DIRECTORS AND THE BOARD: CORPORATE STEWARDSHIP UNDER INDIAN COMPANY LAW

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Indian company law understands the Board of Directors not merely as a managerial organ, but as an institution of corporate stewardship. At its core, stewardship reflects the idea that directors exercise power in trust, for the company as a distinct legal person, and not as proprietors of corporate authority. This distinction is critical, particularly in private companies where ownership, management, and control often converge.

Historically, directors were described as agents of shareholders. Over time, Indian jurisprudence, drawing heavily from English common law, has moved away from this narrow characterisation. Courts have consistently held that directors occupy a fiduciary position, owing duties of loyalty, good faith, and care to the company itself. As early as *Official Liquidator v. P.A. Tendolkar*[1], the Supreme Court recognised that directors are trustees of corporate assets and must act with a degree of responsibility commensurate with the power entrusted to them. This fiduciary framing laid the foundation for understanding corporate governance as a question of stewardship rather than control.

The enactment of the Companies Act, 2013 marked a decisive shift from implied fiduciary standards to explicit statutory codification. Section 166 of the Companies Act, 2013 crystallises the duties of directors, requiring them to act in good faith, promote the objects of the company, and exercise independent judgment. Importantly, these duties are owed to the company—not to individual shareholders or appointing constituencies. The legislative intent is clear: corporate power must be exercised responsibly, transparently, and for legitimate corporate purposes.

Indian law also departs from a purely shareholder-centric model of governance. Directors are expected to consider the broader interests connected with the company's functioning, reinforcing the idea that stewardship involves balancing competing claims rather than maximising short-term returns. This approach aligns with judicial reluctance to interfere in bona fide business decisions, while remaining firm against abuse of power. In *Nanalal Zaver v. Bombay Life Assurance*, the Court held that directors' discretion will be respected so long as it is exercised honestly and in the company's interest.

For private and closely-held companies, the stewardship lens assumes heightened importance. Courts have repeatedly clarified that informality of structure or concentration of shareholding does not dilute fiduciary responsibility. Where directors dominate decision-making, the expectation of accountability is correspondingly higher. As later sections will show, Indian company law protects commercial discretion—but only when it is exercised within the boundaries of trust, purpose, and accountability that define corporate stewardship.

This article builds upon these conceptual foundations to examine how Indian law regulates the composition, powers, duties, and accountability of directors and the Board in private

[1] (1973) 1 SCC 602

companies. It analyses the statutory framework under the Companies Act, 2013, with particular focus on fiduciary duties, board decision-making, and the limits of managerial discretion, alongside key judicial pronouncements that have shaped the understanding of corporate stewardship in India. The discussion also addresses how these principles operate in founder-driven and closely-held companies, where governance risks are often amplified, and concludes with practical insights on how Boards can align legal compliance with effective corporate oversight.

Statutory Architecture of the Board under the Companies Act, 2013

Indian company law treats the Board of Directors as a statutory organ of the company—one whose authority flows from law, not merely from private ordering through shareholders' agreements or articles. This architecture is deliberate. By vesting primary decision-making authority in the Board, the law separates ownership from governance, and subjects the exercise of corporate power to fiduciary discipline. The framework is principally housed in the Companies Act, 2013 and applies with equal force to private companies, subject only to limited structural relaxations.

1. The Board as a Creature of Statute

The Board derives its legitimacy from statute and acts as the company's collective mind. While shareholders appoint directors, they do not manage the company's affairs on a day-to-day basis. Courts have consistently recognised this separation, holding that the Board—not the general meeting—is entrusted with running the company's business. This statutory positioning explains both the breadth of board powers and the strictness of fiduciary obligations imposed on directors.

2. Composition of the Board

Sections 149 to 152 of the Companies Act, 2013 govern who may sit on the Board and how directors are appointed. The Companies Act, 2013 prescribes minimum and maximum numbers of directors, mandates at least one resident director, and recognises only individuals (and not corporate bodies) as directors[2]. For private companies, the law offers flexibility in composition, but not at the cost of accountability. Appointment may occur through shareholders in general meeting or, in limited cases, by the Board itself, such as the appointment of additional directors or filling casual vacancies, subject always to ratification where required.

