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**Environmental, Social and Governance (ESG) Frameworks under Corporate Law: A Legal and Regulatory Analysis**

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# Environmental, Social and Governance (ESG) Frameworks under Corporate Law: A Legal and Regulatory Analysis

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## ABSTRACT

*This comprehensive analysis delves into the concept, evolution, and regulatory integration of ESG (Environmental, Social, Governance) in India, comparing the same with CSR, including the nuances of corporate governance issues like Shareholder Primacy vs. Stakeholder Theory. Some of the prominent regulations under the Companies Act 2013, including the CSR under Schedule VII, duties of directors, SEBI's BRSR Core, Labour Codes, which prescribe compliance to environmental clearances, labor welfare, human rights (NGRBC), independence of boards, green finance, and the balance between shareholder interests through the Business Judgment Rule. In the face of shareholder activism, judicial pronouncements like the Vanashakti judgment, and the dilemma between profit and sustainability, businesses must proactively integrate ESG to create long-term shareholder value, mitigate risks, and achieve India's vision of a Net Zero 2070.*

## KEYWORDS

Environmental • Social & Governance • Companies Act • CSR • Business Law • Corporate Law

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## Introduction

ESG is an abbreviation that means Environmental, Social, and Governance. It refers to a combination of factors that are employed in assessing the sustainability and ethical performance of companies. It also goes by the name Environmental factors, Social factors and Governance factors.

## Core Meaning

ESG aspects quantify the performance and contribution of businesses in the Environmental dimension, Social dimension and Governance dimension. These aspects offer an integrated look to draw a linkage between the non-financial performance and creation of sustainable and long term values.

## Historical Roots

The term was created in the 1960s and 1970s because of emergence of social movements, like the civil rights movement and the environmental movement. There is also the beginning of socially responsible investing at this time as a result of the publication of the book *Silent Spring* by Rachel Carson and the shunning of sin stocks like tobacco.

## Key Milestones

1990s: Since the Rio Earth Summit of 1992, corporate sustainability has been incorporated. Global Reporting Initiative came out in 1997.

The United Nations subsequently published the report *Who Cares Wins* in 2004 using the term ESG, and popularized it.

2006: Principles for responsible investment (PRI) was introduced.

## Modern Evolution

The 2010s saw the further acceleration of the ESG adoption pace with the Paris Agreement of 2015 and the UN Sustainable Development Goals, which shifted its screening to more proactive strategies

in the aftermath of the Enron scandal. By the 2020s, ESG became a quantifiable boardroom problem, although others such as greenwashing remained an issue.

Although both of them are the subset of the larger concept of Corporate Social Performance, the two notions of ESG (Environmental, Social, and Governance) and Corporate Social Responsibility (CSR) have certain essential dissimilarities in terms of scope, applicability, and application. Although ESG is a systematic approach involving quantitative methods of assessing the management of environmental elements (e.g., carbon emissions), social elements (e.g., labor rights), and governance elements (e.g., board transparency), in terms of long-term financial performance, as well as compliance with such standards as the EU CSRD, CSR, the CSR, on the contrary, includes more philanthropic elements such as charitable donations or volunteer work, but it is more relevant to the modern boardrooms.

Stakeholder Theory and Shareholder Primacy offer two contrasting methods in seeking the role and purpose of the corporation. The principle of maximizing profits, or the maximization of shareholder value, is a position that is argued by Milton Friedman in 1970 in Shareholder Primacy, that the primary role of the corporation is to maximize the value of shareholders (or the maximization of profits). The Stakeholder Theory, which is the theory suggested by R. Edward Freeman in 1984, on the other hand, embraces the idea that all the interests of the stakeholders, including those of employees, customers, and environment, should be fulfilled by the corporation in addition to the interests of the shareholders. The main cause of short-term efficiency is Shareholder Primacy which may cause negative externalities like environmental degradation. Stakeholder Theory is the force behind the emergence of inclusive decision-making and the present-day ESG and CSR trends, including the one by the Business Roundtable in 2019, but the legislation is still categorical that the shareholders are the main stakeholders.

