

ENVIRONMENTAL, SOCIAL, AND GOVERNANCE INTEGRATION IN INDIAN COMPANY LAW: THE EVOLUTION FROM DISCLOSURE TO SUBSTANTIVE CORPORATE ACCOUNTABILITY

AUTHORS – ANDREW PAUL R, MEGHNA DAS & ABHIJITH M,
LL.M STUDENTS AT DEPARTMENT OF LAW, CENTRAL UNIVERSITY OF TAMIL NADU, THIRUVARUR.

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Abstract

The integration of Environmental, Social, and Governance (ESG) considerations into corporate governance represents a paradigmatic shift in how companies operationalize their fiduciary obligations. India's approach to ESG, anchored in the Companies Act, 2013, coupled with the Securities and Exchange Board of India's (SEBI) Business Responsibility and Sustainability Reporting (BRSR) framework, reflects an emerging jurisprudence that transcends mere philanthropic charity or regulatory compliance. This paper examines the legal architecture of ESG in Indian company law through three distinct dimensions: (i) the statutory embedding of ESG within directors' fiduciary duties; (ii) the interpretive role of the Indian judiciary in expanding corporate accountability; and (iii) the tension between disclosure-based enforcement and substantive operational accountability. Through critical analysis of landmark judicial decisions particularly *Vanashakti v. Union of India* (2025), *M.K. Ranjitsinh v. Union of India* (2021), and evolving interpretations of section 166 of the Companies Act this paper argues that India stands at a crossroads between formalistic ESG compliance and genuine stakeholder accountability, requiring legislative refinement and institutional strengthening to bridge the enforcement gap that currently characterizes the BRSR framework.

Keywords: Environmental Social Governance (ESG), Greenwashing, Business Response Sustainability Reporting (BRSR), Taskforce for Climate related Financial Disclosure (TCFD), Corporate Sustainability Reporting Directive (CSRD)

1. Introduction: The Conceptual Foundations of ESG in Corporate Governance

1.1 The Definitional Terrain

Environmental, Social, and Governance factors constitute a multidimensional framework that extends the scope of corporate accountability beyond the traditional paradigm of shareholder primacy.^[1] The environmental dimension encompasses ecological sustainability, climate risk mitigation, resource depletion, and pollution prevention. The social pillar addresses labor standards, human rights, community impact,

supply chain responsibility, and inclusive stakeholder engagement. Governance relates to board independence, executive compensation alignment, ethical business practices, regulatory compliance, and the integrity of disclosure systems.^[2]

This tripartite structure is not merely a descriptive categorization of business risks; rather, it represents a normative reconceptualization of corporate purpose within liberal capitalist economies. India's engagement with ESG principles transcends the Western corporate law tradition by integrating

ESG into constitutional commitments to sustainable development, environmental protection, and social justice principles enshrined in Articles 48A, 51A(g), and throughout the Directive Principles of State Policy.

1.2 The Indian Context: Statutory Anchors and Judicial Catalysts

India distinguished itself as a pioneer in mandating corporate social responsibility through section 135 of the Companies Act, 2013, a statutory obligation that allocated a percentage of profits to defined social welfare activities.^[3] However, this early legislative intervention remained rooted in a discretionary, philanthropy-oriented framework rather than integrated governance reform. The subsequent evolution toward ESG integration occurred through judicial interpretation of fiduciary duties and regulatory expansion via the BRSR mandate, creating a complex, sometimes fragmented, and compliance architecture.

The 2023 SEBI directive mandating BRSR for the top 1000 listed companies marked a significant regulatory inflection point, though it simultaneously exposed the gap between mandatory disclosure and enforceable accountability a tension that forms the central problematic of this paper.

2. The Statutory Framework: ESG as Fiduciary Obligation

2.1 Section 166 of the Companies Act, 2013: Directors' Duties and Stakeholder Orientation

Section 166(2) of the Companies Act, 2013, constitutes the principal statutory anchoring of ESG principles within Indian company law. The provision mandates that "[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 and in the best interests of the company, its employees, the community and for the protection of the environment."^[4]

This formulation is legally and conceptually significant for three reasons. First, it explicitly recognizes stakeholders beyond shareholders

employees, the community, and the environment as beneficiaries of directors' fiduciary obligations. Second, it mandates that these obligations be considered *concurrently* with shareholder interests, not subordinately or residually. Third, the inclusion of environmental protection as a distinct object of directorial duty transforms environmental stewardship from an optional corporate virtue into a justiciable obligation.

