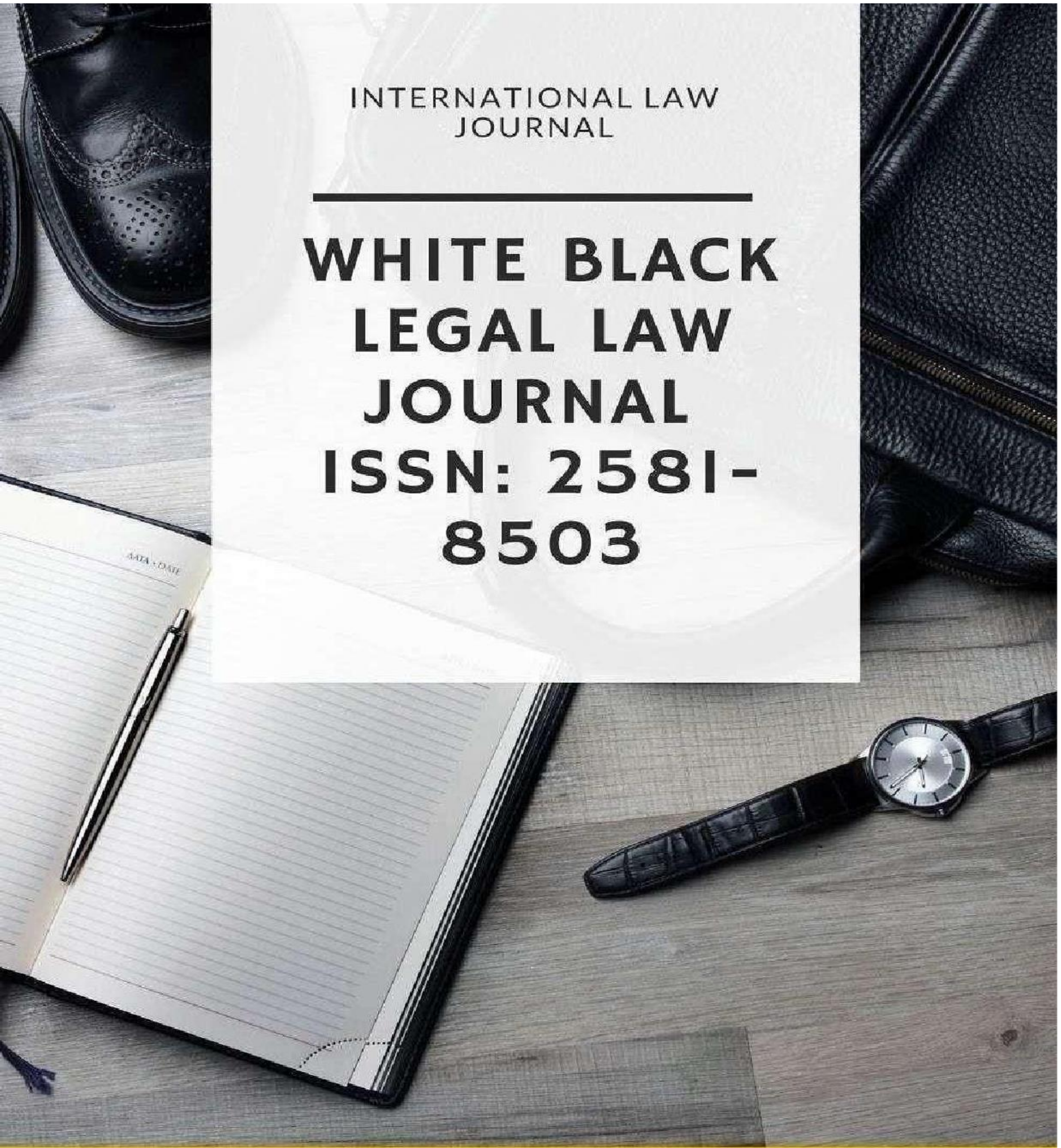

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# ESG COMPLIANCE AND CORPORATE ACCOUNTABILITY UNDER THE COMPANIES ACT, 2013: A CRITICAL EVALUATION OF INDIA'S LEGAL FRAMEWORK AND EMERGING CHALLENGES

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## Abstract

Environmental, Social, and Governance (ESG) considerations have emerged as one of the most significant developments in contemporary corporate governance. Traditionally, corporate entities were evaluated primarily on their financial performance and ability to maximize shareholder wealth. However, growing concerns regarding climate change, environmental degradation, human rights violations, labour standards, corporate fraud, and ethical governance have fundamentally transformed the expectations placed upon corporations. Investors, regulators, consumers, and civil society increasingly demand that corporations operate responsibly while integrating sustainability into their business models. ESG has consequently evolved from a voluntary corporate initiative into an essential component of corporate accountability.

India has gradually embraced this global transformation through legislative reforms under the Companies Act, 2013, the Securities and Exchange Board of India (SEBI) regulations, the mandatory Corporate Social Responsibility (CSR) framework under Section 135 of the Companies Act, the Business Responsibility and Sustainability Reporting (BRSR) framework, and the National Guidelines on Responsible Business Conduct (NGRBC). Despite these developments, significant legal uncertainties continue to exist regarding the enforceability of ESG obligations, the liability of directors for ESG failures, regulatory fragmentation, inconsistent disclosure standards, and the absence of dedicated legislation governing ESG compliance.

This article critically evaluates the existing legal framework governing ESG compliance in India and examines whether current laws effectively ensure corporate accountability. It analyses the interaction between corporate governance principles, statutory duties of directors, sustainability disclosures, and regulatory oversight. The article further explores judicial developments, comparative international practices, and emerging challenges such as greenwashing, climate-related financial risks, and stakeholder protection. It argues that while India has established a promising ESG architecture, the existing framework remains predominantly disclosure-oriented rather than accountability-driven. The article recommends legislative reforms to strengthen ESG enforcement, improve regulatory coordination, introduce independent ESG audits, enhance directors' fiduciary responsibilities, and establish effective penalties for misleading sustainability disclosures. Such reforms are essential to transform ESG compliance from a procedural reporting obligation into a substantive mechanism of responsible corporate governance.

**Keywords:** Environmental, Social and Governance (ESG); Corporate Accountability; Companies Act, 2013; Corporate Governance; Sustainability Reporting; Business Responsibility and Sustainability Report (BRSR); Corporate Social Responsibility (CSR); Directors' Duties; Greenwashing; Sustainable Development.

