governed by trust, confidence, and ethical responsibility.

Fiduciary duties are further emphasized by the fact that separation of ownership and control, which is characteristic of corporate businesses, is something that increases the need to have fiduciary obligations. The shareholders especially in big public organizations are usually scattered and cannot monitor managerial decisions directly. Directors, however, have better information and power over decision making and this gives rise to the potential of opportunistic behaviour, self-serving and conflict of interests[3]. The fiduciary duties are a legal tool that curbs the agency costs since they inhibit the tendency of the directors to use their position to gain individual advantages and to hold them accountable to abuse their corporate power.

Traditionally, the fiduciary duties of directors in India were based to a large extent on common law principles which were inherited out of English company law. Judicial precedents were used to establish the obligations like loyalty, care, and conflicts avoidance and in many cases, directors were considered as trustees of the company assets, but not the technical sense of the word trustee[4]. The responsibilities of directors were not clearly spelled out under the Companies Act, 1956 and this created a sense of uncertainty and inconsistent enforcement of the fiduciary standards. The judicial interpretation was dominant resulting in a disjointed body of jurisprudence in which responsibilities were implied as opposed to being expressed.

With the enactment of the Companies Act, 2013, it was a dramatic shift in this approach as the duties of directors were statutorily identified and codified under the Companies Act, 2013, Section 166. This legal intervention aimed at introducing clarity, uniformity, and predictability in the fiduciary duty of directors[5]. The Act enhanced the normative framework of directors conduct by explicitly listing the responsibilities of the directors, including acting in good faith, exercising due care and diligence, conflicts of interest, and undue gains. The codification indicates the desire of the legislature to bring the Indian corporate law in line with the international standards of governance and still have some sensitivity to the local corporate realities.

Among the main purposes of the Companies Act, 2013 is to make corporations more responsible through the introduction of more precise obligations and repercussions of violation of fiduciary duties. The Act is in reaction to increasing worries on corporate frauds, corporate governance failures and abuse of managerial discretion that has destroyed investor confidence in the pre-2013 regime[6]. The law aims at having fiduciary

[1] L. C. B. Gower, *Gower and Davies' Principles of Modern Company Law* (Sweet & Maxwell, 10th ed., 2016).
[2] *Nanalal Zaver v. Bombay Life Assurance Co. Ltd.*, AIR 1950 SC 172.
[3] Adolf A. Berle & Gardiner C. Means, *The Modern Corporation and Private Property* (Transaction Publishers, 1932).
[4] *Percival v. Wright* [1902] 2 Ch 421.
[5] Companies Act, 2013, s. 166.
[6] Ministry of Corporate Affairs, *Report of the Parliamentary Standing Committee on the Companies Bill, 2012*.

obligations accompanied by statutory penalties and liability so that directors are not just nominal figures but are also responsible to the ethical and legal management of corporate governance. The change is an indication of transitioning to a more substantive accountability regime rather than the purely disclosure-based regime.

The other significant change as per the 2013 Act is that of adopting the corporate governance system as a stakeholder-focused model as opposed to a promoter-driven system. The promoter groups dominated boards and boards traditionally had considerable control over the Indian companies to the exclusion of minority shareholders and other stakeholders[7]. In section 166, the authors explicitly state that the directors should act in good faith to the benefit of the company, its shareholders, employees, and the community, and thus, the fiduciary responsibility is extended beyond shareholder primacy. It is a strategy that indicates a new awareness of corporations operating in a broader socio-economic ecosystem and that directors must be responsible in balancing competing interests.

Fiduciary accountability is further strengthened by the introduction of independent directors, improved disclosure standards, and governance drugs on the board as stipulated by the Companies Act, 2013. These will enhance independence in the board, minimize conflicts of interest and enhance transparency in decision making[8]. The broadening of responsibilities and liabilities has however also brought a concern of over-criminalisation and the chilling effect on taking risks in entrepreneurship especially to non-executive and independent directors. This conflict between responsibility and corporate freedom has been a serious problem in the application of trust obligations.

It is against this background that this paper attempts to critically discuss the fiduciary duty of directors in the Indian corporate law, with reference made to the Companies Act, 2013. The following are the key research questions that the study will explore; to what extent has the codification of directors duties in statute improved corporate accountability; are the current liability regimes appropriate in balancing governance and business judgment; and to what extent has judicial interpretation helped to create clarity or ambiguity in the application of fiduciary standards. The paper has not gone into detail on the regulations in the industry but has only examined the statutory provisions, judicial decisions and mechanism of governance concerning the duties and liabilities of directors. By asking this question, this paper seeks to determine whether fiduciary framework by the 2013 Act can lead to ethical corporate management in India.

