

Draft Report

**FIDUCIARY DUTIES OF
DIRECTORS**

Sponsored by



Prepared By



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The study has been conducted by the research team at SIMS including Brig (Dr) Rajiv Divekar, Dr Pravin Kumar Bhoyar, Dr Pradnya Chitrao, Prof P K Rajagopal, Dr Komal Chopra, Prof Vishwas Chitrao, Dr. Sanjay Kumar Mangla and Ms Ritika Paul.

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Executive Summary

Corporate executives are necessary for any particular company, and they typically possess a great deal of authority that they may utilize against the interests of the public and investors. Upon examining the financial crises of recent times, it becomes evident that corporations may exert influence not just in the nations in which they conduct business but also globally.

Businesses have a significant influence on the society in which they operate, and in this regard, it is critical to recognize the accountability expected of the decision-makers inside these organizations, known as directors. Section 166(3) of the Companies Act, 2013 (also known as the "Indian Companies Act"), which codifies the duty of care required by company directors, is the main clause in India that imposes responsibility on company directors.

Problem Statement

Many global business scandals emerged at the beginning of the twenty-first century, notably the US cases of Enron and WorldCom (Gordon, Jeffrey N., 2002). The global financial crisis of 2007–2009 highlighted the "interconnectedness" of today's modern international capital markets on a worldwide scale. All the crises highlighted the need to hold accountable company directors for improper conduct. Because of their fiduciary duty to the company, directors are not permitted to sign contracts with organizations in which the company has an interest or plans to have an interest for their own personal gain. Behaving in good faith is the foundation of the concept of fiduciary duty.

The directors have an obligation to act in the best interests of their beneficiary, which is the business or its stakeholders, in their capacity as trustees. The safeguarding of beneficiaries from mistreatment or exploitation by the trustee is a fundamental aspect of a fiduciary relationship (Flannigan, Robert, 2004). For this reason, the law has made fiduciary duties binding.

The primary fiduciary obligations are to:

- act in the best interests of the firm;
- prevent conflicts of interest;
- act within the authority granted by the company's Memorandum and Articles of Association;
- not restrict one's own judgment; and
- not make unapproved profit.

Section 166 of the Indian Companies Act of 2013 spells out clearly the fiduciary duties of directors. Fiduciary duties include duty of care, loyalty, good faith, confidentiality, prudence, and disclosure. The necessity of comprehending and upholding fiduciary responsibilities has been brought to light by the rise in minority shareholder activism and the heightened scrutiny placed on directors' performance of their duties. Minority shareholders are demanding higher levels of accountability and transparency from directors because they have more access to information and forums for voicing concerns. The aforementioned activism functions as a potent prompt for directors to scrupulously discharge their fiduciary responsibilities, guaranteeing that their decisions are in the best interests of the firm and its stakeholders.

Justification/Relevance of this study

The ability to fulfil fiduciary duties correctly is intimately linked to the maturity and leadership required for improved governance. Strong leadership and moral rectitude are important qualities for directors to possess because they help to establish a culture of responsibility and openness that builds stakeholder trust and improves the company's governance structure as a whole.

Directors encounter many difficulties in the current corporate climate that put their knowledge and judgment to the test. Directors must show extraordinary expertise and vision in order to manage cash flow effectively, preserve assets and wealth, and guarantee the company's long-term viability. These duties are made even more difficult by the growing difficulties in obtaining long-term investment visibility, thus directors must exercise extreme caution and initiative in their risk management and strategic planning.

In order to successfully navigate these complexity, directors' competency is essential. Directors must possess a thorough understanding of the business, sound financial judgment, and the capacity to recognize and address new risks and trends. Directors must strike a balance between immediate demands and long-term goals in order to ensure that the business can adapt and remain resilient in a fast-changing environment. This is an important aspect of effective governance.

Fiduciary duties must be properly performed not only to uphold good governance but also to handle the complex issues that contemporary organizations must deal with. By fulfilling their fiduciary duties, directors help to safeguard and advance the interests of stakeholders, fostering stability and sustainable growth. The purpose of this study is to investigate these dynamics in

the context of India, looking at how directors might carry out their fiduciary responsibilities in the face of growing shareholder activism and changing governance issues.

Objectives

The research team realized that many directors are not clear about the difference between fiduciary and nonfiduciary duties. So, the aim of this project is to find out the awareness level of Board directors. It also seeks to create awareness among the directors of their crucial fiduciary duties, which are sometimes disregarded as also many critical aspects, such as:

- Importance to stakeholders as well as shareholders;
- Risks connected with non-disclosures and the significance of transparency;
- The significance of choosing and assessing directors based on their qualifications to carry out their responsibilities.
- The significance of conservation, asset utilization, and debt repayment.
- Optimizing cash flow management and increasing the company's value.
- Liabilities of Directors for non-discharge of duties under SEBI regulations and complying with listing agreement compliance, in addition to Liabilities of Directors under various taxation laws, Competition Act, and Money Laundering laws, etc.
- Directors' duties regarding the operation of step-down subsidiary.
- Domain expertise as eligibility as opposed to fulfilling fiduciary duty
- Tighter regulatory requirements leading to more fiduciary duties
- When will a breach of trusteeship be considered to have occurred?
- How can one determine whether a loss results from a business failure and not from a fiduciary duty breach?
- Describe how the interests of shareholders can be pooled, but individual directors' fiduciary duties cannot be pooled as a collective responsibility.
- Describe how the fiduciary duties of nominee directors go beyond protecting the interest of the nominee.
- Describe the fiduciary duties of directors regarding contributions to charitable and other funds.
- The fulfilment of fiduciary duties through segmental analysis and capital allocation, as well as the inability to pinpoint the factors that contribute to the creation of long-term value.

This study aims to shed light on the function of fiduciary duties in corporate governance and offer useful suggestions for improving the competence and responsibility of directors. In the end, it will help to create more resilient and sustainable firms by highlighting best practices and making suggestions for improving the governance structure. It is impossible to overestimate the significance of fiduciary duties in defending the interests of all parties engaged in a situation when stakeholder expectations are higher than ever.

This study thus aims to investigate the ways in which Indian business directors manage their obligations in various scenarios. Specifically, it will examine how they maintain openness, accountability, and safeguard the interests of all parties involved in the corporate governance structure.

Research Methodology

The following approaches were adopted to further investigate the aforementioned subjects:

- Current worldwide research endeavours in pertinent fields using Reputed Journals
- Replicate/Quote from authoritative books and periodicals on important subjects, giving proper credit where credit is due.
- Visits and interactions with specific organizations who have implemented sound Corporate Governance principles, particularly with regard to Board Practices, from the beginning. It has made impressive growth, development, and improvement over time.
- The research was conducted against a backdrop of secondary data obtained from a sample of thirty organizations spanning various representative sectors, excluding banking and insurance companies. All the points were covered by questionnaires and in-person conversations with approved individuals.
- The questionnaire was tested through a pilot interview of 4 directors and then suitably modified to include all aspects of the study
- The modified questionnaire consisting of 33 questions and the final report is based on response of 57 respondents against 30 as proposed in the study proposal.

Schedule of the Project

The project was completed in a timely manner. Secondary research was conducted at the start of the project. The questionnaire and the frame work for analysis were prepared before starting the primary research.

Limitations of the Study

The target sample size for this study was 30 Directors, and this final report is based on responses of 57 directors who all are highly qualified. Directors gave responses on condition of anonymity. The total sample of directors lack diversity in terms of geographical locations and industries. This is primarily due the non-receipt of responses from many target respondents reached as it was found quite difficult to obtain responses from directors of companies.

Findings from Analysis

The responses to the questions were analysed and the following findings were obtained:

- The respondents opined that the business and the board members are in charge of making sure that the annual operational plans, budgets, and other materials are provided to the board members and reviewed at each meeting.
- The responses clearly indicate that the company and the board members bear the responsibility of ensuring that the capital budgets are shared with the members of the board and updated at each meeting.
- The NRC committee handles the concerns and hiring procedure, but the Board of Directors is ultimately in charge of succession planning for Directors and Senior Managerial staff.
- The succession process must be overseen at least once a year.
- One needs to carefully examine the wording employed in the regulations. A systematic training program can help directors participate in the board more actively by providing them with direction on healthy practices that the board should follow on a regular basis.
- It is essential to have a formalized program for directors' training.
- In addition to providing members with yearly earnings and expense reports, SEBI LODR mandates that companies manage foreign exchange risk, for which their directors have a fiduciary responsibility to fulfil.
- Words used in the Companies Act, particularly of Section 166 need careful study for discharge by Directors of their fiduciary obligations to the Company.
- Careful attention to end commitments might require direction from a formal Directors training program.
- In order to stay up to date on significant changes in legislation and disclosures, majority of directors choose to take refresher courses and other training.

Aggregate Analysis on Directors' Degrees of Understanding of their Fiduciary Responsibilities

Based on the percentage of right or favourable responses provided by all directors across the 33 questions, an aggregate analysis has been constructed (as indicated in table 2) to determine the confidence level of directors regarding their fiduciary duties. Directors exhibit moderate confidence in fiduciary duties, with non-listed company directors showing slightly higher and more consistent levels than listed directors. Listed company directors display greater variability and lower minimum confidence, indicating gaps in awareness. Confidence intervals are narrow and reliable, highlighting the precision of these findings. Targeted training is recommended to address disparities and enhance understanding, particularly among listed company directors.

Overall Analysis of Directors' Knowledge of their Fiduciary Responsibilities in Relation to the Nine Provisions within the Purview of this Study

Each of the 33 questions relates to one of the nine provisions that this research is covering. As a result, the study has carried out a comprehensive investigation of directors' comprehension of their fiduciary obligations in light of these nine clauses.

Provision 1: Directors to ensure shall act subject to provisions of the Act and also subject to provisions to the Articles of the Company

Directors of non-listed companies demonstrate higher confidence (mean 57.78%) compared to listed company directors (mean 44.00%), with both groups showing a median confidence of 50%. The listed directors exhibit greater variability and a concerning minimum confidence of 0%, highlighting significant knowledge gaps. These findings suggest the need for targeted training, especially for listed directors, to address inconsistencies and improve understanding.

Provision 2: To act in good faith in order to promote objects of the company.

Non-listed directors show significantly higher confidence (mean 75.00%) than their listed counterparts (mean 52.00%), with greater uniformity in responses. The minimum confidence of 0% for listed directors indicates awareness gaps, while non-listed directors show consistently higher levels of understanding. This underscores the need for focused initiatives to elevate the confidence of listed directors in promoting the company's objectives in good faith.

Provision 3: To work for benefit of members as a whole and in best interest of the company employees, shareholders, the community and for protection of environment (Section 166(2))

Directors of listed companies exhibit slightly higher confidence (mean 42.00%) compared to non-listed directors (mean 33.33%), but both groups show substantial variability and low minimum confidence levels (0%). The lack of strong confidence in this provision highlights a need for targeted education on directors' roles in serving stakeholders and protecting the environment.

Provision 4: Shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

Both listed and non-listed directors exhibit relatively high confidence in exercising due care, skill, and independent judgment, with mean confidence levels of 60.88% and 55.55%, respectively. The narrow confidence intervals and higher maximum confidence levels suggest an overall stronger understanding, though opportunities remain to align confidence across director groups.

Provision 5: Not to involve in situation, where direct or indirect interest of Director conflict or may conflict with interests of Company.

Confidence in avoiding conflicts of interest is alarmingly low, with listed directors showing a mean confidence of 20.00% and non-listed directors at 46.88%. Both groups have a median confidence of 0%, signaling critical gaps in understanding. Comprehensive training programs on managing conflicts of interest are urgently required to address this deficiency.

Provision 6: Not to or attempt to achieve undue gain or advantage to himself or to relatives, partners or associates and liability to payback undue gain, to company. (Section 166(5))

Moderate confidence levels are observed for this provision, with listed directors (mean 58.93%) showing slightly higher confidence than non-listed directors (mean 45.83%). Variability is greater among listed directors, and minimum confidence levels of 0% for listed directors indicate gaps in awareness. Tailored programs are necessary to ensure consistent understanding of fiduciary responsibilities to avoid undue personal gain.

Provision 7: Assignment of functions is void

Confidence levels for this provision are low to moderate, with listed directors (mean 39.00%) slightly lagging behind non-listed directors (mean 43.75%). Both groups show a broad range of responses, with a minimum confidence of 0% and a maximum of 100%. Targeted education

is needed to clarify the invalidity of assigning director functions, especially among listed directors.

Provision 8: Penalty for breach of duties

Non-listed directors exhibit higher confidence (mean 69.79%) than listed directors (mean 50.69%) in understanding penalties for breaches of fiduciary duties. Both groups show similar variability, but listed directors display lower minimum confidence levels, indicating a need to enhance their understanding and close the gap with non-listed directors.

Provision 9: To work with other directors and key management Personnel to ensure all duties of Directors towards Disclosures and compliances enumerated in SEBI regulations – particularly SEBI (LODR) Regulations are carried out in timely manner. (SEBI (LODR) Regulations 2015).

Listed directors demonstrate higher confidence (mean 68.00%) compared to non-listed directors (mean 58.33%) in ensuring compliance with SEBI regulations. While both groups exhibit strong minimum confidence levels (50%), listed directors reach a maximum of 100% compared to 75% for non-listed directors. Tailored interventions can help align non-listed directors' confidence with regulatory requirements.

Comparison between Directors of Listed and Non-Listed Companies regarding their Understanding Levels on their Fiduciary Duties according to Nine Provisions under the Scope of this Study

The findings indicate no significant difference in overall confidence levels between directors of listed and non-listed companies, but notable disparities exist in specific fiduciary responsibilities. Significant differences were observed in Provisions 1, 2, 5, and 8, relating to acting per the law, promoting company objectives, avoiding conflicts of interest, and understanding penalties for breaches, suggesting these areas require targeted training or awareness campaigns. Conversely, provisions such as exercising care, avoiding undue gain, and ensuring SEBI compliance show similar confidence levels across both groups. Provisions with near-significant differences, like working for stakeholder and environmental benefits, also warrant attention to address emerging gaps.

Conclusions

The results demonstrate that directors have a thorough awareness of their fiduciary responsibilities, with a strong commitment to director obligations, financial control, legal compliance, and leadership continuity. The necessity of ongoing professional development and training in order to stay current with regulatory changes and best practices in corporate governance is heavily stressed. The study emphasizes the careful approach directors take to strike a balance between the needs of the firm and those of the shareholders, particularly in unique circumstances like insolvency. The analysis gave a lot of interesting insights.

- **Financial Oversight and Compliance: Average Response:** In terms of important tasks like handling non-payment for goods and product liability claims, as well as evaluating annual operational plans, budgets, capital budgets, and foreign exchange exposure, a modest level of involvement by directors in financial monitoring and compliance efforts is indicated by the average response.
- **Planning for Leadership and Succession:** The directors demonstrated a strong commitment to maintaining leadership continuity, as seen by their unanimity on the necessity of non-compete agreements after directorship and the significance of yearly succession planning for senior management as well as directors.
- **Compliance with Law and Ethics:** The replies of the directors to managing mishaps, environmental concerns, legal notices, insider trading, and ultra vires acts fall under this category. The comparatively elevated mean response indicates a robust emphasis on conforming to lawful and moral norms.
- **Average Response for Conflict of Interest and Related Transactions:** Directors demonstrate a moderate awareness and proactive management of conflicts of interest in their responses to inquiries concerning competing directorships, approval of related party transactions, and fines for such breaches.
- **Protective and Liabilities of Directors: Average Answer:** The comprehension of responsibilities by directors, recording of objections, defence against breach claims, NCLT recovery of gains, and differential liability for non-executive directors are all included in this area. The high average response suggests that they are well aware of their risks and safeguards.
- **Training and Ongoing Improvement:** A commitment to continuing professional growth was demonstrated by the directors' significant need for continual training to manage new regulatory obligations and uphold good governance standards.

- Particular Circumstances and Governance: Mean Reaction: Directors demonstrate a strong grasp of governance in unique circumstances by their answers to inquiries concerning their responsibilities in the event of insolvency and their requests for professional views on disputed matters.
- Interests of the company and shareholders: The directors' opinions on striking a balance between the company's and shareholders' interests are reflected in this category. A moderate emphasis on making sure decisions is taken in the best interests of the business and its shareholders is evident in the responses.

The analysis indicates that directors pay special attention to training and continuous improvement, as well as leadership and succession planning. These domains demonstrate robust involvement and an anticipatory approach to governance. Conversely, sectors such as company and shareholder interests exhibit comparatively lower levels of involvement, indicating potential areas for directors to increase their level of emphasis. In short, the graph offers a thorough summary of how directors rank various facets of their fiduciary responsibilities.

Recommendations

It is recommended to implement targeted training programs focusing on fiduciary responsibilities, corporate governance, and regulatory compliance. Additionally, enhancing support systems through mentorship programs, advisory panels, and access to experts can build confidence and ensure consistent application of duties. Regular assessments and feedback, promoting best practices from non-listed companies, and developing structured induction programs for new directors are crucial for continuous improvement. Encouraging a culture of continuous learning, robust monitoring and evaluation mechanisms, and increasing board diversity can further enhance decision-making and confidence levels among directors.

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Ms Ritika Paul has a graduate degree in Mathematics and a postgraduate degree in Economics (Development Studies) with a strong foundation in both quantitative and qualitative analysis. Currently, she is working as a Research Assistant at Symbiosis Institute of Management Studies, contributing to impactful research projects and aiding in the preparation, analysis, and summarization of data. Her expertise includes statistical software like SQL and R.

