
From Compliance to Conscience: Evaluating the Efficacy of ESG Regulations in India's Climate Governance

Original Research Article | Volume 1 | Issue 5 | 2026 | Article Number: 085

Accepted: 05 October 2026 | Published: 10 October 2026 | ISSN: 2979-8582 (Online)



Crossref : <https://doi.org/10.67693/BJCR-JXUARWVV>



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Abstract

Global discussions about sustainability in life revolve around changing human mindsets while legal frameworks focus on changing reporting systems. This paper contends that the current ESG regulatory framework in India, which SEBI Business Responsibility and Sustainability Report (BRSR) is a part of, is at risk of imposing a culture of mere compliance to checklists rather than real corporate climate accountability. The main aim of the study is to assess the functioning of Companies Act, 2013 and the recent SEBI regulations on the belief that the laws many observers feel are largely reactive mechanisms for compliance than proactive tools for environmental stewardship. The paper adopts a doctrinal and analytical approach, examining the gap that exists in between the policy objectives of ESG obligations and actual practices in Indian corporate offices. Specific regulatory barriers are described because they enable business organizations to appear as acting in favor of the environment without changing the very nature of their business. The results show that while India has a high-level reporting scheme, there is a lack of educational system and incentive systems to integrate sustainability into the legal framework. For ESG laws to effectively reshape the planet, it is important for the legal structure to move beyond such governance which is merely based on disclosures. Liability rules ought to be implemented, thereby punishing environmental negligence and rewarding practical climate action, which will narrow the gap between the legal system and conscience of business.

Keywords: ESG Regulations, Corporate Governance, SEBI BRSR, Climate Action, Greenwashing

1. INTRODUCTION

1.1 The Global Imperative vs. Corporate Reality: Changing Minds

Current discussions regarding climate commitments at the state level in India frequently clash with the actual movements of corporate entities. Even though national guidelines are pushing for ecological transitions, the execution within boardrooms remains stagnant. India holds a respectable status due to its contributions at COP 26, specifically regarding the mission life initiative that suggests a shift from passive consumption toward the purposeful use of resources. This vision aligns with the 2070 net zero target, which necessitates fundamental behavioral changes within economic classes rather than relying solely on technological upgrades. The 2023-24 economic survey highlights this necessity for localized, resource-efficient strategies, while the idea of adopting a standard western regulatory model is vigorously opposed.

A developmental driver is how the government classifies climate action, yet private organizations frequently view these obligations through a narrow, compliance-based prism. Many scholars in the legal field have observed that a green mirage exists, where businesses employ sustainability buzzwords without performing structural, strategic shifts. One specific case involves the requirement from the Securities and Exchange Board of India regarding business responsibility and sustainability reporting; while this framework was intended to create transparency, contemporary analysis shows that a sense of urgency is displayed in environmental stewardship reports while a sense of inertia is maintained in corporate implementation.

At the macro level, India has laid out a behaviour centric climate strategy. This is crystallized in the form of Mission LiFE (Lifestyle for Environment) which is a global initiative that was applauded in COP26 by India, focusing on moving away from indiscriminate consumption to mindful, considered utilisation. The vision is also anchored in the Net Zero 2070 target which is a commitment that involves not just technological substitution but a fundamental change in cognition in all economic strata. The Economic Survey 2023-24 concurs and says that ‘one-size-fits-all’ Western paradigm is inadequate and “India's climate resilience needs to be built on the foundation of distinct and localised behavioural adjustments and resource efficiency.”

However, there is a strong disconnection between these sovereign ambitions and the operational realities of boardrooms in India. While the state thinks of a “development driven” climate agenda, the corporate sector is stuck with a “compliance driven” mentality. Recent legal scholarship calls it a “green mirage”, in which corporations tap the lexicon of sustainability without strategic metamorphosis. For instance, while the Securities and Exchange Board of India (SEBI) has mandated the Business Responsibility and Sustainability Reporting (BRSR) to improve transparency, according to critical reviews, such disclosures often suffer from “vague qualitative reporting” and a glaring lack of transition planning.