The language "in order to promote the objects of the company" creates an interpretive nexus: directors must understand and articulate how ESG considerations advance legitimate corporate objectives. This requirement constrains opportunistic invocation of ESG as corporate theatre while simultaneously demanding that boards integrate material ESG risks and opportunities into strategic decision-making frameworks.^[5]

2.2 Section 134(3) and Material ESG Disclosures

Section 134(3) (I) of the Companies Act requires the board to disclose details of "material changes and commitments affecting the financial position of the company which have occurred between the end of the financial year to which the financial statements relate and the date of the report." Judicial interpretation and regulatory guidance have increasingly recognized that material ESG events environmental liabilities, labor disputes, reputational damage from governance failures constitute material changes subject to disclosure.

This provision operationalizes the intersection between financial materiality (traditionally understood in securities law) and ESG materiality (understood in sustainability accounting). The legal consequence is that boards face potential liability not merely for failing to manage ESG risks, but for failing to disclose them to shareholders and stakeholders.

2.3 Mandatory Corporate Social Responsibility: Section 135 and Beyond

Section 135 of the Companies Act mandates that qualifying companies allocate at least 2% of their average net profit to activities specified in Schedule VII. While CSR has often been criticized as representing a "checkbook" approach to social responsibility a means of purchasing moral legitimacy through charitable contributions rather than reforming core business practices the statutory architecture contains latent potential for substantive reorientation.^[6]

The requirement that companies "establish a CSR committee" and "monitor" CSR initiatives creates governance infrastructure that, with appropriately calibrated judicial interpretation, could evolve toward integration of social impact considerations into supply chain audits, labor standards enforcement, and community consultation mechanisms. The legal obligation to conduct CSR activities "in areas such as education, healthcare, environmental sustainability, gender equality, rural development" indicates that ESG considerations should pervade corporate operations, not remain sequestered in separate philanthropic departments.

3. Judicial Interpretation: The Judiciary as ESG Architect

3.1 M.K. Ranjitsinh v. Union of India (2021): Judicial Affirmation of Environmental Fiduciary Duty

The Supreme Court's 2021 decision in *M.K. Ranjitsinh v. Union of India* constitutes a watershed moment in Indian ESG jurisprudence.^[7] The case involved challenges to renewable energy projects in ecologically sensitive regions. Rather than abstractly debating environmental protection versus development, the Court articulated a sophisticated jurisprudential framework linking directors' statutory duties to environmental stewardship.

The Court held that section 166(2)'s obligation to "protect the environment" is not merely a peripheral consideration but a core fiduciary duty. The judgment reasoned that directors, in discharging fiduciary obligations, must anticipate, assess, and mitigate environmental risks with the same rigor applied to financial risks. This reasoning transforms environmental due diligence from a corporate compliance checklist into an integral component of board-level risk governance.

Critically, the Court established that failure to discharge environmental duties can constitute breach of fiduciary duty actionable by shareholders and, in appropriate circumstances, by the state acting *parens patriae*. This jurisprudential move expands the circle of potential plaintiffs and remedies available for enforcing environmental obligations, creating avenues for public interest litigation that transcend traditional private law boundaries.

3.2 Vanashakti v. Union of India (2025): The Precautionary Principle and Ex-Ante Accountability

The recent Supreme Court decision in *Vanashakti v. Union of India* (May 2025) represents the apex court's most forceful articulation of mandatory environmental accountability divorced from post-hoc regularization or administrative discretion. The case invalidated the 2017 Notification and 2021 Office Memorandum that had permitted ex-post facto environmental clearances for projects already under construction.