## **Legal Framework Governing ESG in India**

### **ESG under the Companies Act 2013**

Concerning the Companies Act, 2013, ESG (Environmental, Social, and Governance) practices are not necessarily to be observed as a separate code, but are also covered by the Act under other sections, namely the section 135, of the Act, that of Corporate Social responsibility (CSR), where some companies are obliged to spend at least 2% of their average net profits of the previous three years on such activities as included in the Schedule VII, of the Act, that of Corporate Social responsibility, which expressly reflects on ensuring environmental sustainability, ecological balance, Additionally, under Section 134, the board reports are obliged to contain information concerning energy conservation measures, information concerning employee welfare and information concerning measures taken towards environmental protection, and under Section 166, duties of Independent Directors, to act in good faith, and in a manner he or she deems in the best interests of the company to promote its success to the benefit of its shareholders.

Although Business responsibility and sustainable reporting (BRSR) by SEBI assists this process among the top listed companies, in 2013, the Act itself was the first to provide global mandate on the CSR initiatives marking groundwork on the integration of ESG without the use of ESGs terms.

### **Role of Securities and Exchange Board of India (SEBI)**

SEBI also has a critical role to fulfill in ensuring enhanced ESG in India through mandatory disclosures of listed companies, primarily by the Business Responsibility and Sustainability Reporting (BRSR) mechanism, which was launched in 2021 and succeeded by the BRSR Core standards. As of today, this has been made mandatory in the case of the top 250 listed entities, on 9 core ESG metrics, including carbon emissions, energy consumption, waste, water conservation, diversity, and governance, including a voluntary reporting on value chain partners by the top 500 entities by of next

year, FY 2026-27. This expands on the current requirements of the Companies Act 2013 on the spending of CSR as well as encouraging the ESG disclosures with an emphasis on standardized and investor-centric ESG disclosures, such as green credit indicators and green bond standards, with the most recent changes in 2026 revolving around the assessment of ESG rating providers to mitigate the practice of greenwashing.

### **Key SEBI ESG Mandates**

**BRSR Core (2025):** A gradual reporting of environmental parameters (e.g., GHG intensity) and social parameters (e.g., employee welfare) and governance parameters of the top 1,000 listed companies in India.

### **Value Chain Disclosures:**

Phase 1 To FY 2025-26 Mandatory to the top 250 companies, and optional historical disclosure to facilitate compliance.

### **Enforcement:**

In case of a credit rating, companies can be delisted by rating agencies, and green debt securities must be checked by an independent party.

### **Strategic Impact**

SEBI has established a framework of the capital markets in India which is comparable to the international standards such as the ISSB thus enhancing investor confidence in the capital markets, and has incorporated the Companies Act to create a comprehensive approach to ESG governance.

### **Environmental Law Compliance**

Environmental laws in India fall under the ESG parameters as set out by the Companies Act 2013 and SEC Laws, which are meant to ensure that the companies are environmentally responsible by complying with a number of environmental laws such as the Environment (Protection) Act, 1986, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, among others. Specific types of projects require companies to obtain a prior environmental clearance in the form of the Environmental Impact Assessment Notification, 2006, with the Ministry of Environment, Forest, and Climate Change, and monitor emissions/discharges in terms of the standards established by the Central Pollution Control Board, and prepare annual compliance reports. In the ESG parameters, the SEBI BRSR Core is obligatory to disclose the environmental parameters such as those mandated by the scope 1, 2, and 3 of the emissions of greenhouse gases, energy consumption, water consumption, waste management, and hazardous substances among others in the top listed companies in India to be assured since FY 2026-27 and included in the activities of environmental sustainability as well.

### **Critical Compliance Requirements.**

**Clearances & Consents:** State Pollution Control Boards Environmental Clearance (EC), Consent to Establish (CTE), and Consent to Operate (CTO).

**ESG Measures (BRSR):** Carbon Footprint, the use of renewable energy, Recycling rate, and Circular Economy Practices.

## **Reporting:**

Section 134(3)(m) of the Companies Act on conservation practices contains an annual reporting requirement of the board.

## **Enforcement Mechanisms**

The National Green Tribunal (NGT) may impose fines or imprisonment, or limit the business under LODR; or by SEBI on ESG Disclosures.

## **Labour & Social Welfare Legislations linked to ESG**

The basis of the S pillar under the ESG ratings is labour and social welfare laws, through which employees receive fair treatment, safety, and equality. Four Labour Codes will be introduced as part of the future in November 2025, which will codify 29 laws into new forms. The Minimal wage standards, payment punctuality, compensation equality, and bonus payment are guaranteed by the code on Wages 2019. The code of industrial relations 2020 makes it easier to make unions, solve disputes, and use fixed-term contracts. Code on Social Security 2020 will increase the coverage of provident fund, gratuity, ESIC, and maternity benefits to gig workers/platform workers. The occupational safety, health and working conditions code of 2020 provides safe working hours, welfare and health checkups to the workers. It may be traced to the ESG ratings via BRSR reports on diversity (pay disparities, board structure), employee training, employee turnover, and human rights, and CSR on page VII includes education, healthcare, and skill development.