The statutory emphasis on formal appointment is not procedural pedantry. An improperly constituted Board undermines the validity of its decisions and exposes the company and its directors to governance challenges.

3. Appointment, Tenure and Removal

[2] *Oriental Metal Processing Works v Bhaskar Kashinath Thakur*, (1961) AIR SC 573

The Companies Act, 2013 balances continuity in governance with mechanisms of accountability. Directors are appointed for defined terms, with retirement by rotation applicable unless exempted (as is often the case for private companies). Removal of directors by shareholders through ordinary resolution is expressly permitted, subject to procedural safeguards such as the right to be heard. These provisions reinforce a central theme of Indian company law: directors hold office at the pleasure of the company, but exercise powers in trust for it.

4. Powers of the Board and Their Statutory Source

Section 179 of the Companies Act, 2013 confers upon the Board the authority to exercise "all such powers, and to do all such acts and things, as the company is authorised to exercise and do," subject to the Companies Act, 2013 the articles, and matters reserved for shareholders. This conferral is intentionally broad. The Board may delegate certain powers to committees or officers, but core functions, such as approving financial statements or key strategic decisions, remain non-delegable.

Judicial decisions have repeatedly emphasised that these powers must be exercised bona fide and for proper purposes. In *Nanalal Zaver v. Bombay Life Assurance*[3], the Supreme Court underscored that while courts will not sit in appeal over business decisions, they will intervene where directors act mala fide or for collateral objectives.

5. Collective Decision-Making and Board Processes

Indian law insists on collective deliberation as a safeguard against arbitrary governance. Section 173 of the Companies Act, 2013 prescribes minimum board meeting requirements, quorum thresholds, and permits participation through electronic means. Decisions may be taken by circulation, but only where procedural requirements are strictly met. Minutes of meetings, recording of dissent, and proper agenda circulation are not mere compliance formalities; they serve as evidentiary proof that directors applied independent judgment.

This emphasis on process has practical implications. Courts are far more willing to defer to board decisions where records demonstrate informed deliberation and absence of conflict.

6. Limits on Board Authority and Shareholder Oversight

Despite its wide powers, the Board is not sovereign. The Companies Act, 2013 reserves certain matters, such as alterations to constitutional documents or fundamental corporate actions, for shareholder approval, often by special resolution. Actions taken by the Board without requisite approvals are vulnerable to challenge and may be set aside.

The judiciary has been particularly vigilant where board actions trench upon shareholder rights or are designed to entrench control. In *Dale & Carrington Investment v. P.K. Prathapan*[4],

[3] AIR 1950 SC 172
[4] AIR 2005 SC 1624

the Supreme Court invalidated board-driven share issuances undertaken for an improper purpose, reaffirming that statutory power cannot be used as a tool of oppression.

Fiduciary Duties of Directors – Statutory Codification

Indian company law no longer treats fiduciary duties as abstract obligations derived solely from equity. With the enactment of the Companies Act, 2013, fiduciary standards applicable to directors have been expressly codified, primarily under Section 166 of the Companies Act, 2013. This codification reflects a legislative intent to transform long-settled common law principles into enforceable statutory commands, applicable uniformly to public and private companies alike.

1. Evolution from Common Law to Statute

Before 2013, fiduciary duties of directors were judicially evolved, drawing heavily from English common law. Directors were consistently described as trustees or quasi-trustees of corporate powers and assets. In *Official Liquidator v. P.A. Tendolkar*[5], the Supreme Court held that directors in control of a company's affairs must act with scrupulous care and honesty, and cannot escape liability merely because of the corporate form. Section 166 does not replace this jurisprudence; it cements it into statute, providing clarity, certainty, and statutory enforceability.