The Court's reasoning established three legally significant propositions. First, Environmental Impact Assessment (EIA) is not a retroactive damage-calculus mechanism but a forward-looking ex-ante safeguard rooted in the precautionary principle. Second, subordinate regulatory instruments cannot nullify statutory mandates requiring prior environmental clearance without adequate constitutional authorization. Third, systematized post-facto regularization, though framed as exceptional

amnesty, represents an unlawful subordination of environmental rule of law to executive convenience.

For corporate ESG governance, *Vanashakti* establishes that anticipatory environmental due diligence is legally mandatory, not optional. Companies cannot defer environmental compliance into operations and subsequently seek administrative forgiveness. The judgment obligates boards to front-load environmental risk assessment into project conception, site selection, and pre-feasibility analysis. Failure to discharge this anticipatory obligation exposes companies to multiple enforcement vectors: regulatory penalty, administrative closure, derivative shareholder suits, and potentially criminal liability under environmental statutes.

3.3 The Precautionary Principle as Interpretive Anchor

The Indian judiciary's consistent invocation of the precautionary principle most prominently in *Union Carbide v. Union of India* and reiterated in *Vanashakti* establishes a jurisprudential standard that reverses the burden of proof in environmental contexts.^[8] Rather than requiring environmental advocates to prove harm, the precautionary principle obligates companies to demonstrate that proposed activities will not cause environmental damage. This doctrinal inversion has profound implications for ESG governance.

From a corporate governance perspective, the precautionary principle mandates that boards adopt more stringent environmental due diligence standards than might be required by formal regulatory compliance alone. The legal implication is that a company's compliance with environmental regulations may be insufficient to satisfy fiduciary duties if the board has reason to believe that the regulatory standard itself is inadequate or if best available practices exceed regulatory thresholds.

4. The BRSR Framework: Architecture, Implementation, and Enforcement Lacunae

4.1 Regulatory Genesis and Mandatory Scope

The SEBI Business Responsibility and Sustainability Reporting (BRSR) framework, mandated effective financial year 2022-23 for the top 1000 listed companies (by market capitalization), represents India's most comprehensive ESG disclosure mandate to date.^[15] The framework requires disclosure across nine core dimensions: (i) governance structure and processes; (ii) strategy and financial planning; (iii) business conduct; (iv) environmental management; (v) product responsibility; (vi) employee welfare; (vii) stakeholder engagement; (viii) community and social development; and (ix) supply chain practices.

The BRSR incorporates quantifiable Key Performance Indicators (KPIs) such as greenhouse gas emissions intensity, water footprint, workforce diversity metrics, and workplace safety statistics creating standardized units of measurement that theoretically facilitate comparative assessment and investor reliance. The framework's stated objective is transparency: enabling stakeholders, investors, and regulators to assess companies' ESG performance on consistent metrics.

However, the scope of mandatory BRSR application has sequentially expanded. Initially, the BRSR Core (2023) applied to the top 250 companies; subsequently expanded to the top 500 and, from 2024-25, to the top 1000 listed entities. This cascading expansion reflects regulatory recognition that systemic ESG risks pervade even mid-tier corporations and that supply chain integration requires comprehensive upstream disclosure obligations.

4.2 The Disclosure-Accountability Gap: A Critical Lacuna

Despite its comprehensive architecture, the BRSR framework exhibits a pronounced gap

between mandatory disclosure and enforceable accountability. Under current regulatory design, SEBI's enforcement powers are primarily directed at ensuring *that companies disclose* ESG information rather than enforcing *specific ESG performance standards*.^[9] A company may explicitly disclose environmentally damaging practices, labor exploitation, or governance failures and remain technically compliant with BRSR requirements.

This disclosure-based approach reflects a particular regulatory philosophy: that market transparency enables stakeholders and investors to price risk appropriately and that reputational consequences will incentivize corporate behavioral change. However, this theoretical mechanism operates imperfectly in practice due to multiple market failures. Retail investors often lack capacity to interpret complex ESG disclosures; institutional investors' ESG mandates may tolerate substantial ESG deficiencies if financial returns suffice; and reputational damage may be insufficiently material to trigger behavioral change in companies with diverse stakeholder bases.