Table of Contents

CHAPTER 1: INTRODUCTION	16
1.1 Background	16
1.2 Justification of the Study	18
1.3 Objectives/Purpose of the Study	19
1.4 Research Methodology	20
1.5 Limitations of the Study	21
CHAPTER 2. CONCEPT OF FIDUCIARY DUTY	22
CHAPTER 3: ANALYSIS OF FIELD OBSERVATIONS ON FIDUCIARY DUTIES OF DIRECTORS	36
3.1 Question-wise Analysis	37
3.2 Aggregate Analysis on Understanding Levels of Directors Regarding their Fiduciary Duties	61
3.3 Aggregate Analysis on Understanding Levels of Directors Regarding their Fiduciary Duties according to Nine Provisions under the Scope of this Study	63
3.4 Comparison between Directors of Listed and Non-Listed Companies regarding their Understanding Levels on their Fiduciary Duties according to Nine Provisions under the Scope of this Study	72
Chapter 4: CONCLUSION AND RECOMMENDATIONS	75
4.1 Conclusion	75
4.2 Recommendations	77
References	80
Annexure 1 – Questionnaire	81

CHAPTER 1: INTRODUCTION

1.1 Background

Corporate governance is a big deal in today's business world. It's all about making sure that companies are run in a way that considers the interests of everyone involved, like shareholders, employees, customers, and the community at large. Directors of companies have a crucial role to play in corporate governance. They have a bunch of responsibilities to make sure the company is doing things legally, ethically, and efficiently. These responsibilities, in India, are laid out in the Companies Act, 2013, and explained further in various rules and court interpretations. In India, directors have different types of duties, including fiduciary duties, statutory duties, and other duties as per company policies and governance standards. Fiduciary duties are super important because they guide directors to act in the best interests of the company and its stakeholders. These duties cover a wide range of responsibilities, from staying loyal and avoiding conflicts of interest to making careful and thoughtful decisions.

As companies grow, they also develop the potential to harm stake holder interests. This is evident from various incidents in the recent past wherein companies have been found to store and misuse customer data (Jackson, Sarah, 2022), misguide people through advertisements (Jose, Renju, 2022), displace communities, harm the environment (Taylor, Matthew & Watts, Jonathan, 2019), and sell drugs to teenagers (The Economist, 2019) to name but a few. When one looks at the financial crises of the recent past one realizes that companies can have an impact, not just in the countries where they operate, but across the globe (Merle, Renae, 2018). The possibility of such crises happening again is on the rise on account of an increasing number of companies now being valued at sums that are far more than the annual gross domestic product of several developed countries (Wallach, Omri. 2021). Corporate law to be effective has to stay abreast of the new perspectives of the different stakeholders of a company (Kraakman, Reiner et al., 2017).

Companies are the main medium through which businesses operate. They have a huge impact on any given society, and in this context, it is important to understand the responsibility placed on the decisionmakers – the directors – of companies. In India, the key provision that places responsibility on company directors is Section 166(3) of the Companies Act, 2013 ('the Indian Companies Act'), which codifies the duty of care owed by company directors

Fiduciary duties of directors were first spelled out by common law judges, who did this without any help from the formal written law. In fact, the United States' company laws, and many other common law jurisdictions, do not spell out the core fiduciary duties of directors (namely care and loyalty). The fiduciary duties of directors are today evolving again without formal written law.

The Organization of Economic Cooperation and Development (OECD) Principles of Corporate Governance pinpoint the key points of corporate governance that a country's regulatory framework should uphold. Some of them are in brief:

- The protection and facilitation of shareholder rights.
- Equitable treatment of all shareholders, including minority and foreign shareholders.
- Cooperation between companies and stakeholders for the purpose of creating wealth, jobs and for sustaining financially healthy enterprises.
- Timely, accurate disclosure on all material matters of the company, with respect to its financial situation, performance, ownership and governance.
- Effective monitoring of management by the board, and the board's accountability to the company and its shareholders.

The start of the twenty-first century saw numerous international corporate scandals, including Enron and WorldCom in the United States (Gordon, Jeffrey N., 2002). While these may be seen as isolated events, the 2007–2009 global financial crisis, brought out the global “interconnectedness” of contemporary international capital markets (D'Aloisio, Tony:2009). These crises brought to the forefront the question of accountability for improper conduct by company directors and officers.

Directors are a Company's agents and enter into transactions as its representatives. They are not individual shareholders' or members' agents. A Director may be an employee of the company and holds the position of a trustee. A director has a fiduciary relationship with the company and is not allowed to enter into contracts with entities in which the company has an interest or is going to have an interest for his/her own personal benefit.

Section 2(34) of the Companies Act, 2013 defines a director as a person appointed to the board of a company. The Directors are viewed as key personnels playing significant role in running the company and may occupy several high and responsible positions in the companies, such as that of a Managing Director, Manager, Whole Time Director, or an Independent Director. Every

organization has a board of directors that is appointed by the shareholders and which takes decisions on its behalf. In closely-held corporations, the board usually consists of majority shareholders. But, in larger organizations, board members also include the company.

Whatever the composition of the board of directors is comprised, its members have a **fiduciary duty to act in the interests of the company's shareholders**. A parallel duty applies to managing members of an LLC to act on behalf of all other members. Directors' duties are clearly stated in order to make sure that they don't misuse the privilege of limited liability, and to protect the company, and its various stake holders. It will not be in a company's interests if a director is allowed to acquire interests in other companies in which the company is also a stakeholder or is going to become one.

In some countries other than India, it is not necessary for a director to be registered at the Companies House to be termed as a director. Other people may act as a director and these persons have the same responsibilities and duties as an executive director. They also have legislative responsibilities even if they are not registered as directors. So, the personal liability potential, and the potential to be disqualified as a company director is the same for **shadow** and **de facto** directors as for executive directors.

Similarly, there is a general misconception that **non-executive** directors have less risk and responsibility than executive directors who manage the company on a daily basis. This is not the case. Non-executive directors bear the same duties and responsibilities as executive directors and can be held accountable in the same way. They can also be disqualified and prevented from acting as a director.

1.2 Justification of the Study

The rise in minority shareholder activism and increased scrutiny on directors carrying out their duties have highlighted the crucial importance of understanding and sticking to fiduciary responsibilities. Minority shareholders, with greater access to information and platforms for raising concerns, are pushing for higher standards of accountability and transparency from directors. This activism serves as a powerful reminder for directors to diligently fulfill their fiduciary duties, ensuring their actions align with the company's and its stakeholders' best interests.

The maturity and leadership needed for better governance are closely tied to properly carrying out fiduciary duties. Directors who show strong leadership and ethical integrity significantly

contribute to creating a governance culture that prioritizes accountability and transparency, fostering trust among stakeholders and enhancing the company's overall governance framework.

In today's business environment, directors face numerous challenges testing their competence and decision-making abilities. Effective cash flow management, asset and wealth preservation, and ensuring the company's future sustainability are critical areas where directors must demonstrate exceptional skill and foresight. The increasing difficulty in achieving long-term investment visibility further complicates these responsibilities, making it essential for directors to be vigilant and proactive in their strategic planning and risk management.

Furthermore, directors' competence plays a crucial role in navigating these complexities. Directors need a deep understanding of the industry, financial acumen, and the ability to anticipate and respond to emerging trends and risks. Effective governance also requires directors to balance short-term pressures with long-term objectives, ensuring the company remains resilient and adaptable in a rapidly changing environment.

Properly carrying out fiduciary duties isn't just essential for maintaining good governance; it's also crucial for addressing the multifaceted challenges modern corporations face. Directors who uphold their fiduciary responsibilities contribute to protecting and enhancing stakeholder interests, promoting sustainable growth and stability. This study aims to explore these dynamics within the Indian context, examining how directors can effectively fulfil their fiduciary duties amidst increasing shareholder activism and evolving governance challenges.

1.3 Objectives/Purpose of the Study

By delving into the role of fiduciary duties in corporate governance, this study seeks to provide valuable insights into mechanisms that can strengthen director accountability and competence. It will highlight best practices and offer recommendations for enhancing the governance framework, ultimately contributing to the creation of more resilient and sustainable businesses. In an era where stakeholder expectations are higher than ever, the importance of fiduciary duties in safeguarding the interests of all parties involved cannot be overstated. This study will underscore the vital role that directors play in fostering a culture of ethical governance and strategic foresight, ensuring that companies are well-positioned to navigate the complexities of the modern business landscape.

The specific research objective of this study is to ‘to understand how business directors in India handle their responsibilities in different situations, we’ll look at how they ensure accountability, transparency, and protect the interests of everyone involved in the corporate governance framework.’

1.4 Research Methodology

Research methodology relates to the sequence of steps in carrying out research in order to achieve a desirable outcome to meet the research objectives. Research can be done using quantitative method as well as qualitative method. The quantitative research method provides an objective approach to collect and analyse data where the outcome is used to derive patterns, make predictions or understand inter-relationships between the variables under study. The qualitative method provides a subjective approach to collect and analyse data where the outcome is to gain new insights to the phenomenon under study based on experience and reflections. Based on the research objectives, quantitative and qualitative approach can be applied. Research methodology can also entail mixed method approach which is a combination of quantitative and qualitative research where the purpose is to provide objective and subjective outcome.

The current study adopts a mixed methods approach where exploratory research is undertaken in the beginning to explore the issue of fiduciary duties of directors in India followed a qualitative-cum-quantitative analysis of primary survey conducted with ‘Executive Directors’ of companies in India.

The study is based on the analysis of 57 responses collected from ‘Directors’ of companies in India. These 57 respondents have been selected using ‘purposive sampling method’¹ as the information required for this study is very unique. The information is collected using a structure questionnaire (as attached as Annexure 1). The questionnaire consisted of multiple-choice questions. The questions related to the professional background and current role of Directors, their duties and responsibilities in different situations and circumstances. The questionnaire was pilot tested with a sample of 4 respondents who were Directors of organizations to understand whether adequate information was revealed through the existing questions and whether the questions were aligned to the fiduciaries of the Directors. Based on the inputs from respondents, certain corrections were made and the final questionnaire was administered

¹ Purposive sampling is a non-probability sampling method where units are chosen for inclusion in the sample based on specific characteristics or qualities they possess.

for the study. The researchers personally visited the Directors of different organizations after taking appointments and conducted the survey.

1.5 Limitations of the Study

The target sample size for this study was 30 Directors, and this final report is based on responses of 57 directors who all are highly qualified. Directors gave responses on condition of anonymity. The total sample of directors lack diversity in terms of geographical locations and industries. This is primarily due the non-receipt of responses from many target respondents reached as it was found quite difficult to obtain responses from directors of companies.

CHAPTER 2. CONCEPT OF FIDUCIARY DUTY

When a person is a director of a company, he/she has a number of duties to ensure that he/she acts properly. These duties are set out in legislation, common law and in various corporate governance codes. Directors are the subject of both common law and statutory duties, and as they can be categorized into four separate groups (Worthington, Sarah, 2000):

- To compel directors to act in accordance with the strict terms of their mandate
- To compel them to exercise care and skill in carrying out their various functions
- To compel them to use their wide discretionary powers in good faith and for proper purposes.
- To compel them to act loyally in advancing the interest of their company

The idea of fiduciary duty originates from the concept of acting in good faith. So, in an association between two persons, one is expected to protect the interests of the other and if the former on the basis of that relationship makes an unjust enrichment or unjust benefit derived from another, it goes against the ethos of fiduciary duty. As trustees, the directors are duty bound to act in the best interests of their beneficiary, that is, the company or its stakeholders. Fiduciary duty is thus the relationship between a fiduciary and the principal or beneficiary on whose behalf the fiduciary acts. In other words, a fiduciary duty involves actions taken in the best interests of another person or entity.

Numerous justifications have been given for the imposition of fiduciary duties. Many scholars have emphasized the role of trust, dependence, and vulnerability of the beneficiary in the relationship (Hill, Jennifer G. & Conaglen, Matthew, 2018). Fiduciary duties on directors and officers are stipulated by law because of the breadth of the directors' discretionary powers (Miller, Paul B. 2019) and their control of "critical resources belonging to the beneficiary" (Smith, Gordon, D.2002). In fact, the structure of capital markets across the globe is directly linked to a country's corporate governance regime (La Porta, Rafael et al.,2008).

Directors' relationship towards the company is taken as a common example of a fiduciary relationship. The law regards fiduciary relationship as a unique legal relationship because it has three distinct elements (Flannigan, Robert, 2005):

- the fiduciary has some discretion when acting in the interest of the beneficiary;
- the fiduciary can exercise its discretion unilaterally;

- and the beneficiary tends to be in a position of vulnerability.

These features reveal that a key feature of a fiduciary relationship is the protection of beneficiaries from abuse or exploitation at the hands of the fiduciary (Flannigan, Robert, 2004). To achieve this goal the legal system imposes fiduciary duties. Under section 299 of the Companies Act, 1956, there was no requirement of interested directors not participating in the meeting, similar to the US law.

Difference between Non-fiduciary and Fiduciary Duties

First, fiduciary duties arise from the unique context of the fiduciary relationship. Second, the fiduciary duty is exclusively concerned with a fiduciary's opportunism. Third, fiduciary duties apply both subjective and objective standards. Fourth, fiduciary duties apply to all fiduciary relationships. Finally, fiduciary duties impose strong remedial rules and stipulate punitive damages. Most fiduciary duties are now spelled out under company legislation. However, the common law duties still exist in a slightly different form. They create trust and confidence, and reinforce the principles of no conflict and no profit.

Following are the main fiduciary duties:

- act within the powers bestowed by the company's Memorandum and Articles of Association;
- avoid a conflict of interest;
- act in the best interests of the company;
- not fetter one's own discretion; and
- not make unauthorised profit.

These duties are more or less self-explanatory. However, it is common for directors who are also shareholders to be in a quandary when they are acting in both capacities, especially during times of high pressure.

"Duties of directors" under Section 166 of the Indian Companies Act, 2013

1. A director of a company shall abide by the articles of the company.

2. A director of a company shall act in good faith and promote the goals of the company in the interests of its members as a whole, which include the interest of not just the company, but also its employees, the shareholders, the community and the environment.
3. A director of a company shall perform his duties with reasonable care, skill and diligence and shall use independent judgment.
4. A director of a company shall not involve in a situation in which he/she may have a direct or indirect interest that conflicts, or may conflict, with the interest of the company.
5. A director of a company shall not achieve or strive to achieve any undue gain or advantage either to self or to relatives, partners, or associates, and if a director is found guilty of making any such undue gain, he/she shall be liable to pay an amount equal to that gain to the company.
6. A director of a company shall not assign his/her office and any assignment so made shall be void.

Fiduciary duties include duty of care, loyalty, good faith, confidentiality, prudence, and disclosure. “Breach of fiduciary duties of Directors have always been upheld by judicial bodies in litigations even before introduction for the first time in Companies Act 2013 of Section 166. This introduction has therefore increased the risks of Directors and penalties for breach of provisions covered under Section 166. The survey through questionnaire and their analysis and objective of this study was to evaluate whether Directors on appointment despite their domain knowledge etc. are aware of risks on breach of Section 166. It appears that specific course and training to directors may be required through NFCG affiliated institutes² to upgrade their knowledge and awareness of the importance of Section 166 of Companies Act 2013.”

A. Duty of Care

- Directors have a duty of making themselves totally aware of all the laws and responsibilities in order to make sound decisions that protect a beneficiary's interests. They have to thoughtfully consider the options and then take a sensible decision based on a careful examination of available information.
- The duty of care is uniform for all directors. But in the case *Jorchester Finance Co. Ltd vs. Stebbing* 1989, BCLC 498 Ch D., courts extended relief as the directors had

² NFCG affiliated institutes imply its approved research centers on corporate governance including Indian Institute of Corporate Affairs, Manesar. Moreover, NFCG may consider partnering with country's tops management institutes for this purpose.

acted in good faith although liability had been incurred. So, a director need not be held liable for mere errors of judgement

- But overall, the law takes a serious view of this duty. Section 166(3) clearly states that a director of a company shall fulfil all duties with due and reasonable care, skill and diligence and shall make use of independent judgment. The Supreme Court has termed it as a failure of corporate governance on the part of directors if they do not employ due care and diligence and, in the process, permit fabrication of figures and false disclosure and will accordingly be held accountable for such errors and commissions.

This statutory parameter is quite subjective and courts are now reviewing the standard of care expected of directors. As of now a director is expected to use only such skill as may reasonably be expected from a person of his/her knowledge and experience. Thus, standard of care expected of directors by common law is traditionally lightly associated with their duties in other areas. Generally, it took gross negligence for directors to be liable and today the trend is toward objectivity.

B. Duty of Loyalty

- The duty of loyalty is recognized as a fiduciary duty by all common law jurisdictions because it applies universally to all fiduciary relationships.
- The duty of loyalty is found in directors' relationship with the corporation, trustor-trustee relationships, attorney-client relationships, and more (Miller, Paul, 2011).
- Directors have to act in the best interest of the beneficiary at all times by putting their well-being foremost. It covers the fiduciary duty of excusing themselves from taking actions when there's a conflict of interest with the beneficiary's welfare.
- The decision makers within the company should act in the interests of the company, and not in their own interests.
- For example, in *York and North Midland Railway Co v Hudson* (1853) 61 Beav 485: 22 LJ Ch 529 it was decreed that directors have been selected to manage the affairs of the company for the benefit of the shareholders. It is an office of trust duty bestowed upon them to perform fully and entirely. Since the directors hold a fiduciary position of trust, the first and most obvious obligation is to act with honesty
- The standard of duty of loyalty is very different in the US and in India. In the *Technicolor Case*, the Court ruled that a director's self-interest is 'material' if it creates a 'reasonable probability' that it will compromise the independence of a

reasonable director and the collective decision of the board. The Court based its judgement on the legislative mandate of the Delaware Code, which prevents corporate actions from becoming invalid on grounds of director's self-interest, if such interest is disclosed to and approved by a majority of disinterested directors and shareholders or if the transaction is found to be 'fair' for the corporation (*Fliegler v. Lawrence*). In this case, the Court held that the interest of the individual directors did not influence the decision of the board, and hence, the duty of loyalty was not breached.