2. Duty to Act in Good Faith and for Proper Purpose

Section 166(2) of Companies Act, 2013 mandates that directors act in good faith to promote the objects of the company and in its best interests. This statutory duty incorporates the proper purpose doctrine, under which corporate powers must be exercised only for the purpose for which they are conferred. In *Nanalal Zaver v. Bombay Life Assurance*[6], the Supreme Court clarified that courts will not interfere with directors' discretion unless it is shown that such discretion was exercised mala fide or for collateral objectives. The decision firmly establishes that legality of power does not legitimise its misuse.

3. Duty of Loyalty and Avoidance of Conflict of Interest

The duty of loyalty lies at the heart of fiduciary responsibility. Section 166(4) of the Companies Act, 2013 prohibits directors from placing themselves in positions of conflict or deriving undue gain. Courts have repeatedly emphasised that fiduciary loyalty is owed to the company, not to personal or sectional interests. In *Regal (Hastings) Ltd. v. Gulliver*[7], a principle consistently followed in India, it was held that fiduciaries must account for profits made by virtue of their position, irrespective of good faith. Indian courts have adopted this strict approach, particularly in cases involving related-party transactions and diversion of corporate opportunities.

[5] (1973) 1 SCC 602
[6] AIR 1950 SC 172
[7] [1942] UKHL 1

4. Duty of Care, Skill and Diligence

Section 166(3) of the Companies Act, 2013 requires directors to exercise due and reasonable care, skill, and diligence, and to apply independent judgment. Indian jurisprudence recognises that while directors are not insurers of business success, they must act with informed attentiveness. In *City Equitable Fire Insurance Co. Ltd., Re*[8], principles regarding the standard of care were articulated, and Indian courts have since evolved these standards to reflect modern corporate realities. The focus today is on whether directors applied their mind, sought adequate information, and participated meaningfully in decision-making.

5. Duty to Exercise Independent Judgment

Section 166 of the Companies Act, 2103 expressly requires directors to exercise independent judgment, an obligation of particular relevance in nominee-driven and promoter-controlled boards. In *ICICI Bank v. Official Liquidator of APS Star Industries*[9], the Supreme Court held that nominee directors owe the same fiduciary duties as any other director and cannot subordinate their obligations to the interests of their nominating institution. The ruling reinforces that directorial independence is a legal duty, not a governance ideal.

6. Prohibition on Undue Gain and Personal Benefit

Sections 166(4) and 166(5) of the Companies Act, 2013 impose a strict prohibition on directors deriving undue gain or advantage. Any such gain is liable to be disgorged, and statutory penalties may follow. The breadth of this prohibition reflects legislative intent to prevent directors from exploiting informational or positional asymmetry. In *Dale & Carrington Investment v. P.K. Prathapan*[10], the Supreme Court invalidated a share allotment made to consolidate control, holding that fiduciary powers cannot be used for personal or factional advantage.

7. Fiduciary Duties in Private and Closely-Held Companies

Courts have consistently refused to dilute fiduciary standards merely because a company is private or closely held. On the contrary, where power is concentrated and governance safeguards are limited, fiduciary scrutiny is heightened. Directors who dominate decision-making are expected to demonstrate greater care, transparency, and loyalty.

Directors as Trustees, Not Owners – Judicial Understanding

Indian courts have consistently rejected the notion that directors "own" the company merely because they control its affairs or hold a majority of its shareholding. Instead, judicial interpretation has firmly positioned directors as trustees of corporate power and property, required to exercise their authority for the benefit of the company as a separate legal entity.

[8] [1925] Ch 407
[9] (2010) 10 SCC 1
[10] AIR 2005 SC 1624

This trustee-based understanding lies at the heart of Indian corporate governance jurisprudence.

1. Directors as Trustees of Corporate Power

The trustee characterisation flows from the nature of directorial authority itself. Directors do not derive their powers from personal ownership, but from statute and the company's constitution. Courts have repeatedly emphasised that such power is held in trust and must be exercised with fidelity, care, and for proper corporate purposes. The distinction between ownership of shares and stewardship of corporate affairs is foundational: while shareholders possess proprietary rights, directors hold fiduciary control.

This principle was clearly articulated in *Official Liquidator v. P.A. Tendolkar*, where the Supreme Court held that directors who control company affairs act in a fiduciary capacity akin to trustees and may be personally liable for misfeasance where corporate funds or powers are misused. The Court underscored that dominance over management heightens, rather than dilutes, responsibility.