2. Statutory Framework Governing Directors' Duties under the Companies Act, 2013

The Companies Act, 2013 is a clear legislative endeavour to enshrine and enhance a fiduciary regime of directors in India. The 2013 Act has a clear statutory base of the role, responsibilities and accountability of directors unlike the previous regime where the role was open to judicial interpretation. This part explores the legislative framework of the directors responsibilities with an emphasis on the categorization of directors, the enshrined responsibilities in Section 166, and the interplay between the law and the company discretion.

2.1 Directors meaning and Classification.

[7] Umakanth Varottil, "Corporate Governance in India: Retrospect and Prospects" (2014) 6 National Law School of India Review 1.

[8] Securities and Exchange Board of India, *Corporate Governance Reforms in India* (2018).

The Companies Act, 2013 describes a director as any individual that is appointed to the Board of a company and is given the duty of guiding its affairs[9]. Directors jointly act as the mind and will of the company and can exercise managerial power on behalf of an artificial legal person which in itself can do nothing. The Act identifies different classes of directors such as executive directors, non executive directors, independent directors, nominee directors and managing or whole-time directors[10]. Although the role and level of participation of the directors may vary, fiduciary duties exist among all directors due to the trust they hold. The categorization of the directors presupposes significance in the identification of the degree of responsibility and liability. The executive directors are personally engaged in the day-to-day management, but the non-executive directors and the independent directors tend to act only in supervisory and advisory capacities. The statutory obligations in Section 166 are, however, evenly applied to all directors but with some limited protection given to the independent and non-executive directors in instances where they are liable to an action that is outside their knowledge or approval[11].

2.2 Section 166: Duties of Directors Codified.

Indian company law The first statutory codification of directors duties in Indian law is contained in section 166 of the Companies Act, 2013. It lists a number of fiduciary and ethical duties that directors should follow in the course of discharging their activities[12]. This provision is based on the common law principles, international best practices and suggestions of expert committees and, as a result, it converts the norms which are judicially developed into statutory standards which are binding.

Section 166 provides positive duties that include acting in good faith and exercising due care as well as negative duties including not engaging in a conflict of interest and not gaining undue advantage. Violations of these obligations are punished by law, which is an indication of the will of the legislature to provide substantive rather than formal observance of its duties.

2.3 Duty to Act in Good Faith

The duty of directors to act in good faith is one of the fundamental fiduciary duties in Section 166(2) that are to be undertaken in line with the objectives of the company. This obligation compels directors to act their powers in good faith, in good purpose and without any extraneous considerations. Good faith goes further than the absence of fraud and implies the duty to act in a loyally responsible way in the best interest of the company.

The judicial interpretation has always underlined that decision made in bad faith, in collateral purpose or in bad intention of mala fide is a breach of fiduciary duty[13]. This obligation is statutorily acknowledged, which supports the idea that directors cannot explain the presence of inappropriate behaviour only by the fact of formal power or the majority vote.

2.4 Duty of Care, Skill and Diligence.

In section 166(3), directors are required to perform their duties with reasonable and due care, skill and diligence and to exercise independent judgment[14]. This provision brings an objective-subjective hybrid

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[9] Companies Act, 2013, s. 2(34).
[10] Companies Act, 2013, ss. 149–152.
[11] Companies Act, 2013, s. 149(12).
[12] Companies Act, 2013, s. 166.
[13] *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.*, (1981) 3 SCC 333.
[14] Companies Act, 2013, s. 166(3).

standard, which obligates directors to fulfil the standard of care to be held by a person in a similar position, but also to take into account the personal knowledge and experience.

The duty of care aims at having an informed decision making, proper supervision and participation in board discussions. The directors may be subject to liability by mere passive acquiescence or by blindly relying on management[15]. Simultaneously, the courts have been more or less reluctant to review the bona fide commercial judgments, since they have realised the relevance of managerial discretion in business.

2.5 Duty not to have a Conflict of Interest.

Section 166(4) specifically forbids the positioning of the directors in a conflict of interest situation or where there is a possibility of a conflict of interest between the personal and the company interests. This obligation is indicative of the old concept of fiduciary that no individual with whom a fiduciary relationship exists should permit personal interests to play into corporate decision making.

Self-dealing transactions, related-party contracts, or abuse of corporate opportunities can all be a conflict of interest. The Act complements this obligation by having disclosure requirements and limitations of interested transactions[16]. Not revealing material interests or being involved in decisions that are conflicted compromises the integrity of the board and amounts to a breach of fiduciary responsibility.

2.6 Duty to Act in the Best Interests of Company and Stakeholders.

One of such moves that are not in line with the shareholder-centric governance is that under Section 166(2) directors are required to exercise the best interests of the company, its shareholders, employees, and the society[17]. This clause expands the fiduciary horizon whereby considerations of the stakeholders are applied to corporate decision-making.