## 1. Introduction

The concept of corporate governance has undergone a remarkable transformation during the last three decades. Historically, corporate law focused primarily upon protecting shareholders, maximizing corporate profits, and facilitating economic growth. Classical corporate theory, particularly influenced by Milton Friedman's shareholder primacy doctrine, maintained that the sole responsibility of a corporation was to increase profits within the framework of law.[1] However, increasing globalization, climate change, environmental degradation, financial scandals, labour exploitation, and growing social inequality have challenged this traditional understanding of corporate responsibility.[2]

The twenty-first century has witnessed the emergence of Environmental, Social and Governance (ESG) principles as a comprehensive framework through which corporations are assessed not merely on financial performance but also on their environmental stewardship, social responsibility, and governance practices.[3] ESG represents a shift from shareholder

[1] Milton Friedman, *Capitalism and Freedom* (University of Chicago Press 1962).
[2] United Nations, *Transforming Our World: the 2030 Agenda for Sustainable Development* (2015).
[3] United Nations Global Compact, *Who Cares Wins* (2004).

capitalism towards stakeholder capitalism, wherein corporations owe responsibilities not only to investors but also to employees, consumers, local communities, governments, and future generations.[4] This transformation reflects an evolving understanding that sustainable economic development requires responsible corporate conduct capable of balancing profitability with social and environmental obligations.

Globally, ESG has become an indispensable component of investment decisions, risk management, corporate governance, and regulatory policy. Institutional investors increasingly evaluate ESG performance before making investment decisions because sustainability-related risks directly affect long-term financial stability.[5] International organisations such as the United Nations, the Organisation for Economic Co-operation and Development (OECD), the International Finance Corporation (IFC), and the World Economic Forum have consistently advocated integrating ESG considerations into corporate governance frameworks to achieve sustainable development.[6]

India has also experienced a gradual evolution in its corporate governance regime. Following economic liberalisation in 1991, rapid industrialisation and capital market expansion necessitated stronger regulatory mechanisms to ensure transparency and accountability. Corporate scandals such as the Satyam Computer Services fraud highlighted the inadequacy of existing governance structures and accelerated legislative reforms culminating in the enactment of the Companies Act, 2013.[7] The Act introduced numerous provisions concerning directors' duties, independent directors, board accountability, corporate social responsibility, and enhanced disclosure obligations. Although the Companies Act does not explicitly define ESG, several of its provisions indirectly promote ESG objectives.[8]

The regulatory landscape has further evolved through SEBI's introduction of the Business Responsibility Report (BRR), later replaced by the Business Responsibility and Sustainability Report (BRSR), which mandates sustainability disclosures by India's largest listed companies.[9]

[4] R. Edward Freeman, *Strategic Management: A Stakeholder Approach* (Pitman 1984).
[5] OECD, *OECD Principles of Corporate Governance* (2023).
[6] World Economic Forum, *Measuring Stakeholder Capitalism* (2020).
[7] The corporate governance reforms following the Satyam Computer Services accounting scandal informed the enactment of the Companies Act, 2013.
[8] Patel, Amaresh, *Competition Law: Principles, Legislation and Case Studies* (Central Law Publication, 2025).
[9] Securities and Exchange Board of India, *Business Responsibility and Sustainability Reporting (BRSR) Circular* (2021).

Similarly, the National Guidelines on Responsible Business Conduct encourage responsible corporate behaviour aligned with global sustainability standards. These measures collectively signify India's growing commitment towards integrating ESG principles into corporate regulation.

Despite these developments, ESG compliance in India remains characterised by significant legal complexities. Unlike traditional corporate law obligations, ESG standards derive from multiple regulatory instruments rather than a unified legislative framework. Consequently, questions persist regarding enforceability, regulatory overlap, accountability mechanisms, directors' liability, and remedies for ESG violations. Furthermore, concerns regarding "greenwashing"—where corporations exaggerate or misrepresent sustainability achievements—raise serious questions about the credibility of voluntary ESG disclosures.[10] This article critically examines whether India's existing legal framework sufficiently ensures corporate accountability through ESG compliance. It argues that although India has developed an impressive disclosure regime, genuine accountability requires stronger legal enforcement, clearer statutory obligations, effective regulatory coordination, and enhanced judicial oversight.

## 2. Research Problem

The growing acceptance of ESG principles has fundamentally altered expectations concerning corporate governance. Nevertheless, India lacks comprehensive legislation specifically governing ESG compliance. Existing obligations are dispersed across the Companies Act, 2013, SEBI regulations, environmental legislation, labour laws, and voluntary policy guidelines. This fragmented framework creates uncertainty regarding corporate obligations, enforcement mechanisms, and legal liability.

Moreover, while disclosure requirements have increased significantly, there remains limited legal accountability for inaccurate ESG reporting or failure to implement sustainability commitments. The absence of comprehensive statutory standards permits inconsistent reporting practices and increases the possibility of greenwashing. Consequently, the effectiveness of India's ESG framework in ensuring genuine corporate accountability remains uncertain.

[10] Organisation for Economic Co-operation and Development, *ESG Investing and Greenwashing* (2022).

## 3. Research Questions

The present study seeks to answer the following questions:

1. What constitutes ESG compliance within the Indian corporate legal framework?
2. To what extent do the Companies Act, 2013 and SEBI regulations promote ESG principles?
3. Does the present legal framework effectively ensure corporate accountability?
4. How do directors' fiduciary duties interact with ESG obligations?
5. What lessons can India derive from international ESG regulatory frameworks?
6. What legal reforms are necessary to strengthen ESG enforcement?

## 4. Objectives of the Study

The principal objective of this research is to critically evaluate India's legal framework governing ESG compliance. The study further aims to examine the extent to which corporate accountability is promoted through statutory duties under the Companies Act, 2013, SEBI regulations, and related governance mechanisms. It also seeks to analyse international best practices and recommend reforms capable of strengthening India's evolving ESG regime.

## 5. Research Methodology

This research adopts a doctrinal and analytical methodology. Primary sources include the Companies Act, 2013, SEBI regulations, notifications, circulars, judicial decisions, and international legal instruments. Secondary sources comprise books, peer-reviewed journal articles, government reports, OECD publications, World Bank studies, United Nations reports, and academic commentaries.

Comparative analysis has been employed to examine ESG regulation in the United Kingdom, the European Union, Singapore, and the United States, enabling identification of best practices applicable to India.

## 6. Review of Literature

Academic literature demonstrates substantial growth in ESG scholarship during the last decade. Early studies predominantly examined corporate social responsibility as an isolated governance mechanism. However, recent research increasingly recognises ESG as an integrated framework combining environmental sustainability, social responsibility, and corporate governance.