- Thus, in the US, if the directors disclose their interest truthfully and the transaction is approved by the disinterested directors, the duty of loyalty is not breached and the decision of the board is protected by the business judgment rule. Additionally, if they can show that the transaction was conducted in 'entire fairness', in terms of fair dealing and fair price, they are not liable (*Nixon v. Blackwell*).
- But, in sharp contrast, the Indian law ensures that an interested director does not breach his/her fiduciary duty under section 166 of the Companies Act, 2013. Under section 184, a director interested in a transaction, whether directly or indirectly, is duty bound to disclose his/her interest when he/she participates at the first board meeting, and the first board meeting in every financial year as also the first board meeting held after a change in interest, even if it is subsequent to the transaction. Moreover, to ensure that the collective decision of the board remains neutral and beneficial for the company, it is imperative for the interested director to not participate in the meeting. Besides punishing the directors for non-compliance, violation of such provisions makes the transaction voidable by the company.
- The earlier Companies Act of 1956 (Section 299) like the US law did not enforce the non-participation of interested directors. But, cases like *Globe Motors Ltd v. Mehta Teja Singh* showed that when a substantial part of the board becomes interested in some or the other transaction, even when the interested directors reveal their interest and do not participate in the decision-making, their presence is adequate to motivate the entire board to prioritize their self-interest over the company's. Such misuse of the company's assets and breach of fiduciary duty called for a higher threshold for ensuring independence of the board. So, if the *Technicolor Case* was to be decided as per the amended Indian law, participation of interested director in the decision-making would itself violate section 184 and make the transaction voidable.
- Therefore, with regard to the standard of ensuring that the interested directors do not breach their duty of loyalty, the US law is more illustrative. So long as the interest is

disclosed and the collective decision of the board is not tarnished, the self-interest of the directors is not significant. It prescribes a lower standard as compared to Indian law, which is more prescriptive in nature. The Indian law makes it binding for the interested director to disclose his/her interest and to prevent participation and voting in those transactions. This variation in the threshold stipulated by law has to be examined with respect to the different ownership structures and shareholding patterns of companies in the US and India.

- In America, there has been tremendous diversion of stock ownership and shareholding in major companies, The principal shareholders owned less than 1% shares. These companies were basically having several impersonal institutional shareholders, wherein shares were taken for investment, by investment groups, insurance companies, etc., rather than by individuals. These shareholders did not have any personal interest in the affairs of the company. This ensured that the management of the company was vested with the board of directors, who were not aligned to the personal interests of any one shareholder, consequently differentiating between ownership and control.
- Even with the rise of institutional holdings, ‘controlled companies’, wherein more than 50% of the voting power for election of directors is concentrated in a single entity, constituted a minority among large public companies in America. According to the recent 13F Filings in 2018, the top public corporations continue to be dominated by institutional ownership, wherein shareholding is dispersed among large number of shareholders. For instance, in Apple Inc., institutional ownership constitutes 59.87%, dispersed among over 3,100 shareholders, with Vanguard Group Inc. holding the maximum stake of 6.99%. While individuals like Arthur Levinson and Tim Cook own considerable shares, they are not even among the top shareholders. Similarly, for Amazon.com Inc., institutional ownership constitutes 56.15% shares, dispersed among 2,772 shareholders, with Vanguard Group Inc. owning the highest shares of a mere 5.93%. Jeff Bezos, the top individual shareholder, despite owning 16.1% shares, does not have such a substantial stake to enable him to run the company in accordance with his own interest.
- This means that an individual or a rich business family can rarely dominate the election of the board of directors and, in turn, control the management of the company. The shares are owned for investment purposes, rather than controlling the management. Consequently, the US law presumes that mere evidence of self-interest, in an otherwise arms-length transaction, does not invalidate the transaction unless the collective

decision of the board is tainted. Since ownership is diversified and the shareholders are active, there is a sufficient system of checks and balances on the powers of the directors. Under such circumstances, a lower threshold of duty of loyalty and protection by the business judgment rule becomes necessary for promoting risk taking.

- On the contrary, in the top public companies in India, the majority shareholding is concentrated in the hands of rich influential business families. According to studies conducted by Balasubramanian and Anand in 2010s, though efforts were made to bring in diversification of shareholding in markets by mandating a minimum 25% public shareholding, empirical evidence showed that ownership levels became more concentrated. Throughout 2017, institutional shareholding in family firms reduced, while promoters of family firms continued to dominate the Indian economy.
- Similarly, the trend of concentration of shareholding among the promoters is evident from the December 2018 filings. Even though on the face of things shareholding seems to be dispersed, these entities are mostly relatives and *alter-egos* of the promoters, showing concentration of power in the family.
- Though promoter ownership is a mirror of the confidence of the promoters in the company, concentration of ownership gives considerable power to the rich business families to appoint directors, who could run the company according to their interests, at the expense of interests of the company and public shareholders. Even when shares are issued to the public, most of them are held by foreign investors. Since, in such situations, where a substantial portion of the board may be personally interested in a transaction or may align with the interests of the principal shareholder, having a prescriptive law which imposes a duty on the interested director to not participate in the meeting, after disclosure of interest, becomes crucial to ensure that the collective decision of the board is not tainted.
- Therefore, it can be concluded that a merely illustrative law, requiring disclosure of interest by the directors and approval of transaction by disinterested directors, is sufficient in the US context, where ownership is diversified. However, in India, where ownership is concentrated in rich business families and their *alter-ego* corporations, a prescriptive law requiring the interested directors to not participate in the meetings becomes fundamental to ensure that the fiduciary duty of the board of directors is not compromised.

C. Duty of Good Faith [S. 166(2)]

- This duty refers to always acting within the law for promoting the interests of the beneficiary. The fiduciary should never take actions that are outside of legal constraints.
- Directors must act in the best interest of the company, its employees, shareholders, and community, and similarly for the protection of the environment.
- Greatest good faith is expected in discharge of Directors' duties as is seen from the case: *Turner Morrison & Co v Shalimar Tar Products* {1980} 50 Comp Cas 296 Cal.}.
- Liability for breach of trust: Traditionally the duties of directors were non-statutory and were formulated on the basis of the common law as developed through cases, but now company legislation in some countries has departed from this tradition and the Nigerian Act covers the following provision on the point.
- Greatest good faith is expected from the directors in the discharge of their duties and so all their endeavours must be oriented to the benefit of the company. So, if a director of a company is also a member of another company, and received bonuses from the other company by providing approximately business facility of his company, he must be accountable for such profits, though the company itself may have lost nothing and also could not have earned the bonus.
- In the *Regal (Hastings) Ltd v Gulliver*, the judgement was that the profits of directors which were made because of the fiduciary relationship with the company must be repaid.

D. Duty of Confidentiality

- A fiduciary must keep confidential all information relating to the beneficiary. No form of the information, whether written or spoken, is to be used for personal gain.
- Misusing unpublished and confidential information belonging to the company is a breach of duty and the company can demand of the director in question to make good its loss if any. This is because any knowledge or information made by the company is the property of the company, and is termed as intellectual property. Turnover of business, profit margins, list of customers, plans, etc is intellectual property

and the use of such information can be stopped through an injunction. Any gain made by the use of confidential information has to be accounted for by the company.

- In the case *Thomas Marshall (Exports) Ltd vs Guinle* a company was importing foreign goods for resale in the UK. Its managing director formed a new import company and solicited orders on its behalf from UK buyers and he imported goods from those very firms with whom he had business dealings while acting for the company. He was stopped from doing this as it was a breach of the service contract and also of the fiduciary duty.

E. Duty of Prudence

- Fiduciaries must execute matters and take decisions involving the interests of beneficiaries with the highest degree of professional skill, caution, and critical awareness of risk.
- A director mandatorily has to act honestly and diligently and discharge duties prudently as is expected of a person of that level of ability and knowledge.
- Justice Romer in *Re City Aquintable Fire Insurance Company* case pointed out that any wilful misconduct or culpable negligence may be termed as misfeasance.
- It was held in **Duomatic Ltd case** that a director has to act with the same reasonable care and circumspection as if dealing with his/her own affairs.
- The Supreme Court in the case of **Official Liquidator v. P.A. Tendolkar {1973} 43 Com cases 382**, ruled that a director could be charged with dereliction of duties if the negligence is of the type that enables frauds to be committed and losses thereby incurred by the company.

F. Duty to Disclose [Ss. 2(49) and 184]

- Fiduciaries must behave in a very transparent manner, and reveal all relevant information that can affect their ability to carry out their duties as fiduciary and/or the well-being of a beneficiary's interests.
- Every agent has a fiduciary position towards the principal and as such must see that his/her interest and his/her due for his principal do not clash, and for the proper exercise of the functions of a director, he/she must be disinterested, that is, be free from any contradictory interest.
- Must disclose all material information when seeking shareholder approval, or when a conflict of interest exists

What constitutes an "interest"

Section 2(49) specifies persons who may be considered to have an interest. So, an interested director is one who is in any way, whether on own or through any relatives or firm, body corporate or other overtones of individuals in which that director or any relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, agreed upon or to be agreed upon by or on behalf of a company.

The interest to be disclosed is that which in a business sense might be viewed as influencing judgment; in short, any kind of personal interest which is material in the sense of not being important has to be disclosed. So, the interest must be such that it conflicts with the director's duties towards the company, and thus, for example, where the directors participate in and vote at a meeting of the Board which granted debentures to two of them, the resolve will be seen as bad. This is well exemplified by the case *North Midland Railway Co v Hudson* (1853) 61 Beav 485: 22 LJ Ch 529.

Disclosure and Timing

The sub section {1} of section 184 talks about the disclosure of interest to be made by the director. It stipulates that every director is obliged to disclose his: - {a} concern, or {b} interest, in any of the following entities: -

- company or companies or
- bodies corporate, or
- firms, or
- other association of individuals.

Appropriately the concern or interest must also include the director's shareholding.

The disclosure has to be made in the format prescribed by the Central Government. {Already prescribed under Rule 9 of the Companies (Meetings of Board & its Powers) Rules 2014} The timing of the disclosure, however, has been specified in the sub section itself. Thus, the disclosure has to be made: -

- at the first meeting of the Board of Directors in which he/she participates as a director, and
- thereafter at the first meeting of the Board held in every financial year, or
- whenever there is any change in the disclosures already made, then at the first Board meeting held after such change.

The first and foremost requirement is that the director must have concern or interest in any one or more of the entities where-after he/she must disclose only at the board meetings as stated by the law. The terms “concern” or “interest” have not been spelled out although the term “interested director” has been defined in Section 2 {49}.

The next sub section {2} of section 184 provides that every director who is in any way whether {a} directly, or {b} indirectly concerned or interested in the following: -

- a contract or arrangement, or
- a proposed contract or arrangement

which are {a} entered into, or {b} to be entered into by his/her company with certain specified entities, shall disclose the nature of his/her concern or interest at the Board meeting/s.

- In the case of **Seth Mohanlal v Grain Chambers Ltd, AIR 1959 All 276** it was ruled that the word contract or arrangement includes transactions in which a director acquires some right or incurs some liability “qua” director, as a result of it.

Disclosure at the Board meeting/ voting/ quorum

- This sub section {2} further lays down that the director shall disclose the nature of his/her concern or interest at the meeting of the Board of Directors in which the contract or arrangement is discussed. He/she is however, not allowed to participate in such meeting. As a result, he/she cannot vote in order to make sure that he/she will not influence and turn the decision process at the board proceedings in his/her favour.

Subsequent Concern or Interest

This sub section also lays down that where any director who is not interested at the time of entering into such a contract or arrangement, but subsequently becomes concerned or interested after the contract or arrangement is entered into, he/she is duty bound to

disclose his/her concern or interest, forthwith, to the company. Alternatively, he/she needs to disclose at the first meeting of the Board held after becoming so concerned or interested.

Contravention

- This penultimate sub section (4) states that if the director contravenes the provisions of sub-section (1) or subsection (2), the punishment will be imprisonment for a term which may extend to one year or, a fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, or both. This sub section clearly states that the onus of compliance is on the director and for any contravention he/she is liable. As far as the company is concerned there is no liability and it can, if it so desires, validate the offending contract or arrangement in terms of sub section {3}. In case it does not validate the same, the contract or arrangement, becomes invalid and therefore, cannot be proceeded with.
- As per section 167{1}{c} of the new Act 2013 a contravention shall result in the office of the concerned director becoming vacant.

Disclosure of interest by directors is thus the most critical commencement of the process of carrying out of statutory duties by them and helps a great deal in establishing corporate governance by avoiding conflict of interest. It should be followed by all directors at all times in letter and spirit.

Many of the of breaches that happen in the partnership context can also take place with members of a board of directors. Some more examples are:

- Not allow shareholders to exercise their voting rights;
- Not give shareholders access to records;
- Refuse to pay dividends;
- Vote unrealistic compensation for themselves; and
- Force out minority shareholders through wrong actions.

Breach of fiduciary duties

Punishment for violation of Section 166 of Companies Act 2013 regarding duties of Directors

If a director of the company contravenes the provisions of this section such a director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

If the board of directors or individual board members have violated a fiduciary duty to the shareholders, the latter can file a lawsuit to protect their interests.

Section 167 of Indian Companies Act 2013 "Vacation of office of director"

(1) The office of a director shall become vacant if -

- (a) he/she incurs any of the disqualifications specified in section 164;
 - (b) remains from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
 - (c) acts contrary to the provisions of section 184 relating to entering into contracts or arrangements in which he/she is directly or indirectly interested;
 - (d) does not disclose interest in any contract or arrangement in which he/she is directly or indirectly interested, in contravention of the provisions of section 184;
 - (e) is disqualified by an order of a court or the Tribunal;
 - (f) is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months.
- Assuming that the office shall be vacated by the director even if an appeal has been filed against the order of such court;
- (g) he/she is removed as per the provisions of this Act;

The vacation of office due to contravention of Section 184 (related to disclosure of interests) directly relates to a director's fiduciary duties. If a director fails to disclose their interest in a contract or arrangement, it reflects a breach of their duty of loyalty and duty to disclose. Non-compliance with disclosure requirements can lead to automatic vacation of office under Section 167. Directors who contravene Section 184 may face dual penalties viz. Imprisonment (under

Section 184(4)) and Monetary fines (under Section 172). In summary, the vacation of office provisions and the fiduciary duties of directors are closely intertwined. Directors must uphold their duties to avoid automatic vacation and legal consequences.

(h) after being appointed a director by virtue of holding any office or other employment in the holding, subsidiary or associate company, he/she will no longer hold such office or other employment in that company.

(2) If a person, functions as a director even after knowing that the office of director held by him/her has become vacant on account of any of the disqualifications specified in subsection (1), he/she can be penalized with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

(3) Where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his/her absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

(4) A private company may, by its articles, stipulate any other reason for the vacation of the office of a director in addition to those specified in sub-section (1).

CHAPTER 3: ANALYSIS OF FIELD OBSERVATIONS ON FIDUCIARY DUTIES OF DIRECTORS

The present study covers the analysis on 09 provisions on ‘Fiduciary Duties of Directors’ in India under Section 166 (the Companies Act, 2013) and The Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements) (LODR) Regulations, 2015. These are mentioned as under Table 1:

Table 1: Nine Provisions Under the Scope of Research on – Fiduciary Duties of Directors

SN/ Objectives	Description	Provision (Companies Act)
1	Directors to ensure shall act subject to provisions of the Act and also subject to provisions to the Articles of the Company	Section 166(1)
2	To act in good faith in order to promote objects of the company	Section 166(2)
3	To work for benefit of members as a whole and in best interest of the company employees, shareholders, the community and for protection of environment	Section 166(2)
4	Shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.	Section 166(3)
5	Not to involve in situation, where direct or indirect interest of Director conflict or may conflict with interests of Company.	Section 166(4)
6	Not to or attempt to achieve undue gain or advantage to himself or to relatives, partners or associates and liability to payback undue gain, to company.	Section 166(5)
7	Assignment of functions is void	Section 166(6)
8	Penalty for breach of duties	Section 166(7)
9	To work with other directors and key management Personnels to ensure all duties of Directors towards Disclosures and compliances enumerated in SEBI regulations – particularly SEBI (LODR) Regulations are carried out in timely manner.	SEBI (LODR) Regulations 2015

3.1 Question-wise Analysis

To cover the above-mentioned 09 provisions regarding fiduciary duties of directors, the questionnaire consists of total 33 questions. The question-wise analysis of the responses received from executive director are mentioned below:

QUESTION – 1

Whether Board deliberate on the Annual Operative plans and Budgets and its review and if so its periodicity: (Mapped to objective 4)

Three (3) Options were given:

1. First meeting of the financial year
2. Every meeting when quarterly results are approved
3. Information furnished to board members and review report placed in every meeting -

FAVOURITE

Option Exercised by Fifty-seven (57) persons:

Twenty-one (21) opted for 1 - i.e., 37%

Twenty (20) Opted for 2 i.e., 35%

Fourteen (14) Opted for 3 i.e., 25% (with modification)- Favourite

Modification is: However, budgets are considered when the need arises. Generally, annual plans are discussed for setting goals in 3rd and 4th quarter meetings and reviewed for deviation at each meeting.

