MANAGERIAL HEGEMONY AND ETHICAL GOVERNANCE: A CRITICAL REVIEW AND PROPOSAL FOR AMENDMENTS TO SECTION 166 OF THE COMPANIES ACT, 2013

Komal Nanda, PhD Candidate, Faculty of Law, Rabindranath Tagore University, Bhopal, India

Dr. Neelesh Sharma, Dean Faculty of Law, Rabindranath Tagore University, Bhopal, India

CA Mohammad Maroof Beg, MBA Candidate, Faculty of Business Economics and Law, Auckland University of Technology, Auckland

ABSTRACT

This paper undertakes a critical examination of Section 166 of the Companies Act, 2013, through the theoretical lens of managerial hegemony. Managerial hegemony theory explores the centralization of power within corporate management, often resulting in imbalances in governance structures that can undermine accountability, transparency, and stakeholder interests. This study delves into the interplay between managerial dominance and corporate governance, with a specific focus on the extent to which Section 166 mitigates the risks associated with excessive managerial control. Adopting a doctrinal research methodology, the paper provides a comprehensive analysis of Section 166, which outlines directors' duties under Indian corporate law. It contextualizes these statutory obligations within the broader discourse of managerial hegemony, scrutinizing the capacity of Section 166 to address issues of power concentration and promote equitable governance practices. By evaluating the provision's legal framework, the study explores its potential to safeguard the interests of stakeholders and shareholders while fostering ethical and transparent corporate conduct. The concept of managerial hegemony is of paramount importance in contemporary corporate governance, particularly in light of increasing ethical concerns regarding power distribution and fair practices within organizations. This paper identifies the intricate provisions of Section 166, analyzing their practical implications concerning managerial hegemony. Key considerations include the duties of directors to act in good faith, promote the company's objectives, and uphold the interests of employees, shareholders, and other stakeholders. Through this analysis, the study evaluates the efficacy of Section 166 in curbing managerial dominance and fostering a governance structure rooted in accountability and openness. Furthermore, it assesses the challenges posed by the current statutory

framework, highlighting gaps that may enable managerial overreach. By drawing upon relevant legal precedents, theoretical insights, and comparative corporate governance practices, the paper emphasizes the need for robust statutory measures to reinforce equitable governance. The findings reveal that while Section 166 establishes a foundational framework for directors' duties, its effectiveness is limited by ambiguities in interpretation, enforcement mechanisms, and the broader corporate culture. To address these shortcomings, the paper proposes a set of statutory amendments aimed at strengthening Section 166. These recommendations include clearer definitions of directors' fiduciary responsibilities, enhanced mechanisms for regulatory oversight, and stricter penalties for non-compliance to ensure accountability and safeguard stakeholder interests. This study underscores the critical role of Section 166 in shaping corporate governance practices in India. By addressing the risks of managerial hegemony, it seeks to contribute to the ongoing discourse on enhancing ethical standards and fostering sustainable governance frameworks that balance managerial authority with stakeholder protection.

Keywords: Corporate Governance, Managerial Hegemony, Companies Act 2013, Section 166, Director Duties, Fiduciary Duty, Shareholder Interests, Doctrinal Research, Managerial Control, Board Oversight, Corporate Law, Business Ethics.

1. INTRODUCTION

Corporate governance remains a central issue in ensuring the accountability and transparency of management and directors in modern corporations. In the center of this challenge is the phenomenon of managerial hegemony, when authority is excessively concentrated in the hands of managers, potentially undermining the interests of shareholders and other stakeholders. Section 166 of the Companies Act, 2013, outlines the duties of directors, which is seen as a key component in mitigating managerial dominance. This study critically evaluates whether these statutory provisions are sufficient to address the challenge of managerial hegemony in India's corporate sector.

2. RATIONALE FOR THE STUDY

Corporate governance has become an area of increasing concern globally, particularly as corporations grow larger and more complex. In such environments, managerial power has been increasingly overshadowing shareholder control and stakeholder interests. One of the specific duties outlined in Section 166 of the Companies behave of 2013 is for directors to behave in good faith. and exercise independent judgment. However, these provisions may not sufficiently

counteract the potential for managerial hegemony, especially in cases where management holds disproportionate influence over the decision-making process.

Given the growing emphasis on corporate governance in India, this study seeks to assess the effectiveness of Section 166 in countering managerial dominance and ensuring that directors fulfill their duties with due diligence and care. By focusing on managerial hegemony theory, this paper intends to add to the larger conversation on corporate governance reform and the strengthening of director accountability in India.

