



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

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# **SHAREHOLDER PRIMACY VS. STAKEHOLDER GOVERNANCE WITH SPECIAL REFERENCE TO SECTION 166 OF THE COMPANIES ACT, 2013: A CRITICAL ANALYSIS**

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## **Abstract**

Indian corporate law has historically been shaped by the doctrine of shareholder primacy under which directors' fiduciary duties were primarily directed towards maximising shareholder value. The Companies Act 2013, particularly section 166<sup>1</sup>, appears to mark a normative shift by recognising the stakeholder-oriented duties as well as requiring directors to consider the interests of employees in the community alongside those of shareholders. This research article critically examines whether legislative development has meaningfully transformed corporate governance practices in India or whether it is largely symbolic, through doctrinal analysis of section 166<sup>2</sup>, judicial interpretation, enforcement mechanisms, and corporate practice. This article also argues that the provision has not substantially audited shareholders' centric decision-making. Judicial restraint and weak enforcement have limited its practical impact, resulting in continued prioritisation of shareholders within the celebrations. While section 166 has significant normative and symbolic value in aligning Indian corporate law with global trends and stakeholder governance and sustainable business practices, its transformative potential remains unrealised. This conclusion is that stronger legislative clarity, regular guidance, and enhanced accountability mechanism are necessary to ensure that stakeholder consideration move from aspirational ideas to enforceable components of corporate governance in India.

**Keywords:** *Corporate governance, Director duties, Shareholder privacy, Stakeholder governance.*

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<sup>1</sup> Companies Act, 2013, § 166, No. 18, Acts of Parliament, 2013(India).

<sup>2</sup> *id.*

## **Introduction**

One of the debatable issues in the theory of corporate law has been whether the right aim of the corporation can be the subject of dispute. Corporations have been traditionally considered as mechanisms of wealth creation by the shareholders with directors mandated to represent corporate activities in a way that best enhances shareholders returns. There is little evidence that shareholder primacy, as this concept is often called, is a recent development in corporate governance systems, and it has had a profound impact on statutes, judicial reasoning, and practices in the boardrooms. This practice was implicitly recognised in India under the Companies Act, 1956, in which the responsibilities of the directors were mostly informed by the principles of common law where the interests of shareholders were of overriding importance over other concerned parties which are seen as minor to the operations of the corporate.<sup>3</sup>

The corporate law reform in India utilizing the Companies Act, 2013, should be thought of as a part of the global trend on governance philosophy. The Act also established various initiatives to promote transparency, accountability and ethical behavior as the most significant one being the codification of directors duties in Section 166<sup>4</sup>. The move to provide that statutorily, directors are obliged to act in good faith whilst taking into account the interests of employees, the community, and the role of environmental protection, is a break with the previously applied fiduciary principles that were established by the courts. This clear awareness of non-shareholder interests is a milestone in the Indian corporate law implying an effort to restore the balance between profit and social responsibility.

In addition, the Indian corporate governance remains typified by the presence of concentrated ownership, promoter power and minimal shareholder activism, which only exacerbate the feasibility of stakeholder-based decision-making in practice. Directors could also be structurally motivated in such an environment to place the body of shareholder and promoter interests in priority to the wider responsibilities that are being statutorily incorporated. The absence of able interventions in commercial decision making and the unwillingness of many

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<sup>3</sup> Astha Pandey and MP Ram Mohan, Re-evaluating Corporate Purpose: A Critical Assessment of the Indian Stakeholder Governance Framework through a Historical and Comparative Analysis, IIMA Working Paper No. 2024-06-01 (June 2024), <https://www.iima.ac.in/sites/default/files/2024-06/WP-2024-06-01.pdf>.

<sup>4</sup> Companies Act, 2013, § 166, No. 18, Acts of Parliament, 2013(India).

courts to intervene in such matters have also restricted the creation of an effective stakeholder jurisprudence.<sup>5</sup>

It is against this, that this paper critically discusses the issue of whether Section 166<sup>6</sup> can be considered a true change of the idea of the primacy of the shareholder or it is merely a facade to be ethically governed. Using the analysis of the doctrinal basis of director duties, judicial interpretation and enforcement reality, the study would attempt an evaluation of how far the stakeholder governance is internalised within the Indian corporate law. In this way, the paper will enter the current debate on corporate accountability by questioning the disconnect between legislative desire and corporate action, and discussing ways of how stakeholder-related considerations can be entrenched as enforceable norms instead of aspirational principles and values.