The involvement of the employees and the community is an indication of a shift towards governance based on the stakeholders, as corporate behavior becomes aligned to the social responsibility and sustainable development objectives[18]. Although the exact edges of this responsibility are judicially untested, it represents a normative change to appreciate the external effect of the corporate operation.

2.7 Comparison to Companies Act, 1956.

Through the Companies act 1956, the responsibilities of directors were not explicitly written down and fiduciary duties were implied through the common law and judicial precedents[19]. Lack of a statutory clarity usually led to uncertainty and lack of consistency in enforcement. The English case law was often used by the courts to identify the nature and scope of fiduciary duties.

The 2013 Act is solving these gaps by clearly defining the responsibilities and connecting them to the statutory penalties[20]. This shift towards an explicit model is a major change in Indian corporate governance that allows less recourse to judicial creativity and increases the legal predictability.

2.8 Character of Duties: Mandatory or Discretionary.

The obligations of Section 166 are not optional obligations subject to being contracted or diluted by contractual arrangements, but are obligatory in nature[21]. These obligations are statutorily imposed on

[15] *Official Liquidator v. P.A. Tendolkar*, AIR 1973 SC 1104.
[16] Companies Act, 2013, ss. 184, 188.
[17] Companies Act, 2013, s. 166(2).
[18] Umakanth Varottil, "Stakeholderism in Indian Corporate Law" (2019) 12 NUJS Law Review 1.
[19] Companies Act, 1956.
[20] Ministry of Corporate Affairs, *Report on the Companies Bill, 2012*.
[21] Companies Act, 2013, s. 166.

directors regardless of approval by the shareholders or internal resolutions. Nevertheless, compliance can have a certain level of discretion, especially in the business judgment and strategic decision making.

This difference is important to make sure that even though ethical and fiduciary standards cannot be negotiated, directors have freedom to govern corporate activities effectively. The issue is that there is a need to balance between the enforceable accountability and the legitimate business autonomy[22].

The Articles of Association play a vital role in the company by authorizing its operations and ensuring its existence.<|human|>2.9 Role of the Articles of Association The Articles of Association are very crucial in the company because they allow the company to operate and also guarantee its existence.

The Articles of Association (AoA) still have a significant role to define the internal governance structure of a company. Although the AoA might issue some extra responsibilities or procedural conditions, they cannot supersede or conflict with the statutory responsibilities in the Companies Act, 2013[23].

AoA can enhance the fiduciary requirements by establishing more rigorous standards of conduct, disclosure or board practices. But a provision which attempts to absolve the directors of statutory obligations or liabilities would be null to the so far as it does so. Therefore, statutory obligations act as the bare minimum of governance and the Articles act as an enabling tool to governance, not a replacement.

3. Fiduciary Duties of Directors: Judicial Interpretation and Doctrinal Analysis

Judicial interpretation of the Indian corporate law has been used to develop the fiduciary obligations of directors, drawing extensively on the English common law principles. Even though companies act, 2013 has codified the duty of directors, the courts still have an important role in determining their scope, content and enforceability. In this section, the author explores the doctrine of fiduciary duty, the trustee-agent controversy, and judicial principles to be used in various types of directors.

3.1 Directors as Trustees or Agents: Legal Controversy.

One of the long standing doctrinal controversies in company law is whether the directors are to be treated as trustees, agents or sui generis fiduciaries of the company. The Indian courts have maintained that directors are not trustees in the literal sense of the term but are fiduciaries to the corporate assets and powers just like trustees to the corporate assets and powers[24]. Directors have managerial discretion and are not limited to perform only under the set conditions in contrast to the traditional trustees.

Meanwhile, directors can be referred to as agents of the company, specifically where they sign contracts on behalf of the company[25]. Nevertheless, the principles of agency cannot be used to describe the fiduciary aspect of the directorial behaviour since directors do not follow orders but make independent decisions. In their turn, courts have taken a middle ground, perceiving directors as fiduciaries that are not only trustees but also agency, subjected to the primary duty of loyalty, care, and good faith[26].

3.2 Duty of Loyalty

The first and foremost of fiduciary responsibility is the duty of loyalty in which the directors are supposed to act in the best interests of the company without any personal factors coming into play when making

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[22] Rajeev Saumitra, "Business Judgment Rule in India" (2016) 8 SCC Journal 23.
[23] Companies Act, 2013, s. 5.
[24] *Official Liquidator v. P.A. Tendolkar*, AIR 1973 SC 1104.
[25] *Ferguson v. Wilson* (1866) 2 Ch App 77.
[26] L.C.B. Gower, *Gower and Davies' Principles of Modern Company Law* (Sweet & Maxwell, 10th ed., 2016).

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judgments. The Indian jurisprudence has reiterated severally that directors should not use their office to their own advantage or put themselves in a conflict of interest situation[27].

