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RESEARCH CORNER

- Carbon Footprint vs. Capital Pay-outs: Reconciling Shareholder Returns with Climate Capital under Indian Law

Carbon Footprint vs. Capital Pay-outs: Reconciling Shareholder Returns with Climate Capital under Indian Law

Boards of Directors of Indian Listed Companies are often faced with a growing tension between environmental spending and shareholder pay-outs (Dividends / Buy-back), which is often taken as a conflict of these two competing priorities. This article argues that the real issue is not about competing priorities and hence, framing them as such is mistaken. Environment Obligation originates from the non-justiciable Fundamental Duty provided under Article 51A(g) of the Constitution of India, through the Directive Principles under Articles 48A and 39, to its statutory expression given in Section 166(2) of the Companies Act, 2013 in the form of one of the duties of directors. The article shows that only CSR spending under Section 135 carries a mandatory corporate obligation; SEBI's sustainability disclosure regime, dividend policy, and share buybacks operate through disclosure or discretion alone, with buybacks receiving the most specific regulatory accommodation. Drawing on five years of published CSR data available in public domain, the article finds environment-linked spending a modest but growing share of an overall CSR spending that has itself grown by roughly forty percent since FY 2019-20. The finding is an asymmetry, not a genuine conflict, and the article proposes a capital allocation disclosure to make board reasoning visible to shareholders and regulators alike.

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INTRODUCTION

This article examines the tension between two demands increasingly placed on the boards of Indian listed companies: whether the obligation to direct corporate resources toward environmental responsibility should be in priority over the discretion to return surplus capital to shareholders through dividends and share buybacks or vice versa. It discusses the constitutional basis of the environmental obligation, beginning with the Fundamental Duty under Article 51A(g) of the Constitution of India along with the Directive Principles under Articles 48A and 39, through its statutory expression in Section 166(2) of the Companies Act, 2013, to its regulatory implementation through mandatory Corporate Social Responsibility spending and SEBI's sustainability disclosure framework. It then sets out the comparatively weaker legal basis (non-mandatory) for dividend distribution and the accommodating provisions for share buybacks. It goes onto present the limitedly available public data on how listed Indian companies have spent on environment-linked activity over the past five years. The entire premise is that the apparent conflict between environmental spending and shareholder returns is not a conflict between two equally weighted obligations, but an asymmetry between one legally compulsory requirement through CSR spending and two areas of substantial board discretion. It closes by proposing a disclosure-based mechanism to address that asymmetry.

THE CONSTITUTIONAL PREMISE: A FUNDAMENTAL DUTY BEYOND THE INDIVIDUAL CITIZEN

Article 51A (Part IVA) places on every citizen of India a duty:-

"to protect and improve the natural environment, including forests, lakes, rivers and wildlife, and to show compassion for living creatures."[1]

As a Fundamental Duty under Part IVA, it is non-justiciable by design and hence, cannot be enforced by way of writ petition under Articles 32 or 226 as a standalone cause of action.[2] Instead, its enforcement is made through legislative enactment[3] and judicial interpretation, without treating it as independently enforceable. For instance, Environment (Protection) Act, 1986 and Wildlife (Protection) Act, 1972 legally mandate corporate environmental responsibility by imposing strict compliance, operational restrictions, and criminal liability on businesses. Under the Environment (Protection) Act, 1986, companies are legally prohibited from discharging pollutants beyond prescribed limits and must obtain mandatory prior Environmental Clearances

1. *Constitution of India, art. 51A(g), inserted by the Constitution (Forty-second Amendment) Act, 1976.*
2. *Part IVA contains no express provisions for enforcement of fundamental duties.*
3. *Environment (Protection) Act, 1986; Wildlife (Protection) Act, 1972.*

(EC) before launching or expanding industrial projects. Concurrently, the Wildlife (Protection) Act, 1972 restricts corporate activities by banning industrial operations inside or near eco-sensitive zones, national parks, and wildlife sanctuaries to prevent habitat destruction. Crucially, both statutes impose personal, statutory liability on directors and key officers i.e. it provides that if a company violates these laws, the directors and key corporate officers can be held personally liable and face stringent criminal prosecution and penalties.

