

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 6

2025

© 2025 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Corporate Sustainability in Transition: Mapping India's Shift from CSR to ESG

MAYANK¹ AND YASHIKA NAGARIA²

ABSTRACT

The 21st century faces the dual challenge of economic growth and climate change, with scientific consensus urging drastic emission reductions. India is also one of the major emitters that must balance development needs with sustainability imperatives, necessitating corporate involvement in climate action. This paper evaluates whether Indian corporate law has evolved enough to tackle the climate crisis by critically comparing CSR's expenditure-based framework with the emerging Environmental, Social and Governance (ESG) paradigm.

Using a doctrinal and comparative methodology, the paper analyses statutory provisions, judicial precedents, SEBI's Business Responsibility and Sustainability Reporting (BRSR) framework, and regulatory trends across the EU, US, UK, Australia, South Africa, and Asia (China and Singapore). While CSR mobilised corporate funds, it often remained a compliance exercise lacking impact assessment and governance integration. By contrast, ESG emphasises measurable performance, fiduciary duties, and investor-driven accountability.

The analysis reveals that ESG in India is still nascent, limited to top 1,000 listed companies, and vulnerable to greenwashing, regulatory fragmentation, and lack of independent verification. The paper argues that reforms are essential embedding ESG into fiduciary duties, mandating third-party audits, expanding scope to SMEs, and aligning disclosures with financial reporting. The contribution of this paper lies in mapping India's halfway transition from philanthropy to governance and proposing a roadmap for transforming ESG into a credible corporate law mechanism capable of addressing the climate crisis.

I. INTRODUCTION: CORPORATE SOCIAL RESPONSIBILITY (CSR) IN INDIA

The story of corporate law in India is no longer only about profit-making. Over the past decade, the debate has shifted to whether corporations owe an enforceable duty to society and the environment. Globally, India is the only country which has established a statute regulating Corporate Social Responsibility (CSR) mandate under Section 135 of the Companies Act, 2013. It imposes legal duties on qualifying companies to contribute to social development, thereby

¹ Author is a student at Bennett University, Greater Noida, Uttar Pradesh, India.

² Author is a student at Bennett University, Greater Noida, Uttar Pradesh, India.

institutionalising the principle that corporations must act as partners in nation-building.

India was not entirely averse to the concept of CSR in 2013. Before the law, Indian business houses like the Tata Group, Birla Group, and Wadia Group had a long tradition of philanthropy in education, health, and community development. The Confederation of Indian Industry (CII) and the Federation of Indian Chambers of Commerce & Industry (FICCI) encouraged corporate philanthropy through voluntary codes. In 2009, the Ministry of Corporate Affairs issued Corporate Responsibility Guidelines³, and in 2011 it released the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business⁴. However, these guidelines lacked enforceability and therefore had limited impact. Many corporations engaged in CSR only when it coincided with brand-building or marketing interests.

It was against this backdrop that the Companies Act, 2013 introduced Section 135, making CSR mandatory for companies with a “net worth of ₹500 crore”⁵, a “turnover of ₹1,000 crore”⁶, or a “net profit of ₹5 crore”⁷. Such companies must constitute a CSR committee, frame a CSR policy, and spend at least two percent of their average net profits of the previous three years on activities listed in Schedule VII of the Act⁸. These include eradicating hunger and poverty, promoting healthcare and education, ensuring gender equality, promoting environmental sustainability, protecting heritage, and supporting government relief funds.

The Companies (CSR Policy) Rules, 2014, strengthened the statutory framework by mandating board-level monitoring and detailed disclosure in annual reports. Subsequent amendments, such as, the Companies (Amendment) Act, 2019, introduced penalties for non-compliance with respect to spending CSR funds and carrying-forward provisions for unspent amounts, signalling the gravity of the mandate.

Parliamentary debates on CSR echoed India’s unique context. Legislators argued that in a country which is still in hand-to-hand struggle with poverty, malnutrition and inadequate infrastructure, private wealth had to accompany state resources. Critics, however, described CSR as “compulsory philanthropy” and warned that it could reduce corporate novelty in social responsibility by converting it into a compliance exercise. Nevertheless, the law was passed, making India a global pioneer.

³ Ministry of Corp. Affs., Gov’t of India, *Corporate Social Responsibility Voluntary Guidelines, 2009* (Dec. 2009).

⁴ Ministry of Corp. Affs., Gov’t of India, *National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business* (July 2011).

⁵ Companies Act, No. 18 of 2013, § 135(1) (India).

⁶ Companies Act, No. 18 of 2013, § 135(2) (India).

⁷ Companies Act, No. 18 of 2013, § 135(3) (India).