In Needle Industries (India) Ltd. V. Needle Industries Newey (India) Holding Ltd. the Supreme Court observed that directors have a duty of loyalty to the company and have to act in good faith by the benefit of the company as a whole[28]. The Court made it clear that even those decisions that are officially sanctioned by the board can be overturned in case of contamination with the mala fide intent or the misuse of fiduciary authority. The duty of loyalty therefore acts as a substantive constraint to the exercise of managerial power.

3.3 Duty of Care and the Business Judgment Rule.

The duty of care is based on the fact that directors must exercise reasonable care, skill and diligence in the running of corporate affairs. The Indian courts have been conservative in the application of this duty and have realised that oversteps by the court can destroy the legitimate business risk-taking. Such judicial restraint is manifested in the use of business judgment rule according to which the courts do not second-guess the bona fide commercial decisions that are made in good faith.[29]

In the case of Official Liquidator v. P.A. Tendolkar, the Supreme Court saw the directors to have reasonable care and are not liable to simple errors of judgment, so long as they are acting honestly and without negligence[30]. The standard used is not that of an insurer or some infallible expert, but of a reasonably prudent person in a similar position. This solution is a middle ground between responsibility and managerial freedom.

3.4 Responsibility Not to Misuse Corporate Opportunity.

Tightly connected with the obligation of loyalty is the ban of the abuse of corporate opportunities. The directors should not in any way take business opportunities that are rightfully the company. This principle has been identified by Indian courts as a key element of fiduciary behavior despite a lack of express statutory forbidding before the Companies Act, 2013[31].

Courts have in instances where directors have misused corporate opportunities on their own benefit, imposed liability based on the breach of fiduciary duty, whether the company had directly incurred the loss or not[32]. It is centered on avoiding unjust enrichment and maintaining the dignity of fiduciary relationships.

3.5 Duty of Disclosure and Transparency

The disclosure duty entails the disclosure of any material interest in the company transactions by the directors. Informed consent and effective governance require transparency in decision-making in the boardroom. The Indian courts have considered non-disclosure of material interests a grave violation of fiduciary duty, which can nullify transactions[33].

Disclosure requirements are put in place to guarantee that directors do not abuse informational asymmetry to their benefit. Judiciary has repeatedly emphasized that disclosure should be complete, honest and timely and that partial and misleading disclosure cannot be in compliance with fiduciary standards[34].

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[27] *Dale and Carrington Investment (P) Ltd. v. P.K. Prathapan*, (2005) 1 SCC 212.

[28] *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.*, (1981) 3 SCC 333.

[29] Rajeev Saumitra, “Business Judgment Rule in India” (2016) 8 SCC Journal 23.

[30] *Official Liquidator v. P.A. Tendolkar*, AIR 1973 SC 1104.

[31] *Regal (Hastings) Ltd. v. Gulliver* [1942] 1 All ER 378 (HL).

[32] *Industrial Development Consultants Ltd. v. Cooley* [1972] 1 WLR 443.

[33] Companies Act, 2013, s. 184.

[34] *Cook v. Deeks* [1916] 1 AC 554 (PC).

3.6 Important Judicial Precedents in India.

The fiduciary duty jurisprudence in India is based on a number of landmark cases. In Nanalal Zaver v. The Supreme Court ruled that directors should exercise their powers in good faith and in the best interest of the company (Bombay Life Assurance Co. Ltd.).[35] Likewise, in Dale and Carrington Investment (P) Ltd. v. P.K. Prathapan, the Court decided that directors should not be able to manipulate the share allotments to continue to control the company since it is the violation of fiduciary duty.

These cases demonstrate that the judiciary is ready to interfere in situations when directors misuse their fiduciary role, although they are still deferential to good faith business judgment.

3.7 Impact of the UK and Common Law Jurisprudence.

English company law has traditionally served as a guide to Indian courts in stating fiduciary norms. Other cases like the Regal (Hastings) Ltd. v. Gulliver and Percival v. Wright have guided Indian understandings of faithfulness, conflict of interest and the boundaries of fiduciary duty[36]. The principles adopted are a measure of the common law heritage and the lack of indigenous codification before 2013.

Although judicial reasoning is nowadays statutorily codified, common law jurisprudence remains relevant to judicial reasoning, especially in the interpretation of broad fiduciary terms like good faith and proper purpose[37].

3.8 Standard of Conduct: Executive vs Non-Executive Directors.

It has been identified by courts that the level of behaviour that is required of directors can differ based on their responsibilities and extent of participation. All executive directors are under more care and supervision than the non-executive or independent directors since they are actively involved in the management process[38]. Nevertheless, the fiduciary obligations take effect equally and in the case of the non-executive directors, ignorance is not a defense to liability when reasonable care should have been taken.