## **I. A Theoretical Overview of Shareholder Primacy and Shareholder Governance**

The doctrine of shareholder primacy has long served as the foundation of corporate governance driving the legitimacy from classical economic theory and common law principles. At its core, the corporation is conceptualised as an excess of contract among various participants with shareholders occupying a privileged position as a residual claimants who bear the ultimate financial risk of the failure of an enterprise. This dual risk bearing function has been used to justify the claim that corporate strategy making prioritise the maximisation of shareholders. The model gained particular prominence in Anglo-American jurisdiction during the late 20th century, coinciding with new liberal economic reforms that emphasised market efficiency, competition and short-term financial performance as indicators of corporate success.<sup>7</sup> Indian corporate governance historically mirror the shareholder Centre orientation which was influenced by colonial legal traditions and post independence commercial regulation though Indian courts constantly try to interpret directors' fiduciary duties as being owed to the company, which was largely equated with the collective interest of shareholders, this

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<sup>5</sup> Astha Pandey and MP Ram Mohan, Re-evaluating Corporate Purpose: A Critical Assessment of the Indian Stakeholder Governance Framework through a Historical and Comparative Analysis, IIMA Working Paper No. 2024-06-01 (June 2024), <https://www.iima.ac.in/sites/default/files/2024-06/WP-2024-06-01.pdf>.

<sup>6</sup> *id.*

<sup>7</sup> Pandey, Astha and M. P., Ram Mohan, Re-evaluating Corporate Purpose: A Critical Assessment of the Indian Stakeholder Governance Framework through a Historical and Comparative Analysis (April 17, 2025). Delaware Journal of Corporate Law, Volume 49, Issue 2, Available at SSRN: <https://ssrn.com/abstract=4874378> or <http://dx.doi.org/10.2139/ssrn.4874378>

interpretation effectively marginalises the non-shareholder consequences from the framework. Corporate social responsibility, where it existed, was largely received as discretionary and charitable lacking Forceable legal status within corporate governance norms. The theoretical and practical limitations of a shareholder privacy however prompted increasing criticism. Scholars also highlighted that the focus of shareholder value encourages the short-term termination, risk externalisation as well as governance failure. These critics lead the intellectual ground for emergence of stakeholder governance as an alternative paradigm.<sup>8</sup>

The stakeholder approach conceptualises is the corporation as a social institution embedded within the network of corporate sustainability which depends on the equitable consideration of all stakeholders affected by the corporate activity. This respective also challenges the assumption about shareholder interest which were inherently aligned with broader welfare instead of emphasis inclusive of value creation. Section 166<sup>9</sup> of the Companies Act 2013 occupies a major position within this transition by prescribing codeine-directed duties in a manner that expressly incorporates stakeholder interests. By requiring directors to act in good faith while having regard to employees and the provision signals a departure from the narrow confidence of shareholder privacy. Furthermore more the coexistence of shareholder oriented objectives with the stakeholder considerations within the some Statutory provision reflects in resolve the theoretical tension. Directors remain legally obligated to promote the interests of the company also while navigating the expectations and underscoring the ongoing struggle within the corporate governance structure in India.

## **II. Statutory and Regulatory Framework of Corporate Governance in India**

The framework for corporate governance in India is structured around statutory mandates and institutional oversight mechanisms that define the duties and powers, as well as the liabilities, of company directors. This framework has evolved significantly since the economic liberalisation reforms after 1990s which necessitated the regulatory sophistication to address increase corporate activity, shareholding and heightened public interest in corporate conduct.<sup>10</sup>

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<sup>8</sup> *id.*

<sup>9</sup> Companies Act, 2013, § 166, No. 18, Acts of Parliament, 2013(India).

<sup>10</sup> Astha Pandey and MP Ram Mohan, Re-evaluating Corporate Purpose: A Critical Assessment of the Indian Stakeholder Governance Framework through a Historical and Comparative Analysis, IIMA Working Paper No. 2024-06-01 (June 2024), <https://www.iima.ac.in/sites/default/files/2024-06/WP-2024-06-01.pdf>.