Archie Carroll's Pyramid of Corporate Social Responsibility remains one of the earliest theoretical models linking corporate ethics with business responsibility.[11] Carroll argues that corporate responsibilities extend beyond profit-making to encompass legal, ethical, and philanthropic obligations.

Jill Solomon emphasises that modern corporate governance requires corporations to integrate sustainability considerations into strategic decision-making rather than treating environmental responsibility as voluntary philanthropy.[12] According to Solomon, ESG represents a transformation in governance philosophy rather than merely an expansion of disclosure obligations.

The OECD Principles of Corporate Governance similarly recognise that sustainable corporate success depends upon effective governance, stakeholder engagement, transparency, and accountability.[13] These principles have significantly influenced regulatory reforms across jurisdictions, including India.

Indian scholarship has largely focused upon Corporate Social Responsibility under Section 135 of the Companies Act, 2013. Comparatively fewer studies comprehensively examine ESG as an integrated legal framework encompassing directors' duties, sustainability reporting, environmental accountability, and stakeholder governance. Existing literature further reveals limited analysis concerning legal liability arising from misleading ESG disclosures and greenwashing. This article seeks to bridge these gaps by examining ESG compliance through the broader lens of corporate accountability.

## 7. ESG Compliance under the Companies Act, 2013: Building the Legal Foundation for Corporate Accountability

The enactment of the Companies Act, 2013 marked a paradigm shift in Indian corporate regulation by replacing the Companies Act, 1956 with a more comprehensive governance-oriented legal framework. Although the legislation does not expressly employ the term "Environmental, Social and Governance (ESG)," several of its provisions collectively establish the statutory basis for ESG compliance in India. The Act significantly expands directors'

[11] Archie B. Carroll, 'The Pyramid of Corporate Social Responsibility' (1991) 34 *Business Horizons* 39.
[12] Jill Solomon, *Corporate Governance and Accountability* (5th edn, Wiley 2020).
[13] OECD, *G20/OECD Principles of Corporate Governance* (2023).

fiduciary duties, strengthens disclosure obligations, institutionalises Corporate Social Responsibility (CSR), enhances board independence, and introduces greater transparency and accountability in corporate administration. Consequently, the Companies Act, 2013 represents the principal legislative foundation upon which India's ESG architecture has gradually evolved. Unlike many jurisdictions that have enacted dedicated sustainability legislation, India has adopted an integrated approach by embedding ESG-related obligations within existing corporate governance provisions. This legislative design reflects an understanding that environmental protection, social responsibility, and ethical governance cannot be viewed as isolated regulatory concerns but must instead become integral components of corporate decision-making. Nevertheless, the absence of an explicit statutory definition of ESG has resulted in fragmented interpretation and uneven implementation, thereby raising questions concerning the enforceability and legal consequences of ESG-related obligations.

The Companies Act, 2013 demonstrates a significant departure from the traditional shareholder-centric model of corporate governance. The legislation increasingly recognises that corporate entities operate within a broader socio-economic ecosystem and therefore owe responsibilities not merely to shareholders but also to employees, creditors, consumers, local communities, regulators, and the environment. This stakeholder-oriented approach closely aligns with internationally accepted ESG principles and reflects the influence of modern corporate governance theories that advocate balancing commercial profitability with sustainable development and ethical responsibility.[14]

The Act achieves these objectives through several interrelated mechanisms. The mandatory preparation of comprehensive Board Reports under Section 134 enhances transparency by requiring directors to disclose material information relating to business operations, financial performance, internal controls, risk management, and corporate governance practices. Section 135 institutionalises Corporate Social Responsibility by imposing mandatory CSR expenditure upon qualifying companies. Section 149 introduces the institution of Independent Directors to improve board oversight, while Section 166 codifies directors' fiduciary duties, requiring them to act in good faith and in the interests of multiple stakeholders. Collectively, these provisions establish the legal infrastructure through which ESG principles are increasingly operationalised within Indian corporate law.

[14] Companies Act, 2013, Statement of Objects and Reasons.

However, despite these progressive developments, significant doctrinal ambiguities remain. The Act does not explicitly impose legally enforceable environmental or social obligations comparable to those found in certain European jurisdictions. Instead, many ESG-related responsibilities are indirect, disclosure-oriented, or dependent upon regulatory guidance issued by agencies such as the Securities and Exchange Board of India (SEBI). Consequently, a detailed examination of these statutory provisions becomes essential to evaluate whether India's corporate law framework genuinely promotes substantive corporate accountability or merely procedural compliance.

**7.1 Board's Report and ESG Disclosure: Section 134 of the Companies Act, 2013**

Section 134 of the Companies Act, 2013[15]constitutes one of the most significant disclosure provisions within Indian corporate law. The section requires every company's Board of Directors to prepare and approve a comprehensive Board's Report, which accompanies the annual financial statements presented before shareholders. The Board's Report functions not merely as a financial disclosure document but as a broader governance instrument designed to promote transparency, accountability, and informed stakeholder participation.

The statutory contents prescribed under Section 134 extend considerably beyond traditional financial reporting. Directors are required to disclose matters relating to risk management, conservation of energy, technology absorption, foreign exchange earnings, corporate governance practices, internal financial controls, related-party transactions, annual performance evaluation, and CSR activities where applicable. These disclosures collectively reflect the governance dimension of ESG by ensuring that investors and other stakeholders receive meaningful information regarding the company's management practices and long-term sustainability strategies.[16]

Particularly significant is the requirement concerning conservation of energy and environmental protection. Although these disclosures remain relatively limited compared to contemporary international ESG standards, they nevertheless represent an early legislative attempt to integrate environmental considerations within mainstream corporate reporting. Information concerning energy efficiency initiatives, renewable energy adoption, waste reduction measures, technological innovation, and resource conservation enables stakeholders to evaluate the corporation's environmental performance alongside its financial achievements. Section 134 further mandates disclosure regarding internal financial controls and risk

[15] Patel, Amaresh, *Competition Law: Principles, Legislation and Case Studies* (Central Law Publication, 2025).
[16] Companies Act, 2013, s 134.

management systems. Modern ESG frameworks recognise environmental risks, climate change, cyber security, supply-chain vulnerabilities, human rights violations, and governance failures as material corporate risks capable of significantly affecting enterprise value. Consequently, effective risk management disclosures indirectly contribute to ESG accountability by compelling directors to identify, assess, and mitigate sustainability-related risks affecting corporate operations.[17]

The Directors' Responsibility Statement prescribed under Section 134(5) further strengthens corporate accountability by requiring directors to affirm compliance with applicable accounting standards, maintenance of adequate accounting records, safeguarding of company assets, prevention of fraud, establishment of internal financial controls, and implementation of appropriate compliance systems. These statutory declarations create personal accountability for directors regarding the integrity of corporate governance processes. From an ESG perspective, such accountability becomes particularly significant because sustainability reporting increasingly depends upon the reliability and credibility of information disclosed by corporate management.[18]

Despite these progressive features, Section 134 remains primarily disclosure-oriented rather than performance-oriented. The provision obliges companies to report information but does not prescribe measurable sustainability benchmarks or minimum environmental performance standards. Consequently, corporations may technically comply with disclosure obligations while simultaneously engaging in environmentally or socially harmful business practices. This distinction between procedural compliance and substantive accountability represents one of the principal limitations of India's existing ESG framework.