3. RESEARCH METHODOLOGY

This study's research methodology is doctrinal, which is focused on analyzing statutory provisions, case law, as well as academic analysis to assess the legal framework and its practical application [1]. The doctrinal approach is especially appropriate for this research because it allows for a thorough analysis of Section 166 of the Companies Act, 2013, and its interaction with the theory of managerial hegemony. The methodology is structured in three key stages. The research methodology for this study is structured in three key stages. First, the theoretical framework focuses on a detailed exploration of managerial hegemony theory, especially how it affects corporate governance and the duties of directors in the context of power imbalances within organizations. Second, the research includes a case law examination, analyzing key judicial decisions that shed light on how courts interpret the application of Section 166 concerning managerial dominance and director conduct. Lastly, a statutory analysis is conducted to thoroughly review Section 166 and its corresponding provisions within the Companies Act, 2013, to understand the duties it imposes on directors [2]. This methodological approach enables an in-depth understanding of both the theoretical aspects of managerial hegemony and the practical application of legal provisions in the context of corporate governance. This method permits a thorough understanding of both the legal provisions and the practical impact of managerial control on corporate governance.

4. MANAGERIAL HEGEMONY: DEFINITION AND ORIGINS

Managerial hegemony refers to the dominance of managers within a corporation, where decision-making and control shift from the shareholders or board to the management team, particularly senior executives. This theory, first articulated by John Kenneth Galbraith in his

[1] Terry Hutchinson, "Doctrinal research: researching the jury," in *Research methods in law* (Routledge, 2013).
[2] Paul L Davies, Sarah Worthington, and Christopher Hare, *Principles of modern company law*, vol. 17511 (Sweet & Maxwell London, 2008).

study, The New Industrial State (1967), suggests that managers hold a significant degree of control in large corporations due to their expertise, organizational knowledge, and influence over corporate policies [3].

The managerial hegemony theory posits that managers accumulate power over time, frequently at the price of stakeholders and shareholders who lack the resources to properly contest management choices. In this structure, the board of directors may become passive or serve primarily to ratify management's decisions [4]. According to this theory, boards are frequently a legal fiction controlled by management, with the board at best serving as a support system or, at worst, only approving management choices while avoiding a more active role in strategy or stakeholder involvement [5].

5. MANAGERIAL HEGEMONY AND THE CASE OF CYRUS MISTRY: IMPLICATIONS FOR SECTION 166 OF THE COMPANIES ACT, 2013

Managerial hegemony refers to the disproportionate concentration of power within the management of a company, which can marginalize the board of directors' function and hinder effective governance. A prominent example of this phenomenon is the case of Cyrus Mistry, former chairperson of Tata Sons, whose ousting in 2016 highlighted the clash between management and board authority in a major corporate setting [6] . Significant questions concerning corporate governance procedures were brought up by Mistry's termination, especially with regard to the function of independent directors and the impact of ingrained management dominance. The Tata Group's board faced accusations of inadequately defending Cyrus Mistry's position and being influenced by Ratan Tata, the former chairman, which raised questions about the board's independence in overseeing management decisions [7]. This situation aligns with the concept of managerial hegemony, where the board's role is reduced to ratifying decisions made by powerful figures within the organization [8]. The controversy surrounding Mistry's removal and subsequent allegations of mismanagement and lack of corporate governance further exemplifies the potential for board passivity in the face of influential

---

[3] John Kenneth Galbraith, "The new industrial state, Boston (Houghton Mifflin Company) 1967," (1967).
[4] Myles L Mace, "Directors: Myth and reality," *Harvard Business School Press* (1986).
[5] Kevin Hendry and Geoffrey C Kiel, "The role of the board in firm strategy: Integrating agency and organisational control perspectives," *Corporate Governance: An International Review* 12, no. 4 (2004).
[6] Cyrus Mistry v. Tata Sons Ltd., Company Appeal No. 52 of 2016 (National Company Law Appellate Tribunal 2016).
[7] "Tata Versus Mistry: How the Saga Unfolded," NDTV Profit, 2022, https://www.ndtvprofit.com/business/tata-versus-mistry-how-the-saga-unfolded; NDTV Profit, "Tata Versus Mistry: How the Saga Unfolded."
[8] Hendry and Kiel, "The role of the board in firm strategy: Integrating agency and organisational control perspectives."

management figures. This case is highly relevant in the analysis of Section 166 of the Companies Act, 2013, as it underscores the necessity for ethical governance and the growing power of boards to counterbalance managerial dominance. Section 166, which mandates directors to act in good faith, exercise independent judgment, and avoid conflicts of interest, directly addresses these concerns. By examining cases like the Mistry affair, it becomes evident that while the Companies Act outlines key duties for directors, real-world challenges, such as managerial hegemony, require stronger enforcement of board independence and clearer mechanisms to maintain corporate balance.