More problematically, the BRSR framework currently lacks (i) mandatory third-party verification mechanisms; (ii) standardized audit requirements ensuring disclosure accuracy; (iii) explicit legal liability for misleading ESG representations; and (iv) penalties for poor ESG performance itself (as opposed to non-disclosure or misrepresentation).^[10] This creates what regulatory scholars term "green washing risk" the capacity of companies to present misleading or incomplete ESG narratives while remaining within formal regulatory compliance boundaries.

4.3 Comparative Framework: Distinguishing India's Approach from Global Standards

A comparative assessment illuminates India's distinctive ESG regulatory posture. The European Union's Corporate Sustainability Reporting Directive (CSRD) imposes mandatory assurance by independent third parties, creating legal liability for misstatement. The

United Kingdom's mandatory climate disclosure framework requires board-level climate governance and scenario analysis aligned with the Task Force on Climate-Related Financial Disclosures (TCFD), operationalizing climate risk assessment as core strategic function. Singapore's corporate governance code explicitly imposes board responsibility for understanding and managing sustainability risks, creating direct governance accountability.

By contrast, India's BRSR framework prioritizes transparency and standardization without explicitly mandating external verification, creating legal liability for misleading disclosures, or imposing substantive ESG performance obligations. This "disclosure-first" approach reflects India's regulatory philosophy emphasizing market-based mechanisms and institutional capacity development over prescriptive performance mandates. However, it simultaneously creates enforcement asymmetry: companies with sophisticated disclosure capabilities and legal resources can satisfy formal BRSR requirements while maintaining problematic underlying practices.

5. Green washing, Misrepresentation, and Emerging Liability Frameworks

5.1 Green washing as Legal Injury

The term "Green washing" denotes the strategic presentation of misleading or incomplete ESG narratives designed to project environmental or social responsibility exceeding actual corporate practices or performance.^[11] While often discussed in marketing and public relations contexts, green washing increasingly constitutes a legal harm subject to multiple liability vectors.

In Indian law, potential liability for green washing arises through several doctrinal channels: (i) securities fraud under the SEBI Act, 1992, if ESG misrepresentations constitute material misstatements affecting investment decisions; (ii) violation of Consumer Protection Act provisions if ESG claims affect consumer purchasing decisions; (iii) tort liability for

fraudulent misrepresentation; and (iv) potential criminal liability under the Indian Penal Code for fraud or cheating, depending on jurisdictional facts.

The critical legal threshold is "materiality" whether ESG misrepresentations would reasonably affect investor, consumer, or stakeholder decisions. Indian courts have demonstrated increasing sophistication in recognizing that environmental and social information constitutes material information for investment and stakeholder decisions, particularly as ESG-focused investment mandates proliferate and regulatory regimes increasingly price ESG considerations into capital allocation frameworks.

5.2 Volkswagen India v. Satvinderjeet Singh Sodhi: The Automotive Emissions Paradigm

The case of *Volkswagen India (P) Ltd. v. Satvinderjeet Singh Sodhi* illustrates emerging judicial willingness to hold corporations accountable for systematic ESG misrepresentation in environmental contexts. The case involved allegations that Volkswagen had deployed defeat devices in automobiles to manipulate emissions testing, thereby falsely representing vehicle emissions compliance.

Beyond imposing financial penalties, the court's reasoning recognized that systematic ESG misrepresentation falsifying environmental compliance claims constitutes breach of fiduciary duty to shareholders and injury to the community and environment. This jurisprudential development transforms green washing from merely a marketing violation into a species of governance failure actionable under multiple legal regimes.

The case's implications extend beyond the automotive sector. It establishes that courts will scrutinize the accuracy of ESG claims and hold corporations liable when disclosed ESG practices diverge materially from actual operations. For companies subject to BRSR obligations, this means that BRSR disclosures constitute legally binding representations

subject to accuracy requirements comparable to financial statement disclosure obligations.

6. Directors' Duties, Stakeholder Accountability, and the Derivative Action Problem

6.1 Derivative Actions and ESG Enforcement

Section 241 of the Companies Act, 2013, permits derivative actions suits brought by shareholders to remedy corporate wrongs in cases of "oppression, prejudice, and mismanagement." Traditionally, derivative action jurisprudence has focused on financial mismanagement or improper self-dealing. However, emerging case law establishes that material ESG failures constitute "mismanagement" actionable through derivative suits.