Furthermore, the quality of disclosures often varies considerably across companies due to the absence of uniform statutory reporting standards. Boilerplate disclosures, generic sustainability statements, and selective reporting frequently undermine the objective of meaningful corporate transparency. Such practices increase the risk of "greenwashing," whereby corporations exaggerate environmental achievements or selectively disclose favourable sustainability information while concealing adverse impacts.[19]

Another limitation concerns enforcement. Although Section 134 prescribes penalties for failure to prepare or approve the Board's Report, regulatory authorities rarely scrutinise the substantive accuracy of sustainability-related disclosures contained therein. Consequently, misleading

[17] Companies (Accounts) Rules, 2014.
[18] Companies Act, 2013, s 134(5).
[19] OECD, *G20/OECD Principles of Corporate Governance* (2023).

ESG statements often escape meaningful legal consequences unless they simultaneously constitute securities fraud or other statutory violations. This regulatory gap significantly weakens the accountability function of corporate reporting.

Comparative jurisdictions increasingly require independent assurance of sustainability disclosures by external auditors or accredited verification agencies. India's existing framework has yet to fully embrace mandatory third-party ESG assurance, thereby limiting stakeholder confidence in reported sustainability information. Strengthening Section 134 through mandatory ESG assurance, standardised sustainability metrics, and enhanced regulatory oversight would substantially improve corporate accountability.

The evolution of international sustainability reporting frameworks, particularly those developed by the International Sustainability Standards Board (ISSB) and the Global Reporting Initiative (GRI), demonstrates a growing consensus that sustainability disclosures should be integrated with financial reporting rather than treated as separate voluntary statements.[20] Aligning Section 134 with these emerging global standards would significantly strengthen India's corporate governance regime while enhancing investor confidence in ESG disclosures.[21]

### 7.2 Corporate Social Responsibility under Section 135 of the Companies Act, 2013: From Philanthropy to Mandatory ESG Compliance

One of the most innovative features of the Companies Act, 2013 is the statutory recognition of Corporate Social Responsibility (CSR) under Section 135. India became the first major economy to mandate CSR expenditure through legislation, marking a significant departure from the traditional understanding of CSR as a purely voluntary or philanthropic activity. The introduction of mandatory CSR reflects a broader transformation in corporate governance philosophy, recognising that corporations are not merely economic institutions but also social actors whose activities generate both benefits and externalities for society. This legislative innovation has significantly contributed to the evolution of Environmental, Social and Governance (ESG) compliance by institutionalising the "Social" pillar of ESG within the framework of company law.

Historically, CSR in India was deeply influenced by the philanthropic traditions of prominent business families such as the Tata, Birla, Bajaj, and Godrej groups. Their contributions to

[20] International Sustainability Standards Board, *IFRS S1: General Requirements for Disclosure of Sustainability-related Financial Information* (2023).
[21] Global Reporting Initiative, *GRI Universal Standards* (2021).

education, healthcare, rural development, and scientific research were largely voluntary and motivated by ethical considerations rather than legal obligations. While these initiatives played an important role in national development, they remained inconsistent because their implementation depended upon individual corporate values rather than enforceable legal standards. The enactment of Section 135 fundamentally altered this position by converting social responsibility into a statutory obligation for eligible companies.

Section 135 applies to every company having a net worth of ₹500 crore or more, a turnover of ₹1,000 crore or more, or a net profit of ₹5 crore or more during the immediately preceding financial year. Companies satisfying any one of these thresholds are required to constitute a Corporate Social Responsibility Committee of the Board consisting of at least three directors, including an independent director wherever applicable. The Committee is entrusted with formulating the CSR policy, recommending expenditure, monitoring implementation, and ensuring compliance with statutory obligations.[22]

The legislative design of Section 135 demonstrates that CSR is not intended to operate independently of corporate governance. Instead, CSR is integrated into the governance structure through direct Board oversight, thereby ensuring that social responsibility becomes an essential component of strategic corporate decision-making. This institutional arrangement also reinforces accountability because the Board of Directors remains ultimately responsible for approving CSR policies, monitoring implementation, and making appropriate disclosures in the Board's Report under Section 134.

The obligation to spend at least two per cent of the average net profits of the preceding three financial years on CSR activities has attracted considerable academic discussion. Unlike traditional taxation, CSR expenditure is retained within corporate governance rather than transferred to the State. Companies themselves identify projects, implement programmes, and monitor outcomes, thereby allowing greater flexibility while simultaneously promoting local community development. Schedule VII of the Companies Act provides an indicative list of permissible CSR activities, including eradication of hunger and poverty, promotion of education, gender equality, environmental sustainability, ecological conservation, protection of national heritage, rural development, disaster management, healthcare, sanitation, contributions to government relief funds, promotion of sports, and research in science and technology.[23]

[22] Companies Act, 2013, s 135.
[23] R. Ranjan, "Navigating the Digital Frontier: The Intersection of Technology and Criminal Liability in Modern Jurisprudence" in Abhijit B. & Sajal Sharma (eds.), *Disruptive Technologies and the Law: Navigating Legal*

The inclusion of environmental sustainability within Schedule VII demonstrates the close relationship between CSR and ESG. Activities relating to biodiversity conservation, renewable energy, afforestation, water conservation, pollution control, and ecological restoration directly contribute to the environmental dimension of ESG compliance. Likewise, programmes addressing education, public health, livelihood enhancement, women's empowerment, skill development, and rural welfare strengthen the social pillar of ESG by improving stakeholder welfare beyond the corporation's immediate commercial interests.