6. MANAGERIAL HEGEMONY AND CORPORATE GOVERNANCE

Managerial hegemony poses significant challenges to corporate governance, as the concentration of power in the hands of top executives can have detrimental effects. One of the key issues is weak oversight by the board, as management often controls the board's agenda, making it difficult for directors to challenge management's decisions [9]. Furthermore, when managers wield unchecked power, they may make self-serving decisions that put their own interests ahead of the company's long-term success [10]. This concentration of power also frequently results in decision-making procedures becoming opaque., which limits accountability within the organization [11].Given these potential consequences, Section 166 of the Companies Act, 2013, with its emphasis on independent judgment and the avoidance of conflicts of interest, becomes critical. However, questions remain about whether these provisions go far enough to effectively counter managerial hegemony and safeguard against the concentration of power that undermines corporate governance.

7. SECTION 166 OF THE COMPANIES ACT, 2013: DUTIES OF DIRECTORS

7.1. Bare Act

"Section 166. Duties of Directors

(1) Subject to the provisions of this Act, the director of a company shall act in accordance with the articles of the company.

(2) A director of a company shall act in good faith in order to promote the objects

[9] Hendry and Kiel, "The role of the board in firm strategy: Integrating agency and organisational control perspectives."

[10] Eugene F Fama and Michael C Jensen, "Separation of ownership and control," *The journal of law and Economics* 26, no. 2 (1983).

[11] Iain MacNeil, "The Trajectory of Regulatory Reform in the UK in the Wake of the Financial Crisis," *European Business Organization Law Review (EBOR)* 11, no. 4 (2010).

of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community, and for the protection of the environment.

(3) A director of a company shall exercise his duties with due and reasonable care, skill, and diligence and shall exercise independent judgment.

(4) A director of a company shall not involve himself 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.

(5) 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.

(6) A director of a company shall not assign his office and any assignment so made shall be void.

(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." [12].

8. ANALYSIS OF SECTION 166 OF THE COMPANIES ACT, 2013

Section 166 of the Companies Act, 2013 outlines the duties of directors, mandating them to conduct themselves in the company's best interests and its stakeholders, encompassing employees, investors, the neighborhood, and the environment. This section was designed to ensure responsible corporate governance by setting out clear guidelines on the conduct expected of directors. A detailed analysis of each provision within this section reveals the mechanisms established to hold directors accountable and prevent potential abuses of power, particularly in the context of managerial hegemony, which can undermine the governance process if directors become unduly influenced by management.

8.1. Subsection (1) – Compliance with the Articles of Association

Provision: *"Subject to the provisions of this Act, a director of a company shall act in*

[12] The Companies Act Section 166, The Companies Act 2013, (Government of India: Ministry of Law and Justice, 2013).

accordance with the articles of the company." [13].

This provision places an obligation on directors to act in conformity with the articles of association of the business, which serve as the internal regulatory framework. Directors are expected to adhere to the rules and directives set out in these Articles, ensuring that their actions are in line with the governance structure of the company [14]. However, in the context of managerial hegemony, this provision could be problematic if the Articles are drafted in such a way that consolidates power within management, thus reinforcing managerial dominance. If management controls the process of drafting the Articles, directors might find themselves constrained by internal rules that favor management's interests, rather than promoting an independent and balanced governance approach [15].Therefore, while this provision aims to maintain order, it may inadvertently perpetuate managerial control if the Articles are not designed to balance power within the company.

8.2. Subsection (2) – Duty to Act in Good Faith

Provision: *"A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community, and for the protection of the environment."* [16].

This subsection introduces the concept of good faith as a central duty of directors, highlighting their responsibility to behave in a manner that advances the company's long-term objectives and its broader stakeholders, including employees and the community [17].In the context of managerial hegemony, however, the concept of good faith can be subjective. Directors may take actions based on their beliefs that is in the corporation's finest interests, but if they are influenced by management, their decisions may reflect management's agenda rather than the broader interests of the company's stakeholders [18]. The vagueness of "good faith" allows for a wide range of interpretations, which, in a managerial-dominated environment, can be exploited to serve management's self-interest rather than that of the company at large [19].