## **Key Legislations**

Pre-Codes (Ongoing Relevance): payment of Gratuity Act 1972, Employees Provident Funds Act 1952, Maternity Benefit Act 1961, Sexual harassment (POSH) Act 2013.

## **Four Labour Codes:**

Contract formalization, overtime (twice the salary), female night shifts of safe working conditions, rights of migrant workers.

## **ESG Tie-In:**

### **BRSR would need the following information:**

Inclusion of the workforce, safety accidents, and child/forced labor audit of suppliers.

## **Compliance Impact**

Failure to comply attracts a fine of up to 5 lakh rupee, jail term and SEBI fines; enhances environmental, social and governance ratings to attract more investors.

## **Environmental (E) Dimension in Corporate Law**

### **Climate Change and Corporate Liability**

Climate change has been shown to be a corporate liability on India, as the corporations have to deal with the consequences of the environmental laws, ESG reporting and court decisions, which put the corporations on the hook because of emissions, pollution and failure to comply with risk mitigation strategies. Alex under the Environment (Protection) Act 1986, corporations are absolutely liable to hazardous activities that cause harm, and may impose penalties of up to ₹1 crore fines and 5-year imprisonment, and can be imposed by the National Green Tribunal (NGT) by judgment, e.g. MCMehta v. Union of India, revolving around the polluter pays concept and sustainable development.

The best Indian companies must disclose under the SEBI BRSR core requirements the risks associated with climate change, Scope 1, 2, and 3 greenhouse gas emissions, and transition plans, where Scope 3 emissions and the assurance gaps present greenwashing risks to Indian corporations, which may be enforced under the Companies Act sections 34/245 of misrepresentation.

### **Emerging Trends**

The rise of climate change litigation on ESG disclosure and carbon-intensive operations is indicative of a paradigm shift toward preventive governance with companies considering the use of a climate risk strategy in the context of a 2070 Net zero target of India.

### **Green Financing and Sustainable Investments**

India's green finance and sustainable investments are driven by a set of regulations, including SEBI's green debt securities and RBI's climate risk management guidelines, to direct investments to low-carbon activities, including renewable energy and energy efficiency initiatives, green bonds with a "greenium" of 10-25 basis points, sustainability-linked bonds, and sovereign green bonds announced in Budget 2022-23, directing investments to green infrastructure development in India, aiming to achieve a net zero target of 2070.

The 2026 Environment Protection Fund Rules direct 75% of pollution penalties to states to be invested in blended finance instruments, including concessional loans from SIDBI/IREDA.

### **Regulatory Drivers**

SEBI has further regulated ESG securities in 2026, including disclosure of negative impacts and protecting investors against greenwashing, and RBI is focusing on climate stress tests. This environment is improving ESG scores for corporations, reducing capital costs, and aligning with global practices such as ISSB.

### **Social (S) Dimension in Corporate Law**

#### **Corporate Human Rights Obligations**

The corporate responsibility for human rights in India is primarily based on the United Nations Guiding Principles for Businesses and Human Rights, which were endorsed globally in 2011 and have now been implemented in the form of National Guidelines for Responsible Business Conduct 2019, which urge companies to respect human rights through policy commitments, due diligence, and remediation through grievance mechanisms, which have now been included in the ESG social pillar under the BRSR, which requires companies to disclose their human rights in supply chains, including bans on child/forced labour, diversity, and non-discrimination, while the Companies Act, Section 166, requires directors' responsibility for the success of stakeholders in an ethical manner, while the Labour Code, which will be enforced from 2025, requires payment of wages, safety, and social security, which, in case of violation, will be subject to the jurisdiction of the NGT/NHRC or shareholder actions, while sectoral laws like the POSH Act 2013 require companies to prevent harassment in the workplace.

### **Key Frameworks**

UNGPs Pillars: Duty to protect (State), responsibility to respect (Corporate), Access to remedy.

## **NGRBC:**

Voluntary for all firms, mandatory BRSR for top listed firms for salient risks.