The Companies (Corporate Social Responsibility Policy) Rules, 2014 further strengthen this framework by requiring companies to formulate a detailed CSR policy, establish governance mechanisms, monitor implementation, and disclose expenditure in their annual reports. Subsequent amendments introduced through the Companies (Amendment) Act, 2019 and the Companies (Amendment) Act, 2020 significantly enhanced the enforceability of CSR obligations. Earlier, failure to spend the prescribed amount merely required companies to explain the reasons for non-compliance under the widely discussed "comply or explain" approach. However, the amended framework now requires the transfer of unspent CSR amounts to specified funds or designated Unspent CSR Accounts depending upon the nature of the project.[24] This transition represents a clear legislative shift from persuasive compliance towards mandatory accountability.

From an ESG perspective, these amendments are particularly significant because they recognise that sustainability commitments should produce measurable outcomes rather than symbolic declarations. Companies are now expected not only to allocate financial resources but also to demonstrate effective implementation, monitoring, and impact assessment of CSR programmes. The Ministry of Corporate Affairs has further strengthened this approach through mandatory impact assessment requirements for large CSR projects, thereby encouraging evidence-based evaluation of social interventions. Such measures reflect an increasing emphasis on outcome-oriented governance rather than expenditure-based compliance.

Nevertheless, important conceptual distinctions continue to exist between CSR and ESG. CSR primarily concerns the utilisation of corporate resources for socially beneficial activities outside the corporation's core business operations, whereas ESG integrates environmental, social, and governance considerations into the corporation's business strategy, investment decisions, risk management processes, and operational conduct. A company may comply with

*Challenges in an Era of Innovation* 41, 41–48 (Iterative International Publishers (IIP), 2024).

[24] Companies (Corporate Social Responsibility Policy) Rules, 2014.

CSR spending requirements while simultaneously engaging in environmentally harmful production processes, discriminatory employment practices, or weak governance structures. Consequently, CSR should be regarded as only one component of the broader ESG framework rather than a substitute for comprehensive sustainability governance.

Another limitation arises from the measurement of CSR effectiveness. Although statutory expenditure can be objectively verified, the actual social impact of CSR initiatives remains considerably more difficult to assess. Several empirical studies indicate that some corporations continue to prioritise short-term charitable activities over long-term sustainable development projects because the former are easier to implement and publicly communicate. In certain cases, CSR initiatives have also been criticised as reputational management tools designed to enhance corporate image rather than address systemic social challenges. Such practices raise concerns regarding "social washing," which parallels the phenomenon of greenwashing in environmental reporting.

The governance of CSR expenditure has also generated practical challenges concerning project selection, monitoring mechanisms, collaboration with implementing agencies, and transparency in fund utilisation. While the statutory framework requires Boards to disclose CSR activities annually, the quality of disclosures varies substantially among companies. Some reports provide detailed information regarding project objectives, beneficiaries, implementation partners, measurable outcomes, and financial utilisation, whereas others remain descriptive and generic. The absence of standardised reporting indicators reduces comparability and limits stakeholder assessment of corporate performance.

Judicial interpretation of CSR obligations has so far remained relatively limited because the framework is comparatively recent. Nevertheless, regulatory authorities have consistently emphasised that CSR should not be viewed as an alternative form of taxation but rather as a governance obligation reflecting responsible corporate citizenship. The Ministry of Corporate Affairs has issued several General Circulars and Frequently Asked Questions clarifying the scope of eligible activities, treatment of administrative overheads, implementation through registered entities, and reporting requirements. These administrative clarifications have contributed significantly to the practical implementation of Section 135.[25]

Internationally, India's mandatory CSR framework remains unique. Most jurisdictions encourage social responsibility through voluntary sustainability reporting, tax incentives, or stock exchange disclosure requirements rather than mandatory statutory expenditure. While

[25] Ministry of Corporate Affairs, *General Circular No. 14/2021 on CSR*.

India's model has succeeded in mobilising substantial corporate resources towards developmental activities, scholars continue to debate whether compulsory spending is compatible with the principle of business autonomy. Proponents argue that corporations derive significant benefits from public infrastructure, natural resources, and legal protections and therefore owe reciprocal obligations to society. Critics, however, contend that mandatory CSR may dilute managerial discretion and transform corporate philanthropy into a compliance exercise. The continuing evolution of India's CSR framework will therefore depend upon balancing legal accountability with corporate flexibility.[26]

Viewed through the lens of ESG, Section 135 has undoubtedly expanded the concept of corporate accountability by embedding social responsibility within company law. Nevertheless, the provision remains primarily expenditure-centric rather than impact-centric. Future reforms should focus upon integrating CSR outcomes with ESG reporting, developing measurable performance indicators, encouraging independent social audits, and linking CSR disclosures with broader sustainability strategies. Such integration would ensure that CSR functions not merely as a statutory obligation but as a meaningful instrument of sustainable corporate governance.

### 7.3 Independent Directors under Section 149: ESG Governance and the Question of Board Independence

The institution of Independent Directors under Section 149 of the Companies Act, 2013 represents a central pillar of India's corporate governance architecture and plays a significant role in strengthening Environmental, Social and Governance (ESG) compliance. The legislative intent behind introducing independent directors was to enhance board objectivity, improve oversight over managerial decisions, and protect minority shareholders from potential abuses of controlling shareholders or dominant promoter groups. Within the ESG framework, independent directors are increasingly viewed as critical agents of accountability, particularly in ensuring transparency in sustainability disclosures, risk management practices, and ethical governance standards.

Section 149 mandates that certain categories of companies, particularly listed public companies, appoint a prescribed number of independent directors on their boards. These directors are expected to be individuals of integrity, possessing relevant expertise and experience, and most importantly, maintaining independence from management and

[26] Archie B. Carroll, 'Corporate Social Responsibility: Evolution of a Definitional Construct' (1999) 38 *Business & Society* 268.

controlling shareholders. The Companies Act, 2013, read with Schedule IV, provides a detailed Code for Independent Directors, which outlines their duties, ethical expectations, and professional responsibilities. This Code requires independent directors to uphold ethical standards, exercise objective judgment, safeguard stakeholder interests, and act as a moderating influence in board deliberations.[27]

From an ESG perspective, independent directors are expected to act as guardians of governance integrity. Governance, being one of the three pillars of ESG, relies heavily on-board effectiveness, transparency, accountability, and risk oversight. Independent directors are uniquely positioned to scrutinise corporate disclosures, evaluate sustainability risks, and ensure that environmental and social commitments are not merely symbolic statements but are integrated into corporate strategy. Their presence is intended to reduce agency problems between management and shareholders while also expanding the board's accountability towards broader stakeholder interests.