---

[13] *The Companies Act Section 166, Short The Companies Act 2013.*
[14] Rita D Kosnik, "Greenmail: A study of board performance in corporate governance," *Administrative science quarterly* (1987).
[15] Hendry and Kiel, "The role of the board in firm strategy: Integrating agency and organisational control perspectives."
[16] *The Companies Act Section 166, Short The Companies Act 2013.*
[17] Catherine M Daily, Dan R Dalton, and Albert A Cannella Jr, "Corporate governance: Decades of dialogue and data," *Academy of management review* 28, no. 3 (2003).
[18] Daily, Dalton, and Cannella Jr, "Corporate governance: Decades of dialogue and data."
[19] Hendry and Kiel, "The role of the board in firm strategy: Integrating agency and organisational control perspectives."

8.3. Subsection (3) – Duty to Exercise Care, Skill, and Diligence

Provision: *"A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment."* [20]

This sub section highlights the need for directors to use independent judgment and carry out their responsibilities with a fair level of care, competence, and diligence. This is particularly crucial in the context of managerial hegemony, as it serves as a safeguard to ensure that directors do not blindly follow management decisions. The requirement to exercise independent judgment is meant to prevent managers from unduly influencing the board's decisions [21]. However, in practice, if the board is dominated by executive directors or individuals with close ties to management, the independent judgment of directors may be compromised, leading to decisions that favor management over the company's broader interests [22]. This highlights the difficulty in balancing managerial power with director accountability, a key issue in overcoming managerial hegemony.

8.4. Subsection (4) – Avoiding Conflicts of Interest

Provision: *"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 interest of the company."* [23]

This subsection seeks to prevent conflicts of interest, requiring directors to avoid circumstances in which their own interests could interfere with the company's interests. The provision is designed to curb situations where directors, under managerial influence, prioritize personal or management interests over those of the company and its shareholders. However, managerial hegemony can lead to directors turning a blind eye to potential conflicts, especially if management benefits from such conflicts. In such cases, directors may fail to disclose or resolve conflicts in a manner that is in the best interests of the company [24] . The effective implementation of this provision requires a culture of transparency and independence, which can be undermined in environments dominated by managerial control.

[20] *The Companies Act Section 166, Short The Companies Act 2013.*
[21] Mace, "Directors: Myth and reality."
[22] Hendry and Kiel, "The role of the board in firm strategy: Integrating agency and organisational control perspectives."
[23] *The Companies Act Section 166, Short The Companies Act 2013.*
[24] Renée B Adams, Benjamin E Hermalin, and Michael S Weisbach, "The role of boards of directors in corporate governance: A conceptual framework and survey," *Journal of economic literature* 48, no. 1 (2010).

8.5. Subsection (5) – Undue Gain or Advantage

Provision: *"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. "* [25]

This subsection aims to prevent directors from securing personal advantages or financial gains from their position, either directly or indirectly. It acts as a deterrent against corruption and self-dealing, a common concern in corporate governance. In the context of managerial hegemony, this provision is important, as it holds directors accountable for any personal gain derived from their decisions. However, the success of this provision in curbing managerial hegemony depends on the enforcement of penalties and the independence of the board. If the board is compromised or influenced by management, directors may be more likely to disregard this duty, conflict of interest can result from being detrimental to the company's long-term health [26].

It is the professional duty of directors to refrain from placing themselves in a situation where there is a plausible and actual risk of a conflict between their interests and the company's. For this obligation to be broken, the director does not have to gain anything or do harm to the business [27]. Directors are obligated to refrain from abusing their position to benefit themselves or others, redirect opportunities away from the company, or seek to profit or take advantage of possibilities for their own benefit.

8.6. Subsection (6) – Prohibition on Assignment of Office

Provision: *"A director of a company shall not assign his office and any assignment so made shall be void."* [28]

This provision prevents directors from delegating or assigning their office to another person, ensuring they cannot avoid their responsibilities by shifting their duties onto someone else. This is crucial to maintaining accountability within the company. In the context of managerial hegemony, this provision can be seen as a mechanism to prevent management from manipulating directors into delegating their duties, thus concentrating power in the hands of

[25] *The Companies Act Section 166, Short The Companies Act 2013.*
[26] Hendry and Kiel, "The role of the board in firm strategy: Integrating agency and organisational control perspectives."
[27] Constance E Bagley, "The ethical leader's decision tree," *Harvard Business Review* 81, no. 2 (2003).
[28] *The Companies Act Section 166, Short The Companies Act 2013.*

management. However, this provision's effectiveness may be diminished if directors are pressured by management to avoid responsibility or if they choose to relinquish their decision-making duties in favor of management's agenda. According to the managerial hegemony idea, boards frequently have a passive role in strategy since professional managers make the majority of their decisions [29] . This may result in circumstances when directors choose not to participate in strategic decision-making, which could jeopardize their accountability.