The judicial interpretation therefore takes a contextual approach where the liability is evaluated on the basis of position, access to information and decision making. This subtle norm tries to maintain fairness but does not jeopardize the integrity of fiduciary accountability[39].

4. Directors' Liabilities under the Companies Act, 2013

The mechanism of fiduciary liability includes the imposition of liability on directors, which is a significant way fiduciary duties are enforced by corporate law. The Companies Act, 2013 provides the directors with much more extensive liability coverage by providing more explicitly statutory-defined, stronger penalties, and a more differentiated treatment of different classes of directors. This section evaluates the civil and criminal liability of the directors, principles of vicarious liability and situations when personal liability can be applied by lifting the corporate veil.

Directors have civil liabilities that are not limited to the director only, but extend to the company as well.

4.1 Directors Civil Liabilities

The civil liabilities are not the liabilities of the individual director alone but the liabilities of the company.

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35 *Nanalal Zaver v. Bombay Life Assurance Co. Ltd.*, AIR 1950 SC 172.

36 *Percival v. Wright* [1902] 2 Ch 421.

37 Umakanth Varottil, "Directors' Duties in India" (2014) 6 NUJS Law Review 1.

38 Companies Act, 2013, s. 149(12).

39 *Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609.

The civil liability of directors mainly occurs when a director acts against the fiduciary duties or statutory obligations and the breach of which leads to a loss or injury to the company or stakeholders. This liability can be in the form of compensation, restitution, disgorgement of unwarranted gains, or damages[40]. The civil liability regime is based on the idea that the directors in their capacity of fiduciaries should put the company back to the position that it would have been in the absence of the breach.

Section 166.2 under Companies Act, 2013, provides that the directors can be civilly liable in cases of mismanagement, oppression, fraudulent act or breach of duty. Courts have always believed that civil liability is not necessarily based on the demonstration of mala fide intent, but negligence or absence of due diligence may also be an attractive liability in the case of breach of fiduciary standards. This is a transformation of the fault-based liability to responsibility-based accountability.

4.2 Criminal Liabilities of Directors.

Besides civil implications, the Companies Act, 2013 subjects directors to criminal liability in a vast number of statutory offences. Some of them include penalties of imprisonment and fines against fraud, falsification of accounts, failure to disclose, and non-observation of the provisions of regulations[41]. Criminalisation is a deliberate abuse of corporate power that is discouraged by the intent of the legislation to protect the confidence of investors.

Nevertheless, the broad criminal liability has been criticized to lead to over-criminalisation of corporate governance[42]. Courts have thus been cautious and stressed the need not to impose criminal liability in a mechanical manner and must be proved by clear evidence of mens rea where necessary[43].

4.3 Vicarious Liability of Directors.

Vicarious liability is defined as the liability under which directors are charged with the company offences. Because a company operates under its directors and officers, the statutes tend to place a liability on a person who is responsible and in charge of the behavior of the business[44]. This principle is reflected in the Companies Act, 2013, as the directors are liable in cases of the commission of an offence under their consent, connivance or attributable negligence.

The judicial interpretation has helped to clarify the fact that vicarious liability cannot be assumed just because a director is called so[45]. It should have certain averments proving the role of the director in the commission of the offence. This strategy aims at avoiding the blind prosecution of all the board members and will only impose the liability in the cases where actual engagement or negligence has been shown.

4.4. Liability of acts of Omission and Commission.

Liability can be brought against directors in cases of omission (where they fail to perform an act) and commission (where they do something wrong). Fraudulent transaction, misuse of funds or illicit allotment of shares fall under acts of commission whilst failure to exercise due diligence, insufficient supervision, or failure to comply with statutory requirements falls under acts of omission[46].

[40] L.C.B. Gower, *Gower and Davies' Principles of Modern Company Law* (Sweet & Maxwell, 10th ed., 2016).
[41] Companies Act, 2013, ss. 447, 448.
[42] Umakanth Varottil, "Over-Criminalisation of Corporate Law" (2016) 8 NUJS Law Review 1.
[43] *Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609.
[44] Companies Act, 2013, s. 2(60).
[45] *SMS Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89.
[46] Companies Act, 2013, s. 166(3).

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Indian courts have acknowledged that passive inaction may be a breach of fiduciary duty in a situation in which directors neglect to perform the duty of oversight of the company[47]. Subsection 166(3) duty of care imposes an obligation of active participation and reasonable supervision and thus denies the defence of not having participated in the decision making of the boards of directors.

4.5 Particular Statutory Provisions that give rise to liability.

The Companies Act, 2013 has a number of stipulations which make the directors explicitly liable. Section 166(7) sets punishment in case of violation of duties of directors[48]. Section 447 covers the penalty of fraud, which is a criminal penalty that imposes serious penalties[49]. There are also other provisions of related-party transactions, financial statements, and corporate disclosures, under which personal liability of directors in the execution of corporate compliance is imposed[50].