The contemporary framework reflects an attempt to regulate corporate decision-making through legally enforced standards also accommodating competing claims of shareholders as well as other stakeholders within the structure.<sup>11</sup> The principal source of corporate governance regulation in India is the Companies Act 2013 which replaced the Companies Act 1956 with the objective of strengthening accountability and enhancing the transparency. A central feature of the act is the statutory qualification of director duties under section 166<sup>12</sup>. Prior to this enactment, the director's duties and obligation were likely derived from interpretation and principles. Section 166<sup>13</sup> not provides a definitive statutory statement of these duty thereby transforming the standards from judgement norms into unenforceable legal obligation it also mandates the directors act in accordance with the articles of association exercise due to reasonable care skill intelligence and act and good faith to promote the object of the company for the benefit of its members as a whole importantly the provision requires directors and discharging their duties to having regard to the interest of employee shareholders as well as the corporate environment. While the statutory language does not displace the premise of the company interest but it also raises the legality and the relevant consideration related to directors which must be taken into account.

The enforcement structure in the Section 166<sup>14</sup> is the primary regulatory and shareholder travel. All the penalties and contraventions are prescribed under the act, and enforcement is typically initiated by a regulatory authority, such as the Registrar of Companies or through shareholder actions.<sup>15</sup> Absence of statutory standing of non-shareholder stakeholders which directly enforce directors' duty limits the operational reach of the provisions inclusive of language.

Judicial interpretation has largely confined the application of the section 166<sup>16</sup> to clear instances of misconduct such as conflict of interest or a gain. The Companies Act 2013 for the strengthen the governance regulation through institutional mechanisms embedded within the

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<sup>11</sup> E. Ramya and Dr. Gowri Ramesh , Shareholder Primacy vs. Stakeholder Approach: Directors 'Challenges in Indian Corporate Governance, 7 (6) IJLMH Page 687 - 702 (2024), DOI: <https://doi.org/10.1000/IJLMH.118575>

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

<sup>13</sup> *id.*

<sup>14</sup> *id.*

<sup>15</sup> Pandey, Astha and M. P., Ram Mohan, Re-evaluating Corporate Purpose: A Critical Assessment of the Indian Stakeholder Governance Framework through a Historical and Comparative Analysis (April 17, 2025). Delaware Journal of Corporate Law, Volume 49, Issue 2, Available at SSRN: <https://ssrn.com/abstract=4874378> or <http://dx.doi.org/10.2139/ssrn.4874378>

<sup>16</sup> *id.*

board structure. The requirement for the appointment of independent directors under section 149<sup>17</sup> seeks to ensure imperial oversight and initiate the influence of controlling the shareholders. Another significant Statutory intervention is the introduction of the mandatory corporate social responsibility under section 135<sup>18</sup> of the act. This makes the company eligible to constitute CSR committees and allocate a prescribed percentage of profits toward these socially beneficial activities. While CSR obligations are framed as expenditure requirements rather than a duty, their inclusion within the Companies Act integrates social responsibility and compliance. Directors are legally required to ensure disclosure of CSR policies, their implementation, and the reasons for non-spending of funds by subjecting CSR decisions to regulatory scrutiny.

The act also incorporates protection for minority holders through provisions enabling class action suits, enhancing disclosure requirements, as well as material transactions.<sup>19</sup> These provisions impose a legal constraint on board discretion and require directors to justify decisions that may proportionally affect minority interests, and these mechanisms collectively reinforce the directors' duty to act fairly and in accordance with social and corporate governance.<sup>20</sup> Further more in the context of the company's regulatory role of these Securities and Exchange Board of India which is commonly known as SEBI which has listing applications and disclosure requirements which impose detailed compliance obligations relating to the composition of the board and the structure of the committee.<sup>21</sup> These entities are required to maintain an audit committee and a risk management system, both predominantly staffed by independent directors. These regulatory requirements are legally pending and subject to regulated requirements, which are legally binding and subject to enforcement through monetary penalties. SEBI Regulations also address the covenant risk associated with conflicts of interest inside training and related party transactions. Directors are also legally required to ensure the timely disclosure and approval of such transactions, with failure to do so attracting

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<sup>17</sup> Companies Act, 2013, § 149, No. 18, Acts of Parliament, 2013(India).