8.7. Subsection (7) – Penalty for Contravention

Provision: *"If a director of the company contravenes the provisions of this section, such a director shall be punishable with a fine which shall not be less than one lakh rupees, but which may extend to five lakh rupees."* [30]

This provision establishes sanctions for failure to adhere to the duties outlined in Section 166, with fines ranging from ₹1 lakh to ₹5 lakh. The goal is to prevent directors from abandoning their responsibilities. by imposing a financial penalty. However, in a corporate environment dominated by managerial hegemony, this penalty may not be a strong deterrent. The fine is relatively insignificant compared to the potential benefits directors may gain by aligning with the management's interests, especially in cases of managerial influence over the board. Therefore, while the provision serves as a deterrent, its effectiveness in curbing managerial control could be limited if enforcement is weak or if directors face only mild consequences for neglecting their duties.

8.8. Summary of the Analysis of Section 166

TABLE 1: Analysis of Section 166 of the Companies Act, 2013: Mitigating Managerial Hegemony and Identifying Lacunae

Subsection of Section 166	**Contribution to Mitigating Managerial Hegemony**	**Lacunae**
Compliance with Articles of Association (Section 166(1))	Ensures directors act according to the company's governing rules, limiting managerial control, and promoting	Articles of association may be skewed to favor management, reducing the ability of directors to act independently.

[29] Margaret M Blair and Lynn A Stout, "Director accountability and the mediating role of the corporate board," *Wash. ULQ* 79 (2001).

[30] *The Companies Act Section 166, Short The Companies Act 2013.*

	accountability through clear governance structures.	
Duty to Act in Good Faith (Section 166(2))	Promotes decisions made in the best interest of all stakeholders, ensuring directors do not prioritize the management's interests over the company's welfare.	"Good faith" can be subjective, allowing management to potentially justify actions that align with their own goals under the guise of acting in good faith.
Duty to Exercise Care, Skill, and Diligence (Section 166(3))	Directors are required to use independent judgment and diligence, reducing reliance on management's influence over their decisions.	Dominant management or executive directors may still pressure other board members, undermining their independence.
Avoidance of Conflicts of Interest (Section 166(4))	protects against managerial domination by making sure directors stay out of circumstances where their own or management's interests collide with those of the company.	Management influence may still persist if directors have personal ties to management or fail to disclose conflicts, making it harder to uphold this provision.
Prohibition on Undue Gain or Advantage (Section 166(5))	Prevents directors from gaining unfair advantage, ensuring they do not align with management's interests to their personal benefit, limiting conflicts of interest and managerial control.	Enforcement may be weak, especially in cases where management wields considerable influence over directors, limiting the impact of this provision.
Non-Delegation of Director's Duties (Section 166(6))	Ensures directors cannot delegate their responsibility, maintaining personal accountability and reducing managerial power concentration.	In practice, some directors may delegate duties under pressure or willingly, allowing management to maintain

		control over decision-making processes.
Penalty for Contravention (Section 166(7))	Imposes fines for non-compliance, serving as a deterrent to prevent directors from acting in ways that may disproportionately benefit management.	The penalty may be insufficient to deter powerful directors in companies where managerial control is deeply entrenched.

Section 166 of the Companies Act, 2013 provides essential guidelines for directors, mandating them to act in good faith, exercise independent judgment, and avoid conflicts of interest. These provisions are intended to promote ethical governance by ensuring that directors act in the best interests of the company. its communities and stakeholders. However, the effectiveness of Section 166 in curbing managerial hegemony is undermined by the concentration of power within management. While the provision mandates independent judgment, the influence of dominant managers can lead to groupthink, where directors conform to management's views, thereby diluting their ability to exercise independent judgment effectively. Furthermore, while Section 166 addresses conflicts of interest, it does not provide detailed mechanisms to ensure board independence or hold management accountable, leaving directors vulnerable to managerial pressures, especially in family-controlled businesses or companies where managers have significant sway over the board.