All these combine to form a thick liability system to ensure that the corporate personality cannot be used to abscond liability by directors. The policy underlying the statutory design is the preference of accountability, as opposed to managerial insulation.

4.6 Independent Directors and Level of Protection.

Having realised the supervisory-non executive functions of independent directors, the Companies Act, 2013 offers minimal protection against liability. Section 149(12) limits the liability of the independent and non-executive directors to the acts of omission or commission that they committed with the knowledge, consent or connivance, or failed to do, with diligence.[51]

This protection has been strengthened by the judicial rulings which have affirmed that the independent directors are not to be prosecuted in criminal proceedings unless there are specific complaints that prove their participation in the criminal acts[52]. This proportional liability is aimed to promote a situation where competent persons will volunteer to sit on boards without the fear of unnecessary prosecution, and accountability to real neglect or misconduct is maintained.

4.7 Lifting of Corporate Veil and Personal Liability.

The principle of lifting the corporate veil permits the court to ignore the legal personality of the company and personally tax directors in circumstances where the corporate vehicle is abused[53]. In situations where fraud, tax evasion and abuse of corporate structure are applied, this doctrine has been used by Indian courts to thwart public interest.

Delhi Development Authority v. Skipper Construction Co. (P) Ltd., the supreme court decided that corporate veil can be lifted to avoid fraud and hold the wrongdoers accountable (C) Ltd.[54]. The doctrine serves as a fair means of strengthening fiduciary responsibility, especially where the directors have used the company as a cover to commit illegal actions.

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[47] *Official Liquidator v. P.A. Tendolkar*, AIR 1973 SC 1104.
[48] Companies Act, 2013, s. 166(7).
[49] Companies Act, 2013, s. 447.
[50] Companies Act, 2013, ss. 184, 188.
[51] Companies Act, 2013, s. 149(12).
[52] *Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609.
[53] *Life Insurance Corporation of India v. Escorts Ltd.*, (1986) 1 SCC 264.
[54] *Delhi Development Authority v. Skipper Construction Co. (P) Ltd.*, (1996) 4 SCC 622.

5. Corporate Accountability and Governance Mechanisms

Corporate accountability is the institutional model by which directors fiduciary is monitored, enforced and internalised in the corporate decision making. Companies Act, 2013 along with securities regulation assumes a multi-layered structure of governance that aims at balancing the managerial freedom and control with transparency, oversight, and stakeholder protection. Section 4 of this report analyses the major governance structures that support fiduciary accountability in Indian corporate law.

5.1 Accountability Mechanisms of the Board.

The board of directors serves as the main point of corporate governance and fiduciary duty. Internal accountability tools include collective decision making, board deliberations and documented minutes, which expose the actions of directors to peer review[55]. Companies Act, 2013 enhances accountability of the board by stipulating minimum requirements of the board composition, frequency of board meetings and reporting of director interests.

The board responsibilities are also enhanced with statutory requirements of independent judgment and due diligence. Directors will have to play a role in corporate strategy, financial supervision, and risk management instead of acting as passive approvers to executive decisions[56]. Incompetence by the board to provide good oversight could subject the directors to liability due to violation of fiduciary duties, especially where there is corporate fraud or governance failure.

5.2 Role of Shareholders

Shareholders are very important in ensuring corporate accountability by exercising voting rights, approval and legal redress. The Companies Act, 2013 is an improvement in the participation of shareholders by demanding the shareholders approve of the major corporate activities like related-party transactions, director appointment and removal, and major structural changes[57].

Minority shareholders are also enabled with the solution against oppression and mismanagement, and in such cases, judicial intervention becomes possible in case directors misuse their fiduciary status[58]. These mechanisms echo the idea that fiduciary obligations are eventually held into the company and the shareholders are the residual claimants and the enforcers of governance.

5.3.1 Audit committees and Independent Directors.

One of the main foundations of the internal corporate governance is audit committees. Audit committees consisting of mostly independent directors are charged with the responsibility of supervising financial reporting, internal control, and legal compliance[59]. They play an important role especially in identification of financial abnormalities and avoiding account manipulation.

Independent directors are custodians of fiduciary integrity because they can offer independent judgment and oppose the preeminence of promoters. The legislative focus on the independence of the boards is aimed at reducing the conflict of interest and increasing the transparency[60]. The interpretation of judicial has come to appreciate the governance role of the independent directors and has adjusted the liability standards to ensure that they reflect the supervisory role of the independent directors.

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[55] Companies Act, 2013, ss. 173–175.
[56] Companies Act, 2013, s. 166(3).
[57] Companies Act, 2013, ss. 188, 152.
[58] Companies Act, 2013, ss. 241–242.
[59] Companies Act, 2013, s. 177.
[60] Companies Act, 2013, s. 149.