The theoretical foundation is straightforward: if section 166(2) mandates that directors act to protect the environment and advance employee and community interests, then failure to discharge these obligations constitutes breach of fiduciary duty constituting "mismanagement" within section 241. A shareholder suffering diminution of share value due to environmental liability, reputational damage from labor exploitation, or governance failures can theoretically pursue derivative remedies.

However, practical obstacles substantially impede derivative litigation as an ESG enforcement mechanism. First, shareholders must possess minimum shareholding thresholds (typically 5-10% of equity capital). This excludes retail investors and minority shareholders from derivative action remedies. Second, Indian courts have historically imposed exacting pleading requirements requiring plaintiffs to establish prima facie violation of law rather than merely plausible wrongdoing. Third, corporate defendants leverage numerous technical defenses corporate standing doctrines, demand futility exceptions, procedural objections that consume substantial litigation resources and delay resolution.

Most critically, derivative actions remedy injury to the corporation, not directly to stakeholders. An environmental derivative suit recovers damages to corporate assets, not compensates environmental injury or affected communities. This creates a fundamental mismatch between the injury contemplated by ESG duties (protection of environment and community) and the remedial framework available through derivative litigation (monetary damages to corporate treasury).

6.2 The Stakeholder Standing Problem

Section 166(2)'s expansive definition of directors' duties beneficiaries' employees, the community, the environment creates conceptual tension with traditional company law's shareholder-centric remedial framework. If employees and community members are true beneficiaries of fiduciary duties, why should they lack direct standing to sue for breach? Conversely, why should shareholders be able to monopolize enforcement of duties theoretically owed to non-shareholder stakeholders?

Indian judicial interpretation has not fully resolved this tension. Conservative jurisprudence maintains that derivative actions remain shareholder prerogatives, treating non-shareholder stakeholders as possessing separate remedies through consumer protection statutes, labor law regimes, and environmental litigation frameworks. Progressive jurisprudence suggests that courts might recognize direct action rights for materially injured stakeholders or enable public interest litigation as a mechanism for enforcing community and environmental components of directors' duties.

The problem assumes particular urgency in ESG contexts. Environmental injuries often manifest diffusely across large populations without individual shareholders bearing disproportionate share price impact. Labor exploitation in supply chains may not materially affect corporate financial performance in accounting terms. Community displacement due to industrial expansion may generate no

shareholder lawsuit if share value remains stable. In such scenarios, the derivative action framework proves inadequate for enforcing ESG duties whose beneficiaries include non-shareholding stakeholders.

7. The Intersection of Company Law and Environmental Statutes: Doctrinal Integration

7.1 The Environment (Protection) Act, 1986 and Precautionary Governance

The Environment (Protection) Act, 1986, establishes a regulatory framework for pollution prevention and environmental protection. Sections 3 and 5 of the EPA empower the central government to prescribe standards and issue directions to prevent environmental deterioration. The landmark Supreme Court decision in *M.C. Mehta v. Union of India* established that industries causing environmental pollution violate constitutional rights to life and health and must bear corrective costs under the "polluter pays principle."^[12]

Indian courts have progressively integrated environmental law principles into corporate governance jurisprudence. The "polluter pays principle," the "precautionary principle," and the doctrine of "absolute liability for hazardous activities" have permeated judicial discourse on company directors' fiduciary obligations.^[13] The legal consequence is that directors cannot discharge their statutory duties merely by satisfying minimum regulatory requirements if industry practice or best available technology suggests higher environmental standards are achievable.

This doctrinal integration creates a form of "environmental due diligence obligation" that transcends positive law compliance into aspirational best practice territory. Directors must understand not merely what environmental regulations require but what environmental science indicates is necessary and what peer companies achieve through advanced environmental governance. Failure to adopt or justify rejecting superior environmental

performance exposes directors to fiduciary duty breach allegations.

7.2 The National Green Tribunal: Environmental Justice as ESG Adjudication

The National Green Tribunal (NGT), established under the National Green Tribunal Act, 2010, possesses specialized jurisdiction over environmental disputes, including those arising from corporate activities. The NGT's jurisprudence, while technically separate from company law doctrine, increasingly intersects with ESG enforcement.