⁸ Companies Act, No. 18 of 2013, Sch. VII (India).

Judicial explanations have surfaced CSR as a statutory prerequisite. In *Technicolor India Pvt. Ltd. v. Registrar of Companies* (2019)⁹, the National Company Law Tribunal rejected the argument that CSR expenditure was voluntary, declaring it a statutory mandate. The Karnataka High Court in *CIT v. Infosys Foundation* (2015)¹⁰ clarified that CSR expenditure could not be deducted as business expenditure, distinguishing it from voluntary charity. In *Novartis India Ltd. v. Union of India* (2019)¹¹, the Bombay High Court noted that CSR duties are aligned with constitutional principles like the Directive Principles of State Policy. At the same time, courts have flagged superficial compliance: in *Shree Cement Ltd. v. Union of India* (2017)¹², the Delhi High Court criticised box-ticking CSR initiatives with little social impact.

In practice, CSR has channelled significant financial flows. According to government data, Indian companies spent over ₹1.25 lakh crore on CSR between 2014 and 2022. Education, healthcare, rural development, and sanitation were the top beneficiaries. The Tata Trusts have constructed schools and hospitals, Reliance Foundation has financed in rural healthcare, Infosys Foundation has buoyed arts and education and Wipro has initiated projects in primary education. These initiatives prove CSR's potential as a force for good. Yet the agenda has been criticised for being expenditure-driven rather than impact-driven. Companies often spend the obligatory amount on "safe" sectors like education and health without give a talk to systemic challenges such as climate change, renewable energy, or biodiversity.

Thus, while India's CSR dictate signifies a landmark innovation, its boundaries are clear. It has mobilised resources but failed to implant sustainability into corporate governance. CSR remains concerned with around how much money is spent, not whether outcomes are sustainable. Against the background of climate change, this limitation is serious.

II. CLIMATE CHANGE AND CORPORATE CONTRIBUTION

Climate change is not a cold problem it is already redesigning economies, ecosystems and lives in India. Increasing average temperatures, irregular monsoons, more frequent floods and overwhelming heatwaves hover agriculture, water security, urban infrastructure and human health. The Intergovernmental Panel on Climate Change (IPCC) warns that unless emissions are drastically reduced, India will face significant climate-related risks, including the loss of coastal cities, reduced crop yields, and water scarcity affecting millions.

⁹ *M/s Technicolor India Pvt. Ltd. v. Registrar of Companies*, C.P. No. 124/BB/2019 (NCLT Bengaluru Bench, filed July 8, 2019)

¹⁰ *Commissioner of Income-Tax v. Infosys Technologies Ltd.*, 229 Taxman 335 (Karn. 2015).

¹¹ *Novartis AG v. Union of India & Ors.*, W.P.(C) No. 11346/2019 (Delhi H.C., Oct. 23, 2019).

¹² *Shree Cement Ltd. v. Union of India & Ors.*, S.B. Civil Writ Petition No. 2414/2016 (Raj. H.C., Sept. 18, 2017).

Corporations are at the heart of this crisis. India's economic growth has been powered by industries whose environmental footprints are enormous. The energy sector, dominated by coal, accounts for the bulk of India's greenhouse gas emissions. Power producers, steel manufacturers, cement companies, and automobile industries are all among the country's largest polluters. The construction sector contributes significantly to emissions through cement and steel use, while IT companies indirectly drive high emissions through energy-hungry data centres.

The energy sector exemplifies this contradiction. Coal India Limited, one of the world's largest coal producers, supplies a resource that is central to India's energy security but also its single largest source of carbon emissions. Renewable energy companies like ReNew Power and Adani Green Energy are growing, but fossil fuels remain dominant.

The steel and cement industries are among the most carbon-intensive in the world. Companies like JSW Steel and UltraTech Cement have begun making commitments to reduce emissions intensity, but their absolute emissions remain very high given India's growing infrastructure demand.

The automobile sector contributes significantly to air pollution and greenhouse gas emissions. While electric vehicle (EV) adoption is on the rise, led by companies like Tata Motors, India's vehicle fleet remains overwhelmingly fossil-fuel based.

Even consumer goods companies have been implicated in environmental controversies. Coca-Cola's bottling plant at Plachimada, Kerala, was accused of depleting groundwater, sparking one of India's most famous corporate-environment disputes. Similarly, Hindustan Unilever has faced allegations of mercury contamination at its thermometer factory in Kodaikanal.