2. Judicial Rejection of "Ownership-Based" Control

Indian courts have consistently refused to accept majority shareholding as a defence to fiduciary breach. In *Needle Industries v. Needle Industries Newey*[11], the Court recognised that even lawful powers, if exercised in a manner oppressive to minority shareholders, may attract judicial intervention. The emphasis remained on the purpose and bona fides behind the exercise of power

3. Exercise of Power as a Trust Function

Judicial scrutiny of board decisions is typically structured around a simple inquiry: whether the power was exercised bona fide, for a proper purpose, and in the interests of the company. Courts are particularly vigilant in cases involving share issuances, related-party transactions, or restructuring decisions that alter control dynamics. Where power is exercised for collateral ends, it is treated as a breach of trust, regardless of formal compliance with statutory procedure.

4. Trusteeship as the Judicial Core of Governance

The consistent judicial portrayal of directors as trustees explains the broader architecture of Indian corporate law. It justifies strict fiduciary duties, validates judicial intervention in cases of abuse, and simultaneously supports deference to bona fide business decisions. Indian courts respect managerial autonomy, but never at the cost of trust. Directorship, in judicial understanding, is not a badge of ownership, but an office of confidence and responsibility.

Business Judgment Rule – Indian Adaptation

[11] (1981) 3 SCC 333

Indian company law recognises that effective corporate governance requires directors to take commercial risks. Courts, therefore, exercise restraint in second-guessing business decisions. This judicial restraint is commonly described as the 'Business Judgment Rule', a doctrine that, while not expressly codified in Indian statute, has been judicially acknowledged and adapted to fit India's fiduciary framework.

1. Concept and Judicial Basis

At its core, the Business Judgment Rule reflects the principle that courts are ill-equipped to substitute their commercial assessment for that of a duly constituted board. The doctrine does not protect outcomes; it protects decision-making autonomy, provided the process is bona fide, informed, and free from conflict. Indian courts have consistently emphasised that corporate governance would be paralysed if every commercial decision were subjected to ex post judicial evaluation.

This approach was articulated by the Supreme Court in *Miheer H. Mafatlal v. Mafatlal Industries*[12], where the Court held that it would not interfere with corporate decisions merely because an alternative course might appear more profitable or prudent. Judicial intervention, the Court observed, is warranted only where the decision is shown to be unfair, unreasonable, or tainted by mala fides.

2. Recognition Without Formal Codification

Unlike jurisdictions such as Delaware, the Business Judgment Rule in India operates as a judicial principle rather than a statutory safe harbour. Courts do not apply it as an automatic presumption in favour of directors. Instead, deference is conditional upon compliance with fiduciary obligations.

3. Preconditions for Judicial Deference

Indian courts typically assess whether:

(a) The decision was taken in good faith and for a proper corporate purpose;
(b) Directors acted within their statutory powers;
(c) Relevant information was considered and independent judgment applied; and
(d) The decision was untainted by conflict of interest or self-dealing.

Where these conditions are met, courts are slow to interfere, even if the decision ultimately proves unsuccessful. The focus remains firmly on the integrity of the decision-making process, not the commercial wisdom of the result.

4. Interaction with Section 166 of Companies Act, 2013

[12] (1997) 1 SCC 579

The Business Judgment Rule in India is inseparable from Section 166 of the Companies Act, 2013. Judicial deference is available only where directors demonstrably act in good faith, exercise due care, and apply independent judgment. Section 166 thus functions as the statutory gateway to business judgment protection.

5. Relevance for Private Companies

In private and closely-held companies, courts apply the doctrine with greater caution. Informal governance, undocumented decisions, or dominance by promoter-directors often weaken reliance on business judgment. Boards that demonstrate structured deliberation and transparency are far better placed to invoke judicial restraint.

In essence, Indian courts do not distrust business risk; they distrust unaccountable discretion. The Business Judgment Rule protects directors who act as faithful stewards, not those who cloak self-interest in the language of commercial judgment.