Enforcement: Judicial precedents apply Article 21 (right to life) for polluters, CSR funds remediation.

## **Practical Steps**

Firms carry out HR impact assessments, supplier audits, and ESG reporting to reduce litigation risks as activism grows.

## **Employee Welfare & Labour Law Compliance**

The four Labor Codes have contributed significantly to the welfare of employees and implementation of labour laws in India since November 2025, consolidating 29 existing labour laws in a more favourable and beneficial way to the employees as well as making business easier to run. Four labour codes (Code on Wages 2019 (payment of wages, payment on time, minimum / national floor wage, equal payment of equal work), Industrial Relations Code 2020 (union rights, dispute resolution, and fixed-term employment), Social Security Code 2020 (extension of EPF / ESI to gig workers, payment of gratuity after 1 year, and maternity benefits) and Occupational Safety, Health & Working Conditions (OSH) Code 2020 (8 hours a day, 2x overtime pay, safety commit

### **Key Compliance Mandates**

Registration & Records: Central digital portal for employers; mandatory appointment letters for all workers, even contract workers/gig workers.

### **Welfare Benefits:**

Pan-India ESIC even for 1 hazardous worker across India; migrant workers' protection; night shifts for women with transport facility; health check-ups.

### **Employer Duties:**

Principal employers liable for defaulting contractors' wages; reporting of vacancies; digital records.

### **ESG Linkage**

Diversity, training programs, turnover rates, safety records to be disclosed by companies under SEBI BRSR, which is linked to CSR for skill development programs/health initiatives; ₹5 lakh penalty for non-compliance.

## **Governance (G) Dimension in Corporate Law**

### **Board Structure and Independence**

The structure of boards and board independence in India are largely regulated by the Companies Act 2013 and SEBI (LODR) Regulations 2015, focusing on balanced decision-making, board diversity, and board accountability, particularly in ESG issues. Public companies must have a minimum of 3 directors, 6-8 in the case of top listed companies, out of a total of 15 or as resolved through a special resolution, and must have a third of IDs, a woman director, and a resident director staying in India for 182+ days.

### **Independence Criteria**

IDs must not have pecuniary links (no loans > ₹50 lakh or 2% equity holding), nor be recent employees/promoters, and must attend 2/3 board meetings quarterly; the chairperson must be a non-executive director to avoid conflicts of interest. These models facilitate ESG through risk committees and fiduciary obligations under Section 166, thereby protecting stakeholder interests.

## **Shareholder Activism and ESG Resolutions**

Shareholder activism in India, with the backing of the Companies Act 2013, is now more inclined towards ESG risks with resolutions filed on climate reporting, board diversity, and executive compensation based on sustainability performance. Shareholders use Section 149 for directors for small shareholders, Section 151 for e-voting for resolutions, and Section 245 for class actions for mismanagement, with SEBI LODR for proxy advisors and Stewardship Code 2019 for institutional shareholders (like mutual funds with 20%+ stakes) for proactive engagement.

### **Trends**

Activism saw a 30% increase post-2023, with instances of investors pushing back against coal assets; challenges include high promoter holding (60% average) but growing via surge in retail demat accounts to 15 crore.

## **Directors' Duties and ESG**

### **Fiduciary Duties and Stakeholder Interests**

Under the Companies Act 2013, fiduciary duties of directors are stipulated by Section 166 according to which a director is now required to act in good faith in promoting the objects of the company to the interest of the members of the company as a whole and under due diligence and judgment and without conflict of interest and self-interest, a company. This is a shareholder-centric model which is founded on common law principles, and concerns principally the interest of the members of the company but has evolved over time to encompass the interest of the other stakeholders such as; employees, creditors, communities and the environment.

### **Balancing with Stakeholders**

Directors are required to make a reasonable interpretation of “members as a whole” to include value creation over a long term, as prescribed by SEBI BRSR disclosures on ESG risks faced by the firm and board oversight of sustainability. The judiciary has established this through precedents under Sections 241-242 of the CA Act, which hold directors liable for compensation, fines of ₹1-5 lakh, or removal from office for oppression/mismanagement of a firm, based on enlightened shareholder value that considers stakeholder welfare without compromising director primacy.

### **ESG Integration**

In reality, fiduciary duty is now extending to climate risk evaluation and human rights screening, thus connecting shareholder value with stakeholder theory through activism and NGRBC guidelines.

