



CORPORATE GOVERNANCE AND CLIMATE RESPONSIBILITY: EXPANDING DIRECTORS' DUTIES UNDER INDIAN COMPANY LAW

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ABSTRACT

Corporate directors are increasingly functioning at the intersection of fiduciary obligation and planetary boundaries. There are enough legal tools and normative momentum to expand directors' fiduciary duty toward climate responsibility in Indian corporate law, read holistically. Recent provisions in section 166 of the Companies Act, 2013, incorporate reporting obligations created by the SEBI (BRSR), and a changing regulatory disposition creates an ecosystem for directors to factor in climate-related financial, operational and reputational risks and align their corporate strategies to transition pathways. However, legislation, enforcement practice and boardroom culture create substantial gaps: the limited guidance around materiality thresholds; deficient enforcement of non-financial disclosures; and a dominant shareholder-value orthodoxy that discounts medium- to long-term ecological risks. This article outlines the doctrinal basis for imposing climate-responsive duties, explores regulatory policy and litigation trends that create plausibility around boards facing accountability, and proposes calibrated law reform, doctrinal, procedural, and supervisory, to make climate risk externalities an entrenched feature of Indian directorship. Governance tools are additionally proposed.

Keywords: Corporate Governance, Directors' Responsibilities, Climate Accountability, Companies Act 2013, BRSR, Environment, Social and Corporate Governance, India

INTRODUCTION

Climate change is no longer an externality that is separate from corporate balance sheets. Physical risks, transition risks, and new regulatory regimes are altering how companies create

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(and destroy) value. For boards of directors, these issues raise two related questions: what do directors need to take into account in today's context, and how should the law evolve to enable boards to prudently govern climate risk? This article focuses on both of these questions, using Indian company law as a lens. It argues that existing legal constructs—statutory obligations, securities disclosure frameworks, and environmental enforcement enabling frameworks— together point to a directors' obligation to consider climate change-related factors in their decisions.¹ The challenge is how to clarify, operationalise and enforce that obligation so that it becomes a practical norm and not a nice-to-have virtue signal. The central recommendations arise from a doctrinal reading of section 166 of the Companies Act 2013,² an analysis of SEBI's Business Responsibility and Sustainability Reporting (BRSR) framework,³ and recent interpretive work by climate law advisory groups and scholars.⁴

LEGAL FOUNDATIONS: SECTION 166 AND THE SCOPE OF DIRECTOR DUTIES

Section 166 of the Companies Act, 2013, recodified the traditional duties of directors as a legal statute. The duty is to act in good faith in promoting the objects of the company for the benefit of its members as a whole, and—to be absolutely clear—to act in the long-term best interests of the company, employees, members, and community, and for the protection of the environment. When considered as a whole, Section 166 is certainly not simply shareholder-centric; it specifically indicates the directors' considerations of stakeholder responsibility and protection of the environment as part of the directors' evaluative scale.

This leads to two consequences for interpretation. First, “best interests of the company” language lends itself to incorporation of long-term systemic risks (i.e. climate change) that threaten business continuity, asset valuations and returns to shareholders. Second, the directive to “have regard” to the community and environment provides a distinct statutory basis for directors to consider environmental harms which could impact enterprise value in the long run, despite the harms not being of immediate concern to short-term earnings outcomes. Academic

¹ Ministry of Corporate Affairs, Report of the High-Level Committee on Corporate Social Responsibility (2019) <https://www.mca.gov.in>

² Companies Act 2013, s 166

³ Securities and Exchange Board of India (SEBI), Business Responsibility and Sustainability Reporting by Listed Entities (circular no. SEBI/HO/CFD/CMD-2/P/CIR/2021/562, 10 May 2021)

⁴ Commonwealth Climate and Law Initiative (CCLI), Directors' Duties and Climate Change in India (2019) <https://commonwealthclimatelaw.org>

and practitioner views disagree, but Section 166 has been invoked as including a requirement for directors to consider climate change risks in their objects of duty.⁵

Nonetheless, establishing the standard of care has not eliminated uncertainty. Section 166 does not require directors to determine how to assess climate risks, articulate the standard of care in climate cases, or articulate an order of enforcement priority. This fluidity to the text provides both strength—allowing the law to exist in a way that allows it to be malleable—and a weakness—allowing for avoidance of enforcement and or considered inaction.