The judiciary has frequently intervened in corporate-environment disputes. In *M.C. Mehta v. Union of India* (1986)¹³, following the Oleum Gas Leak, the Supreme Court laid down the principle of absolute liability, a standard stricter than negligence or strict liability. In *Indian Council for Enviro-Legal Action v. Union of India* (1996)¹⁴, it reinforced the "polluter pays" principle. In *Sterlite Industries (India) Ltd. v. Union of India* (2013)¹⁵, the Court emphasised the need for strong monitoring of polluting industries. In *Vellore Citizens' Welfare Forum v. Union of India* (1996)¹⁶, sustainable development was recognised as a constitutional principle. Jointly, these cases imitate the judiciary's strap line of corporate responsibility in environmental

¹³ *M.C. Mehta v. Union of India*, (1986) 2 SCC 176 (India).

¹⁴ *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212 (India).

¹⁵ *Sterlite Indus. (India) Ltd. v. Union of India*, (2013) 4 SCC 575 (India).

¹⁶ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647 (India).

harm.

Despite this judicial involvement, corporate donations to mitigating climate change remain limited. According to the Ministry of Corporate Affairs, only around 9% of CSR spending in 2022–23 was allocated to environmental sustainability. By difference, education alone reported for over 35%. While education and healthcare are undeniably important, the disparity reveals a failure to prioritise climate action, even though climate change poses systemic risks to all sectors.

Community-level conflicts illustrate the corporate-environment tension. The Vedanta mining project in Odisha's Niyamgiri Hills, opposed by local tribal groups on ecological and cultural grounds, became a milestone in environmental governance when the Supreme Court empowered gram sabhas (village councils) to decide. The proposed POSCO steel project in Odisha faced similar opposition due to movement and deforestation. The Sterlite copper plant in Tuticorin was permanently closed in 2018 following mass protests against pollution. These conflicts underline how corporate activities can exacerbate environmental injustice by excessively impacting susceptible communities.

From a policy point of view, the CSR regime has not sufficiently addressed this disparity. The Supreme Court in *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh* (1985)¹⁷, in the limestone mining case, tense that development must be ecologically sustainable. Yet CSR spending continues to be skewed, neglecting climate action. The challenge, therefore, is not only to mobilise corporate resources but also to redirect them toward addressing the climate crisis.

III. INTRODUCTION OF ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) AND COMMITMENTS

The limitations of CSR in India's corporate governance framework, particularly its expenditure-driven approach, have paved the way for the adoption of a broader, governance-oriented model: Environmental, Social and Governance (ESG) frameworks. Unlike CSR, which mandates financial allocations to social causes, ESG requires companies to integrate sustainability principles into their very operations and decision-making structures. It represents not philanthropy, but performance.

Globally, ESG has risen to prominence over the past two decades due to a combination of regulatory pressure, investor demand, and civil society advocacy. Financial organizations

¹⁷ *Rural Litig. & Entitlement Kendra v. State of Uttar Pradesh*, 1985 Supp. SCC 79 (India).

progressively view ESG performance as a substitution for long-term suppleness and risk management. For example, companies with poor environmental practices face reputational harm, governing fines and stranded assets. Firms with weak labour practices risk assaults, reputational damage or consumer prohibits. Governance failures can lead to fraud, mismanagement and collapse, as illustrated by corporate scandals from Enron to Wirecard. ESG therefore translates social and environmental thoughts into material financial risks.

Global ESG Frameworks

Several global initiatives have provided structure to ESG implementation. The Global Reporting Initiative (GRI), established in 1997¹⁸, is among the most extensively used sustainability reporting standards. It covers discoveries on greenhouse gas emissions, water usage, biodiversity impact, labour rights and anti-corruption. By presenting sector-specific pointers, GRI enables equivalence across companies.

The Sustainability Accounting Standards Board (SASB)¹⁹, now combined under the International Sustainability Standards Board (ISSB), develops industry-specific standards that focus on financial corporeality. This ensures that investors receive information relevant to measuring risks and opportunities in particular sectors, such as oil and gas, mining or IT.

The Task Force on Climate-related Financial Disclosures (TCFD), established by the Financial Stability Board in 2015²⁰, needs companies to disclose “*climate-related risks and chances under four pillars: governance, strategy, risk management and metrics and targets*”²¹. TCFD has been recognized by governments and regulators worldwide and is particularly significant in aligning financial institutions with climate goals.

The “*United Nations Sustainable Development Goals (SDGs) though not an ESG reporting framework, provide a prescriptive backdrop. Goals such as SDG 7 (affordable and clean energy), SDG 12 (responsible consumption and production) and SDG 13 (climate action) have become standards against which corporate sustainability efforts are measured*”²².