REGULATION: Regulations covering the disclosures are as under:

- i) SEBI (LODR) Regulations 2015
- ii) Regulation 4(2)(f)(ii)(1) – Responsibility of Board of Directors
- iii) Regulation 17(7) r.w. Item A of Part A of Schedule II - Minimum information to be placed before the Board of Directors

Summary of Regulations listed above:

- 1) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestments.
- 2) Minimum information to be placed before the Board of Directors is Annual operating plans and budgets and any updates.

CONCLUSION:

1. Based on the aforesaid study it is clear that it is the responsibility of the company and of the board members to see that the Annual Operative Plans, Budgets and furnished to members of the board and its review is done in each meeting.

QUESTION – 2

Whether Board deliberate on the Capital Budgets and its review and if so its periodicity? (Mapped to objective 4)

Three (3) options were given:

1. First meeting of the financial year
2. Information furnished to board members and review report placed in every meeting - **FAVOURITE**
3. Every meeting when quarterly results are approved

Option exercised by Fifty-seven (57) persons

Eleven (11) persons were for Option 1 – 19%

Fifteen (15) persons were for Option 2 – 26% - Favourite

Thirty (30) persons were for Option 3 – 53%

One (1) person chose to state other than all 3 options – 2%

Fresh option stated was: The Capital Budgets Annual plans are considered generally in 3rd and 4th quarter meetings and reviewed for deviation at each meeting.

REGULATION: Regulation covering the disclosures are as under:

- i) SEBI (LODR) Regulations 2015
- ii) Regulation 4(2)(f)(ii)(1) – Responsibility of Board of Directors
- iii) Regulation 17(7) r.w. Item B of Part A of Schedule II - Minimum information to be placed before the Board of Directors

Summary of Regulations listed above:

1. Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestments.
2. Minimum information to be placed before the Board of Directors is Capital Budgets and any updates.

CONCLUSION:

- 1) Based on the aforesaid study it is clear that it is the responsibility of the company and of the board members to see that the Capital Budgets are disclosed to the members of the board and its updates are done in each meeting.

QUESTION – 3

Do the Board deliberate on succession planning for only Directors or also for Senior management personnel and periodicity? (Mapped to objective 9)

Three (3) Options were given:

1. For both Directors and Senior Management personnel based on criteria laid down by NRC committee minutes as and when they meet. Once a year minimum. **FAVOURITE**
2. For both once a year

3. For only Directors once a year

Option exercised by Fifty-seven (57) persons

All the 57 participants exercised their option for Favourite option 1.

This possibly was due to a more descriptive explanation in option 1.

REGULATION: SEBI LODR Regulation covering the disclosures are as under:

- i) Reg No. 4(2)(f)(ii)(3) & (5) – Responsibility of Board of Directors
- ii) Reg 17(4) – Board to satisfy on succession plans.
- iii) Schedule II – Part D – Clause A (1) & (4) – NRC Committee criteria on Directors and senior management personnel for appointment and removal.
- iv) Reg 19(3A) – NRC Committee shall meet at least once in a year

Summary of Regulations listed above:

1. Key functions of Board of Directors include selecting, compensating, monitoring and when necessary, replacing key managerial personnel and overseeing succession planning. Nomination process to the Board with diversity of thought. experience, knowledge, perspective and gender in the Board of Directors.
2. Board of Directors of the listed entity, shall satisfy itself that plans are in place for orderly succession, for appointment to the Board of Directors and Senior management.
3. NRC Committee besides making formulation of criteria to include qualifications and positive attributes, balance of skills, knowledge and experience and independence of Directors, policy on remuneration of Directors, Key managerial personnel and other employees, shall also identify persons for appointment as Directors and Senior Management personnel for recommendation to the Board for appointment and removal.

CONCLUSION:

1. Succession planning of Directors and Senior Managerial personnel is primarily the responsibility of the Board of Directors though the NRC committee addresses the issues and enlistment process.
2. Minimum overseeing the succession process have to be once a year.

QUESTION – 4

Do board members in their meeting deliberate on show cause notices received, substantial demands made on company including prosecution and penalties imposed under various laws applicable to the company? (Mapped to objective 7)

Three (3) options were given:

1. On material issues in every meeting - **FAVOURITE**
2. As and when it arises
3. Addressed by Audit committee

Option exercised by Fifty-seven (57) persons

1. Twenty i.e., 35% exercised Option 1 – This was the Favourite
2. Twenty-five i.e., 44% exercised Option 2
3. Twelve i.e., 21% exercised Option 3
4. One person made additional point that: In the form of legal compliance reports placed at each meeting.

REGULATION: SEBI LODR Regulation covering the disclosures are as under:

1. Schedule II – Part A – Item F
2. Regulation state that Minimum information to be placed before the Board of Directors include show cause, demand, prosecution notices and penalty notices, which are materially important.

QUESTION – 5

Whether do board address the issues like fatal or serious accidents, dangerous occurrences. (Mapped to objective 9)

Three (3) options were given:

1. Disclosed in web site
2. Information furnished to board members - **FAVOURITE**
3. Discussed as and when it arises

Option exercised by Fifty-seven (57) persons

- i) One out of 57 i.e., 2% exercised Option 1
- ii) Twelve out of 57 i.e., 21% exercised Option 2 – which was the Favourite
- iii) Thirty-eight out of 57 i.e., 67% exercised Option 3
- iv) Six persons out of 57 were invalidated as they opted for all 3 options.

REGULATION: SEBI LODR Regulation covering the disclosures are as under:

1. Schedule II – Part A – Item G
2. Regulation state that Minimum information to be placed before the Board of Directors include Fatal or serious accidents, dangerous occurrences. The word material is absent in these cases.

QUESTION – 6

Do board address the issues like material effluent or pollution problems? (Mapped to objective 3)

Three (3) options were given:

1. Disclosed in web site
2. Discussed as and when it arises
3. Information furnished to board members and material issues discussed in meetings. - **FAVOURITE**

Option exercised by Fifty-seven (57) persons

- i) Two persons representing 3% exercised Option 1
- ii) Twelve persons representing 21% exercised Option 2.
- iii) **Thirty-seven persons representing 65% exercised Option 3 - FAVOURITE**
- iv) Six persons representing 10% were invalidated as they opted for either 2 or all 3 options.

REGULATION: SEBI LODR Regulation covering the disclosures are as under:

- 1. Schedule II – Part A – Item G
- 2. Regulation state that Minimum information to be placed before the Board of Directors include any material effluent or pollution problems. Please note here the word ‘material’ is used.

CONCLUSION:

- 1. Response the question was satisfactory. However, words used in the regulations need careful study. Healthy practices to be followed by the board on a regular basis can be of guidance for enhancing participation by Directors in the Board with a structured training programme.

QUESTION – 7

Do board members get information on substantial nonpayment for goods sold by company? (Mapped to objective 7)

Three (3) options were given:

- 1. Addressed by Audit Committee.
- 2. Yes - **FAVOURITE**.
- 3. Addressed in Internal / statutory audit report.

Option exercised by Fifty-seven (57) persons

- i) Twenty-nine (29) persons representing 51% exercised Option 1
- ii) **Twenty-eight (28) persons representing 49% exercised Option 2 - FAVOURITE**

REGULATION: SEBI LODR Regulation covering the disclosures are as under:

- 1. Schedule II – Part A – Item H
- 2. Regulation state that Minimum information to be placed before the Board of Directors include any material default in financial obligations to and by the listed entity or substantial nonpayment for goods sold by the listed entity.

QUESTION – 8

**Do board members get information on product liability claims of substantial nature?
(Mapped to objective 7)**

Three (3) options were given:

1. Addressed by Audit Committee.
2. Addressed in Internal / Statutory Audit Report
3. Yes - **FAVOURITE**

Option exercised by Fifty-seven (57) persons

- i) Twenty-four (24) persons representing 42% exercised Option 1
- ii) Six (6) persons representing 10% exercised Option 2
- iii) **Twenty-seven (27) persons representing 47% exercised Option 3 - FAVOURITE**

REGULATION: SEBI LODR Regulation covering the disclosures are as under:

1. Schedule II – Part A – Item I
2. Regulation state that Minimum information to be placed before the Board of Directors include any issue which involves possible public or product liability claims of substantial nature including any judgment or order which, may have passed strictures on the conduct of the listed entity or taken an adverse view regarding another enterprise that may have negative implications on the listed entity.

QUESTION – 9

Any agreements entered into by Directors causing gain to him and loss to company will result in - (Mapped to objective 6)

Three (3) options were given:

1. Disgorgement of undue gain and penalty. - **FAVOURITE**
2. Penalty and prosecution
3. Vacation of office as Director.

Option exercised by Fifty-seven (57) persons

- i) **Twenty (20) persons representing 35% exercised Option 1 - FAVOURITE**
- ii) Twenty-two (22) persons representing 39% exercised Option 2.
- iii) NIL (0) i.e, 0% exercised Option 3
- iv) Twelve (12) persons representing 21% stated they don't know.

REGULATION:

1. Section 166(5) of the Companies Act, 2013:
A Director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners or associates, and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the Company.

2. Delhi High Court decision on 22nd January 2016 in Rajeet Saumitra vs Neetu Singh Para 85 of the Judgment:

85. This Court is conscious about the fact that defendant No.1 being the Director of defendant No.3 is entitled to 50% net-profit of the Company but at the same time, as she has violated her fiduciary duties and is guilty of breach of Section 166 of the Companies Act, 2013, the undue gain already Rajeet Saumitra vs Neetu Singh & Ors on 27 January, 2016 made by her is liable to be paid to the Company under sub-Section 5 of Section 166 of the Act and the Director of the company is not to assign his office unless the breach is stopped. But under no circumstances, the Director can be allowed to compete the business of the Company, in which he/she is already a Director, to exploit the mark in order to give the impression to the public at large that he/she has any association or affiliation of the Company in which he/she is still a Director.

3. Section 174 of the Companies Act, as of date have not made mandatory vacation of office of
 Director on contravention of Section 166.

CONCLUSION:

1. More than 51% responded to other than favourite.
2. Words used in the Companies Act, particularly of Section 166 need careful study for discharge by Directors of their fiduciary obligations to the Company.
3. A structured Directors training programme is imperative.

QUESTION – 10

Do Board in their meeting discuss on Foreign Exchange exposure (earnings and outgo) (Mapped to objective 7)

Three (3) options were given:

1. Stated in Directors Report - **FAVOURITE**
2. Once annually
3. Addressed by Audit Committee.

Option exercised by Fifty-seven (57) persons

- i) **Nineteen (19) persons representing 33% exercised Option 1 - FAVOURITE**
- ii) **Fourteen (14) persons representing 25% exercised Option 2.**
- iii) **Twenty-four (24) persons representing 42% exercised Option 3**

REGULATION: Companies Act 2013.

1. Section 134(3)(m) – Report by its Board of Directors attached to statements before a company, shall include:

(m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;

CONCLUSION:

1. More than 51% responded to other than favourite.

2. Besides earnings and outgo annual details to members, SEBI LODR also prescribe foreign exchange risk management by Company where Directors have a fiduciary duty to discharge.
3. Words used in the Companies Act, particularly of Section 166 need careful study for discharge by Directors of their fiduciary obligations to the Company.
4. A structured Directors training programme is imperative.

QUESTION – 11

Can a Director be a Director of another Competing company?
(Mapped to objective 4)

Three (3) options were given:

1. Yes, as no prohibition in Companies Act.
2. No prohibition in SEBI Regulations.
3. No, as breach of fiduciary duties. - **FAVOURITE**

Option exercised by Fifty-seven (57) persons

- i) Seven (7) persons representing 15% exercised Option 1
- ii) One (1) person representing 2% exercised Option 2.
- iii) Thirty-eight (38) persons representing 67% exercised Option 3 – **FAVOURITE**
- iv) Eleven (11) persons representing 19% were invalidated as they either 2 or more options.

REGULATION: Companies Act 2013. & Judicial pronouncements

1. Section 166(4) clearly state as follows:

(4) A director of a Company shall not involve in a situation in which he may have a direct or indirect interest that conflicts or possibly may conflict with the interests of the company.

2. Para 71 in the judgment by Delhi High Court in Rajeev Saumitra vs Neetu Singh dated 27 Jan 2016 it is stated as follows:

71. Therefore, seeing the overall situation, one can easily draw conclusion that the way the defendants No.1 and 2 had been carrying on business since February, 2015, it amounts to completely competing the business. The defendant No.1 is in violation of the provisions of Section 166 of Companies Act, 2013. She has failed to assign any valid reason or justification as to why she being the Director of defendant No.3 has started parallel business of defendant No.2. If she had any grievances or the plaintiff is trying to control the business of defendant No.3 or she was ousted as alleged by her, she had the remedy and rightly so, she was availing the remedy, but there is hardly any justification to start parallel/similar to the business of defendant No.3. Normally, the injunction should have been followed, however, the facts in the present case are peculiar. Therefore, it is to be examined, as to what type of order is required to be passed under the circumstances available in the case.

CONCLUSION:

1. 38% responded to other than favourite.
2. The impact of provisions in Section 166 and fiduciary duties of Directors are still not in knowledge of many Directors.
3. Words used in the Companies Act, particularly of Section 166 (4) need careful study for discharge by Directors of their fiduciary obligations to the Company.
4. A structured Directors training programme is imperative.

QUESTION – 12**Does fiduciary obligation cease with resignation?****(Mapped to objective 4)****Three (3) options were given:**

1. Yes, for future and not for past. **FAVOURITE**
2. Only after resignation is complete.
3. Obligation continues.

Option exercised by Fifty-seven (57) persons

- i) Fifty-five persons (55) persons representing 96% exercised Option 1-**FAVOURITE**
- ii) NIL (0) persons representing 0% exercised Option 2.
- iii) NIL (0) persons representing 0% exercised Option 3.
- iv) Two (2) persons representing 4% added a point that it shall be post completion of non-compete period .

REGULATION: Companies Act 2013. & several Judicial pronouncements:

1. Section 168 of Companies Act.
2. Date of resignation shall be on date of resignation upon intimation to the company.
3. No acceptance by company is required as resignation amounts to withdrawal of consent to act as director.
4. Abiding by conditions if any in Articles of Association or agreements entered into by the Director with the Company on non-compete etc. will also be a deciding factor. This however has been covered in Q 13. But fiduciary obligations cease for future but continue for past.
5. Intimation in Form 32 with ROC is mandatory for removal of name from ROC records.
6. Future liability can be contained provided steps are taken to complete the process and not merely sending a resignation letter.

CONCLUSION:

Responses were satisfactory. However, minute care to be taken to cease obligations may need guidance in a structured Directors training program.

QUESTION – 13

Does fiduciary obligation, to work for competing companies, cease after leaving office as Director?

(Mapped to objective 4)

Three (3) options were given:

1. Not if non-compete clause is agreed to
2. After cooling period
3. Yes, after leaving office.

Option exercised by Fifty-seven (57) persons

- i) Twelve persons (12) persons representing 21% exercised Option 1-**FAVOURITE**
- ii) Thirty-seven persons (37) persons representing 65% exercised Option 2.
- iii) NIL (0) persons representing 0% exercised Option 3.
- iv) Four (4) persons representing 7% added a point that it shall be post completion of non-compete period or terms of appointment agreement.

REGULATION: Companies Act 2013. & Judicial pronouncements:

1. Section 166 of Companies Act per se has no special feature like cooling period and hence if no stipulations have been agreed to with directors specifically, the obligation shall cease after leaving office. If however non-compete agreement has been agreed to then fiduciary liability shall continue till time agreed to on the terms agreed.
2. In an interesting case Delhi High Court in EV Motors vs Anurag Agarwal on 14 December 2017 had decided that fiduciary responsibility cease on and from date of leaving office by resignation with no stipulation of non-compete etc. However, an interesting point raised by the company seeking the director to act was:

“2. The relief clauses in the plaint are predicated on the cause of action during the tenure of the defendant no.1 as director with the plaintiff company, the defendant no.1 has derived knowledge and information as regards business of manufacture and sale of electric buses, and that this knowledge and information therefore the defendant no.1 as also the defendant no. 2 company which is promoted by defendant no. 1, cannot use for carrying on business.” Against this claim by Company the H’ble judge in para 14 observed as follows :

“14. Learned counsel for the plaintiff argued that plaintiff has taken great pains to receive information with respect to suppliers of various products for manufacture of an electric bus and this information the defendant no.1 derived during his tenure of directorship with the plaintiff company and therefore defendant no.1 should be restrained from using such information, however, in my opinion this argument is completely misconceived because any information which is received or comes to the knowledge of a person which is otherwise available in public domain, cannot be the subject matter of exclusive knowledge of the plaintiff company for not being used by any other person unless and until the compilation would have become a work which is subject matter of copyright under the Copyright Act and as already stated above there is no cause of action pleaded in the plaint with respect to the plaintiff having copyright in a work which the defendants are illegally using.”

QUESTION – 14

In case of contentious issues and issues raised by Independent Director in difference to that of others , should expert opinion be taken before taking a decision ?

(Mapped to objective 4)

Three (3) options were given :

1. Majority decision followed
2. Yes to avoid Bias - **FAVOURITE**
3. Non agreeing minority views to be only recorded in minutes

Option exercised by Fifty-seven (57) persons

- i) Five persons (5) persons representing 9% exercised Option 1.
- v) Fifty-two (52) persons representing 91% exercised Option 2-**FAVOURITE**.
- vi) NIL (0) persons representing 0% exercised Option 3

REGULATION : Section 166 (3) of Companies Act 2013.