To mitigate managerial hegemony, it is crucial for boards to be not only independent but also empowered to make decisions without undue interference from management. Provisions such as regular performance evaluations of management, whistleblower protections, and stronger shareholder rights are necessary to enhance director accountability. Additionally, while Section 166 sets out high-level duties for directors, there is a need for clearer regulations on maintaining board autonomy and counterbalancing managerial control, particularly in large corporations. These provisions do not explicitly address how directors should safeguard their independence or counterbalance the concentration of power within the hands of managers, thus contributing to the phenomenon of managerial hegemony [31].

Despite its comprehensive nature, Section 166's real-world application may be significantly

[31] Hendry and Kiel, "The role of the board in firm strategy: Integrating agency and organisational control perspectives."

impacted by managerial hegemony unless careful attention is given to enforcement and ensuring the independence of the board. The subjective nature of terms like "good faith" and the weak enforcement mechanisms in some organizations may allow managerial dominance to persist, preventing directors from genuinely fulfilling their duties. For Section 166 to be fully effective, a robust system of checks and balances must be in place to counteract managerial dominance. Strengthening provisions regarding director independence, enhancing transparency, and ensuring more effective enforcement mechanisms are necessary to promote a culture of accountability within corporate governance. Legal reforms could be crucial in closing the existing lacunae and ensuring that the provisions of Section 166 are applied consistently in practice. Addressing these challenges will be essential in promoting responsible governance and ensuring that directors uphold their fiduciary duties genuinely.

9. RECOMMENDATIONS FOR STRENGTHENING SECTION 166 OF THE COMPANIES ACT, 2013

The findings of this study indicate that while Section 166 of the Companies Act, 2013, provides essential provisions aimed at ensuring directors uphold their fiduciary duties, it falls short in addressing the risks posed by managerial hegemony. The concentration of power within management can undermine the independence and effectiveness of the board, ultimately compromising corporate governance. To strengthen Section 166 and safeguard against managerial dominance, several recommendations are proposed. These recommendations aim to clarify provisions, enhance enforcement mechanisms, and empower boards to effectively counterbalance managerial influence, thereby fostering ethical governance and promoting a culture of accountability within organizations.

9.1. Clarifying and Strengthening Independent Judgment Provisions

While Section 166 mandates that directors exercise independent judgment, the influence of powerful managers can still hinder this. To address this, the Act should clearly define what constitutes "independent judgment" and introduce mechanisms to support directors in resisting managerial pressure. This could include the creation of an independent advisory body to assist the board in making decisions that are free from managerial influence.

9.2. Enhancing Conflict of Interest Guidelines

Section 166 acknowledges conflicts of interest but does not provide enough detailed mechanisms to safeguard board independence, especially when managers dominate the

decision-making process. It is recommended that the Companies Act introduces stricter conflict-of-interest provisions, particularly for cases where a director’s relationship with management might compromise their objectivity. Regular and detailed disclosures of interests by directors should be mandatory to ensure transparency.

9.3. Empowering the Board to Challenge Management Decisions

To effectively counter managerial hegemony, the board must be empowered to challenge management decisions without fear of retaliation. Provisions should be made for regular performance evaluations of both management and directors, with independent external bodies assessing the performance of both. Furthermore, whistleblower protection should be enhanced to protect directors who challenge management.

9.4. Strengthening Enforcement Mechanisms

The enforcement of Section 166 is currently weak, with the primary consequence being fines. To ensure compliance, stronger penalties for violations should be introduced, including the possibility of disqualifying non-compliant directors and mandating their removal. Additionally, establishing an independent body to monitor the effectiveness of governance practices and investigate complaints would help to deter managerial hegemony.

9.5. Improving Board Composition

A substantial percentage of the board should be composed of independent directors, and their presence should be mandatory, particularly in large or family-controlled businesses. The Act should set minimum thresholds for the total number of independent directors based on the size of the company. This would ensure that boards have sufficient independence to balance managerial power.

9.6. Increasing Transparency in Decision-Making

Section 166 should be revised to require more detailed records of board meetings and decision-making processes, particularly regarding major corporate decisions. By doing this, directors would be held responsible for their choices and actions. Additionally, the use of external auditors to verify the transparency of decision-making and the board's compliance with legal duties could provide an additional layer of accountability.