Regulatory Developments in Developed Jurisdictions

Regulatory frameworks in advanced countries have increasingly organized ESG. The European Union’s Corporate Sustainability Reporting Directive (CSRD)²³ 2023 expands compulsory

¹⁸ Global Reporting Initiative, <https://www.globalreporting.org/>.

¹⁹ Sustainability Accounting Standards Bd., <https://sasb.org/>.

²⁰ Task Force on Climate-related Fin. Disclosures, <https://www.fsb-tcfid.org/>.

²¹ <https://www.chesnara.co.uk/>.

²² United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development*, G.A. Res. 70/1, U.N. Doc. A/RES/70/1 (Oct. 21, 2015), <https://sdgs.un.org/2030agenda>.

²³ Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 on corporate

sustainability reportage to nearly 50,000 companies, including extraneous firms with substantial EU activity. Reports must follow the European Sustainability Reporting Standards (ESRS) and feel independent audits, ensuring reliability and comparability.

The United States Securities and Exchange Commission (SEC) has proposed mandatory climate disclosures for public companies, requiring Scope 1 and 2 greenhouse gas emissions and Scope 3 (value chain) emissions where substantial. Companies must also reveal the impact of climate risks on their financial performance and governance.

The United Kingdom's Corporate Governance Code (2018) gratifies boards to consider the interests of stakeholders, including employees, groups and the environment, and to reveal how sustainability issues are combined into strategy.

Australia's prudential regulators mandate climate stress-testing for financial institutions. The Australian Prudential Regulation Authority (APRA) needs scenario analysis of climate risks to safeguard flexibility of banks and insurers.

South Africa's King IV Code (2016) implants sustainability into fiduciary duties, requiring boards to "apply and explain" how they merge environmental and social considerations. This model is widely valued for shifting from compliance to governance culture.

Together, these examples show how developed economies have moved beyond voluntary sustainability to enforceable frameworks backed by audits, fiduciary obligations and integration into financial regulation.

India's ESG Evolution

India has started its ESG journey mainly through securities regulation. The Securities and Exchange Board of India (SEBI) first announced the Business Responsibility Report (BRR) in 2012, necessitating the top 100 listed companies to disclose their responsible business practices²⁴. In 2021, SEBI replaced the BRR with the Business Responsibility and Sustainability Report (BRSR), mandatory for the top 1,000 listed entities from FY 2022–23²⁵.

The BRSR is based on the nine principles of the National Guidelines on Responsible Business Conduct (NGRBC)²⁶, which line up with the SDGs. These values require companies to operate

sustainability reporting (CSRD), O.J. L 322, 1 (16 Dec. 2022)

²⁴ Securities & Exch. Bd. of India, *Business Responsibility Reports (BRR)*, Circular No. CIR/CFD/DIL/8/2012 (Aug. 13, 2012), https://www.sebi.gov.in/legal/circulars/aug-2012/business-responsibility-reports_23474.html

²⁵ Securities & Exch. Bd. of India, *Format for Business Responsibility and Sustainability Report (BRSR)*, Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562 (May 10, 2021), https://www.sebi.gov.in/legal/circulars/may-2021/format-for-business-responsibility-and-sustainability-report-brsr_50096.html

²⁶ Ministry of Corp. Affs., Gov't of India, *National Guidelines on Responsible Business Conduct* (Mar. 2019), <https://www.mca.gov.in/content/mca/global/en/about-us/initiatives/ngrbcs.html>.

ethically, provide goods that are safe and sustainable, promote employee well-being, respect stakeholder interests, protect human rights, respect the environment, encourage inclusive growth, support public policy, and engage in transparent governance. Contrasting CSR, which is about financial outlay, the BRSR is about disclosure of performance across environmental, social, and governance limits.

The BRSR introduced quantitative metrics such as energy ingesting, water use, orangery gas emissions, waste management, employee diversity, gender ratios, training hours, supply chain sustainability, and board diversity. By demanding measurable data, the BRSR represents a step towards performance accountability.

Corporate adoption of ESG practices in India has accelerated under investor pressure. Infosys declared itself carbon neutral in 2020 and aligns its disclosures with GRI and SASB. Reliance Industries has pledged net-zero by 2035, backed by massive investments in green hydrogen and solar power. Tata Group companies disclose ESG metrics and run sustainability initiatives across sectors. Wipro has consistently ranked among global ESG leaders. Stock exchanges have also incentivised ESG adoption: the NSE has launched the Nifty 100 ESG Index, while the BSE introduced the S&P BSE Greenex.