However, despite this strong normative framework, significant concerns persist regarding the actual effectiveness of independent directors in India. Empirical and doctrinal studies reveal that in many cases, independent directors face structural limitations that hinder their ability to exercise genuine independence. These limitations include promoter dominance in board appointments, informational asymmetry, limited access to internal corporate data, and dependence on management for reappointment and remuneration. Consequently, questions arise as to whether independent directors function as effective governance monitors or merely as formal compliance mechanisms fulfilling statutory requirements.[28]

The issue of independence becomes particularly critical in ESG matters because sustainability-related decisions often involve long-term strategic trade-offs between profitability and environmental or social responsibility. In promoter-driven companies, short-term financial objectives may take precedence over long-term sustainability commitments, thereby placing independent directors in a position of potential conflict. While Section 166 imposes fiduciary duties requiring directors to act in good faith in the interests of the company, shareholders, employees, and the community, the practical enforcement of these obligations remains limited.[29]

Another important dimension relates to the expertise required for ESG oversight. Modern ESG governance demands specialised knowledge in environmental law, climate science,

[27] Companies Act, 2013, s 149.
[28] Companies Act, 2013, Sch IV.
[29] Companies Act, 2013, s 166.

sustainability reporting standards, human rights frameworks, and risk assessment methodologies. However, many independent directors possess traditional expertise in finance, law, or management without necessarily having deep familiarity with ESG-specific issues. This skills gap limits their capacity to critically evaluate sustainability reports, assess climate-related risks, or identify greenwashing practices within corporate disclosures.[30]

The increasing complexity of ESG reporting frameworks, particularly the introduction of the Business Responsibility and Sustainability Reporting (BRSR) system by SEBI, further intensifies the need for technically competent board members. Independent directors are expected to review non-financial disclosures with the same level of scrutiny as financial statements, yet the absence of uniform ESG assurance standards and limited regulatory training often restricts their effectiveness. This raises concerns about whether current legal requirements sufficiently prepare independent directors for their evolving ESG responsibilities.

Judicial and regulatory developments have occasionally highlighted the accountability of independent directors in cases involving corporate fraud or governance failures. However, courts have generally adopted a cautious approach, recognising that independent directors cannot be held liable for every corporate wrongdoing unless there is evidence of active participation, negligence, or breach of duty. This judicial restraint is intended to protect board independence, but it may also reduce deterrence and weaken accountability mechanisms in ESG-related failures.[31]

Internationally, several jurisdictions have strengthened the role of independent directors in sustainability governance. For example, in the European Union, board-level responsibility for sustainability reporting is increasingly integrated into corporate governance frameworks. Similarly, in the United States, institutional investors exert significant pressure on boards to adopt ESG-aligned governance practices. Compared to these jurisdictions, India's reliance on formal independence without strong enforcement mechanisms or ESG-specific competency requirements represents a structural limitation.

Nevertheless, independent directors remain indispensable to India's ESG governance architecture. Their role in audit committees, nomination and remuneration committees, and risk management committees places them at the centre of corporate oversight. These committees are increasingly responsible for reviewing sustainability risks, evaluating compliance with

[30] Securities and Exchange Board of India, *Listing Obligations and Disclosure Requirements (LODR) Regulations* (2015).
[31] Jivantika Gulati & Radha Ranjan, "Cascading Role of Governance in Ensuring Judicial Activism in India", 19(2S) *Bhartiya Journal of Public Administration (BJPA)* (July–December 2022).

environmental regulations, and ensuring accuracy in non-financial disclosures. Strengthening their independence, enhancing ESG literacy, and improving regulatory safeguards are therefore essential for improving corporate accountability.[32]

Ultimately, the effectiveness of independent directors in advancing ESG compliance depends not only on statutory provisions but also on corporate culture, regulatory enforcement, and institutional investor activism. Without addressing structural constraints and capacity limitations, the institution of independent director's risks becoming a formalistic requirement rather than a substantive mechanism for ensuring responsible corporate governance.

### 7.4 Directors' Duties under Section 166: ESG Accountability and the Expansion of Fiduciary Responsibility

Section 166 of the Companies Act, 2013 codifies the fiduciary duties of directors in India and marks a significant departure from the earlier common law-based approach under the Companies Act, 1956. The provision explicitly requires directors to 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, shareholders, the community, and for the protection of the environment. The inclusion of the "environment" within statutory fiduciary obligations represents one of the most direct legislative recognitions of Environmental, Social and Governance (ESG) principles within Indian corporate law.[33]

This statutory formulation expands the traditional shareholder-centric model of corporate governance by embedding a stakeholder-oriented approach into directors' legal responsibilities. Under classical corporate law principles, directors were primarily expected to maximise shareholder value, subject to compliance with law. However, Section 166 transforms this position by requiring directors to consider broader stakeholder interests, including environmental sustainability and social welfare. This shift reflects the global movement towards stakeholder capitalism, where corporations are viewed as social institutions with responsibilities extending beyond profit maximisation.

From an ESG perspective, Section 166 serves as the normative foundation for corporate accountability. Environmental responsibility, in particular, gains statutory force through the explicit reference to environmental protection as part of directors' duties. This creates a legal expectation that directors must not only ensure compliance with environmental regulations but also actively consider environmental impacts in corporate decision-making. This includes

[32] World Economic Forum, *Measuring Stakeholder Capitalism* (2020).
[33] Companies Act, 2013, s 166(3),(4).

decisions relating to production processes, resource utilisation, emissions management, waste disposal, supply chain practices, and long-term sustainability strategies.

Similarly, the requirement to act in the interests of employees and the community aligns with the "Social" dimension of ESG. Directors are expected to ensure fair labour practices, workplace safety, non-discrimination, ethical sourcing, and community engagement. The governance dimension is reinforced through the obligation to act honestly, exercise due care, skill and diligence, and avoid conflicts of interest. Together, these duties form a holistic governance framework that closely mirrors the structure of modern ESG principles.

Despite this strong statutory language, the practical enforcement of Section 166 remains limited. The provision does not prescribe specific penalties for breach beyond general liability under the Act, nor does it provide detailed enforcement mechanisms for ESG-related failures. Consequently, enforcement largely depends on regulatory interpretation, judicial discretion, and ancillary provisions relating to fraud, misstatement, or negligence. This creates a gap between normative expectations and legal accountability.

One of the key challenges in applying Section 166 to ESG governance lies in its broad and indeterminate language. Terms such as "good faith," "best interests," and "due care" are inherently subjective, allowing significant discretion to directors in decision-making. While this flexibility is necessary for commercial decision-making, it also creates ambiguity in assessing whether ESG considerations have been adequately incorporated into board-level decisions. As a result, directors may comply formally with fiduciary duties while still neglecting substantive sustainability obligations.