For instance, NGT decisions mandating companies to remediate environmental damage, implement enhanced environmental management systems, or compensate affected communities create de facto ESG obligations. Companies found liable for environmental injury must disclose remediation requirements in BRSR reports, potentially affecting investor perceptions and creating reputational consequences. This interconnection between environmental adjudication and ESG disclosure creates a feedback loop: environmental litigation informs ESG reporting obligations, which in turn create disclosure liabilities for misrepresenting environmental status.

8. Labor Law Integration: The Social Pillar of ESG Governance

8.1 Statutory Labor Protections and Directors' Obligations to Employees

Section 166(2)'s requirement that directors promote the interests of "employees" must be read in conjunction with India's comprehensive labor law framework. The Industrial Relations Code, 2020, the Code on Social Security, 2020, and the Code on Occupational Safety, Health and Working Conditions, 2020, establish statutory minima for labor protection, workplace safety, and social security coverage.

Significantly, Indian courts have held that directors' statutory duties under section 166(2) require boards to ensure that labor practices exceed statutory minima where feasible and that companies do not exploit regulatory gaps

to depress labor standards. In *Tata Consultancy Services v. Cyrus Investments* (2021), the Supreme Court affirmed that "stakeholder governance" necessarily includes substantive commitment to employee welfare, suggesting that boards cannot discharge fiduciary duties through mere technical compliance with statutory labor provisions.^[14]

The practical implication is that ESG obligations require directors to periodically assess whether labor practices align with industry best practices, international labor standards, and sustainability commitments. A company that complies with Indian labor law but maintains wages and working conditions substantially below comparable sector standards potentially breaches fiduciary duties under this interpretation.

8.2 Supply Chain Labor Standards and Third-Party Accountability

BRSR framework disclosure requirements explicitly mandate reporting on supply chain labor practices, human rights due diligence, and responsible sourcing. This creates a peculiar legal position: companies become responsible for monitoring and disclosing labor practices of supply chain partners over whom they exercise limited contractual control and no legal authority.

This supply chain accountability regime reflects a recognition that corporate ESG impact extends beyond direct operations into contractual relationships. However, the legal mechanism for enforcing supply chain accountability remains underdeveloped. Companies face unclear standards for assessing supplier compliance, limited remedies for supplier misconduct, and potential liability exposure both for inadequate supply chain oversight and for supply chain harms that should have been identified.

The legal principle underlying supply chain accountability is that corporate fiduciary duties include due diligence obligation to ensure that

outsourced operations comply with ESG standards the company would maintain if operations were performed in-house. Failure to exercise due care in supply chain monitoring exposes companies to potential liability, particularly where labor exploitation, environmental damage, or governance failures in supply chains become public and generate reputational injury.

9. Institutional Gaps and Future Legislative Directions

9.1 The Absence of Centralized ESG Oversight

A critical institutional gap in India's ESG enforcement architecture is the absence of a dedicated regulatory body with specialized expertise and enforcement authority over ESG compliance. SEBI oversees ESG disclosure through the BRSR mandate but lacks explicit statutory authority to enforce ESG performance standards or impose penalties for substantive ESG violations (as opposed to disclosure failures). The Ministry of Corporate Affairs oversees company law and CSR compliance but similarly lacks dedicated ESG enforcement capacity.

The Parliamentary Standing Committee on Finance (2025) has explicitly recommended establishing a dedicated ESG oversight body with forensic expertise to combat green washing and provide specialized enforcement capacity. Such an institution would consolidate fragmented ESG authority currently dispersed across SEBI, the Ministry of Corporate Affairs, environmental regulators, and labor authorities, creating coherent enforcement standards and reducing regulatory arbitrage opportunities.

9.2 Proposed Amendments to Section 166: From Aspirational to Enforceable

The same Parliamentary committee has recommended amending section 166 of the Companies Act, 2013, to explicitly impose enforceable ESG objectives within directors' fiduciary duties rather than leaving ESG considerations to judicial interpretation of general stakeholder obligation language.