International commitments have reinforced this shift. In the Paris Agreement (2015), India devoted to decrease the emissions intensity of GDP by 33–35% by 2030 compared to 2005 levels. At “*COP26 in Glasgow (2021), Prime Minister Narendra Modi announced India’s target of attaining net-zero by 2070, together with goals to upsurge non-fossil fuel energy capacity to 500 GW and reduce projected carbon emissions by one billion tonnes by 2030*”²⁷. These promises cannot be met without sequestered sector participation, making ESG adoption crucial.

Yet in spite of progress, ESG in India remains forced by limited attention, absence of mandatory audits and risks of greenwashing. Its potential to transform corporate governance is clear, but its actual impact remains shy compared to global standards.

IV. COMPARATIVE ANALYSIS: DEVELOPED AND DEVELOPING ECONOMIES

The deviation between advanced and emerging economies in ESG adoption highpoints both mechanical advantages and systemic challenges. Advanced economies have advanced frameworks that embed ESG into fiduciary duties, financial disclosures and risk management.

²⁷ Prime Minister of India, *National Statement at COP26 in Glasgow* (Nov. 1, 2021), https://www.pmindia.gov.in/en/news_updates/prime-ministers-statement-at-cop26-glasgow-2021/.

Developing countries, by contrast, remain disclosure-oriented with limited enforceability.

Developed Economies

The European Union stands at the forefront of this global drive, revolutionary the most ambitious and comprehensive approach to corporate sustainability through its Corporate Sustainability Reporting Directive (CSRD). This landmark rule moves beyond voluntary rules to mandate extensive and detailed disclosures on a wide range of ESG metrics. What sets the CSRD apart is its rigorous requirement for independent, 3rd-party audits of these sustainability reports, a crucial measure intended to enhance transparency, build trustworthiness and effectually combat the universal threat of greenwashing. By creating common, consistent reporting metrics under the European Sustainability Reporting Standards (ESRS)²⁸, the EU ensures that corporate sustainability data is both analogous and reliable. Furthermore, the directive's reach extends beyond EU borders, compelling foreign companies with considerable operations within the block to comply, thereby globalizing its severe standards and influencing corporate behaviour on an international scale. This regulatory framework is complemented by the EU taxonomy for sustainable activities, a classification system that scientifically defines which economic activities are environmentally sustainable²⁹, providing a clear roadmap for investment and further reinforcing the EU's commitment to directing capital towards a green transition.

In parallel, other foremost developed economies have accepted distinct yet equally impactful approaches to integrating ESG into their corporate and financial systems. The United States, for example, has embraced a risk-focused model, with the Securities and Exchange Commission (SEC) suggesting climate expose rules that treat climate risks as material financial information for investors. While these rules have faced noteworthy political and legal challenges, they signify a crucial step toward mainstreaming ESG by connecting it directly to financial particles and investor decision-making. This monitoring push is augmented by the strong effect of large institutional investors like BlackRock and Vanguard, who have been increasingly spoken in demanding ESG compliance from their portfolio firms, leveraging their considerable capital to exert market-driven heaviness for change. Similarly, the United Kingdom's approach, as codified in its Corporate Governance Code, reflects a shareholder model that requires boards to move beyond shareholder primacy and consider the interests of employees, communities and

²⁸ Comm'n Delegated Reg. (EU) 2023/2772 of 31 July 2023 supplementing Directive (EU) 2013/34 of the European Parliament and of the Council as regards sustainability reporting standards, 2023 O.J. (L 305) 118.

²⁹ https://justtransitionfinance.org/wp-content/uploads/2025/03/Promoting-a-transition-with-inclusion-in-India_The-role-of-BRSR.pdf.

the environment, a principle reinforced by the mandatory TCFD-aligned exposes for premium-listed firms.

The merging on ESG as a core governance principle is also evident in the ground-breaking regulatory actions of other developed nations. Australia's Australian Prudential Regulation Authority (APRA) has taken a sole forward-looking approach by focusing on the sensible regulation of climate risk. By directing that banks and insurers conduct climate stress tests and situation analysis, APRA ensures the financial system's stability in the face of future climate shocks. Meanwhile, South Africa's King IV Code provides a globally important example of implanting ESG as a fundamental fiduciary duty for executives. This framework modernizes by shifting from a "comply or explain" model to an "apply and explain" one, compelling directors to actively demonstrate how sustainability considerations are integrated into their strategic decision-making and governance structures. Taken together, these diverse but interconnected regulatory and market-driven developments illustrate a clear global trend: developed economies are moving decisively towards a model where ESG is no longer viewed as an optional, philanthropic gesture but as an integral and indispensable component of corporate governance, financial risk management, and investor accountability.