While bias can be avoided by taking expert opinion . Defense for breach of duty of directors are always resorted to by taking third party expert opinion in good faith . However the following precautions have to be taken by directors :

1. It is expected that the directors performed due diligence before putting the advice into action.
2. Expert advice is a third party delegation and hence competence and also non bias of such a delegate are vital before directors take action on such expert opinion .
3. The abovesaid are essential to satisfy exercise of directors duties with due and reasonable care , skill and diligence and exercise of independent judgment .

QUESTION – 15

Should power to allot shares be only in the interests of the company ?

(Mapped to objective 1)

Three (3) options were given :

- i) YES
- ii) Fiduciary obligation is to company .
- iii) To be in interest of members also - **FAVOURITE**

Option exercised by Fifty-seven (57) persons

1. Twenty-five persons (25) persons representing 45% exercised Option 1.
2. Eleven (11) persons representing 19% exercised Option 2.
3. Fifteen (15) persons representing 26% exercised Option 3 – **FAVOURITE**
4. Six (6) persons representing 10% did not exercise any option.

REGULATION : Section 166 (1) of Companies Act 2013 r.w CLB decision in Mrs.Uma Pathak and Shri Rajat vs Urasian Choice International Pvt Ltd – Order by S.Balasubramanian Chairman CLB on 15th April 2004 .

Not only the directors have to act in best interest of the Company they are also required to act in the best interests of the shareholders who have appointed them .

CLB order in para 8 state :

8. It is settled law that while issuing further shares, the Board of Directors discharge their fiduciary responsibilities. If the shares are issued with the sole object of creating a new majority or with the view to convert a majority into a minority, then the action of the Board is not only in breach of the fiduciary responsibilities but also a grave act of oppression against the existing majority

QUESTION – 16

When there are waring factions in Management and Control mere compliance of law is insufficient .

(Mapped to objective 2)

Three (3) options were given :

- i) To resolve differences
- ii) Regulatory compliance is sufficient .
- iii) Fiduciary responsibility is not just legal - **FAVOURITE**

Option exercised by Fifty-seven (57) persons

- 1. Ten (10) persons representing 17% exercised Option 1.
- 2. Sixteen (16) persons representing 28% exercised Option 2.
- 3. Twenty-five (25) persons representing 45% exercised Option 3 – **FAVOURITE**
- 4. Six (6) persons representing 10% did not exercise any option.

REGULATION : Section 166 (2) of Companies Act 2013 r.w CLB decision in Neelu Kohli vs Nikhil Rubber decided on 25th September 2000 .

Observations in para 16 leading to order :

“The observations made by us in paragraph 12 would support both the possibilities. In view of this, we do not propose to go deeper into the merits of the matter other than taking cogni- zance of the fact that the irreconcilable matrimonial differences between the parties have brought the affairs of the company to a stage that it is just and equitable that the company should be wound up. However, we find that by the time the disputes started, the turnover of the company was going up, and but for the disputes, the company could have prospered. Therefore, we propose to pass an order that would be equit- able to both the sides while protecting the interest of the company. The company is a family company promoted by the petitioner and the respondent. We are not impressed with the claim of the petitioner that, since she had 95% share capital, she should be given the charge of the company inasmuch as mere capital alone cannot ensure pros- perity of a company. Her averment that she joined

the respondent as a promoter only due to the legal requirement of having two members does not carry much conviction. It is on record that the respondent has expertise in rubber technology while the petitioner has no such expertise. It is also on record that the major portion of the turnover of the company was out of the exports for which the respondent had obtained orders while visiting exhibitions abroad. Thus, even assuming that the respondent had not contributed to the capital of the company initially, his contribution of expertise for the benefit of the company cannot be ignored. the Company Law Board, in a proceeding under Section 397/398, exercise equitable jurisdiction and, therefore, all these aspects have to be taken into consideration in moulding the relief. According to us, the most equitable manner of disposing of this petition, in facts of this case, is to declare the petitioner and the respondent as 50% shareholder each considering the fact that one had contributed to the capital and the other to the expertise. Since there is ample evidence that due to serious matrimonial disputes, they cannot continue together, it is imperative that one of them goes out of the company. Considering the fact that the petitioner has a business of her own (Nikhil Rubber), we consider it appropriate that the respondent who had been the manager of Nikhil Rubber and also an active director of the company should also have a business of his own; and accordingly, we direct the petitioner to sell her 50% interest in the company to the respondent at a value to be determined by an independent valuer. In the peculiar circumstances of this case, we consider that this would be the most equitable solution even if somewhat unconventional. Accordingly, we direct the parties to be present before us on 15 November, 2000, at 4.00 p.m. for appointment of a valuer mutually acceptable to both the sides for valuing the shares in the company and for further direction in regard to the valuation. Since the respondent would gain control of the company on working out this order, it is not necessary for us to look into the circumstances under which the flat in Kanpur was registered in the name of the respondent. 17. The petition is disposed of in the above terms subject to the appointment of a valuer on 15 November, 2000."

QUESTION – 17

Can a Director be held liable for acts done during the financial year but before the date of appointment if he continues as director on record .

(Mapped to objective 4)

Three (3) options were given :

- i) No - **FAVOURITE**
- ii) Both appointment and resignation effectiveness need be complete.
- iii) Ignorance of law is not defense .

Option exercised by Fifty-seven (57) persons

- 1. Forty-nine persons (49) representing 86% exercised Option 1.- **FAVOURITE**
- 2. Eight persons (8) representing 14% exercised Option 2.
- 3. NIL (0) person representing 0% exercised Option 3.

REGULATION : Section 166 of Companies Act 2013 r.w Pranab Kumar Roy vs SEBI (High Court of Calcutta dated 27th March 2023) .

Liability of a Director for breach of fiduciary duties shall commence only from date of appointment and not before and end on resignation for future acts .

Even for liability to repay the funds which were taken during period when a person was director cannot be fastened to the director after his resignation , as continuing liability is of Company (to repay) which shifts from time to time upon functioning directors of the company . (para 33)

QUESTION – 18

Does participation by Independent Director in Board Meeting , without recording objections , if any , create any breach of duty and invite liability .
(Mapped to objective 4)

Three (3) options were given :

- i) Yes . Knowledge attributable through Board process is consent - **FAVOURITE**
- ii) Independent Directors are Non Executive .
- iii) Liability is for Executive Directors .

Option exercised by Fifty-seven (57) persons

- 1. Fifty-six persons (56) representing 98% exercised Option 1.- **FAVOURITE**
- 2. NIL (0) person representing 0% exercised Option 2.
- 3. NIL (0) person representing 0% exercised Option 3.
- 4. One person (1) representing 2% exercised NO OPTIONS.

REGULATION :

Section 149(12) of Companies Act 2013 state as follows :

“(12) Notwithstanding anything contained in this Act,— (i) an independent director; (ii) a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently”

QUESTION – 19

To prove fiduciary negligence , is it necessary to prove quantum of damages which resulted .
(Mapped to objective 6)

Three (3) options were given :

- i) Duty is different from extent of damage - **FAVOURITE**
- ii) Compensation can be worked out .
- iii) Yes as it is the basis of breach of duty .

Option exercised by Fifty-seven (57) persons

1. Forty-five persons (45) representing 80% exercised Option 1.- **FAVOURITE**
2. Six persons (6) representing 10% exercised Option 2.
3. Six (6) persons representing 10% exercised Option 3.

REGULATION :

Breach of duty is primary . Compensation may be worked out based on damage . But such base is not the criteria of discharge of duty .

Though Section 166 came into force from Companies Act 2013 , the breach of duties of directors were issues which the Courts have all along been covering and penalising for breaches. In P.K.Nedungadi vs Malayalee Bank Ltd as early as in 1971 , the Supreme Court of India in para 5 covered provisions of “Companies Act 1913” and observed as follows :

“..... Under Section 235 of the Indian Companies Act, 1913 which was in force at the material time the Court has been given the power to assess damages against the delinquent Directors, etc. If the money or the property of the Company has been misapplied or there has been misfeasance or breach of trust in relation to the company by a Director, an officer or other persons mentioned in the section the Court, after examining the matter, can compel him to repay or restore the property with interest at such rate as the court may think fit or to contribute such sums to the assets of the Company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Court thinks fit. It has been expressly declared that the section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible. In Halsbury's Laws of England, 3rd Edition, Volume 6, it has been stated at page 623 that misfeasance and breach of trust include a breach by a Promoter, Director etc. of a duty to the Company the direct consequence of which has been a misapplication or loss of its assets for which he could be made responsible in an action. Allegations or proof of fraud are not essential and it is immaterial that the offence is one for which the offender may be criminally liable.”

QUESTION – 20

How could a Director protect himself from claim of breach of fiduciary duties of care and loyalty ?

(Mapped to objective 4)

Three (3) options were given :

- i) Do the right things .
- ii) **Refrain from doing any harm to the company .- FAVOURITE**
- iii) Be Independent Director .

Option exercised by Fifty-seven (57) persons

1. Thirty-six persons (36) representing 64% exercised Option 1.
2. **Twelve persons (12) representing 21% exercised Option 2. - FAVOURITE**
3. Six (6) persons representing 10% exercised Option 3.
4. Three (3) person representing 5% did not exercise any option.

REGULATION :

Section 166(3) of Companies Act 2013 and difference between Duty of care and loyalty .

The two main branches of fiduciary duties are the *duty of loyalty and duty of care* . They differ in Character . **Duty of loyalty is primarily a negative duty not to harm the principal** and it is unambiguous in what it requires . **The duty of care is positive** – a duty to promote the ends of the principal and it is open ended and variable in nature . When duties of loyalty and care collide courts generally resolve the conflict in favour of the duty of loyalty representing minimum conduct to which the fiduciary must adhere . Courts resolve these conflicts by analysing the nature or character of the particular duties imposed .

QUESTION – 21

Is it a correct theory that the Directors duty is to its company and not to its shareholders directly in a listed company . ?

(Mapped to objective 1)

Three (3) options were given :

- i) **Yes because harm due to breach is to company .- FAVOURITE**
- ii) No because shareholders appoint Directors Refrain from doing any harm to the company .
- iii) No specific provision in Companies Act .

Option exercised by Fifty-seven (57) persons

- 1. Thirteen persons (13) representing 23% exercised Option 1. FAVOURITE**
- 2. Thirty-three persons (33) representing 58% exercised Option 2.**
- 3. Eight (8) persons representing 14% exercised Option 3.**
- 4. Three (3) persons representing 5% did not exercise any option.**

REGULATION :

Reading of Section 166 of the Companies Act is sufficient to understand that the fiduciary duty of the Directors is to Company. Any breach of duty has to be related to acts of Directors and how it impacted the Company . 166(2) clearly establish any act done in the interest of the company and all stakeholders shall be a discharge of fiduciary duty . The words “members as a whole” signifies not working for a class of shareholders , though they have appointed them.

Extracts from a decision of Supreme Court in Sangram singh Gaikwad and others vs Shantadevi Gaikwad – Order dated 20 Jan 2005

“The ratio in Dale and Carrington (supra), thus, must be understood to have been rendered in the fact situation obtaining in that case. It does not lay down a law that fiduciary duty of a director to the company extends to a shareholder so as to entitle him to be informed of all the important decisions taken by the Board of Directors. Such a broad proposition of law, if understood to have been laid down in Dale and Carrington, would be inconsistent with the duty of a director vis-à-vis the Company and the settled law that the statutory duty

of a direction is primarily to look after the interest of the company. In Bajaj Auto Ltd. Vs. N.K. Firodia and Another etc. [(1970) 2 SCC 550], the Court was concerned with the discretionary exercise of power by the Directors in terms of Section 111(3) of the Companies Act. In the light of refusal by director to register a transfer, the Court held that it is necessary for the directors to act bonafide and not arbitrarily in the following terms: "12. Article 52 of the appellant company provided that the Directors might at their absolute and uncontrolled discretion decline to register any transfer of shares. Discretion does not mean a bare affirmation or negation of a proposal. Discretion implies just and proper consideration of the proposal in the facts and circumstances of the case. In the exercise of that discretion the Directors will Act for the paramount interest of the company and for the general interest of the shareholders because the Directors are in a fiduciary position both towards the company and towards every shareholder. The Directors are therefore required to act bona fide and not arbitrarily and not for any collateral motive." (emphasis supplied) This Court therein also applied the bona fide test of the Director and for the benefit of the company as a whole. In that case, the directors assigned reasons which were tested from three angles view, viz., (i) whether the directors acted in the interest of the company; (ii), whether they acted on a wrong principle; and, (iii) whether they acted with an oblique motive or for a collateral purpose. It was observed in M/s. Harinagar Sugar Mills Ltd. Vs. Shyam Sunder Jhunjhunwala & Others [(1962) 2 SCR 339] that the action of the directors must be set aside if the same was done oppressively, capriciously, corruptly or in some other way mala fide. In this case, this Court is not faced with such a situation....."

QUESTION – 22

**Are liabilities of non executive Directors different from executive Directors ?
(Mapped to objective 9)**

Three (3) options were given :

- i) Yes for non executive Independent Directors only if knowledge attributable to board process established .- **FAVOURITE**
- ii) Liability for both executive and non executive Directors is same .
- iii) Where MD exist no liability for other Directors .

Option exercised by Fifty-seven (57) persons

- 1. Fifty-five (55) persons representing 96% exercised Option 1. FAVOURITE**
- 2. NIL (0) persons representing 0% exercised Option 2.**
- 3. NIL (0) persons representing 0% exercised Option 3.**
- 4. Two (2) persons representing 4% did not exercise any option.**

REGULATION :

- 1. Section 149(12) of Companies Act 2013 :
"Notwithstanding anything contained in this Act,— (i) an independent director; (ii) a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company

which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently”

2. Regulation 25(5) of SEBI (LODR) 2015

“(5) An independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his 148[/her] knowledge, attributable through processes of board of directors, and with his 149[/her] consent or connivance or where he 150[/she] had not acted diligently with respect to the provisions contained in these regulations.”

3. MCA circular 1 dated March 2, 2020.

“Section 149(12) has a non obstante clause which provides that the liability of an Independent Director (ID) or a Non Executive Director (NED) not being promoter or Key Managerial Personnel (KMP) would be only in respect of such acts of omission or commission by a company which had occurred with his knowledge , attributable through board processes , and with his consent or connivance or where he had not acted diligently . In view of the express provision of Section 149(12) , ID’s and NED’s (non promoter and non KMP’s) should not be arrayed in any criminal or civil proceedings under the Act unless the above mentioned criteria is met .”

QUESTION – 23

What is the fine for breach of Section 166 payable by a Director ?
(Mapped to objective 8)

Three (3) options were given :

- i) Minimum Rs. 1 Lac .
- ii) Ranging between Rs.1 Lac and Rs.5 Lacs .
- iii) Prosecution .

Option exercised by Fifty-seven (57) persons

- 1. NIL (0) person representing 0% exercised Option 1.
- 2. Fifty-five persons (55) representing 96% exercised Option 2. - **FAVOURITE**
- 3. NIL (0) persons representing 0% exercised Option 3.
- 4. Two (2) persons representing 4% did not exercise any option.

REGULATION :

Section 166(7) of Companies Act 2013

“(7) If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees”

QUESTION – 24

If all Directors attend Board meeting where ultra vires acts have been approved , are they all liable . ?

(Mapped to objective 1)

Three (3) options were given :

- i) Mere attendance is not consent .
- ii) No it is voidable at the option of the Company .
- iii) Yes . For ultra Vires Acts . – **FAVOURITE**

Option exercised by Fifty-seven (57) persons

- 1. None (0) person representing 0% exercised Option 1.
- 2. None (0) person representing 0% exercised Option 2.
- 3. Fifty-four (54) persons representing 95% exercised Option 3.- **FAVOURITE**
- 4. Three (3) persons representing 5% did not exercise any option.

REGULATION :

1. Companies Act 2013 –
“166. Duties of directors.— (1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company”
2. Observations in Lakshmanaswami Mudaliar vs LIC 1963 (Supreme court of India)
“ ... Held, also, that the action of the Company being ultra vires, it created no legal effect and could not be ratified even if all the shareholders agreed and payments made pursuant to such action created no rights in the appellants and they were rightly directed under s. 15 of the Life Insurance Corporation Act to personally refund the amount.”

“.... Where a Company does an act which is ultra vires, no legal relationship or effect ensues therefrom. Such an act is absolutely void and cannot be ratified even if all the shareholders agree. Re. Birkback Permanent Benefit Building Society (1). The payment made pursuant to the resolution was therefore unauthorised and the trustees acquired no right to the amount paid by the Directors to the trust.”

“... 2 and 4 were at the material time Directors of the Company and they took part in the meeting held under the Chairmanship of the fourth appellant in which the resolution, which we have held ultra vires, was passed. As office bearers of the Company who were responsible for passing the, resolution ultra vires the Company, they will be personall liable to make good the amount belonging to the Company which was unlawfully disbursed in pursuance of the resolution”

QUESTION – 25

Is there a shift in duties of Directors during insolvency .?
(Mapped to objective 3)

Three (3) options were given :

- i) No. Directors are accountable to shareholders .
- ii) Yes. Towards creditors in place of shareholders .- **FAVOURITE**
- iii) No specific provision in IBC .