REGULATORY MOMENTUM: DISCLOSURE REGIMES AND MARKET PRESSURE

Regulatory tools have a growing role to play regarding climate responsibilities and are deepening those responsibilities into tasks held at the boardroom level. To this effect, SEBI's Business Responsibility and Sustainability Reporting framework reflects a structural shift in expectations for listed entities: a standard level of reporting detailing a range of ESG disclosure – including energy consumption, GHG emissions, and climate risk governance – is now common for large listed entities, with the largest 1,000 entities by market capitalisation making this reporting a legal obligation.⁶ A key consideration regarding the BRSR is the board's statement, which requires a disclosure statement from the board about who is responsible for ESG strategy in their organisation; a real governance hook that brings boards and senior leadership into the climate risk world.⁷

Disclosure requirements serve three main purposes: they (a) disclose material climate risks to regulators when appropriate, as well as investors; (b) create a form of paper trail to validate accountability if a board acts contrary to disclosed climate risks; and (c) socialise climate governance as a normal board, business matter. Regarding the latter, current practices of disclosure, with exceptions, are often quite uneven in terms of quality and assurance.⁸ High-quality, rigorously assured standards of disclosure take place without widespread norms; they

⁵ Umakanth Varottil, 'Corporate Law and Climate Change: Re-examining the Role of Directors' (2020) 10(2) Indian Journal of Corporate Law and Policy 145.

⁶ Securities and Exchange Board of India (SEBI), Business Responsibility and Sustainability Reporting by Listed Entities (circular no. SEBI/HO/CFD/CMD-2/P/CIR/2021/562, 10 May 2021).

⁷ SEBI, Consultation Paper on Business Responsibility and Sustainability Reporting (2020) <https://www.sebi.gov.in>

⁸ OECD, Corporate Governance and Sustainability: Transparency and Disclosure (OECD Publishing 2022).

run the risk of devolving into a compliance-type exercise.⁹ If some enhanced rigour occurred around verification standards, definitions of materiality also adapted to narrower interpretations that are globally emerging and specifically clustering disclosures to interrogate exposures to climate, but in India, that would make disclosure regimes contribute better to markets as regulatory environments.

TRENDS IN LITIGATION AND ENFORCEMENT: SETTING ACCOUNTABILITY INCENTIVES

Accountability mechanisms for climate harm are becoming more prevalent in litigation against corporations and their directors at different points around the world. Though India's law on liability for directors in response to climate impact is not yet robust, there are still many mechanisms for accountability of climate harm to turn to, whether existing tribunals such as the National Green Tribunal (NGT),¹⁰ existing statutory regimes (civil or criminal), or other statutory avenues such as a derivative or shareholder suit. Recent writing and scholarship have suggested that in India, directors who respond to climate risk may expose themselves to multiple potential liabilities stemming from those actions - including breach of statutory duty and negligence or misstatement in their securities filings.

Two crucial factors must be considered. First, the incentives for bringing cases into litigation are not the same. While the impacted communities may lack the resources to engage in complex climate change claims against a corporate actor, institutions (for example, investors) or public interest litigants may have that same incentive to claim issues like failure of disclosure or violation of regulations. Second, enforcement agencies will have triggers that would allow them to pierce the corporation's defences (for example, liability from the directors if an environmental violation was based on evidence that they were noncompliant with their duty to oversee emissions) and have an effect in deterring such acts. Recently, legal scholars have effectively argued for an interpretation of a duty of disclosure to be directed at directors that would require consideration of climate change and likely mitigation of climate change in an effort to lessen liability.¹¹

⁹ Task Force on Climate-related Financial Disclosures (TCFD), Final Report: Recommendations of the TCFD (2017) <https://www.fsb-tcfd.org>

¹⁰ National Green Tribunal Act 2010, s 14.

¹¹ Commonwealth Climate and Law Initiative (CCLI), Directors' Duties and Climate Change in India (2019) <https://commonwealthclimatelaw.org>

UNDERSTANDING CLIMATE RESPONSIBILITY AS A DIRECTOR'S ACCOUNTABILITY

What is the location of climate responsibility under a director's accountability? I argue for three layers of accountability -

Accountability for Climate Due Diligence: Directors need to use reasonable care to identify, assess and monitor the physical and transition risks material to company operations and financial conditions. This accountability is an added layer to the duty of care and skill outlined in s.166, to be considered in the context of modern risk realities.

Accountability to Align with Board Strategy: A Board has an accountability to ensure there is board direction around corporate strategy and capital allocation that is aligned with credible pathways to transition, that aligns with any public commitment to transition (like net zero) or at a minimum, where there is not a public commitment, with a prudent risk mitigation strategy. This accountability is really aimed at avoiding stranded assets and reputational damage.