<sup>18</sup> Companies Act, 2013, § 135, No. 18, Acts of Parliament, 2013(India).

<sup>19</sup> Kumar, Amit and Dube, Indrajit, The Paradox of Corporate Purpose in India: Shareholder Primacy versus Stakeholder Model (September 23, 2024). Australian Journal of Asian Law, Vol. 25, No. 1, Article 05: 69-87, 2024, Available at SSRN: <https://ssrn.com/abstract=4964372>

<sup>20</sup> Astha Pandey and MP Ram Mohan, Re-evaluating Corporate Purpose: A Critical Assessment of the Indian Stakeholder Governance Framework through a Historical and Comparative Analysis, IIMA Working Paper No. 2024-06-01 (June 2024), <https://www.iima.ac.in/sites/default/files/2024-06/WP-2024-06-01.pdf>.

<sup>21</sup> E. Ramya and Dr. Gowri Ramesh , Shareholder Primacy vs. Stakeholder Approach: Directors 'Challenges in Indian Corporate Governance, 7 (6) IJLMH Page 687 - 702 (2024), DOI: <https://doi.org/10.1000/IJLMH.118575>

regulatory action. In addition, It mandated to provide periodic disclosure of sustainability risk management and corporate governance practices.<sup>22</sup> The disclosure-based obligations indirectly enforced stakeholder considerations by requiring companies to publicly account for governance and maintenance practice.

The Ministry of Corporate Affairs also functions as the primary administrative authority responsible for implementing and supervising the Companies Act 2013, The MCA issues rules notifications as well as circulars to monitor the corporate filing and disclosures through electronic governance. Education on corporate governance disputes is provided by the national company law tribunal, which exercises jurisdiction over matters such as operations and mismanagement.<sup>23</sup> The NCLT serves as a specialise forum which directors may be held personally accountable before the tribunal for failure of discharge their statutory duty, thereby enforcing the legal consequences of failure. Despite the existence of an extensive legal and regulatory framework the practical enforcement challenges persist and also promoted dominance in the Indian corporate structure of limits the effectiveness of independent directors and internal governance mechanism.<sup>24</sup> Directors are also exposed to increasing legal risk in the aftermath of the corporate failures leading to heightened caution in decision-making. The Indian corporate governance framework thus operates through a layout system of statutory duties regulatory oversight and educator enforcement.<sup>25</sup> Directors are bound to legally required to navigate complex compliance obligation while balancing the shareholder interest as well as stakeholder interest.

### **III. Transnational Approaches to Corporate Governance:**

#### **The UK and the US**

Comparative examination of corporate governance framework revealed that different jurisdictions adopt differing legal approaches to balance the interests of shareholder and stakeholder concerns these differences are shaped by historical institutional as well as market specific factors. The United States of America represents a predominantly shareholder-oriented

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<sup>22</sup> 1. Rönnegard D, Craig Smith N. Shareholder Primacy vs. Stakeholder Theory: The Law as Constraint and Potential Enabler of Stakeholder Concern\*. In: Harrison JS, Barney JB, Freeman RE, Phillips RA, eds. The Cambridge Handbook of Stakeholder Theory. Cambridge University Press; 2019:117-131.

<sup>23</sup> *Supra* Note 22.

<sup>24</sup> *Id.*

<sup>25</sup> E. Ramya and Dr. Gowri Ramesh , Shareholder Primacy vs. Stakeholder Approach: Directors 'Challenges in Indian Corporate Governance, 7 (6) IJLMH Page 687 - 702 (2024), DOI: <https://doi.org/10.1000/IJLMH.118575>

model; on the other hand, the United Kingdom follows a statutory articulated in lighted of shareholder value approach, which is a major related to India, and India occupies an intermediate position seeking to recalibrate shareholder Prema cutie operating within a corporate driven environment.