## **Business Judgment Rule and ESG Decisions**

The Business Judgment Rule (BJR) in India, though not specifically included in the Companies Act as in the case of Delaware, is presumed to protect directors from potential liabilities for decisions taken in good faith, with reasonable care, and in the best interest of the company, as implied under Section 166 of the Companies Act 2013, which deals with the duties of directors, and Section 463, which deals with relief from liability. The courts presume the board's expertise in business decisions, such as

mergers and investments, unless bad faith, gross negligence, and conflicting interests are established, as held in cases such as *Miheer H. Mafatlal vs. Mafatlal Industries*, where the court held that there should be no interference with "fair and reasonable" business decisions that are beneficial to the firm.

### **Application to ESG Decisions**

Finally, BJR protects ESG strategies like the transition to a net zero economy or the adoption of diversity quotas based on data (e.g., BRSR disclosures on climate change) and long-term value, thus rebutting shareholder lawsuits on dilution of shareholder profits. However, ESG failures like unaddressed Scope 3 emissions or greenwashing negate the presumption, subjecting the company to NCLT scrutiny under oppression provisions or SEBI sanctions.

### **Limits and Safeguards**

Protection requires documentation of processes, which balances the need for accountability with the imperative to protect promoters from personal liability for company damage.

### **Emerging Issues & Challenges**

#### **Conflict Between Profit Maximization and Sustainability**

The dualism between profit maximization and sustainability in corporate governance in India is a conflict between traditional shareholder primacy, which is based on Milton Friedman's ideology and Section 166 of the Companies Act 2013, and the pursuit of enlightened long-term value creation that is emphasized by ESG reporting, like SEBI's BRSR Core. Pressures for profit maximization, like quarterly earnings or cost reduction in high-carbon sectors, might be at odds with sustainability investments like renewable energy or supply chain audits for Scope 3 emissions, which require upfront capital (like 10-20% more for green tech) but promise long-term benefits from reduced risks, green premiums, and investor attraction with India's Net Zero 2070 promise.

#### **Resolution Strategies**

Managers apply the Business Judgment Rule to ESG decisions based on due diligence, reconciling shareholder and stakeholder interests (employees, environment) by judicial interpretation of cases such as *MC Mehta* precedents.

Tata Power is an example of companies that benefit from solar investments by reducing costs by 15-20% while increasing ESG ratings to gain cheaper capital.

### **Judicial Trends in ESG Litigation**

Judicial trends in ESG litigation in India indicate an increase in the number of cases since 2020, with the courts holding individuals and organizations accountable for environmental crimes, greenwashing, and sustainability failures through PILs, NGT orders, and shareholders' suits. The Supreme Court's 2025 ruling in the *Vanashakti v. Union of India* case prohibited ex-post facto environmental clearances, which made the retrospective clearances under the EIA 2006 invalid. This has strict consequences for the mining and infrastructure industries. The NGT has ordered cases involving the Yamuna floodplain and emissions from vehicles (*MC Mehta* series). The latest trend is the greenwashing litigation involving BRSR reporting, supply chain offenses, and climate-related offenses under Sections 34/245 of the Companies Act.

#### **Notable Trends**

**Environmental Concerns:** PILs connect Article 21 rights to life to climate change, making remediation committees and emission audits obligatory.

**Corporate Concerns:** SEBI investigates ESG disclosure practices, and derivative actions increase for board-level failures in managing Scope 3 emissions or diversity initiatives.

**2024-2026 Surge:** 30% increase in cases following BRSR, with NGT expediting Scope 3 and human rights violation actions.

### Implications

Evidence-based enforcement is preferred over administrative delays, with a focus on proactive ESG practices to avoid financial penalties, delisting, and shareholder activism.

### Conclusion

Indian ESG frameworks, starting with the Companies Act 2013's CSR mandates and progressing to SEBI's highly prescriptive BRSR Core disclosure norms, require companies to incorporate environmental compliance, labor welfare through the four Codes of Labor Laws, human rights via the NGRBC, and robust governance practices, including independent boards with an effective balance of duty to shareholders and duty to stakeholders. In the face of shareholder activism, green financing opportunities, and emerging judicial trends like the Vanashakti order banning retrospective clearances, companies are caught between the imperative of profits and the imperative of sustainability, with the solution lying in the protective umbrella of the Business Judgment Rule, which allows companies to make informed ESG decisions that marry profit maximization with climate risk and the goal of Net Zero 2070.

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