Option exercised by Fifty-seven (57) persons

- 1. Eight (8) persons representing 14% exercised Option 1.
- 2. Twenty-two (22) persons representing 39% exercised Option 2. - **FAVOURITE**
- 3. Fourteen (14) persons representing 25% exercised Option 3.
- 4. Three (3) persons representing 5% exercised fresh options stating board ceases.
- 5. Nine (9) persons representing 16% did not exercise any option

REGULATION :

The most interesting divergences in the directors' duties are observed when a company starts to face financial trouble, and more so, when it is in bordering on insolvency. Duties of directors during this stage vary among jurisdictions. When a company becomes insolvent, but is not yet subject to a formal insolvency proceeding, the shareholders – or the directors acting on their behalf – may engage, even in good faith, in various forms of behaviour that can divert or destroy value at the expense of the creditors. However, there is some consensus among courts that during borderline insolvency, duties of directors are primarily owed towards creditors and secondarily, if afforded by statute, towards shareholders. There is a shift in duties of directors towards the creditors, who become residual risk-bearers and the best interest lies in conserving the remaining assets of the company towards either revival of the company or repayment of the obligated debt.

There is also a general perception that once a IP is appointed duty of Director ceases . This may not be true. Powers of Directors are ceased . Duties and liabilities remain .

QUESTION – 26

Is duty to take care and diligence while approving RPT's is necessary for both interested and non interested directors .?
(Mapped to objective 5)

Three (3) options were given :

- i) Yes though Audit Committee recommend it .

- ii) Interested Director do not participate .
- iii) Basic principle of at arms length is the duty of care and diligence of all Directors.
FAVOURITE

Option exercised by Fifty-seven (57) persons

1. Seven (7) persons representing 12% exercised Option 1.
2. Twenty-three (23) persons representing 40% exercised Option 2.
3. Twenty (20) persons representing 35% exercised Option 3. **FAVOURITE**
4. Six (6) persons representing 10% did not exercise any option

REGULATION :

In both Section 188 and Section 166 to avoid conflict of interest , it is necessary that the directors ensure that the arms length principle is followed .

Further the SEBI LODR regulations provide for adequate disclosure to ensure transparency .

In case of exceeding thresholds shareholder approvals as against govt approvals is the order of the day and hence directors have to discharge their fiduciary duties through arms length principle and disclosures .

QUESTION – 27

Are penalty for breach of Related Party Transaction different from penalty under Section 166(7) ?

(Mapped to objective 8)

Three (3) options were given :

- i) Yes a separate code for RPT exist which include imprisonment for directors .
FAVOURITE
- ii) Comply with SEBI LODR regulations
- iii) No specific provision in Companies Act.

Option exercised by Fifty-seven (57) persons

1. Thirty-four (34) persons representing 60% exercised Option 1. -**FAVOURITE**
2. Fifteen (15) persons representing 26% exercised Option 2.
3. NIL (0) representing 0% exercised Option 3.
4. Eight (8) persons representing 14% did not exercise any option

REGULATION :

1. Section 166(7) merely state penalty specific for breach of fiduciary duties which include wrongdoing in RPT's.
2. But Section 188 of Companies Act 2013 is a separate code specific for Related part transactions . Penalty for breach shall be in terms of Section 188(5) which state :

“(5) Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall,— (i) in case of listed company, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both; and (ii) in case of any other company, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees”

QUESTION – 28

Is insider trading a breach of fiduciary duties of directors ?
(Mapped to objective 6)

Three (3) options were given :

1. Yes . Board has to adopt the code . **FAVOURITE**
2. Only if it violates SEBI regulations .
3. No provision in Companies Act.

Option exercised by Fifty-seven (57) persons

1. Thirty-six (36) persons representing 63% exercised Option 1. -**FAVOURITE**
2. Seventeen (17) persons representing 30% exercised Option 2.
3. NIL (0) representing 0% exercised Option 3.
4. Four (4) persons representing 7% did not exercise any option

REGULATION :

- a. Companies Act specifically provide in Section 195 prohibition of insider trading in securities of the company and penalties for non compliance .
- b. By virtue of powers of delegation Section 458 of Companies Act 2013 delegated the powers to implement provisions of Section 195 to SEBI.
- c. SEBI by virtue of such delegated powers require strict implementation of the code to prohibit insider trading and detailed in “SEBI (Prohibition of Insider Trading) Regulations 2015.
- d. Code as enumerated in the SEBI regulations have to be adopted by each listed company .
- e. *Consequent to the delegation of powers to SEBI , Section 195 of Companies Act 2013 was deleted in 2017 .*

QUESTION – 29

Can NCLT order recovery of undue gains made by a Director ?
(Mapped to objective 6)

Three (3) options were given :

- i) No only court has jurisdiction .
- ii) Yes because NCLT is akin to court .
- iii) YES . **FAVOURITE**

Option exercised by Fifty-seven (57) persons

- 1. Six (6) persons representing 10% exercised Option 1.
- 2. Thirty-six (36) persons representing 63% exercised Option 2.
- 3. Thirteen (13) persons representing 23% exercised Option 3.- **FAVOURITE**
- 4. Two (2) persons representing 4% did not exercise any option.

REGULATION :

- 1. Both option 2 & 3 may be considered correct due to confusion in wordings .
- 2. Almost 90% persons exercised desired option .
- 3. Specific provision exist in Section 242 (Powers of Tribunal) in subsection 2(i) of Companies Act 2013 , which state:
- 4. *“(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;”*

QUESTION – 30

Is there a monetary penalty for insider trading as per Companies Act ?
(Mapped to objective 8)

Three (3) options were given :

- i) Yes double amount of undue gain .
- ii) Yes MinimumRs.5 lacs and Maximum Rs.25 crores . – **FAVOURITE**
- iii) No penalty for breach of section 166 will apply .

Option exercised by Fifty-seven (57) persons

- 1. One (1) person representing 2% exercised Option 1.
- 2. Sixteen (16) persons representing 28% exercised Option 2. **FAVOURITE**
- 3. Thirty-four (34) persons representing 60% exercised Option 3.

4. Six (6) persons representing 10% did not exercise any option

REGULATION

1. This quiz was based on provisions of Section 195 . As stated in question 28 , Section 195 was removed from Companies Act from 2017.
2. The removal was due to delegated powers to SEBI for implementation of Insider Trading regulations and adoption of Code for compliance by the Board of Directors of each listed company .

QUESTION – 31

Is the document by which the shareholders make offer for sale be deemed to be a prospectus and directors liable for misstatement ?
(Mapped to objective 2)

Three (3) options were given :

- i) Yes as board approval necessary .- **FAVOURITE**
- ii) No. Company is not receiving any capital .
- iii) Directors or their relatives as members making offer for sale liable .

Option exercised by Fifty-seven (57) persons

1. Forty-nine (49) person representing 86% exercised Option 1. -**FAVOURITE**
2. NIL (0) person representing 0% exercised Option 2.
3. Four (4) persons representing 7% exercised Option 3.
4. Four (4) persons representing 7% did not exercise any option

REGULATION :

1. Chapter III – Part I of Companies Act cover public offer .
2. Section 28 of the Act is relevant to offer of sale document by members . The document has to be adopted by the Board . Such a document shall be a prospectus and all liabilities for misstatement in the document the directors shall be liable . It is irrelevant whether money is received by company or members .

QUESTION – 32

Are additional assurances made by the board in BRSR document call for training and periodical refreshers course for upgrading skills ?
(Mapped to objective 9)

Three (3) options were given :

- i) No if more interaction with Audit Committee .
- ii) YES . **FAVOURITE**
- iii) No if more interaction with CFO and Auditors .

Option exercised by Fifty-seven (57) persons

1. Thirteen (13) persons representing 23% exercised Option 1.

2. Seventeen (17) persons representing 30% exercised Option 2. -**FAVOURITE**
3. Twenty-two (22) persons representing 38% exercised Option 3.
4. Five (5) persons representing 9% did not exercise any option

Conclusion :

30% Directors opted for refreshers course and training to keep abreast with major changes in regulations and disclosures .

QUESTION – 33

Can the shareholders ratify breach of fiduciary duties of directors ?
(Mapped to objective 1)

Three (3) options were given :

- i) YES as decided by SAT in Terracote case (actually Terrascope case) .
- ii) YES . if all members agree .
- iii) No with existence of Section 166 of Companies Act .**FAVOURITE**

Option exercised by Fifty-seven (57) persons

1. Sixteen (16) people representing 28% exercised Option 1.
2. NIL (0) person representing 0% exercised Option 2.
3. Thirty-six (36) persons representing 63% exercised Option 3.- **FAVOURITE**
4. Five (5) persons representing 9% did not exercise any option

REGULATION :

In option 1 Terrascope case (SAT on June 2, 2022) was referred, where utilization of funds raised by company was used for other than as planned and later ratified. But this case was when Section 166 casting fiduciary duties on Directors were not in the statute book. Further at the relevant time SEBI LODR was also not in existence. There was reference to clause 43 of the listing agreement in the judgment.

3.2 Aggregate Analysis on Understanding Levels of Directors Regarding their Fiduciary Duties

To understand the confidence level of directors regarding their fiduciary duties, an aggregate analysis has been prepared (as shown in table 2) based on the percentage of correct / favorable answers given by all the directors out of all the 33 questions.

Table 2: Descriptive Statistics of Confidence Level of Directors Regarding their Fiduciary Duties

	Directors (Listed Companies)	Directors (Non-Listed Companies)	Full Sample
Mean	53%	57%	55%
Median	55%	61%	58%
Std. Deviation	0.132	0.101	0.117
Minimum	18%	30%	18%
Maximum	73%	70%	73%
N	25	32	57
Alpha	0.05	0.05	0.05
Std. Error	0.026	0.018	0.016
t-crit	2.004	2.004	2.004
Margin of Error	0.053	0.036	0.031
Confidence Interval	52.947% - 53.053%	56.964% - 57.036%	54.969% - 55.031%

Table 2 shows the descriptive statistics for the confidence levels of directors regarding their fiduciary duties, segmented by directors of listed companies, directors of non-listed companies, and the full sample. The following insights are obtained from this analysis:

- The full sample of directors has an average confidence level of 55%, with a median of 58%, indicating moderate confidence levels across the board. Directors of non-listed companies show slightly higher confidence (Mean: 57%, Median: 61%) compared to directors of listed companies (Mean: 53%, Median: 55%).
- Standard deviation for listed company directors (0.132) is higher than for non-listed directors (0.101), indicating greater variability in confidence among listed company directors. Non-listed company directors exhibit more uniform confidence, while listed company directors display a wider range.
- The minimum confidence level is significantly lower among listed company directors (18%) compared to non-listed company directors (30%), reflecting gaps in awareness among listed directors. Maximum confidence levels are similar (73% for listed vs. 70% for non-listed), indicating that even the most confident directors do not express very high confidence.
- Standard error is smaller for non-listed company directors (0.018) compared to listed directors (0.026), indicating a more precise estimate of confidence levels for non-listed

companies. Margin of error also highlights this difference (0.036 for non-listed vs. 0.053 for listed companies).

- Confidence intervals are narrow, reflecting reliable estimates: Listed Companies: 52.947% - 53.053%. Non-Listed Companies: 56.964% - 57.036%. Full Sample: 54.969% - 55.031%. Non-listed company directors consistently demonstrate higher confidence levels within a narrower range.
- A critical t-value of 2.004 and alpha level of 0.05 confirm the analyses are statistically robust with 95% confidence.
- Implications: Directors of non-listed companies exhibit higher and more consistent confidence levels compared to listed company directors. Listed company directors' variability and lower confidence levels point to a need for targeted training or policy interventions. Narrow confidence intervals across the board indicate reliable findings, but moderate confidence levels (~55%) suggest an opportunity for improving fiduciary duty understanding, especially in listed companies.

3.3 Aggregate Analysis on Understanding Levels of Directors Regarding their Fiduciary Duties according to Nine Provisions under the Scope of this Study

All the 33 questions belong to one or the other nine provisions covered under the scope of this study as mentioned in table 1. Therefore, the study has conducted an aggregate analysis on understanding levels of directors regarding their fiduciary duties according to these nine provisions.

Provision 1: Directors to ensure shall act subject to provisions of the Act and also subject to provisions to the Articles of the Company (Section 166(1))

Table 3: Descriptive Statistics of Confidence Level of Directors Regarding their Fiduciary Duties about Provision 1

	Directors (Listed Companies)	Directors (Non-Listed Companies)	Full Sample
Mean	44.00%	57.78%	51.74%
Median	50%	50%	50%
Std. Deviation	0.208	0.195	0.210
Minimum	0%	25%	0%
Maximum	75%	100%	100%

N	25	32	57
Alpha	0.05	0.05	0.05
Std. Error	0.042	0.034	0.028
t-crit	2.004	2.004	2.004
Margin of Error	0.083	0.069	0.056
Confidence Interval: LB	43.92%	57.71%	51.68%
Confidence Interval: UB	44.08%	57.85%	51.79%

The analysis of directors' confidence regarding Provision 1 (acting in accordance with the Companies Act and Articles of Association) reveals notable differences between listed and non-listed companies. Directors of non-listed companies report higher confidence levels (Mean: 57.78%) compared to listed company directors (Mean: 44.00%), with both groups having a median confidence of 50%. Listed directors exhibit greater variability (Std. Deviation: 0.208) and a concerning minimum confidence of 0%, while non-listed directors range from 25% to 100%, reflecting a more consistent understanding of fiduciary duties.

Confidence estimates are more precise for non-listed directors, with lower standard errors and margins of error. The confidence intervals (43.92% - 44.08% for listed; 57.71% - 57.85% for non-listed) reinforce the reliability of these differences. The full sample mean confidence of 51.74% indicates moderate understanding overall. These findings highlight a pressing need for targeted training and governance improvements, especially for listed company directors, to address inconsistencies and knowledge gaps in fulfilling their fiduciary duties.

Provision 2: To act in good faith in order to promote objects of the company (Section 166(2))

Table 4: Descriptive Statistics of Confidence Level of Directors Regarding their Fiduciary Duties about Provision 2

	Directors (Listed Companies)	Directors (Non-Listed Companies)	Full Sample
Mean	52.00%	75.00%	64.91%
Median	50%	75%	50%
Std. Deviation	0.338	0.254	0.313
Minimum	0%	50%	0%
Maximum	100%	100%	100%
N	25	32	57
Alpha	0.05	0.05	0.05
Std. Error	0.068	0.045	0.041
t-crit	2.004	2.004	2.004
Margin of Error	0.135	0.090	0.083

Confidence Interval: LB	51.86%	74.91%	64.83%
Confidence Interval: UB	52.14%	75.09%	65.00%

The analysis of directors' confidence regarding Provision 2 (acting in good faith to promote the company's objectives) reveals a significant disparity between listed and non-listed company directors. Non-listed company directors exhibit notably higher confidence levels, with a mean of 75.00% and a median of 75%, compared to their listed counterparts, who show a mean confidence of 52.00% and a median of 50%. This stark difference suggests that non-listed directors feel significantly more assured in fulfilling this provision, while listed company directors exhibit more variability in their confidence, as reflected in the higher standard deviation (0.338) compared to non-listed directors (0.254). The minimum confidence for listed directors is 0%, pointing to gaps in awareness, while non-listed directors maintain a higher minimum confidence level of 50%.

Confidence intervals further highlight this gap, with listed directors ranging from 51.86% - 52.14% and non-listed directors from 74.91% - 75.09%, indicating greater precision and reliability in the non-listed group. The full sample mean confidence of 64.91%, with a narrow confidence interval (64.83% - 65.00%), reflects moderately high confidence overall. However, the results underscore the need for focused initiatives to bolster listed directors' understanding and confidence in acting in good faith to promote company objectives, ensuring alignment across governance structures.

Provision 3: To work for benefit of members as a whole and in best interest of the company employees, shareholders, the community and for protection of environment (Section 166(2))

Table 5: Descriptive Statistics of Confidence Level of Directors Regarding their Fiduciary Duties about Provision 3

	Directors (Listed Companies)	Directors (Non-Listed Companies)	Full Sample
Mean	42.00%	33.33%	42.50%
Median	50%	50%	50%
Std. Deviation	0.344	0.258	0.335
Minimum	0%	0%	0%
Maximum	100%	50%	100%
N	25	32	57
Alpha	0.05	0.05	0.05
Std. Error	0.069	0.046	0.044

t-crit	2.004	2.004	2.004
Margin of Error	0.138	0.091	0.089
Confidence Interval: LB	41.86%	33.24%	42.41%
Confidence Interval: UB	42.14%	33.42%	42.59%

The analysis of directors' confidence regarding Provision 3 (working for the benefit of members, employees, shareholders, the community, and environmental protection) highlights challenges in understanding and application across both listed and non-listed companies. Directors of listed companies report a slightly higher mean confidence level (42.00%) compared to non-listed directors (33.33%), but the median confidence for both groups is 50%, indicating clustering of responses around the midpoint. Notably, the variability in confidence levels is greater among listed company directors (Std. Deviation: 0.344) compared to non-listed directors (0.258), reflecting inconsistencies in the former group. The minimum confidence is 0% for both groups, raising concerns about critical gaps in fiduciary understanding.

The maximum confidence levels further emphasize disparities, with listed company directors reaching 100%, while non-listed directors cap at 50%, suggesting a lack of strong confidence among the non-listed group. Confidence intervals for listed directors (41.86% - 42.14%) and non-listed directors (33.24% - 33.42%) are narrow, indicating reliability of the estimates. The full sample mean confidence is 42.50%, with a narrow interval (42.41% - 42.59%), pointing to moderate confidence overall. These findings underscore a pressing need for targeted training to improve directors' understanding and execution of their broader fiduciary duties, particularly concerning stakeholder welfare and environmental responsibility.