The Business Judgment Rule, though not explicitly codified in Indian law, is recognised in judicial practice and plays a significant role in insulating directors from liability for bona fide business decisions. Courts have generally been reluctant to second-guess commercial decisions made by boards unless there is evidence of fraud, bad faith, or gross negligence. While this doctrine promotes managerial autonomy, it also limits judicial scrutiny of ESG-related decisions, particularly in cases involving long-term environmental harm or social impact where financial loss may not be immediately evident.[34]

Another important issue concerns the evidentiary burden in establishing breach of fiduciary duty in ESG contexts. ESG violations often manifest in diffuse, long-term consequences such as environmental degradation, climate risk exposure, or supply chain human rights violations. These harms are difficult to trace directly to specific board decisions, making legal

[34] OECD, *Principles of Corporate Governance* (2023).

accountability challenging. Furthermore, ESG disclosures are often prepared at the managerial level, and independent directors may rely on internal reports without independent verification, thereby complicating liability attribution.

Nevertheless, regulatory developments have increasingly sought to strengthen ESG accountability through enhanced disclosure frameworks and committee structures. Audit committees, risk management committees, and corporate social responsibility committees now play a critical role in overseeing ESG-related matters. These committees are expected to ensure that sustainability risks are properly identified, assessed, and disclosed. In this context, Section 166 operates in conjunction with other statutory provisions to create a multi-layered accountability framework.

The explicit reference to environmental protection within Section 166 is particularly significant in light of global developments in climate governance. Many jurisdictions are increasingly recognising directors' duties to consider climate-related financial risks as part of fiduciary obligations. India's statutory inclusion of environmental protection positions it among progressive jurisdictions in this regard. However, the absence of detailed regulatory standards defining the scope of environmental responsibility limits its practical enforceability.

In addition, the growing importance of ESG disclosures under SEBI's regulatory framework further extends the operational scope of directors' duties. Misstatements or omissions in sustainability reporting may potentially expose directors to liability under securities law, particularly where such disclosures influence investor decisions. This convergence between company law and securities regulation creates an emerging area of ESG accountability that is still evolving in Indian jurisprudence.

Comparatively, jurisdictions such as the United Kingdom have introduced explicit reporting obligations concerning non-financial and sustainability risks under the Companies Act, 2006 (Strategic Report and Directors' Report Regulations). The European Union has further strengthened ESG accountability through the Corporate Sustainability Reporting Directive (CSRD), which imposes detailed sustainability reporting and assurance requirements. These developments indicate a global shift towards enforceable ESG obligations, whereas India continues to rely primarily on disclosure-based mechanisms.[35]

Despite these limitations, Section 166 remains a cornerstone of ESG governance in India. Its significance lies not merely in its legal enforceability but in its normative influence on corporate behaviour. By embedding environmental and social considerations within directors'

[35] European Union, *Corporate Sustainability Reporting Directive (CSRD)* (2022).

fiduciary framework, the provision encourages a gradual cultural shift in boardroom decision-making. Over time, as ESG litigation, regulatory enforcement, and investor activism increase, Section 166 may evolve into a more robust mechanism for corporate accountability.
Ultimately, the effectiveness of Section 166 in advancing ESG compliance depends on judicial interpretation, regulatory enforcement, and corporate governance practices. Strengthening ESG literacy among directors, developing clearer regulatory guidance, and enhancing disclosure verification mechanisms are essential steps in bridging the gap between statutory intention and practical implementation.

## 8. SEBI's Business Responsibility and Sustainability Reporting (BRSR): Institutionalising ESG Disclosure in India

The Securities and Exchange Board of India (SEBI) has played a transformative role in operationalising Environmental, Social and Governance (ESG) compliance within India's capital markets. While the Companies Act, 2013 provides the foundational corporate governance structure, it is SEBI's regulatory framework that has concretely institutionalised ESG disclosure obligations for listed entities. The introduction of the Business Responsibility and Sustainability Report (BRSR) marks a decisive shift from voluntary sustainability reporting to a standardised, mandatory disclosure system aligned with global ESG frameworks. The BRSR framework, introduced through SEBI circulars, replaced the earlier Business Responsibility Report (BRR) with effect from the financial year 2022–23 for the top listed entities.[36]The framework is based on the National Guidelines on Responsible Business Conduct (NGRBC), which emphasise responsible, inclusive, and sustainable business practices. Unlike the BRR, which was largely descriptive and principle-based, the BRSR introduces structured quantitative and qualitative disclosures across key ESG parameters.

The BRSR requires listed companies to disclose detailed information regarding environmental impact, energy consumption, greenhouse gas emissions, water usage, waste management, labour practices, human rights policies, gender diversity, occupational safety, stakeholder engagement, anti-corruption mechanisms, and board-level governance structures. This represents a significant advancement in ESG regulation, as it seeks to convert sustainability from a narrative exercise into a data-driven compliance framework.

[36] SEBI Circular on Business Responsibility and Sustainability Reporting (BRSR), 2021.

One of the most significant aspects of the BRSR is its emphasis on comparability and standardisation. ESG reporting has historically suffered from inconsistency, as companies across jurisdictions often adopt different reporting formats, metrics, and benchmarks. The BRSR attempts to resolve this challenge by prescribing uniform disclosure templates, thereby enabling investors to compare ESG performance across companies and sectors. This enhances transparency and strengthens market discipline by allowing capital allocation decisions to reflect sustainability performance.

However, despite its progressive structure, the BRSR remains primarily a disclosure-based regime rather than a liability-based framework. Companies are required to report ESG data, but there is limited legal consequence for poor ESG performance unless it simultaneously constitutes misrepresentation or violation of other regulatory provisions. This raises fundamental questions regarding the effectiveness of ESG disclosure regimes in ensuring substantive corporate accountability.

The assurance mechanism under BRSR also remains voluntary in nature for most companies, although SEBI has gradually moved towards introducing limited assurance requirements for the top listed entities. Independent third-party assurance is crucial for ensuring the credibility of ESG data, as internal reporting alone may be subject to managerial bias or selective disclosure. Without robust assurance mechanisms, the risk of "greenwashing" remains a significant concern within the Indian ESG ecosystem.