Developing and Emerging Economies

While developed nations are merging on a comprehensive, governance-based method to ESG, many developing countries, including India, are still in the beginning stages, relying basically on distributed, disclosure-based frameworks. In India, the Business Responsibility and Sustainability Reporting (BRSR) framework, while a important step, is limited to the top 1,000 listed entities, leaving a vast majority of the corporate landscape, particularly Small and Medium Enterprises (SMEs), outside its scope. This is a serious gap, as SMEs contribute a considerable portion of the nation's GDP and emissions, yet are not subject to compulsory ESG reporting. China, despite its ambitious 2060 carbon-neutrality goal, also maintains a strong focus on disclosures, with the China Securities Regulatory Commission requiring listed companies, especially in high-emission sectors, to report on ESG metrics, though the consistency of enforcement remains a challenge.

Singapore and Brazil represent other examples of this disclosure-focused approach. Singapore, a major financial hub, requires climate-related disclosures for listed companies and financial institutions, aligning its practices with the global Task Force on Climate-related Financial Disclosures (TCFD). The Monetary Authority of Singapore (MAS) has also issued guidelines to manage environmental risks within the financial sector, indicating a systemic, albeit gradual,

integration of ESG. Similarly, Brazil has mandated sustainability reporting for listed companies, and its stock exchange has even created an index, the ISE, to track the performance of ESG leaders. However, like many of its peers, Brazil struggles with the practical challenges of effective enforcement and the political will to overcome competing priorities, which often hinders the full realization of its ESG goals.

The fragmented and disclosure-based nature of ESG in developing countries is a direct consequence of systemic differences in institutional capacity. Unlike developed economies, which have matured capital markets, vigorous regulatory bodies, and a culture of investor activism, developing nations face specific constraints. They often lack the financial resources, regulatory skill, and implementation mechanisms required for comprehensive ESG frameworks. Furthermore, these countries are rassing with urgent developmental imperatives like poverty obliteration and infrastructure expansion, which can relegate environmental and social concerns to a secondary status. As a result, ESG is often perceived as a "Western import" rather than a domestic necessity, a perception that limits corporate and political enthusiasm and ultimately slows the adoption of more substantive and enforceable governance standards.

India in Comparative Context

India inhabits a unique place in this relative spectrum. As the world's 5th largest economy and a major emitter, India cannot afford to holdup in ESG adoption. Yet its regulatory design shows its growing realities. By mandating CSR and introducing BRSR, India has founded innovations, but these remain inadequate to address climate risks at scale. Unlike the EU, India lacks uniform standards or compulsory audits. Unlike South Africa, ESG is not entrenched in fiduciary duties. Unlike the US, ESG is not integrated into financial filings.

This comparative scrutiny suggests that India must evolve beyond disclosure-based frameworks to governance-based models. To remain competitive in global capital markets, Indian companies will increasingly be required to meet international ESG standards, regardless of domestic rule.

V. CHALLENGES AND GAPS IN INDIA'S ESG EVOLUTION

While India has taken significant steps through its CSR mandate and the introduction of the BRSR framework, grave challenges hinder the transformation of ESG from a disclosure requirement into a governance uprising. These challenges operate at multiple levels legal, institutional, cultural, and market-based and must be understood holistically.

Regulatory Fragmentation

A major problem is the fragmentation of responsibilities across different regulators and ministries. CSR is governed by the Ministry of Corporate Affairs (MCA) under the Companies Act, 2013³⁰. ESG disclosures fall under the Securities and Exchange Board of India (SEBI)³¹, which monitors listed companies. At the same time, the Reserve Bank of India (RBI) has issued distinct guidance on climate risk and sustainable finance for banks and financial institutions. The Ministry of Environment, Forests and Climate Change (MoEFCC)³² controls pollution control, environmental impact valuations, and biodiversity preservation. This assortment creates overlaps, compliance burdens and regulatory uncertainty.

Companies often face contradictory instructions for example, MCA requires CSR disclosures, SEBI requires BRSR disclosures and MoEFCC demands environmental authorizations each with different formats and metrics. Without a united statutory framework, ESG compliance risks becoming another civil service exercise. The lack of a single nodal authority also water down accountability.

Limited Scope of Coverage

The BRSR framework smears only to the top 1,000 listed companies. This excludes thousands of small and medium enterprises (SMEs), unlisted companies and startups, many of which are significant contributors to pollution and social impact. SMEs account for nearly 30% of India's GDP and 40% of exports. They are also deeply integrated into global supply chains, where ESG compliance is becoming a precondition. Yet SMEs remain outside the ESG mandate, creating a regulatory blind spot.