Provision 4: Shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment. (Section 166(3))

Table 6: Descriptive Statistics of Confidence Level of Directors Regarding their Fiduciary Duties about Provision 4

	Directors (Listed Companies)	Directors (Non-Listed Companies)	Full Sample
Mean	60.88%	55.55%	61.11%
Median	56%	56%	56%
Std. Deviation	0.129	0.099	0.137
Minimum	33%	44%	33%
Maximum	89%	67%	89%
N	25	32	57

Alpha	0.05	0.05	0.05
Std. Error	0.026	0.018	0.018
t-crit	2.004	2.004	2.004
Margin of Error	0.052	0.035	0.036
Confidence Interval: LB	60.83%	55.51%	61.07%
Confidence Interval: UB	60.93%	55.59%	61.14%

The analysis of directors' confidence regarding Provision 4 (exercising duties with due care, skill, diligence, and independent judgment) shows relatively higher confidence levels across both listed and non-listed companies compared to other provisions. Listed company directors report a mean confidence of 60.88%, slightly higher than non-listed directors, who have a mean confidence of 55.55%. Both groups share a consistent median confidence of 56%, indicating central tendencies around this level. The variability is slightly higher among listed directors (Std. Deviation: 0.129) compared to non-listed directors (0.099), suggesting a broader range of confidence among the listed group.

The confidence intervals are narrow, reflecting reliable estimates: 60.83% - 60.93% for listed directors and 55.51% - 55.59% for non-listed directors. The full sample mean confidence of 61.11% with a confidence interval of 61.07% - 61.14% highlights overall moderate-to-high confidence. The minimum confidence levels (33% for listed, 44% for non-listed) suggest a baseline understanding of the provision, while the maximum values (89% for listed, 67% for non-listed) show that listed directors exhibit a higher ceiling of confidence. These results suggest a comparatively strong understanding of Provision 4 but highlight an opportunity to further align confidence across director groups through training focused on improving independent judgment and consistent application of diligence and care.

Provision 5: Not to involve in situation, where direct or indirect interest of Director conflict or may conflict with interests of Company. (Section 166(4))

Table 7: Descriptive Statistics of Confidence Level of Directors Regarding their Fiduciary Duties about Provision 5

	Directors (Listed Companies)	Directors (Non-Listed Companies)	Full Sample
Mean	20.00%	46.88%	25.00%
Median	0%	0%	0%
Std. Deviation	0.408	0.507	0.444
Minimum	0%	0%	0%

Maximum	100%	100%	100%
N	25	32	57
Alpha	0.05	0.05	0.05
Std. Error	0.082	0.090	0.059
t-crit	2.004	2.004	2.004
Margin of Error	0.164	0.180	0.118
Confidence Interval: LB	19.84%	46.70%	24.88%
Confidence Interval: UB	20.16%	47.05%	25.12%

The analysis of directors' confidence regarding Provision 5 (avoiding conflicts of interest that may harm the company) reveals alarmingly low confidence levels, particularly among listed company directors. Listed company directors report a mean confidence of 20.00%, significantly lower than non-listed directors, who exhibit a mean confidence of 46.88%. Notably, both groups have a median confidence of 0%, indicating a lack of confidence or understanding for a substantial portion of the sample. The high variability in both groups, reflected in standard deviations of 0.408 for listed directors and 0.507 for non-listed directors, suggests inconsistent awareness or confidence regarding this critical fiduciary responsibility.

The confidence intervals highlight the disparity, with listed directors ranging narrowly from 19.84% - 20.16%, while non-listed directors range from 46.70% - 47.05%. The full sample exhibits a low mean confidence of 25.00%, with a confidence interval of 24.88% - 25.12%, reinforcing the overall lack of confidence. Minimum confidence levels of 0% for both groups underline a serious knowledge gap, even as some directors from both groups reach a maximum confidence of 100%, showing isolated pockets of strong understanding. These findings highlight a critical need for comprehensive training on conflict-of-interest scenarios to build confidence and ensure directors effectively adhere to this essential fiduciary duty.

Provision 6: Not to or attempt to achieve undue gain or advantage to himself or to relatives, partners or associates and liability to payback undue gain, to company. (Section 166(5))

Table 8: Descriptive Statistics of Confidence Level of Directors Regarding their Fiduciary Duties about Provision 6

	Directors (Listed Companies)	Directors (Non-Listed Companies)	Full Sample
Mean	58.93%	45.83%	55.00%
Median	63%	50%	50%
Std. Deviation	0.288	0.188	0.264

Minimum	0%	25%	0%
Maximum	100%	75%	100%
N	25	32	57
Alpha	0.05	0.05	0.05
Std. Error	0.058	0.033	0.035
t-crit	2.004	2.004	2.004
Margin of Error	0.115	0.067	0.070
Confidence Interval: LB	58.81%	45.77%	54.93%
Confidence Interval: UB	59.04%	45.90%	55.07%

The analysis of directors' confidence regarding Provision 6 (prohibiting undue gain for themselves, relatives, partners, or associates, with liability to repay such gains) reveals moderate confidence levels across the board, with notable differences between listed and non-listed directors. Listed company directors report a mean confidence of 58.93%, higher than their non-listed counterparts at 45.83%, while the full sample mean confidence stands at 55.00%. The median confidence values (63% for listed and 50% for non-listed directors) highlight a stronger central tendency for listed directors but reflect room for improvement across both groups. Variability is higher among listed directors (Std. Deviation: 0.288) compared to non-listed directors (0.188), suggesting inconsistencies in the listed group.

Confidence intervals further illustrate this disparity, with listed directors ranging from 58.81% - 59.04% and non-listed directors from 45.77% - 45.90%, emphasizing the reliability of the estimates. The full sample confidence interval (54.93% - 55.07%) reflects moderate understanding overall. Minimum confidence levels as low as 0% for listed directors and 25% for non-listed directors underscore the existence of gaps in awareness, even though both groups have a maximum confidence level of 100%, indicating isolated cases of strong understanding. These findings emphasize the need for targeted education and guidance to strengthen directors' adherence to this fiduciary provision, ensuring consistent awareness and confidence in avoiding undue personal gain.

Provision 7: Assignment of functions is void. (Section 166(6))

Table 9: Descriptive Statistics of Confidence Level of Directors Regarding their Fiduciary Duties about Provision 7

	Directors (Listed Companies)	Directors (Non-Listed Companies)	Full Sample
Mean	39.00%	43.75%	41.67%
Median	25%	50%	50%

Std. Deviation	0.289	0.291	0.289
Minimum	0%	0%	0%
Maximum	100%	100%	100%
N	25	32	57
Alpha	0.05	0.05	0.05
Std. Error	0.058	0.051	0.038
t-crit	2.004	2.004	2.004
Margin of Error	0.116	0.103	0.077
Confidence Interval: LB	38.88%	43.65%	41.59%
Confidence Interval: UB	39.12%	43.85%	41.74%

The analysis of directors' confidence regarding Provision 7 (invalidity of assignment of functions) reveals low-to-moderate confidence levels, with listed company directors reporting a slightly lower mean confidence (39.00%) compared to their non-listed counterparts (43.75%). The full sample mean confidence is 41.67%, reflecting an overall lack of strong understanding of this provision. Median confidence values differ notably between groups, with listed directors at 25% and non-listed directors at 50%, indicating a more polarized distribution among listed directors.

The variability in confidence is similar across the two groups, with standard deviations of 0.289 for listed directors and 0.291 for non-listed directors, suggesting a broad range of responses in both groups. Confidence intervals show reliable estimates, ranging from 38.88% - 39.12% for listed directors and 43.65% - 43.85% for non-listed directors, while the full sample confidence interval is 41.59% - 41.74%. The minimum confidence of 0% in both groups highlights critical gaps in understanding, despite some directors demonstrating a maximum confidence of 100%. These findings emphasize the need for education and clarification on the implications of Provision 7, particularly for listed directors who show lower median and mean confidence levels, to ensure consistent adherence to this fiduciary responsibility.

Provision 8: Penalty for breach of duties. (Section 166(7))

Table 10: Descriptive Statistics of Confidence Level of Directors Regarding their Fiduciary Duties about Provision 8

	Directors (Listed Companies)	Directors (Non-Listed Companies)	Full Sample
Mean	50.69%	69.79%	61.42%
Median	67%	67%	67%
Std. Deviation	0.258	0.274	0.281

Minimum	0%	33%	0%
Maximum	100%	100%	100%
N	25	32	57
Alpha	0.05	0.05	0.05
Std. Error	0.052	0.048	0.037
t-crit	2.004	2.004	2.004
Margin of Error	0.103	0.097	0.075
Confidence Interval: LB	50.59%	69.69%	61.34%
Confidence Interval: UB	50.80%	69.89%	61.49%

The analysis of directors' confidence regarding Provision 8 (penalty for breach of duties) shows moderate-to-high confidence levels, with a significant difference between listed and non-listed company directors. Non-listed directors report a higher mean confidence of 69.79%, compared to 50.69% for listed directors. Both groups share a median confidence of 67%, suggesting that, while the central tendency is comparable, listed directors exhibit a broader spread of confidence levels, as reflected in their lower mean.

The variability is similar, with standard deviations of 0.258 for listed directors and 0.274 for non-listed directors, indicating a moderately wide range of confidence within both groups. The confidence intervals underline the disparity, ranging from 50.59% - 50.80% for listed directors and 69.69% - 69.89% for non-listed directors, with the full sample confidence interval at 61.34% - 61.49%. Minimum confidence levels of 0% for listed directors and 33% for non-listed directors highlight gaps in awareness, though both groups reach a maximum confidence of 100%, indicating isolated cases of strong understanding. These findings suggest that while non-listed directors demonstrate higher confidence in understanding penalties for fiduciary breaches, there is a need to enhance clarity and understanding among listed directors to close the gap and improve overall governance standards.

Provision 9: To work with other directors and key management Personnels to ensure all duties of Directors towards Disclosures and compliances enumerated in SEBI regulations – particularly SEBI (LODR) Regulations are carried out in timely manner. (SEBI (LODR) Regulations 2015)

Table 11: Descriptive Statistics of Confidence Level of Directors Regarding their Fiduciary Duties about Provision 9

	Directors (Listed Companies)	Directors (Non-Listed Companies)	Full Sample

Mean	68.00%	58.33%	70.00%
Median	75%	50%	75%
Std. Deviation	0.170	0.129	0.174
Minimum	50%	50%	50%
Maximum	100%	75%	100%
N	25	32	57
Alpha	0.05	0.05	0.05
Std. Error	0.034	0.023	0.023
t-crit	2.004	2.004	2.004
Margin of Error	0.068	0.046	0.046
Confidence Interval: LB	67.93%	58.29%	69.95%
Confidence Interval: UB	68.07%	58.38%	70.05%

The analysis of directors' confidence regarding Provision 9 (ensuring compliance with SEBI regulations, particularly SEBI (LODR) Regulations 2015) shows higher confidence levels among listed company directors compared to their non-listed counterparts. Listed company directors report a mean confidence of 68.00%, with a median of 75%, while non-listed directors exhibit a mean confidence of 58.33% and a median of 50%. These differences indicate that listed directors feel more assured in fulfilling disclosure and compliance-related fiduciary duties than non-listed directors.

Confidence variability is higher for listed directors (Std. Deviation: 0.170) compared to non-listed directors (0.129), suggesting a broader range of responses among the listed group. Confidence intervals for listed directors (67.93% - 68.07%) and non-listed directors (58.29% - 58.38%) highlight the reliability of these estimates, with the full sample mean confidence standing at 70.00%. Minimum confidence levels are relatively strong at 50% for both groups, while listed directors reach a maximum of 100% compared to 75% for non-listed directors. These findings suggest that while listed directors show higher confidence in compliance and disclosure responsibilities, targeted interventions could help align non-listed directors' confidence with best practices and regulatory requirements.

3.4 Comparison between Directors of Listed and Non-Listed Companies regarding their Understanding Levels on their Fiduciary Duties according to Nine Provisions under the Scope of this Study

The analysis mentioned in section 3.3 provides detailed descriptive statistics on understanding levels of directors regarding their fiduciary duties where it comes out that this understanding level differs between directors of listed and non-listed companies. However, to check whether, this difference is statistically different or not, the study applied independent sample t-test.

$H_0: \mu_1 = \mu_2$ ("the two-population means are equal") or (understanding levels of directors of listed and non-listed companies regarding their fiduciary duties are same)

$H_1: \mu_1 \neq \mu_2$ ("the two-population means are not equal") or (understanding levels of directors of listed and non-listed companies regarding their fiduciary duties are not same)

The independent sample t-test results are provided in table 12:

Table 12: Independent Sample t-test Results

Provisions	Questions Covered under the Provision	Equal Variance Assumed	Cal t	df	P value (two tail)	Decision on H_0
All Questions		Yes	-1.548	55	0.256	0.127
Provision 1	15, 21, 24, 33	Yes	-2.575	55	0.953	0.013
Provision 2	16, 31	Yes	-2.935	55	0.649	0.005
Provision 3	6, 25	Yes	-1.895	55	0.173	0.063
Provision 4	1, 2, 11, 12, 13, 14, 17, 18, 20	Yes	0.508	55	0.251	0.613
Provision 5	26	No	-2.217	55	0.000	0.031
Provision 6	9, 19, 28, 29	Yes	1.812	55	0.511	0.065
Provision 7	4, 7, 8, 10	Yes	-0.613	55	0.829	0.076
Provision 8	23, 27, 30	Yes	-2.682	55	0.882	0.010
Provision 9	3, 5, 22, 32	Yes	1.523	55	0.492	0.133

The findings reveal that while there is no significant difference in the overall confidence levels between directors of listed and non-listed companies, notable disparities exist for specific provisions. Directors of listed and non-listed companies differ significantly in their understanding of acting per the law, promoting the company's objectives in good faith, avoiding conflicts of interest, and understanding penalties for fiduciary breaches. These differences highlight areas where non-uniform confidence levels suggest the need for targeted training or awareness campaigns, especially in listed companies, to enhance their understanding of these critical responsibilities.

For other provisions, such as exercising care and diligence, avoiding undue personal gain, and ensuring compliance with SEBI regulations, no significant differences were observed, indicating that directors across both groups share similar levels of confidence. However, provisions with near-significant differences, such as working for stakeholder and environmental benefits, warrant closer attention to address emerging trends. The results suggest

that while some fiduciary responsibilities are well understood across groups, key provisions require more focused interventions to ensure consistent adherence to governance standards.

The results show that for Provisions 1, 2, 5, and 8, there are statistically significant differences in confidence levels between directors of listed and non-listed companies. However, for the remaining provisions and overall confidence levels, the differences are not statistically significant. This suggests that certain fiduciary responsibilities (like acting per the Act, avoiding conflicts of interest, and understanding penalties for breaches) are perceived differently by the two groups, highlighting areas for targeted training or intervention.

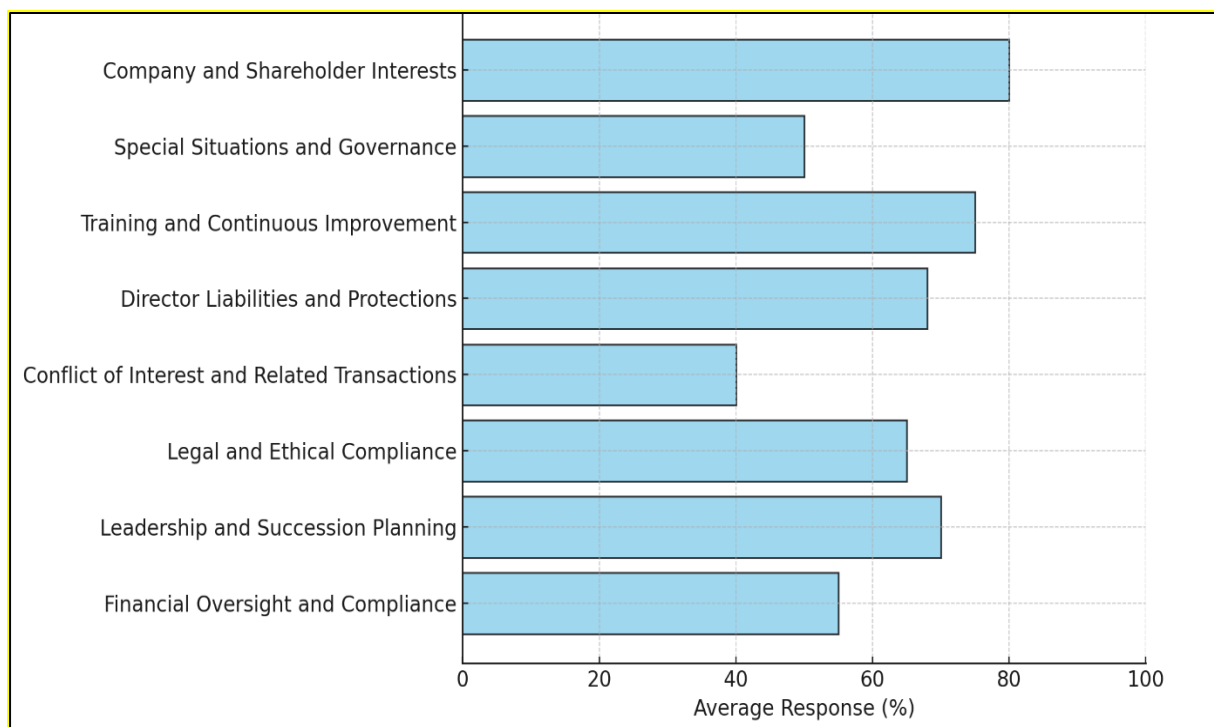
Chapter 4: CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

The findings reflect a comprehensive understanding among directors regarding their fiduciary duties, with strong adherence to financial oversight, leadership continuity, legal compliance, conflict of interest management, and director liabilities. There's a significant emphasis on the need for continuous training and professional development to stay abreast of regulatory changes and best practices in corporate governance. The study highlights the nuanced approach directors take towards balancing company interests with shareholder expectations, especially in special situations like insolvency.