9.7. Promoting Shareholder Engagement and Rights

Shareholders should be granted more rights to influence board decisions, particularly regarding

executive compensation and the appointment or removal of directors. Strengthening shareholder engagement through regular meetings and ensuring they have a stronger voice in governance matters would help balance the power between management and the board.

9.8. Adopting a Stronger Regulatory Framework for Family-Owned Businesses

In family-controlled businesses, where managerial power often supersedes board authority, specific regulatory measures should be introduced to curb managerial dominance. These could include mandatory rotation of managerial positions and periodic external audits to ensure that managerial decisions correspond to the company's and its stakeholders' best interests.

These recommendations are designed to close the existing gaps in Section 166 and enhance its effectiveness in preventing managerial hegemony. By introducing clearer provisions, strengthening enforcement mechanisms, and ensuring greater board independence, the Companies Act can better support ethical governance and prevent the concentration of power in the hands of managers.

10. PROPOSING STATUTORY AMENDMENTS TO SECTION 166 OF THE COMPANIES ACT 2013

The analysis of Section 166 of the Companies Act, 2013, highlights its pivotal role in defining the duties of directors and promoting responsible corporate governance. However, the challenges posed by managerial hegemony and certain gaps in the section's provisions underscore the need for targeted amendments. By refining these subsections, the governance framework can be strengthened to ensure greater accountability, transparency, and independence in directors' decision-making processes. The following recommendations address the specific lacunae identified in each subsection, proposing amendments that aim to enhance the efficacy of Section 166 in safeguarding the interests of all stakeholders and curbing undue managerial influence. The following proposed reformative measures aim to address the gaps in Section 166 and ensure a more robust governance framework to uphold directors' accountability and mitigate managerial dominance.

10.1. Compliance with Articles of Association (Section 166(1))

Amend this subsection to require that the Articles of Association undergo periodic review by an independent body, such as an external auditor or legal expert, to ensure that they remain balanced and do not disproportionately favor management. Additionally, mandate the inclusion of clauses promoting a diversity of perspectives on the board to counteract managerial

dominance.

10.2. Duty to Act in Good Faith (Section 166(2))

Include a provision that defines "good faith" with specific guidelines, requiring directors to justify their decisions through documented assessments of how these decisions correspond with the goals of the business and the interests of stakeholders. Establish an external review mechanism for decisions with significant stakeholder impact to ensure directors cannot misuse subjective interpretations of "good faith."

10.3. Duty to Exercise Care, Skill, and Diligence (Section 166(3))

Introduce mandatory training and certification programs for directors to improve their expertise and abilities, equipping them to exercise independent judgment more effectively. Additionally, require boards to have a threshold on the minimum number of independent directors whose independence is verified annually by a regulatory authority to reduce the likelihood of undue managerial influence.

10.4. Avoidance of Conflicts of Interest (Section 166(4))

Amend this provision to mandate directors to file periodic declarations of interest, including indirect relationships with management, which would be publicly disclosed. Establish stricter penalties for failure to disclose conflicts and empower an independent committee to monitor and address potential conflicts of interest within the board.

10.5. Prohibition on Undue Gain or Advantage (Section 166(5))

Enhance the penalty for undue gains by increasing the financial penalty to at least twice the amount of the undue gain. In addition, impose criminal liability, such as temporary disqualification from holding a directorship, for severe violations. Require companies to adopt whistleblowing mechanisms to encourage reporting of unethical practices.

10.6. Non-Delegation of Director’s Duties (Section 166(6))

Incorporate an explicit provision stating that any delegation of a director’s duties must be approved by the board as a whole and justified in writing, with the rationale made part of the company's official records. Create safeguards to ensure directors retain accountability for decisions even when tasks are delegated to others.

10.7. Penalty for Contravention (Section 166(7))

Increase the range of penalties for non-compliance, with fines starting at ₹5 lakh and extending

up to ₹25 lakh for repeated offenses. In addition to monetary penalties, introduce non-monetary sanctions, such as temporary bans on serving as a director, to enhance the deterrent effect. Mandate annual public disclosure of penalties levied on directors to promote transparency.

In minimizing the danger of managerial predominance and guaranteeing sound corporate governance these suggestions are meant to address the lacunae identified in the analysis and enhance the effectiveness of Section 166 in minimizing the danger of managerial hegemony and guaranteeing sound corporate governance.