The Delhi High Court in *Association of Voluntary Action v. Union of India (2020)*³³ emphasized that imposing compulsions only on large companies destabilizes the social purpose of corporate regulation. Unless ESG obligations are gradually extended to SMEs, India risks creating an exclusive framework limited to blue-chip companies, while ignoring vast segments of the economy.

Greenwashing and Superficial Compliance

One of the most thoughtful concerns with ESG globally is the risk of greenwashing companies

³⁰ Companies Act, No. 18 of 2013 (India), <https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>.

³¹ Securities & Exch. Bd. of India Act, No. 15 of 1992 (India), <https://www.sebi.gov.in/legal/sebi-act.html>.

³² Ministry of Env't, Forests & Climate Change, Gov't of India, *EIA Notification 2006*, S.O. 1533(E) (Sept. 14, 2006), <https://www.moef.gov.in/>.

³³ Indian Social Action Forum (INSAF) v. Union of India, (2020) AIR SC 1363, (2020) SCC OnLine SC 570 (India).

offering a misleading picture of their sustainability performance. Without autonomous audits, companies can embroider achievements in lustrous reports while continuing harmful practices. Examples abound. Internationally, Volkswagen's "Dieselgate" scandal showing how the company distorted emissions data. In India, Hindustan Unilever faced criticism for its claims of "sustainable palm oil" while sourcing from regions linked to deforestation. Coca-Cola has been accused of overstating its water "neutrality" projects even as its operations strain local groundwater.

The Indian context magnifies this problem because BRSR disclosures are largely self-reported. SEBI has not yet mandated third-party audits, and ESG ratings by private agencies are inconsistent. As a result, sustainability reports often become public relations documents rather than tools for accountability.

The Supreme Court's jurisprudence underscores the dangers of superficial compliance. In *M.C. Mehta v. Union of India* (1986)³⁴, the Court held enterprises absolutely liable for environmental harm, rejecting excuses of due diligence. In *Sterlite Industries (India) Ltd. v. Union of India* (2013)³⁵, the Court criticised weak monitoring that allowed pollution to continue for years. These cases highlight the judiciary's insistence on substantive, not cosmetic, compliance. Yet ESG in India currently risks falling into the trap of cosmetic disclosure.

Lack of Standardisation in ESG Ratings

Another major gap lies in ESG rating systems. Globally, rating agencies like MSCI, Sustainalytics, and Refinitiv provide ESG scores. In India, domestic agencies have also entered the field. However, methodologies vary widely, resulting in inconsistent assessments. A company may be rated highly by one agency and poorly by another, undermining investor confidence.

The absence of standardisation also allows companies to cherry-pick favourable ratings. SEBI itself acknowledged this in its 2022 consultation paper, noting that divergent methodologies reduce transparency and comparability. Until rating methodologies are harmonised, ESG ratings cannot serve as reliable signals for investors or regulators.

Weak Board-Level Accountability

At the heart of ESG is governance. However, Indian corporate law does not explicitly require directors to consider environmental or social risks in their fiduciary duties. Section 166 of the

³⁴ *Supra* note 12.

³⁵ *Sterlite Indus. (India) Ltd. v. Union of India*, (2013) 4 SCC 575 (India).

Companies Act, 2013³⁶ requires directors to act in good faith in the best interests of the company, its employees, shareholders, and community. But it stops short of embedding ESG as a mandatory consideration.

This gap contrasts with global trends. South Africa's King IV Code treats ESG as a fiduciary duty, requiring directors to explain how sustainability informs strategy. In the US and EU, directors can be held liable for failing to disclose material climate risks. Without similar obligations, Indian boards may treat ESG as a compliance burden rather than a strategic priority.

The constitutional context makes this omission particularly stark. Article 48A of the Constitution³⁷ directs the state to protect and improve the environment. Article 51A(g)³⁸ imposes a fundamental duty on every citizen to protect the environment. The Supreme Court has held in *Vellore Citizens' Welfare Forum v. Union of India* (1996)³⁹ that sustainable development is a constitutional principle. Yet corporate directors, as powerful economic actors, are not explicitly bound by these constitutional mandates.

Weak Enforcement

Finally, enforcement remains a critical weakness. SEBI prescribes penalties for misreporting under securities law, but these are relatively minor compared to the scale of violations. CSR non-compliance is punishable, but penalties are rarely imposed. The MoEFCC struggles with limited capacity to monitor thousands of industrial units.

The result is that corporations may prefer to pay fines rather than fundamentally change practices. The Supreme Court in *Sterlite Industries* observed that weak monitoring undermines deterrence. Unless regulators strengthen enforcement capacity with strict penalties, independent audits, and proactive inspections, ESG will remain aspirational rather than transformative.