Courts have also applied Article 51A(g) consistently:

- In the Doon Valley case, the Honourable Supreme Court held that preserving the environment is a social obligation resting on every citizen, not the government's responsibility alone.[4]
- In the proceedings on Ganga pollution, the Court directed compulsory environmental education in schools, which was again based on the citizen's fundamental duty.[5]
- In Kamal Nath, the Court read the State's Obligation under Article 48A together with Article 51A(g) and the right to life,[6] holding that natural resources are held by the State in trust for the public and cannot serve a private party's commercial benefit.[7]
- In Virender Gaur, the Court held again that protecting the environment is a duty owed by every citizen, not the State alone.[8]

While none of the above makes Article 51A(g) binding on a company as a "citizen" in the literal sense and no court has expressly held so, the more accurate position is that courts have treated Article 51A(g) as a principle shaping how environmental obligations are made applicable on anyone who uses natural resources for commercial gain, individual or corporate. A company which is drawing on land, water, minerals, and air as business inputs naturally falls within the same reasoning the Honorable Supreme Court applied in Kamal Nath, even though it is Parliament and the regulator, not Article 51A(g) itself, that ultimately places the obligation on an entity in corporate form.

THE DIRECTIVE PRINCIPLES: STATE ENDEAVOUR AND ECONOMIC JUSTICE

Two Directive Principles under Part IV of the Constitution support different halves of the argument that follows:

- Article 48A[9] directs the State in the following manner:

  "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."

  It was inserted by the same 1976 Constitutional amendment as Article 51A(g) and it is reasonable to conclude that it is intended to be read together with Article 51A(g) : one provision directs the State, the other binds the citizen. The Supreme Court has read both together with the right to life to produce enforceable environmental jurisprudence, including the polluter-pays and precautionary principles set out in Vellore Citizens Welfare Forum.[10]

- Articles 39(b)[11] and 39(c)[12] cumulatively direct the State to direct its policy towards securing that **"the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."** These provisions have been historically applied to land reform and industrial policy, not capital markets, and no court has so far expressly extended them to securities law. However, they should be used here as an interpretative basis, though not binding authority, for examining capital allocation in listed companies.

> CSR spending is legally compulsory, dividend and buyback decisions remain matters of board discretion protected by law, and buybacks in particular receive regulatory accommodations that neither dividend nor environmental spending enjoy.

THE STATUTORY BRIDGE: SECTION 166(2) OF THE COMPANIES ACT, 2013

Section 166(2) casts a duty on a director to act in good faith to promote the company's objects for the benefit of its members as a whole, having regard to the interests of the company, its employees, its shareholders, the community, and **the protection of the environment**.[13] This is the first provision in Indian company law to name the environment expressly as an interest a director must weigh. This was inserted on the recommendation of the Dr. J.J. Irani Committee.[14]

- It establishes the environment as one of several stakeholders' interests a director must weigh, alongside the company, employees, shareholders and community. However, it does not intend to rank any one above another.

4. *Rural Litigation and Entitlement Kendra v. State of U.P., AIR 1987 SC 359.*
5. *M.C. Mehta v. Union of India, W.P. No. 860 of 1991, order dated 22 November 1991 (Supreme Court of India).*
6. *Constitution of India, art. 21.*
7. *M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388; and the subsequent compensation order, M.C. Mehta v. Kamal Nath, (2000) 6 SCC 213.*
8. *Virender Gaur v. State of Haryana, (1995) 2 SCC 577.*
9. *Constitution of India, art. 48A, inserted by the Constitution (Forty-second Amendment) Act, 1976.*
10. *Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647.*
11. *Constitution of India, art. 39(b).*
12. *Constitution of India, art. 39(c).*
13. *Companies Act, 2013, s. 166(2).*
14. *Report of the Expert Committee on Company Law (Dr. J.J. Irani Committee), Ministry of Corporate Affairs, 2005.*

- Its enforcement mechanisms are comparatively weak as it is a subjective duty on the part of a director. Any claim from a shareholder whether in form of a derivative action, a claim of oppression and mismanagement, or a class action is likely to face significant procedural hurdles before a director can actually be held accountable specifically for disregarding the environmental limb of the section.[15]

In practice, duty cast under Section 166(2) functions as a statement of statutory responsibility rather than a directly enforceable right. This gap is precisely what SEBI's disclosure-based regulations have since tried to address.