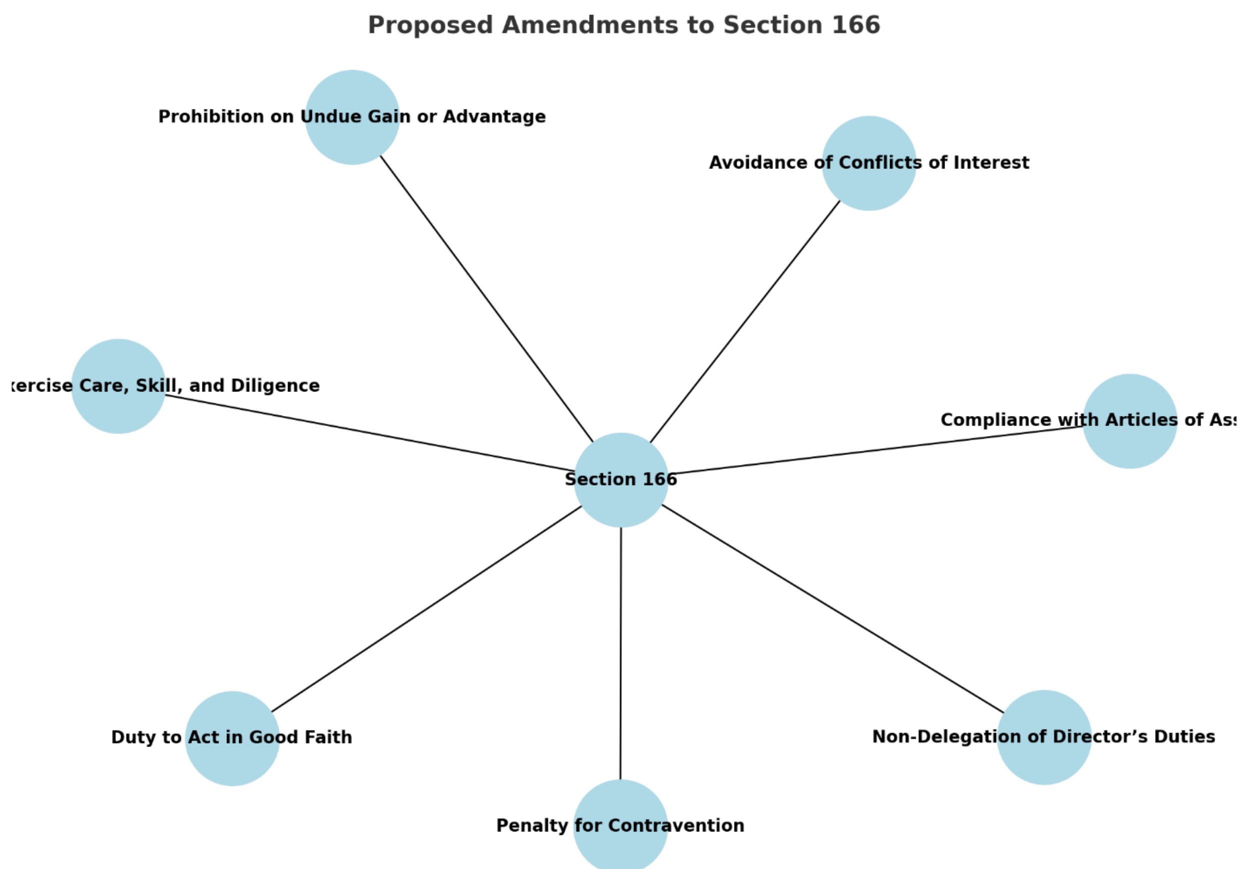

FIGURE 1: Proposed Amendment to Section 166 of the Companies Act 2013

11. CONCLUSION

Section 166 of the Companies Act, 2013, serves as a pillar for promoting ethical governance and delineating the fiduciary duties of directors in India. While it establishes a framework for directors to act in good faith, exercise independent judgment, and avoid conflicts of interest, its effectiveness in addressing managerial hegemony remains limited without robust enforcement and clear mechanisms to counterbalance the concentration of power within management. This study has highlighted the strengths and lacunae of Section 166, showing

that while it aims to protect stakeholders and ensure accountability, the practical application of its provisions often falls short due to systemic challenges.

To realize the full potential of Section 166, there is an urgent need for reforms that bolster board independence, enhance transparency, and empower directors to act without undue influence. By addressing these gaps, corporate governance structures can better safeguard against managerial dominance, ensuring that organizations function in a way that aligns with their ethical obligations and long-term objectives. These improvements are not just legal necessities but are also essential for encouraging sustainable business practices and establishing stakeholder confidence.