### **1. United States**

The corporate governance is largely characterised by a shareholder orientation which are enforced through a unitary report structure and emphasis on shareholder rights. Corporate law, particularly under the Delaware jurisprudence and position directors as fiduciary accountable primarily towards the shareholder though it does not impose a strict legal obligation to maximise the shareholder wealth in all but directors are audited substantial discretion under the business judgement rule to consider a long-term corporate interest including the welfare of employees creditor and corporation itself.<sup>26</sup> While several states in the US have adopted constituency statutes permitting directors to consider non-shareholder interests, these provisions generally do not grant stakeholders enforceable rights nor do they significantly dilute shareholder dominance. The regulatory intervention such as Sarbanes Oxley Act ad Dodd Frank Act have trend in the oversight and accountability mechanism. More recently pressure from institutional investors and growing prominence of ESG considerations have encourage the board to address the broad stakeholder concerns. However these developments are largely market-driven rather than legally mandated and shareholder primacy continues to dominate the enforcement structure.

### **2. United Kingdom**

The UK adopt a more formally integrated approach through the enlighten and share value model which are in shrine under section 172<sup>27</sup> of the companies act 2006. Under this framework directors are required to act in a manner which most likely promote the success of the company and for the benefit of its members while having to regards such as employee interest and community impact. This formulation seeks to reconcile shareholder primacy with stakeholder awareness by embedding the consideration within the objective of long shareholder success.<sup>28</sup>

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<sup>26</sup> Brandt, Fabian and Georgiou, Konstantinos, "Shareholders vs Stakeholders Capitalism" (2016). *Comparative Corporate Governance and Financial Regulation.*, [https://scholarship.law.upenn.edu/fisch\\_2016/10](https://scholarship.law.upenn.edu/fisch_2016/10).

<sup>27</sup> Companies Act, 2006, § 172, Acts of Parliament, 2006 (India).

<sup>28</sup> 1. Rönnegard D, Craig Smith N. Shareholder Primacy vs. Stakeholder Theory: The Law as Constraint and Potential Enabler of Stakeholder Concern\*. In: Harrison JS, Barney JB, Freeman RE, Phillips RA, eds. *The Cambridge Handbook of Stakeholder Theory*. Cambridge University Press; 2019:117-131.

The UK governance code and the Stewardship code for reinforce the board independence and shareholder centric challenge directors decision. Consequently, while stakeholders are more explicitly recognised in the US model, practical governance outcomes continue to be shaped by the expectations of shareholders and the pressure of the market.

In comparison India's framework reflects element of both the models while combining statutory recognition of stakeholder interest within the Limited enforcement mechanism highlighting the global difficulty of translating stakeholder governance from normative commitment into enforceable legal practice.

### **Conclusion & Suggestion**

Section 166 of the Companies Act, 2013 is a significant normative change in the corporate governance of Indian incorporations as an act which has come to statutory acknowledge the stakeholder interests in addition to the shareholder interests. On the conceptual plane, the provision is an indication of the shifting away of the historic dogma of primacy of shareholders and to keeping the Indian corporate law on par with the new trends in the world that focus on sensible and involved corporate practices. This paper however indicates that the practical implications of the implementation of the Section 166 in corporate decision-making processes have not been very significant.

The main liability on the provision is that it lacks a clear language and a viable enforcement system. The fact that directors are only required to have regard to stakeholder interests is insubstantial and does not provide much guidance on how the competing interests should be exercised. Restraint in reviewing business judgments by the courts has further limited the emergence of any meaningful stakeholder jurisprudence that would have permitted the shareholder-centric form of governance accountable to few, if any. Without a regular regulatory/ judicial involvement, the stakeholder responsibilities may become mere aspirations instead of being implemented as duties.

In order to achieve transformational capability of Section 166, special reforms are required. Informing the stakeholders about their responsibilities through legislation would add to the lawful clarity, and further enhances enforcing it. Best practices, disclosure requirements, and the standards of governance are some of the regulatory guidance that can in turn, operationalise the provision on the basis of the regulatory objectives of bodies like the Ministry of Corporate

Affairs. The role of judicial participation by way of purposive interpretation is equally critical in a way that the stakeholder considerations are substantively reviewed as opposed to being proceduralities.

To sum up, although Section 166 is particularly symbolically and normatively important, its probability to transform Indian corporate governance is not fully used. Higher levels of legislative clarity, regulation, and judicial activism are necessary to transform the concept of stakeholder governance into a matter of responsibility and to agree that the corporate decision-making in India should balance with the interests of greater social responsibility.