FROM DUTY TO DISCLOSURE: CSR, BRSR, AND CAPITAL PAY-OUTS COMPARED

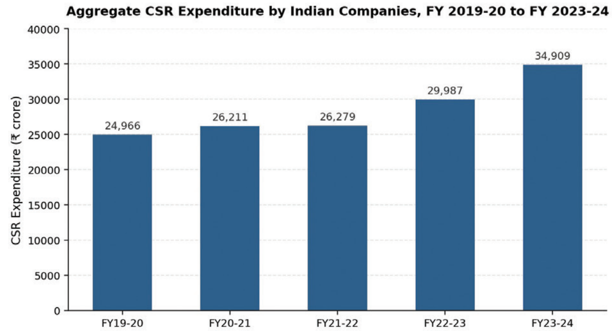
The Ministry of Corporate Affairs and SEBI have built distinct regulatory frameworks that give Section 166(2) its practical effect. However, they differ sharply in legal force:

Instrument	Governing Provision	Nature of Requirement	Applies To
CSR spending	Companies Act, s. 135	Compulsory: min. 2% of average net profit; penalties for non-compliance	Net worth ≥ ₹500 cr / turnover ≥ ₹1,000 cr / net profit ≥ ₹5 cr
BRSR / BRSR Core	SEBI LODR Reg. 34(2)(f); 2023 Circular	Compulsory disclosure; phased third-party assurance. Reporting, not outcome, is mandatory	Top 1,000 listed entities by market cap
Dividend Distribution Policy	SEBI LODR Reg. 43A	Compulsory disclosure of policy only; no spending mandate	Top 1,000 listed entities by market cap
Share buyback	Companies Act, ss. 68-70; SEBI Buy-back Regs. 2018; SAST Regs. 2011	Enabling framework; tax and control-consolidation advantages; no ESG linkage	Any listed company choosing to buyback

As evident from the above, only CSR spending (which may include environmental spending) carries a compulsory obligation on the part of the Corporates. BRSR and the Dividend Distribution Policy both operate through mandatory disclosure without dictating anything on spending. Buybacks carry no ESG-linked requirement at all, and receive the most specific regulatory accommodation, as Part VI shows.

Available Data: Environment-Linked CSR Spending

A very limited data showing Environment-Linked CSR spending is available in public domain. As per the data available in public domain, in view of its mandatory nature, aggregate CSR expenditure by Indian companies has risen every year over the past five financial years, from approximately ₹24,966 crore in FY 2019-20 to approximately ₹34,909 crore in FY 2023-24, an increase of roughly forty percent.[16]



Within this total, spending grouped under the Ministry's combined environmental head, covering environmental sustainability, agro-forestry, animal welfare, conservation of natural resources, and the Clean Ganga Fund, rose from approximately ₹2,921 crore in FY 2022-23 to approximately ₹3,459 crore in FY 2023-24, a share of roughly eight to ten percent of total CSR spending in both years.[17] Among NSE-listed companies specifically, CSR spending rose from approximately ₹15,524 crore to approximately ₹17,967 crore over the same two years, with environmental sustainability recording the largest percentage increase of any category.[18] A 2025 industry survey of 301 large companies put environment and sustainability at roughly thirteen percent of CSR budgets in FY 2024-25.[19]

- Total CSR spend and listed-company CSR spend are separate, overlapping datasets and should not be added together.
- The Ministry does not disaggregate its environmental heading, so the genuine emissions-reduction share of the figures above cannot be isolated from this data alone.
- No centrally compiled public dataset yet aggregates BRSR disclosures, such as reported emissions, across the 1,000 companies that file them; each report exists individually rather than as a public trend series.

Subject to the abovementioned limits, environment-linked CSR spending is a modest but growing share of a total CSR pool that has itself grown steadily. The absence of a centrally compiled BRSR trend dataset, comparable to what the MCA already maintains for CSR, is itself worth looking into. A similar aggregation effort for BRSR disclosures would help practitioners and regulators track

15. *Companies Act, 2013, ss. 241-242 (oppression and mismanagement) and s. 245 (class action suits).*

16. *Ministry of Corporate Affairs, National CSR Portal (csr.gov.in), per a Lok Sabha Unstarred Question reply and secondary compilations (Smile Foundation India, 2026; India CSR, 2026), FY 2019-20 to FY 2023-24.*

17. *Environment-linked CSR figures, FY 2022-23 and FY 2023-24, per secondary compilations of Ministry of Corporate Affairs data (India CSR, 2026; Down To Earth, 2025); grouped under one combined, undisaggregated head.*

18. *PRIME Database compilation of CSR expenditure by NSE-listed companies (Drishti IAS; ThinkWithNiche, 2025), FY 2022-23/2023-24 — a subset of, not additive to, the national figures above.*

19. *CSRBOX, India CSR Outlook Report 2025 (11th edition), based on a sample of 301 companies, FY 2024-25.*

environmental performance across the top companies with the same ease that CSR spending is being tracked today.