5.4 Whistleblower Mechanism

Whistleblower mechanism is an internal system of reporting unethical behavior, fraud or fiduciary violations. The Companies Act, 2013 and related laws mandate listed firms to have vigil systems that guard against the retaliation of whistleblowers[61].

Whistleblower systems enhance fiduciary responsibility because they help identify the failure of governance at the initial stage and empower employees and other stakeholders to become watchdogs. This mechanism is effective when there are confidentiality guarantees, clarity in the procedures and real responsiveness of the board[62].

5.5 Disclosure and Compliance Requirements.

The corporate accountability is based on disclosure. Directors have an ongoing duty to make disclosure of material information that is related to financial performance, related-party transaction, and conflict of interest[63]. Transparency allows shareholders, regulators and the market to assess the conduct and actions of directors regarding the fiduciary standards.

The compliance regime of the Companies Act, 2013 focuses on proper financial reporting, legal audits and internal controls certification. Non-compliance is not only subjected to penalties, but it also negatively affects the fiduciary legitimacy of the board[64].

SEBI and MCA play an important role in promoting transparency in the securities market (5.6).

The issue of regulatory control is crucial in implementing fiduciary accountability. The Companies Act, 2013 is under the management of the Ministry of corporate Affairs (MCA), which regulates corporate compliance, investigations and enforcement measures[65]. The board governance of listed companies is regulated by the Securities and Exchange Board of India (SEBI) that enforces governance norms concerning board composition, disclosures and investor protection.

The corporate governance framework of SEBI is an addition to statutory fiduciary obligations, which set higher standards on listed companies[66]. The regulatory actions are punitive and deterrent and strengthen the severity of the fiduciary duties.

5.7 Effect of Governance Failures on Fiduciary Accountability.

Fiduciary laxity has been illustrated many times, through corporate scandals and governance failures. Board overseeing failures, audit procedures, and disclosure procedures undermine investor confidence and highlight system weaknesses[67]. Such failures are commonly met by courts and regulators with an increased level of scrutiny over the actions of directors, as well as widening the liability capping.

Governance failures are therefore drivers to doctrinal development, whereby more rigorous application of fiduciary obligations is encouraged and the idea of vigilant board action is enhanced.

5.8 Stakeholder Governance and Corporate Social Responsibility.

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[61] Companies Act, 2013, s. 177(9).
[62] Securities and Exchange Board of India, *Corporate Governance Reforms* (2018).
[63] Companies Act, 2013, ss. 184, 129.
[64] Companies Act, 2013, ss. 134, 143.
[65] Ministry of Corporate Affairs, *Annual Report* (latest edition).
[66] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
[67] Umakanth Varottil, "Corporate Governance Failures in India" (2014) 6 NUJS Law Review 1.

Corporate social responsibility (CSR) has been introduced in the Companies Act, 2013 as a part of corporate governance, indicating a change to stakeholder-based fiduciary responsibility[68]. Directors are supposed to take into consideration the social and environmental effects of corporate business, which coincides corporate business goals with the interests of the general society.

Although CSR obligations are more regulatory in nature, they support fiduciary principle according to which the long-term interests of the company and its stakeholders have to be adhered to by the directors. This governance incorporation of CSR is a manifestation of a broadened concept of fiduciary responsibility under the contemporary corporate law[69].

6. Critical Analysis, Challenges, and Conclusion

The Companies Act, 2013 is a deliberate attempt to enhance the fiduciary duty and corporate governance in India. Nonetheless, the efficacy of this framework is not only in the statutory definition of the duties but also their implementation, judicial application, and regulatory consistency. This part is a critical discussion of the difficulties in enforcing the fiduciary duties, the analysis of the doctrinal and institutional constraints, and suggestions on reform.

6.1 Real-World Problems in Imposition of Fiduciary Duties.

Although codified in statutes, it is still impractical to enforce fiduciary obligations against directors. The decisions that corporate officers make are usually based on rather complicated business decisions, and it is difficult to tell whether the actions are made on a bona fide business basis and do not violate the fiduciary duty in any way. The lack of information between directors and shareholders also increases the problem of accountability since it is not easy to know internal deliberations and intent of the directors.

Moreover, in most cases, the enforcement mechanisms are reactive and they are invoked when there is a failure in governance or financial loss has been experienced. This method of ex post is a criticism of preventive governance that permits breach of fiduciary to go undetected until irreversible harm is caused.

6.2 Uncertainty in Statutory Thoroughness.

Although the responsibility of directors is written down in Section 166, its phrasing is general and open-ended. Such notions like good faith, best interests of the company, and exercise of independent judgment are not strictly defined in the statutes and it is up to the courts to exercise a lot of discretion in the interpretation of same[70]. Flexibility is admirable but when taken to the extremes, too much vagueness can lead to uncertainty and inconsistency in its application.