Accountability for Transparent Disclosure and Assurance: Directors should have a level of accountability to ensure that disclosure is true, balanced, material, and is assured by an independent third party as necessary. False, misleading and/or carelessly prepared sustainability disclosures open the company and its directors to potential regulatory action and/or shareholder suits.

Every accountability framework may have some foundation in existing legal terminology and regulatory practice, but it requires enhanced definitions on what “reasonable” climate due diligence, processes (e.g., board committees, risk dashboards), and standards (e.g., widely accepted reporting and assurance standards) look like.¹²

A PRACTICAL BOARD GOVERNANCE MODEL

Responsible Climate Governance at the Board Level: Create (or assign) a board sub-committee, with the required resources, governance authority and charter language, and with explicit responsibility for oversight of climate strategy, risk appetite, and to oversee climate

¹² International Financial Reporting Standards (IFRS) Foundation, International Sustainability Standards Board (ISSB) Standards: IFRS S1 and IFRS S2 (2023) <https://www.ifrs.org>

implementation by management at the board level. Leadership and charter language will help limit the diffusion of responsibility.

Climate Integration into Enterprise Risk Management: Direct management to integrate climate-related physical and transition risk metrics into enterprise risk management systems and incorporate purposefully considered scenario analysis (e.g. 1.5C °C/2.0C °C pathways) into capital planning.¹³

Assurance to Enhance Disclosure: Adopt disclosure frameworks (e.g. BRSR, TCFD-aligned disclosures) to ensure reliable information and third-party assurance of the 'most critical' metrics (e.g. Scope 1 and 2 emissions and key Scope 3 items). Independent verification also raises the costs of unacceptable organisational behaviours to 'greenwash' sustainable concepts.¹⁴

Skill Development and Compensation Structure at the Board Level: Build board competency and skill development in climate science, legal exposure, and financial modelling. Further align management reward to sustainable and credible outcomes, while guarding against perverse incentives.

Stakeholder Engagement and consideration of Just Transition: Assess the social impacts of strategies to transition to a low-carbon economy - for example, what will be the impact on jobs in carbon-intensive areas? Taking actions related to government-required considerations might result in litigation and damage reputation - thoughtful consideration of transition strategies will reduce these risks.

These elements translate abstract obligations into verifiable behaviours at the board level and can be referenced in minutes, disclosure statement or risk reports as evidence of good faith compliance with enhanced responsibilities.

¹³ Network for Greening the Financial System (NGFS), Scenarios in Action: A Progress Report on Global Supervisory Practices (2021) <https://www.ngfs.net>

¹⁴ Task Force on Climate-related Financial Disclosures (TCFD), Final Report: Recommendations of the TCFD (2017) <https://www.fsb-tcf.org>

NEW SUGGESTIONS: IMPROVEMENT OF LAWS AND POLICY RELATED TO CLIMATE RESPONSIBILITIES

The following reforms would make directors accountable for climate responsibilities more direct and enforceable.

Assurance in accordance with climate-related metrics: SEBI (or a standards body) would require the specified climatic metrics for large listed companies to be assured by will independent third parties and establish penalties for the penalties for material misstatements.¹⁵

Education of Directors, and fit-and-proper Criteria: Expectations for climate competence would be incorporated into director fit-and-proper guidelines for listed large companies, and listed entities would be required to disclose how the board composition engages in climate expertise.

Imposition of Liability and Remediation: Improve the ability to administratively impose liability on directors, where governed failures have materially contributed to environmental damage; and allow fast-tracked processes ("tailored benches") for litigation arising from corporate governance failures related to climate-related harm.

Long-Term Decision-Making Safe Harbour: Establish a 'business judgment' safe harbour, with calibrated requirements around good faith, good documentation in relation to long-term, climate investments, even if those investments would restrict short-term earnings, which would happen for sustainable investments, combined with the good documentation requirements to prevent abuse.¹⁶

These reforms seek to balance clarity and deterrence in relation to directors' discretion in business strategy.

OBJECTION AND COUNTER ARGUMENTS

There are a few objections. For example, extending the duty of directors to incorporate climate risk and climate governance may lead courts to second-guess the directors' commercial

¹⁵ Securities and Exchange Board of India (SEBI), Business Responsibility and Sustainability Reporting by Listed Entities (circular no. SEBI/HO/CFD/CMD-2/P/CIR/2021/562, 10 May 2021).