THE OTHER DUTY: DIVIDEND, DISCRETION, AND THE LIMITS OF COMPULSION

Although Dividend distribution finds its place in statutory books, its legal structure is markedly weaker than the CSR mandate:

- Section 123[20] and other related provisions govern the sources from which dividend may be paid and conditions subject to which it can be paid, but does not, anywhere, require a company to declare one. So, the Board of Directors may choose not to recommend dividend even if there exist adequate distributable profits.

  In fact, in its landmark judgement in **Vazir Sultan Tobacco Co. Ltd. v. Commissioner of Income Tax, A.P., [1982] 1 SCR 789**, the Honourable Supreme Court analysed the clear demarcation of powers between the Board of Directors and the shareholders in a General Meeting regarding dividends. The Court affirmed that while the company in a general meeting is the final authority which declares the final dividend as referred to in Section 102(2) of the Companies Act, 2013, that authority is capped by the Board's recommendation, reflecting the principle, also embodied in Article 80 of Table F, Schedule I to the Companies Act, that no dividend can exceed the amount recommended by the Board. The ruling clearly established that shareholders cannot decide and declare quantum of dividend in excess of what was recommended by the Board as the Board has power to use its discretion using business judgement.

- The Honourable Supreme Court has also, in LIC v. Escorts Ltd.[21] held that shareholders cannot compel a board to declare dividends absent proof of mala fide intent or arbitrariness. Dividend is a matter of board discretion protected by the business judgment rule.

- Regulation 43A[22] requires listed companies above a market-capitalisation threshold to disclose a Dividend Distribution Policy, covering when shareholders may expect a dividend and how retained earnings will be used. Introduced in 2016 for the top 500 entities by market capitalisation, it was extended in 2021 to the top 1,000, the same universe covered by BRSR. As with BRSR, the requirement is to disclose the policy, not to follow any particular one. However, this also does not make it mandatory on the part of the Board of Directors to recommend / declare any dividend, which remains a Board's discretion to be used based on the business judgment rule.

- Courts intervene only in the opposite direction: directors who negligently pay dividend out of capital rather than genuine profit may be personally liable to compensate the company.[23] The legal duty runs toward preserving capital, not toward paying shareholders.

WHERE THE TENSION ACTUALLY LIES

The conflict this article examines is not a clash between two equally weighted duties. It is a gap between one compulsory spending requirement and two areas of board discretion, both drawing on the same distributable profits. So, tension lies in the question of whether a Corporate should use its available resources towards environmental spending or it should use them for distribution to shareholders in form of dividend.

This gap widens further with the share buyback. A buyback of shares is governed by Sections 68 to 70 of the Companies Act, 2013, which set the source of funds, the 25% ceiling on paid-up capital and free reserves, and the debt-equity conditions applicable to every company; SEBI's regulations provide for additional conditions specifically applicable for listed companies.[24] Within these frameworks, the Companies Act as well as SEBI Regulations have the effect of consolidation of promoter shareholding with SEBI Regulations recognising it as an accepted commercial purpose of a buyback,[25] and in fact, SEBI Regulations also provide promoters a specific exemption from the open-offer requirement where a buyback pushes their shareholding across the relevant threshold, subject only to procedural conditions.[26]

- Buybacks carry more favourable tax treatment than dividends for many shareholder categories.
- Unlike dividend, a buyback creates no recurring expectation which the board must revisit annually.
- A company choosing between ESG capex, dividend, and buyback operates in a framework where only the first carries a compulsory spending floor as a part of CSR, while the third receives the most specific regulatory accommodation.

SEBI's own conduct shows it is alert to this risk: it paused the stock-exchange buyback route in 2025 over concerns about unequal participation and price signalling, before reintroducing it in 2026 under tighter conditions.[27] The 2018 withdrawal of a well-known buyback

20. *Companies Act, 2013, s. 123.*
21. *Life Insurance Corporation of India v. Escorts Ltd., (1986) 1 SCC 264.*
22. *SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 43A.*
23. *Discussed in Indian commentary alongside Kishinchand Chellaram v. CIT, 1963 AIR 390 (taxation of dividend income); more directly supported by Bairstow v. Queens Moat Houses plc, [2001] 2 BCLC 531 (CA).*
24. *Companies Act, 2013, ss. 68-70, read with Rule 17, Companies (Share Capital and Debentures) Rules, 2014; for listed companies, read further with SEBI (Buy-back of Securities) Regulations, 2018.*
25. *SEBI (Buy-back of Securities) Regulations, 2018.*
26. *SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.*
27. *SEBI circulars on phasing out the stock-exchange buy-back route from 1 April 2025, and its reintroduction with revised conditions from 1 August 2026.*

announcement, after it had already moved the share price, is frequently cited as an example of this signalling risk.[28] However, none of the Companies Act's provisions and of SEBI Regulations / Guidelines, mandate that a company's environmental obligations should be based on the board's initial decision on how to deploy surplus capital at all.