Another important dimension of the BRSR framework is its alignment with global sustainability reporting standards. The framework draws conceptual inspiration from the Global Reporting Initiative (GRI), the Task Force on Climate-related Financial Disclosures (TCFD), and emerging standards issued by the International Sustainability Standards Board (ISSB). This alignment reflects India's intention to integrate its capital markets with global ESG investment flows and sustainability benchmarks.[37]

Nevertheless, challenges persist in implementation. Many companies, particularly mid-cap and small-cap entities, face capacity constraints in collecting, verifying, and reporting ESG data. The absence of standardised ESG data infrastructure in India further complicates compliance.

[37] International Sustainability Standards Board, *IFRS S1 and S2* (2023).

Additionally, the lack of specialised ESG auditors and trained professionals limits the effectiveness of the reporting ecosystem.

From a corporate accountability perspective, BRSR significantly enhances transparency but does not yet establish enforceable sustainability obligations. The framework relies on market discipline, investor pressure, and reputational incentives rather than direct legal sanctions. This reinforces the broader characteristic of India's ESG regime, which is heavily disclosure-oriented rather than enforcement-driven.

## 9. National Guidelines on Responsible Business Conduct (NGRBC): Ethical Foundations of ESG in India

The National Guidelines on Responsible Business Conduct (NGRBC), issued by the Ministry of Corporate Affairs, serve as the ethical and conceptual foundation for ESG regulation in India. The guidelines articulate nine principles of responsible business conduct, which emphasise ethical governance, sustainability, human rights, environmental protection, stakeholder engagement, and inclusive growth.

Although the NGRBC are not legally binding, they significantly influence regulatory interpretation, particularly in relation to SEBI's BRSR framework. The principles encourage businesses to adopt a stakeholder-centric approach, recognising that corporate success must be aligned with social and environmental well-being. This conceptual shift reflects the evolution of corporate governance from profit maximisation to sustainable value creation.

The NGRBC also emphasise the importance of transparency, accountability, and ethical conduct in business operations. These principles align closely with global ESG standards and contribute to the harmonisation of India's corporate governance framework with international norms. However, the non-binding nature of the guidelines limits their enforceability and raises questions regarding their practical impact on corporate behaviour.

## 10.Greenwashing and Corporate Accountability: The Emerging ESG Challenge

One of the most critical challenges in the implementation of ESG frameworks is the phenomenon of greenwashing. Greenwashing refers to the practice of corporations presenting misleading, exaggerated, or selective information regarding their environmental or social performance in order to enhance their public image or attract investment.

In the Indian context, the risk of greenwashing is particularly significant due to the disclosure-based nature of ESG regulation. Since ESG compliance is largely driven by reporting obligations rather than substantive performance standards, companies may technically comply with disclosure requirements while still engaging in environmentally harmful or socially irresponsible practices.

The absence of strict verification mechanisms further exacerbates this problem. Although SEBI has introduced limited assurance requirements under the BRSR framework, comprehensive independent ESG audits remain underdeveloped. Without robust verification, stakeholders may find it difficult to distinguish between genuine sustainability efforts and symbolic compliance. Greenwashing undermines the credibility of ESG frameworks and weakens investor trust in sustainability disclosures. It also distorts capital allocation decisions, as investors may inadvertently support companies that do not genuinely adhere to ESG principles. Addressing this challenge requires stronger regulatory enforcement, mandatory assurance mechanisms, and enhanced penalties for misleading disclosures.

## 11.Comparative Analysis: ESG Regulation in the UK, EU, and United States

A comparative examination of ESG frameworks in other jurisdictions reveals significant differences in regulatory approaches.

The European Union has adopted one of the most comprehensive ESG regulatory regimes through instruments such as the Corporate Sustainability Reporting Directive (CSRD) and the Sustainable Finance Disclosure Regulation (SFDR). These frameworks impose detailed, standardised, and enforceable sustainability reporting obligations, including mandatory third-party assurance.[38]

The United Kingdom similarly integrates ESG considerations within corporate reporting through the Companies Act, 2006 (Strategic Report provisions), requiring companies to

[38] Ministry of Corporate Affairs, *National Guidelines on Responsible Business Conduct* (2019).

disclose non-financial information related to environmental matters, employees, and social issues.

In contrast, the United States relies heavily on securities regulation and investor-driven enforcement mechanisms. The Securities and Exchange Commission (SEC) has recently enhanced climate-related disclosure requirements, reflecting a gradual shift towards mandatory ESG reporting.[39]

Compared to these jurisdictions, India occupies a hybrid position, combining mandatory CSR expenditure with structured ESG disclosure under SEBI's BRSR framework. However, enforcement mechanisms remain comparatively weaker, and ESG obligations are still primarily disclosure-oriented rather than liability-driven.

## 12.Challenges in ESG Compliance in India

India's ESG framework faces several structural and operational challenges. These include regulatory fragmentation, lack of standardised ESG metrics, limited enforcement mechanisms, insufficient ESG expertise among corporate boards, and inadequate assurance frameworks.
Additionally, there is a persistent gap between ESG reporting and actual corporate behaviour. Many companies comply with disclosure requirements but do not integrate ESG principles into core business strategy. This creates a disconnect between form and substance in corporate governance.

The absence of specialised ESG legislation also limits the ability of regulators to impose direct penalties for ESG failures. As a result, enforcement is often indirect and dependent on other statutory violations.

## 13.Recommendations and Reform Suggestions

Strengthening ESG compliance in India requires a shift from disclosure-based regulation to outcome-oriented accountability. Key reforms should include mandatory ESG assurance, standardised reporting frameworks aligned with ISSB standards, enhanced liability for misstatements, and integration of ESG metrics into directors' fiduciary duties.

[39] OECD, *ESG Investing and Disclosure Frameworks* (2022).

Additionally, capacity-building measures for independent directors and the establishment of ESG-specific regulatory bodies or expert panels could significantly improve governance quality. Judicial recognition of ESG-related fiduciary breaches would further strengthen enforcement mechanisms.

## 14.Conclusion

ESG compliance represents a fundamental transformation in corporate governance, shifting the focus from shareholder wealth maximisation to stakeholder-oriented sustainable development. India has made significant progress through legislative reforms under the Companies Act, 2013 and regulatory interventions by SEBI through the BRSR framework. However, the current system remains largely disclosure-driven and lacks robust enforcement mechanisms necessary for ensuring substantive corporate accountability.

The effectiveness of ESG regulation ultimately depends on its ability to move beyond reporting requirements and integrate sustainability into the core legal obligations of corporations and directors. Strengthening enforcement, enhancing transparency, and aligning domestic standards with global ESG frameworks will be essential for ensuring that Indian corporate governance evolves in line with international best practices.

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