¹⁶ Andrew Keay, *The Business Judgment Rule: A Comparative Study* (Hart Publishing 2016).

judgment and harm entrepreneurship (I can certainly understand this concern). While it is a reasonable consideration, an extension of duties must always be about process, degree of reasonableness, and documentation as process, rather than an expected general outcome. Another concern is that regulatory obligations should be implemented based on the size and systemic importance of the entity, similar to the BRSR process.¹⁷ Lastly, others advance an argument that climate governance ought to be led by “the market” instead of by law. However, a market does not price systemic climate risk, and a disclosure or governance obligation is another layer of obligation for remedying that market failure.

INTERNATIONAL PERSPECTIVES: LESSONS FROM OTHER JURISDICTIONS

The expansion of directors’ duties to provide for climate accountability is not only an Indian affair. In the UK and Australia, Courts and regulators have noted that climate change issues are no longer unfounded or ethical in nature; they now represent a material financial risk. The UK Companies Act 2006 has an unequivocal duty on directors to consider environmental (and community) impact on the community,¹⁸ while recent guidance provided by the UK’s Financial Reporting Council will highlight that climate-related disclosures in respect of care and diligence form part of the duties and responsibilities of directors.¹⁹ In Australia, a recent court case in 2019 and the terms of an opinion from Noel Hutley SC in relation to directors further addressed that directors who did not take into account foreseeable climate risks may be liable for breach of duty of care. These types of developments and cases have matured into appropriate persuasive authority, and in preparation for India, there is a way to interpret broadly (s.166) in the context of what climate responsible action looks like for institutional investors that are beyond India's shores, and to elicit comparability and credibility to ensure compliance with nonprofit norms in the processes of the Indian boards. In this way, Indian regulators and boards can draw credibility and compliance comparably.

THE ROLE OF CORPORATE PURPOSE IN INDIA’S FUTURE

Incorporating climate responsibilities into directors' duties gives rise to a re-thinking of what we mean by corporate purpose in India. Corporate law has long had a history of pendular swings from a shareholder perspective to something more stakeholder-informed. Section 166

¹⁷ Securities and Exchange Board of India (SEBI), Business Responsibility and Sustainability Reporting by Listed Entities (circular no. SEBI/HO/CFD/CMD-2/P/CIR/2021/562, 10 May 2021).

¹⁸ Companies Act 2006,

¹⁹ Financial Reporting Council (FRC), Guidance on the Strategic Report (2018) <https://www.frc.org.uk>

has definitely already pushed directors to a pluralist understanding of corporate purpose, which takes into account both community and environmental objectives.²⁰ Climate change, unfortunately, just pushes this consideration even further: it simply shows that long-term shareholder value cannot be disentangled from the stability of our planet.²¹ Therefore, corporate purpose cannot simply be interpreted as profit maximisation - corporate purpose is evolving towards sustainable value generation. But this is not to say there is now an overriding, or more specific, viable sustainability profit maximisation, or worse yet, a "profit before sustainability" framework. Instead, sustainability has progressed beyond a framework focused on profit maximisation to a new conceptualisation of profits when ecological limits are considered.

Ultimately, organisations that embrace this re-direction will develop a much higher level of investor confidence, a social license to operate and the goodwill of regulators.²² As a result, directors need to propel purpose-driven strategies that align financial, social and environmental objectives. With such an approach, climate accountability transforms from a complex compliance-oriented obligation into a strategic asset that each organisation within corporate India will undertake in good governance for sustainability... and headings should not be copied from other sites and should be properly paraphrased.

CONCLUSION

Indian company law has reached a crossroads: statutory language, securities regulation and global norms intersect to offer a pathway to recognition of climate responsibility as a component of directors' duties. Converting that possibility to practice at the board level necessitates doctrinal clarification, enhanced disclosure and assurance, targeted capacity building, and enforcement measures that encourage good faith long-term stewardship while disincentivising gross negligence. If successful, expanding directors' duties to include climate can protect enterprise value, serve stakeholder interests, and promote alignment between corporate India and the public interest in climate stability.²³

²⁰ Companies Act 2013

²¹ Umakanth Varottil, 'Corporate Law and Climate Change: Re-examining the Role of Directors' (2020) 10(2) Indian Journal of Corporate Law and Policy 145.

²² John Ruggie, Corporate Purpose in Play: The Role of Law and Governance (Harvard Kennedy School Working Paper, 2020).

²³ Commonwealth Climate and Law Initiative, Directors' Duties and Climate Change in India (CCLI Report, 2021)