WHY BOTH MUST BE HONOURED?

Environmental spending and shareholder pay-outs are not competing priorities to be ranked above each other. Each serves a distinct constitutional purpose as highlighted below:

Environmental Spending	Dividend and Capital Discipline
Gives effect to the sequence traced from Article 51A(g) and 48A, through Section 166(2), to Section 135 and BRSR.	Gives effect to Articles 39(b) and (c): capital should not concentrate unduly, and enterprise should serve the common good.
Properly directed, strengthens the long-term enterprise value shareholders ultimately depend on.	Distributes the returns of enterprise broadly, rather than allowing them to concentrate with promoters.
Treating it only as a cost to minimise takes a short-term view of a constitutionally grounded duty.	Sustains the market confidence on which future capital formation depends.

As evident from the above, both environmental spending and Dividend and Capital Discipline, emerge from constitutional framework and hence, they cannot be and rather should not be tested against each other in terms of priority. Testing one against another, would amount to treating one constitutional provision sub-ordinate to the other one, which runs contrary to the primary intent of the constitutional provisions i.e. Articles 39, 48A and 51A(g).

Therefore, the reform opportunity is not to make one obligation compulsory at the other's expense, but to close the specific gap identified above: no regulation currently requires a board's choice between environmental spending, dividend, and buyback to be disclosed together, as a single reasoned capital allocation statement in Directors' Report, setting out the company's environmental targets alongside the board's reasoning for how surplus was actually divided among the three uses that year. This would not make Section 166(2)'s environmental limb enforceable in court, nor compel dividend the way Section 135 compels CSR spend. Rather, it would extend the disclosure approach SEBI already applies separately to BRSR and dividend policy, and apply it jointly, so a board choosing a buyback over environmental spending in a high-emission sector must explain that choice in the same document in which it reports its emissions. For a governance professional like the Company Secretary, this offers a practical template: a single board note, prepared once a year alongside the BRSR and dividend policy disclosures, that sets out the reasoning for that year's capital allocation choice and can be relied upon proactively in shareholder and regulatory engagement, rather than reconstructed defensively if the choice is later questioned. This board note along with any other reasoning noted by the Board at its meeting, can become basis for capital allocation statement in the Directors' Report.

CONCLUSION

Although the environmental spending obligations of Indian companies run from a non-justiciable constitutional duty to a disclosure-heavy regulatory framework, they become mandatory for the Companies – who elect to spend their mandatory CSR spending towards environment obligations through a Board-approved action plan under Rule 5 (2) of CSR Rules. Set against this, the legal basis for dividend distribution is considerably weaker and in fact, it is entirely discretionary on the part of the Boards of the Companies to decide distribution of dividends and quantum of such distribution. Further, share buybacks remain largely regulatory accommodation and not a mandatory obligation. Further, the available data shows environment-linked CSR spending as a growing but still modest share of a total CSR pool that has itself grown by roughly forty percent over five years, while comparable aggregate data for BRSR outcomes does not yet exist in centrally compiled form.

The central finding that emerges from the above is an asymmetry, not a genuine conflict: CSR spending is legally compulsory, dividend and buyback decisions remain matters of board discretion protected by law, and buybacks in particular receive regulatory accommodations that neither dividend nor environmental spending enjoy. Therefore, a single, jointly reasoned capital allocation disclosure in the Directors' Report, extending mechanisms SEBI already uses separately for BRSR and dividend policy, would not remove this asymmetry, but it would make the board's reasoning visible to shareholders and regulators alike. That visibility, rather than a new spending mandate, is the reform proposed here. In fact, the proposed reform in terms of capital allocation disclosure would also push the Boards of the Companies to think in a more logical manner as they would be required to provide a well-reasoned disclosure in the Directors' Report.

28. *Market reporting on the PC Jeweller Ltd. buyback announcement and its 2018 withdrawal, noted as a factual episode, not a legal precedent.*