Lack of clear statutory standards on how to gauge compliance with the fiduciary duties also brings a lot of uncertainty to the directors especially in border cases of strategic risk-taking[71].

6.3 Excessive Criminalisation vs. Real Accountability.

Among the most notable reproaches of the Companies Act, 2013, is that it is largely based on criminal penalties to enforce corporate adherence. Many of the clauses provide criminal liability of procedural and technical default, placing the directors at risk of prosecution despite the lack of mala fide intent[72].

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68 Companies Act, 2013, s. 135.

69 Andrew Johnston, "Corporate Social Responsibility and Fiduciary Duties" (2017) 76 Cambridge Law Journal 1.

70 Companies Act, 2013, s. 166.

71 Rajeev Saumitra, "Business Judgment Rule in India" (2016) 8 SCC Journal 23.

72 Umakanth Varottil, "Over-Criminalisation of Corporate Law" (2016) 8 NUJS Law Review 1.

This excessive forms of criminalisation will turn fiduciary responsibility into an incentive not to engage in responsible entrepreneurship. The issue of automatic use of criminal responsibility has been warned against many times by the courts, and the necessity to differentiate between intentional misconduct and actual business failure has been stressed[73]. The difficulty is to re-price the liability in a way that penalizes abuse but not risk-taking that is legitimate.

6.4 Inconsistency in Judicial Standards of Liability.

Fiduciary duties in India have not been interpreted consistently by the judiciary. Although there are decisions which follow a stringent fiduciary standard of loyalty and accountability, others exhibit deference to managerial judgment in the business judgment rule[74].

Such inconsistency brings about unpredictability on the threshold of liability and compromises predictability in corporate governance. Lack of the clearly stated and uniformity in applying the doctrine of business judgment only adds to this dilemma where directors are uncertain of the legal implications of their actions[75].

6.5 Requirement of Clearer Safe Harbours of Directors.

The widening situation of fiduciary duties and liability highlight the necessity of legislative safeguards of good faith directors. Whereas there is some protection to independent directors under Section 149(12), the same is not evident under executive and nominee directors who make complex decisions[76].

Safe harbour policies acknowledging informed consent, use of expert advice, and the lack of conflict of interest would be a more appropriate balance between accountability and autonomy. These provisions would ensure that Indian law is up to date with world best practices and would minimize fear-based boardroom conservatism[77].

6.6 Comparative UK and US Approach.

In a short comparative view, it can be seen that the jurisdictions like the United Kingdom and the United States have a more subtle approach to fiduciary enforcement. Although the law of company in the United Kingdom codifies the duties of directors, it places significant importance on civil penalties and fairness instead of incarceration[78].

The business judgment rule functions in the United States as a strong judicial principle that shields directors against liability due to bona fide decisions made in good faith and in good faith and loyalty[79]. These models prove that efficient fiduciary accountability does not have to rely on the over-criminalisation but can be accomplished by clarity in doctrine and judicial restraint.

6.7 Suggestions for Reform

In a bid to improve fiduciary governance by the Indian corporate law, a number of reforms can be put into consideration. To start with, the statutory obligations of fiduciary and safe harbours should be brought out

[73] *Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609.
[74] *Official Liquidator v. P.A. Tendolkar*, AIR 1973 SC 1104.
[75] Umakanth Varottil, "Directors' Duties in India" (2014) 6 NUJS Law Review 1.
[76] Companies Act, 2013, s. 149(12).
[77] OECD, *Principles of Corporate Governance* (2015).
[78] Companies Act, 2006 (UK), ss. 171–177.
[79] *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985).

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with greater clarity. Second, criminal liability ought to be rationalised and limited to fraud, wilful misconduct or gross negligence cases[80].

Third, there would be better predictability and consistency through judicial articulation of a consistent business judgment doctrine. Lastly, the regulatory focus must seek to focus on preventive governance mechanisms, board capacity building and early identification of fiduciary risks[81].

6.8 Concluding Observations

The fiduciary regime of the Companies Act, 2013 is a step forward in the Indian corporate governance sphere, as it formalized the responsibilities of directors, as well as enhanced the accountability instruments. Nevertheless, this framework can only be effective when it is balanced in terms of its enforcement. Oversimplification in criminalisation, legal ambiguity, and lack of consistency in judicial standards are some of the factors that may negate the purpose of the law itself.

An established fiduciary regime has to balance accountability with management discretion, discouragement with discretion and regulation with innovation. Indian corporate law can enhance the effectiveness of fiduciary duties as tools of ethical stewardship instead of burdens on responsible enterprise by improving the clarity of the doctrine, resetting the liability standards, and reinforcing the institutions of corporate governance.

[80] Ministry of Corporate Affairs, *Report of the Company Law Committee* (2019).
[81] SEBI, *Corporate Governance Reforms* (2018).