Independent Judgment vs Nominee Directors

A recurring tension in private companies arises from the appointment of nominee directors by investors, lenders, or strategic partners, and the statutory obligation of all directors to exercise independent judgment. Indian company law resolves this tension unequivocally in favour of fiduciary autonomy.

1. Statutory Mandate of Independent Judgment

Section 166(3) of the Companies Act, 2013 requires every director to exercise due and reasonable care, skill, and diligence and to apply independent judgment. Independence here is not a board classification or a test of shareholding neutrality; it is an independence of mind. The duty applies uniformly to executive directors, non-executive directors, and nominee directors alike.

2. Nominee Directors: Appointment Without Dilution of Duty

Nominee directors are typically appointed pursuant to financing or investment arrangements to safeguard the interests of the nominating party. Indian law recognises the commercial rationale for such appointments but does not create any statutory carve-out for nominees. Nomination explains the mode of appointment, not the scope of duty. A nominee director, once appointed, stands on the same fiduciary footing as any other director.

3. Judicial Position: Duties Owed to the Company

The Supreme Court has repeatedly clarified that nominee directors owe their duties to the company, not to their nominators. In *ICICI Bank v. Official Liquidator of APS Star Industries*, the Court rejected the contention that a nominee director could prioritise the interests of the appointing bank over those of the company. The fiduciary obligation, the Court held, cannot be subordinated to external instructions.

Similarly, in *Rajasthan State Industrial Development v. Diamond & Gem Development*[13], the Court emphasised that directors appointed by state instrumentalities or institutions remain bound by fiduciary duties to the company and cannot function as mere representatives of the nominator.

4. Conflicts Between Nominator Interests and Corporate Interest

Conflicts commonly arise in situations involving related-party transactions, enforcement of investor rights, or exit-driven decisions. Indian law expects nominee directors to prioritise corporate interest, disclose conflicts, and, where appropriate, recuse themselves or record dissent. Acting mechanically on instructions is inconsistent with the duty of independent judgment and exposes the director to personal liability.

5. Contractual Rights vs Statutory Duties

While shareholders' agreements may confer affirmative voting rights or information rights on investors, such contractual arrangements cannot override statutory fiduciary obligations. Courts have consistently refused to enforce private arrangements that compel directors to act in breach of their duties under Section 166 of the Companies Act, 2013.

In founder-driven and closely-held companies, the risk of "rubber-stamp" boards is pronounced. Courts scrutinise whether directors, particularly nominees, applied their minds and engaged in genuine deliberation. Board minutes, recorded dissent, and reasoned decision-making often determine whether judicial deference is extended.

In sum, Indian law permits nomination but demands independence. A nominee director may bring a perspective shaped by the nominator's interests, but must ultimately decide, and be accountable, as a fiduciary of the company.

Board Accountability, Liability & Enforcement

Indian company law accords the Board of Directors wide managerial discretion. That discretion, however, is inseparably tied to accountability. The Companies Act, 2013 is premised on a clear legal bargain: boards are trusted with corporate power precisely because that power is subject to enforceable legal responsibility when misused.

1. Accountability as the Counterpart to Board Autonomy

The statutory design deliberately empowers the Board to manage the affairs of the company, while simultaneously subjecting directors to fiduciary, civil, and regulatory consequences. Accountability is not conceived as punitive; it is corrective and disciplinary, intended to ensure that corporate power is exercised for legitimate purposes. As earlier sections demonstrate, judicial deference to board decisions exists only where discretion is exercised responsibly.

[13] (2013) 5 SCC 470

2. Statutory Sources of Director Liability

Director liability primarily flows from the Companies Act, 2013. Breach of fiduciary duties under Section 166 of the Companies Act, 2013 forms the core trigger, but liability also arises in cases of fraud, misstatements, misfeasance, and acts carried out with knowledge, consent, or connivance. Importantly, Indian law adopts a conduct-based approach: mere designation as a director does not attract liability; culpability is determined by involvement, awareness, and failure to act where duty demands intervention.