The figure 1 shows the average responses by directors in the study on fiduciary duties, grouped by categories. Each bar represents the average percentage of directors' responses in each category, providing a clear visualization of how directors responded across different aspects of their fiduciary duties.

Figure 1: Average Responses by Directors on Fiduciary Duties



The key insights from this analysis are mentioned below:

Financial Oversight and Compliance (55%): Directors demonstrate moderate confidence in their ability to oversee financial compliance. While the understanding is present, the score indicates room for improvement to strengthen governance in this critical area.

Leadership and Succession Planning (70%): This category shows a high confidence level, suggesting directors are well-prepared to handle leadership transitions and succession planning. This aligns with their prioritization of long-term organizational stability.

Legal and Ethical Compliance (65%): A relatively high confidence level reflects directors' solid understanding of the need to act within legal boundaries and maintain high ethical standards in their decision-making processes.

Conflict of Interest and Related Transactions (40%): This category scores the lowest, indicating significant gaps in directors' understanding of how to manage conflicts of interest effectively. Addressing this area is crucial to strengthening fiduciary compliance.

Director Liabilities and Protections (68%): Directors show strong confidence in understanding their liabilities and the protections available to them, although further emphasis could enhance preparedness for liability scenarios.

Training and Continuous Improvement (75%): High confidence in this category reflects a robust commitment to professional growth and continuous learning, underscoring directors' focus on staying updated with evolving governance practices.

Special Situations and Governance (50%): Moderate confidence in managing governance during special situations suggests directors have some understanding, but additional support or training could help improve their readiness for unique or complex scenarios.

Company and Shareholder Interests (80%): This category ranks the highest, showcasing directors' strong alignment with their fiduciary duty to act in the best interests of the company and its shareholders, a core principle of effective governance.

Overall, the data highlights directors' strong confidence in areas such as leadership (70%), shareholder interests (80%), and training (75%), while pointing to gaps in conflict-of-interest management (40%) and governance in special situations (50%). These insights emphasize the

need for targeted training to address weaker areas and further enhance overall fiduciary competence.

4.2 Recommendations

Targeted Training on Key Fiduciary Provisions

Areas such as Conflict of Interest (Provision 5) and Special Governance Situations (Provision 7), where significant confidence gaps exist, require immediate attention. Conduct dedicated workshops and practical training sessions to equip directors with the knowledge and tools to effectively navigate these complex governance responsibilities. Providing actionable steps, real-life case studies, and scenario-based learning will foster a deeper understanding of these provisions.

Strengthen Understanding of Legal Obligations

To address discrepancies in Provision 1 (acting per the Act and Articles) and Provision 2 (acting in good faith), introduce standardized training modules for directors of both listed and non-listed companies. These modules should focus on bridging gaps in understanding legal and ethical compliance, ensuring consistent interpretation and execution of fiduciary duties across all organizational types.

Enhanced Focus on Conflict-of-Interest Management

With consistently low confidence levels in managing conflicts of interest, organizations must provide clear, detailed guidance on Provision 5. This includes developing protocols for identifying and resolving direct and indirect conflicts, as well as ensuring directors have policies and frameworks to address such situations effectively.

Tailored Programs for Non-Listed Company Directors

Non-listed company directors demonstrate lower confidence in Provision 8 (Penalties for Breaches) and Provision 9 (SEBI Compliance). Governance initiatives tailored to non-listed companies' operational and regulatory contexts will help directors navigate unique challenges, improving both their performance and alignment with governance standards.

Structured Induction Programs

Design structured induction programs for new directors, especially in listed companies, where confidence variability is higher. These programs should comprehensively cover fiduciary

responsibilities, governance policies, and industry regulations, equipping directors with the foundational knowledge required to excel in their roles from the outset.

Focus on Continuous Professional Development

Confidence in Training and Continuous Improvement (75%) highlights directors' willingness to learn. Institutionalize continuous education programs, incorporating updates on governance trends, legal regulations, and ESG (Environmental, Social, and Governance) frameworks. These initiatives should form part of directors' annual development plans to keep them informed and prepared.

Bridge Confidence Gaps Between Listed and Non-Listed Directors

Disparities in provisions such as Provision 2 (acting in good faith) and Provision 8 (penalties for breaches) highlight the need for harmonized governance programs. Collaborative learning sessions, shared best practices, and peer mentoring can align the understanding and execution of fiduciary duties across both groups.

Improve Financial Literacy

Moderate confidence in Financial Oversight and Compliance (55%) calls for enhanced financial training. Directors should be equipped to interpret financial statements, conduct risk assessments, and identify compliance red flags. This will bolster their capacity to oversee financial governance effectively.

Clarify Director Liabilities and Protections

Although confidence in Director Liabilities and Protections (68%) is relatively high, more emphasis on liability management strategies and protections under corporate laws will prepare directors to handle potential exposures effectively.

Promote Collaboration on SEBI Compliance

Non-listed directors lag in confidence regarding Provision 9 (SEBI Compliance). Collaborative initiatives, such as mentoring programs and knowledge-sharing sessions with listed company directors, can help non-listed directors adopt best practices and improve their regulatory alignment.

Leverage Best Practices from Non-Listed Companies

Identify governance practices contributing to the higher confidence levels of non-listed directors and share them with listed companies through workshops, seminars, and case study presentations. This cross-learning can elevate confidence across all companies.

Enhance Monitoring and Evaluation

Implement robust monitoring systems to track directors' confidence levels, particularly for provisions with high variability like Provision 5 and Provision 7. Regular assessments, performance reviews, and feedback mechanisms will help organizations identify and address emerging gaps dynamically.

Standardize Governance Policies

Develop standardized governance frameworks and checklists for both listed and non-listed companies. This consistency will provide directors with clear guidance, reducing variability and fostering uniform confidence in fulfilling fiduciary duties.

Increase Board Diversity

Promote greater board diversity by including individuals with varied expertise, experiences, and perspectives. Diversity fosters comprehensive decision-making and enhances confidence levels by creating a collaborative and innovative governance environment.

Enhance Governance Frameworks for ESG Compliance

Provisions like Provision 3 (stakeholder and environmental benefits) and Provision 7 (invalidity of assigning functions) highlight areas requiring modernized governance approaches. Integrating ESG principles into governance frameworks will equip directors with the skills to address emerging global challenges effectively.

These recommendations aim to address critical gaps in fiduciary confidence while building on directors' strengths. By implementing targeted training, structured onboarding, enhanced support systems, and standardized policies, organizations can achieve more consistent and effective governance across listed and non-listed companies. Promoting a culture of continuous learning, fostering diversity, and leveraging best practices will ensure directors are equipped to fulfill their duties in an evolving corporate landscape.

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Annexure 1 – Questionnaire

Expressing Sincere gratitude for managing your valuable time to help us in providing the required data.

The data acquired via below Questionnaire will be strictly utilized for Research purpose only and will be kept confidential.

The attached questionnaire is aimed at collecting response from **Directors of Companies**, to be covered in our research project on **“Fiduciary Duties of Directors”**. This is aimed primarily for listed Companies though it will apply to unlisted companies also.

While fiduciary duties of Directors have been emphasized in several pronouncements by various Courts, SEBI and Tribunals, this topic has received importance of late after introduction of specific provision in Section 166 of Companies Act 2013 (This was absent in Companies Act 1956) wherein duties of Directors have been codified.

However other Sections like Section 184 cover Related party transactions and Section 135 cover CSR regulations and Section 195 cover prohibition of Insider Trading in securities are also in the Companies Act 2013.

To Choose from proposed answers any 1 out of 3 options which is most appropriate.

Questions

1. Whether Board deliberate on the Annual Operative plans and Budgets and its Review in its meetings and if so its periodicity?
 - ☐ First meeting of the financial year
 - ☐ Every meeting when quarterly results are approved
 - ☐ Information furnished to board members and review report placed in every meeting
2. Whether Board deliberate on the Capital Budgets and its review and if so its periodicity?
 - ☐ First meeting of the financial year
 - ☐ Information furnished to board members and review report placed in every meeting
 - ☐ Every meeting when quarterly results are approved
3. Do the Board deliberate on succession planning for only Directors or also for Senior Management Personnel and periodicity?
 - ☐ For both directors and senior management personnel based on criteria laid down by nomination and remuneration committee and minutes of their meeting as and when they meet. once a year minimum.
 - ☐ For both once a year
 - ☐ For only directors once a year

4. Do Board members in their meeting deliberate on Show cause notices received, Substantial demands made on company including prosecution and penalties imposed under various laws applicable to the company?
 - ☐ On material issues in every meeting
 - ☐ As an when it arises
 - ☐ Addressed by audit committee
5. Whether do Board address the issues like Fatal or serious accidents, dangerous occurrences?
 - ☐ Disclosed in web site
 - ☐ Information furnished to board members
 - ☐ Discussed as and when it arises
6. Whether do Board address the issues like material effluent or pollution problems.
 - a. Disclosed in web site
 - b. Discussed as and when it arises
 - c. Information furnished to board members and material issues discussed in meeting
7. Do Board members get information on substantial non-payment for goods sold by company?
 - ☐ Addressed by audit committee
 - ☐ Yes
 - ☐ Addressed in internal / statutory audit report
8. Do Board members get information on product liability claims of substantial nature?
 - ☐ Addressed by audit committee
 - ☐ Addressed in internal / statutory audit report
 - ☐ Yes
9. Any agreements entered into by Directors causing gain to him and loss to company will result in?
 - ☐ Disgorgement of undue gain and penalty
 - ☐ Penalty and prosecution
 - ☐ Vacation of office as director
10. Do Board in their meeting discuss on foreign exchange exposure (earnings and outgo)?
 - ☐ stated in directors report
 - ☐ once annually
 - ☐ addressed by audit committee
11. Can a director be a director of another competing company?
 - ☐ Yes, as no prohibition in cos act
 - ☐ No prohibition in SEBI regulations
 - ☐ No, as breach of fiduciary duties
12. Does fiduciary obligation cease with resignation?
 - ☐ Yes, for future not for past
 - ☐ Only after resignation complete
 - ☐ Obligation continues

13. Does fiduciary obligation to work for competing companies cease after leaving office as director?
- ☐ Not if non-compete clause is agreed to
 - ☐ After cooling period
 - ☐ Yes, after leaving office
14. In case of contentious issues and issues raised by independent director in difference to that of others should expert opinion be taken before taking a decision?
- ☐ Majority decision followed
 - ☐ Yes, to avoid bias
 - ☐ Non agreeing minority views to be only recorded in minutes
15. Should power to allot shares be only in the interest of the company?
- ☐ Yes
 - ☐ Fiduciary obligation is to company
 - ☐ To be in interest of members also
16. When there are warring factions in management and control mere compliance of law insufficient?
- ☐ To resolve differences
 - ☐ Regulatory compliance is sufficient
 - ☐ Fiduciary responsibility is not just legal
17. Can a director be held liable for acts done during the financial year but before the date of appointment if he continues as director on record?
- ☐ No
 - ☐ Both appointment and resignation effectiveness need be complete
 - ☐ Ignorance of law is not defence
18. Does participation by independent directors in board meeting without recording objections, if any, create any breach of duty and invite liability?
- ☐ Yes. knowledge attributable through board process is consent
 - ☐ Independent directors are non-executive
 - ☐ Liability is for executive directors
19. To prove fiduciary negligence or breach is it necessary to prove quantum of damages which resulted?
- ☐ Duty is different from extent of damage
 - ☐ Compensation can be worked out
 - ☐ Yes, as it is the basis of the breach of duty
20. How could a director protect himself from claim of breach of fiduciary duties of care / loyalty?
- ☐ Do the right things
 - ☐ Refrain from doing any harm to company
 - ☐ Be independent director
21. Is it a correct theory that the director's duty is to the company and not to its shareholders directly in a listed company?

- ☐ Yes, because harm due to breach is to company
 - ☐ No because shareholders appoint directors
 - ☐ No specific provision in companies act
22. Are liabilities of non-executive directors different from executive directors?
- ☐ Yes, for non-executive independent directors only if knowledge attributable through board process established
 - ☐ Liability for both executive and non-executive directors is same
 - ☐ Where md exist no liability for other directors
23. what is the fine for breach of section 166 payable by a director?
- ☐ Minimum rs.1 lac
 - ☐ Ranging between rs.1 lac and Rs. 5 lacs
 - ☐ Prosecution
24. If all directors attend board meeting where ultra vires acts have been approved are they all liable?
- ☐ Mere attendance is not consent
 - ☐ No as it is voidable at the option of the company
 - ☐ Yes, for ultra vires acts
25. Is there a shift in duties of directors during insolvency?
- ☐ No directors are accountable to shareholders
 - ☐ Yes, towards creditors in place of shareholders
 - ☐ No specific provision in IBC
26. Is duty to take care and diligence while approving RPTs' is necessary for both interested and non-interested directors?
- ☐ Yes, though audit committee recommend it
 - ☐ interested director do not participate
 - ☐ basic principle of at arm's length is the duty of care and diligence of all directors
27. Is penalty for breach of related party transaction different from penalty under section 166(7)?
- ☐ Yes, as separate code for RPT exist which include imprisonment for directors
 - ☐ comply with SEBI LODR regulations
 - ☐ no specific provision in companies act
28. Is insider trading a breach of fiduciary duty of directors?
- ☐ Yes, board has to adopt the code
 - ☐ Only if it violates SEBI regulation
 - ☐ No provision in companies act
29. Can NCLT order recovery of undue gains made by a director?
- ☐ No only court has jurisdiction
 - ☐ Yes, because NCLT is also akin to court
 - ☐ Yes

30. Is there a monetary penalty for insider trading as per companies act?
- ☐ Yes, double amount of undue gain
 - ☐ Yes, min Rs. 5 lacs max rs.25 crores
 - ☐ No penalty applicable for breach of 166 shall apply.
31. Is the document by which shareholders make offer for sale be deemed to be a prospectus and directors liable for misstatement?
- ☐ Yes, as board approval necessary
 - ☐ No company is not receiving any capital
 - ☐ Directors or their relatives as members making offer for sale liable
32. Are the additional assurances given by board in BRSR document call for training and periodical refreshers course for upgrading skills?
- ☐ No if more interaction with audit committee
 - ☐ Yes
 - ☐ no if more interaction with CFOs & auditors
33. Can the shareholders ratify breach of fiduciary duties of director?
- ☐ Yes, as decided by sat in terracotta case
 - ☐ Yes, if all members agree
 - ☐ No with existence of section 166 of companies act

NATIONAL FOUNDATION FOR CORPORATE GOVERNANCE (NFCG)

In 2003, the Ministry of Corporate Affairs (MCA) led a unique PPP model to set up the National Foundation for Corporate Governance in partnership with the Confederation of Indian Industry, the Institute of Company Secretaries of India and the Institute of Chartered Accountants of India. Subsequently, the Institute of Cost Accountants of India, National Stock Exchange and the Indian Institute of Corporate Affairs also joined with an objective to promote good Corporate Governance practices both at the level of individual corporates and Industry as a whole.

NFCG endeavors to create a business environment that promotes voluntary adoption of good corporate governance practices.

Vision: Be the Key Facilitator and Reference Point for highest standards of Corporate Governance in India.

Mission:

- To foster a culture of good corporate governance
- To create a framework of best practices, structure, processes and ethics
- To reduce the existing gap between Corporate Governance framework & actual compliance by corporates
- To facilitate effective participation of different stakeholders
- To catalyse capacity building in emerging areas of corporate governance

To achieve its objectives, NFCG has been working closely with Partner Institutions (i.e. CII, ICSI, ICAI & ICoAI) and Accredited Institutions / National Centre for Corporate Governance (i.e. IIMs, ACSI, SPJIMR, IITK, IPE and many others) in building capacity of Directors / Faculty, conducting research work and organising programmes aimed at promoting voluntary adoption of Corporate Governance as the key to sustainable wealth creation. Over the years, more than 300 programmes and 40 research work in the area of Corporate Governance have been conducted under the aegis of NFCG. (For more details, please log on to (www.nfcg.in)).

SYMBIOSIS INSTITUTE OF MANAGEMENT STUDIES (SIMS), PUNE, INDIA

Set up in 1993, SIMS is a premier Management Institute ranked amongst the top B School in India. SIMS is a constituent of the prestigious Symbiosis International University and is the only MBA institute of its kind in India and a shining example of PPP (Public Private Partnership) between Symbiosis and Government of India – Ministry of Defence since 2002. Its flagship MBA course is primarily for Defence Personnel and their Dependents with some seats for Civilian candidates. This ideal mix of Defence dependents and civilians brings out the best in both and ensures holistic development. SIMS is an ISO 9001:2015 quality certified management institute, one of the three institutes in complete Western India. SIMS is an accredited “Centre for Corporate Governance” of the ‘National Foundation of Corporate Governance’ (established by Ministry of Corporate Affairs and CII) and one of the few recognized Program Implementing Agencies (PIA) by Department of Science and Technology (DST) for conducting Entrepreneurship Development Programs.