Proposed amendments would render ESG consideration a mandatory element of board decision-making, require documented ESG risk assessments, and create explicit liability for directors who fail to discharge ESG duties.

Such amendments would align Indian law with emerging international standards emphasizing board-level ESG accountability. The UK mandatory climate disclosure regime, the EU's Corporate Sustainability Reporting Directive, and Singapore's governance code all impose explicit board responsibility for ESG oversight. Indian amendment would similarly signal that ESG is not peripheral corporate social activity but integral governance obligation.

9.3 Strengthening Verification and Assurance Mechanisms

Current BRSR framework design permits self-declaration of ESG metrics without mandatory third-party verification. Unlike financial statement audit, which presupposes external verification by independent chartered accountants, BRSR reports may undergo verification only on voluntary basis. This asymmetry creates audit gap precisely where stakeholders rely on ESG information: companies can disclose unverified ESG claims lacking the quality assurance applied to financial statements.

Regulatory reform should mandate third-party assurance of material ESG KPIs by qualified auditors using standardized assurance standards. International bodies such as the International Auditing and Assurance Standards Board are developing ESG assurance standards that India could incorporate into BRSR requirements. Mandating verified assurance would substantially reduce green washing risk by creating legal liability for auditors approving false ESG representations and by raising authentication standards for disclosed metrics.

10. Conclusion: Toward Substantive ESG Accountability

India's ESG legal architecture has evolved from the CSR philanthropic orientation of early 2013

legislation through judicial integration of ESG principles within fiduciary duties, culminating in comprehensive disclosure mandates via the BRSR framework. This evolution reflects genuine legal and institutional progress toward recognizing that corporate governance encompasses environmental protection, social responsibility, and stakeholder accountability as core obligations rather than peripheral concerns.

However, critical gaps persist between normative ESG obligations established by statute and judicial interpretation, and actual enforcement mechanisms available for compelling corporate compliance. The BRSR disclosure framework remains primarily transparency-focused, lacking mechanisms for enforcing substantive ESG performance or imposing meaningful penalties for ESG violations divorced from disclosure failures. Derivative action remedies, while theoretically available for enforcing ESG duties, prove practically difficult for shareholders and inaccessible for non-shareholder stakeholders most directly affected by ESG failures.

Recent landmark decisions, particularly *Vanashakti v. Union of India* (2025) and *M.K. Ranjitsinh v. Union of India* (2021), demonstrate judicial willingness to enforce ESG principles through strict interpretation of anticipatory environmental due diligence and broad readings of fiduciary duty obligations. These decisions indicate that judicial creativity may partially bridge enforcement gaps, establishing stricter courts-imposed standards when legislative and regulatory mechanisms prove insufficient.

However, robust ESG governance ultimately requires legislative and institutional maturation. Parliament should consider amendments to explicitly codify ESG objectives within directors' fiduciary duties, establish dedicated ESG oversight regulatory capacity, mandate third-party verification of material ESG disclosures, and create explicit legal liability for ESG misrepresentation. Simultaneously, courts

should continue interpreting stakeholder-oriented language in existing legislation expansively, recognizing that environmental and community interests constitute justiciable rights capable of judicial protection through derivative suits and public interest litigation.

The path forward requires moving beyond India's current position a nation with sophisticated ESG disclosure frameworks but limited substantive enforcement mechanisms toward integrated governance regimes where ESG obligations prove enforceable not merely through disclosure but through accountability mechanisms ensuring that corporate practices align with disclosed commitments. This evolution would position India not merely as an ESG disclosure pioneer but as a jurisdiction where ESG principles constitute operative corporate governance norms genuinely constraining corporate behavior.

As India's capital markets mature, investor sophistication regarding ESG risks increases, and climate and social pressures intensify, the legal and institutional pressures toward substantive ESG accountability will intensify correspondingly. Proactive legislative and regulatory reform can channel these pressures toward coherent, predictable governance frameworks rather than reactive litigation and piecemeal judicial interpretation. The coming five years will prove critical in determining whether India's ESG legal architecture matures toward substantive accountability or remains primarily symbolic a matter of disclosure rather than genuine corporate transformation.

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