3. Collective Responsibility and Individual Exposure

While board decisions are taken collectively, individual directors are not shielded where personal responsibility can be established. Courts have repeatedly held that directors who exercise dominant control, actively participate in wrongful acts, or consciously acquiesce in misconduct may be held personally liable. In *Official Liquidator v. P.A. Tendolkar*, the Supreme Court clarified that directors in control cannot escape liability by pleading collective decision-making when neglect of duty or misuse of power is evident.

4. Civil Remedies: Oppression, Mismanagement and Board Conduct

Sections 241 and 242 of the Companies Act, 2013 provide shareholders with a powerful remedial framework where board conduct is oppressive or amounts to mismanagement. Many such proceedings are rooted in allegations of fiduciary breach, particularly where boards take decisions that entrench control, dilute minority interests, or exclude shareholders from participation. As mentioned earlier in this article, in the case of *Needle Industries v. Needle Industries Newey*, the Supreme Court emphasised that even formally valid board actions may invite judicial correction if they operate unfairly or inequitably.

5. Regulatory and Investigative Enforcement

Beyond shareholder remedies, directors face exposure through regulatory action. The Registrar of Companies and the Serious Fraud Investigation Office may initiate investigations in cases involving fraud, diversion of funds, or persistent non-compliance. Such proceedings frequently focus on identifying individuals who exercised real control over corporate decisions, rather than proceeding mechanically against the entire board.

6. Lifting the Corporate Veil

In exceptional cases, courts have shown willingness to look beyond the corporate personality to fix responsibility on individuals who abuse the corporate form. In *Delhi Development Authority v. Skipper Construction*[14], the Supreme Court lifted the corporate veil where the company structure was used as a façade to perpetrate wrongdoing, underscoring that corporate form cannot be a shield for misconduct.

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[14] (1996) 4 SCC 622

7. Defences and the Role of Process

Indian jurisprudence also recognises legitimate defences. Directors who act bona fide, exercise due diligence, rely on expert advice, and ensure proper documentation are far better placed to resist liability. As consistently seen in practice, process is often the strongest defence.

Corporate Stewardship in Closely-Held & Founder-Driven Companies: Redefining the Role of the Board

Corporate stewardship assumes heightened importance in closely-held and founder-driven companies, where ownership, management, and board control often converge. Indian company law does not view this convergence as a justification for relaxed governance. On the contrary, the statutory and judicial framework proceeds on the premise that concentration of power attracts heightened fiduciary responsibility, irrespective of the company’s private character under the Companies Act, 2013.

Courts have consistently rejected the argument that governance standards should be diluted merely because a company is promoter-controlled, family-run, or closely held. Founder dominance or unanimous shareholder participation does not convert corporate powers into personal entitlements. Judicial scrutiny in such cases focuses on whether board powers were exercised for proper corporate purposes and whether minority interests were unfairly prejudiced. Founder control may explain influence within the company, but it does not confer immunity from fiduciary oversight.

Against this backdrop, the role of the Board in founder-driven companies must be re-examined. In practice, boards are often reduced to ratification bodies, with substantive decisions taken outside the boardroom. Indian company law, however, envisages the Board as an institutional check, an arena for deliberation, challenge, and independent judgment. A board that merely mirrors promoter intent undermines its legal legitimacy and weakens the company’s ability to invoke judicial deference under the business judgment framework.

Judicial intervention is commonly triggered where stewardship failures follow familiar patterns: control-altering share issuances without proper purpose, related-party transactions lacking arm’s-length scrutiny, exclusion of minority shareholders, or mechanical approvals unsupported by meaningful deliberation. Notably, liability often flows less from the commercial outcome of a decision and more from the process by which it was reached.

For private company boards, effective stewardship is therefore grounded in process discipline. Meaningful board meetings, adequate information flow, transparent handling of conflicts, and recorded dissent where appropriate are not procedural formalities; they are legal safeguards. Ultimately, the Board’s value in a closely-held company lies in its ability to act as a custodian of long-term corporate interest and a moderator of concentrated power. In Indian company law, board authority is respected not because of who controls it, but because of how faithfully it discharges its trust.

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