VI. CONCLUSION AND SUGGESTIONS

India's journey from CSR to ESG demonstrates both innovation and inertia. CSR mobilised resources for social welfare but became a compliance ritual measured by expenditure rather than impact. ESG offers the promise of embedding sustainability into governance, but in India it remains disclosure-oriented, with limited coverage, weak enforcement, and vulnerability to greenwashing.

Despite these limitations, India occupies a pivotal role in the global sustainability landscape. As

³⁶ Companies Act, No. 18 of 2013, § 166 (India).

³⁷ Constitution Of India, §48(A), 1950, Acts of Parliament, 1950 (India).

³⁸ Constitution Of India, §51A(g), 1950, Acts of Parliament, 1950 (India).

³⁹ *Supra note 15*.

one of the largest emerging economies and the third-largest emitter, India cannot meet its development goals without simultaneously addressing climate risks. The corporate sector must play a central role in this balance.

Mandatory ESG Allocation within CSR

Despite a pioneering CSR mandate requiring companies to spend 2% of profits on social initiatives, only a small fraction targets climate action. Data shows that less than ten percent of CSR expenditure is allocated to environmental projects, with most directed towards education and healthcare. While these are critical sectors, the neglect of climate action undermines long-term sustainability.

To correct this imbalance, the government should earmark a portion of CSR funds for ESG purposes. For instance, of the mandatory 2% CSR expenditure, at least 0.5% could be compulsorily directed towards ESG-linked initiatives such as renewable energy, water conservation, waste reduction, and climate adaptation. This would not increase the overall burden on companies but would ensure that climate action receives consistent funding.

Integration of CSR and ESG

Currently, CSR and ESG operate in parallel but disconnected silos. CSR is expenditure-based and governed by the MCA, while ESG is disclosure-based and governed by SEBI. This fragmentation reduces efficiency and increases compliance burdens. A unified statutory framework that integrates CSR and ESG would streamline obligations, reduce duplication, and align corporate law with constitutional principles.

Independent Audits and Standardisation

To prevent greenwashing, ESG disclosures must be subject to independent third-party audits, akin to financial statements. Rating agencies must be regulated to ensure standardised methodologies, transparency, and accountability. Just as financial markets depend on audited accounts, sustainability markets must depend on verified data.

Expansion of Coverage

ESG obligations must be gradually extended to SMEs and unlisted companies, particularly in high-impact sectors like textiles, chemicals, and construction. Incentives such as tax benefits, concessional loans, and preferential procurement could ease the burden on smaller firms while ensuring broader coverage.

Embedding ESG into Fiduciary Duties

Section 166 of the Companies Act should be amended to explicitly require directors to consider

environmental and social risks in decision-making. This would align corporate law with constitutional mandates under Articles 48A and 51A(g), as interpreted in *Vellore Citizens' Welfare Forum* and *Indian Council for Enviro-Legal Action*⁴⁰. By codifying ESG as a fiduciary duty, India would signal that sustainability is not optional charity but a legal responsibility.

Alignment with Global Standards

India must also align its frameworks with global best practices to remain competitive in international capital markets. As investors increasingly demand TCFD-aligned disclosures and EU-compliant reporting, Indian companies that lag behind risk being excluded from global value chains. Harmonising Indian standards with frameworks like GRI, SASB, and CSRD will ensure global credibility.

ESG as Climate Diplomacy

Finally, ESG adoption must be framed as part of India's climate diplomacy. At COP26, India pledged net-zero by 2070. As G20 president in 2023, India highlighted "LiFE" (Lifestyle for Environment) as a global movement. Embedding ESG in corporate law would demonstrate India's seriousness in implementing these commitments, enhancing its credibility on the world stage.

Final Reflection

India's corporate governance has evolved from voluntary philanthropy to mandatory CSR, and now towards ESG. Yet the journey is incomplete. CSR succeeded in mobilising resources but failed to ensure impact. ESG has the potential to embed sustainability in governance, but only if it is strengthened through mandatory allocations, independent audits, fiduciary duties, and unified regulation.

The Supreme Court's jurisprudence—absolute liability in *M.C. Mehta*, polluter pays in *Indian Council for Enviro-Legal Action*, and sustainable development in *Vellore Citizens' Welfare Forum*—already provides a constitutional foundation. It is now the task of corporate law to operationalise these principles within boardrooms and business strategies.

If implemented, these reforms would move India from expenditure-based responsibility to governance-based sustainability. They would transform ESG from a buzzword into a substantive tool of climate governance. More importantly, they would enable India to balance growth with responsibility, ensuring that corporations become partners in safeguarding the planet for future generations.

⁴⁰ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647 (India).