The reality is that at least for many Indian conglomerates ESG (Environmental, Social, and Governance) is a compliance cost, not an intrinsic value driver. Empirical analyses of the top listed companies show that while “foundational” disclosures (mandatory metrics) score well “leadership” indicators (voluntary, high-impact metrics) are considerably lower suggesting a reluctance to go above and beyond regulatory requirements. Moreover, a 2022 study of companies listed in the National Stock Exchange (NSE) revealed that almost 54 percent of sampled companies were involved in some form of greenwashing, with the energy and manufacturing sectors -which are key to the Net Zero target- the most vulnerable to unsubstantiated claims. This fact brings out an important gap, the Global imperative requires a radical change in business models to save the future, yet, the corporate reality is usually characterized by

short-termism, where environmental stewardship is practiced, not to save the planet, but because it is required to do so.

1.2 The Problem Statement: The “Compliance Trap”

The Sustainability Reporting phenomenon that has been building over the last decade has created a ‘Compliance Trap’ for companies. While regulatory bodies around the world including India have intensified the disclosure requirements over the last decade, the volume and complexity of Environmental, Social, and Governance (ESG) data that companies are expected to generate has increased exponentially. On the surface it would appear that all is well in the sustainability reporting space. However, in reality there is nothing but poor environmental performance to show for all the reporting that is taking place. Measured in terms of carbon intensity, biodiversity loss, and waste generation, environmental performance of companies has not improved. In fact, reporting has taken center stage to the point where it has become the end and not just the means to an end. The grave threat of green-hushing or even worse, greenwashing, looms large as companies struggle to be technically compliant with all the disclosure requirements of SEBI while at the same time externalizing environmental costs. Sustainability reporting is perceived to be a procedural challenge that is to be incorporated into the existing governance framework as a substantive liability it is not. The Sustainability Reporting phenomenon has over the last decade created a problem in the evolution of governance structures -what this study calls the ‘Compliance Trap’. The increased volume of Environmental, Social, and Governance (ESG) information recently required by regulatory bodies globally and in India, over the last decade, has not translated into corresponding improvements in terms of the environment's impact as measured in terms of carbon intensity, biodiversity loss and increased amount of waste generation.

The “Compliance Trap” emerges when the behavior of revealing information becomes a replacement for genuine operational results. Within this framework, corporations allocate heavy resources toward managing the complex network of reporting structures, such as GRI, SASB, and now BRSR, so that high ESG ratings can be obtained. It has been observed that these evaluations frequently provide rewards for the total amount of data provided instead of the excellence of the ecological result. Because this situation exists, a risky atmosphere of “green-hushing” or “greenwashing” is produced where a firm might be technically following every SEBI mandate while the firm still pushes large environmental costs onto society. The basic difficulty exists because current governance arrangements handle sustainability as a systematic obstacle instead of a meaningful legal debt.

1.3 Research Objectives

Given the gaps identified in the current regulatory landscape, this research is structured around three primary objectives:

- *To evaluate the transition from CSR to ESG in India:* This study analyzes the legislative shift from the philanthropy-based model of Corporate Social Responsibility (Section 135 of the Companies Act, 2013) to the more rigorous, data-driven ESG framework. It examines whether this transition represents a genuine shift in corporate accountability or merely a rebranding of voluntary altruism.
- *To critique the efficacy of the SEBI BRSR framework in preventing greenwashing:* The Business Responsibility and Sustainability Report (BRSR) is India's most ambitious attempt at standardized disclosure. This objective seeks to determine if the BRSR’s “Essential” and “Leadership” indicators provide sufficient granularity to expose greenwashing or if they inadvertently provide a “safe harbor” for superficial compliance.
- *To propose a shift from “disclosure-based” to “liability-based” governance:* Moving beyond the comply or explain or disclosure-only models, this research advocates for a governance structure

where environmental performance is linked to legal liability. It explores the potential for green fiduciary duties, where directors are held personally and corporately liable for failures to meet stated sustainability targets.

1.4 Methodology

This study employs a doctrinal and analytical research design. In the doctrinal part, the study looks at primary legal sources which are the Companies Act 2013, National Voluntary Guidelines (NVGs), and the SEBI (Listing Obligations and Disclosure Requirements) Regulations in a systemic manner.

The analytical part discusses secondary literature such as the “Triple Bottom Line” and “Stakeholder Primacy” and the “Stakeholder Primacy” theories of corporate governance. This study also looks at the international benchmark such as the “EU’s Corporate Sustainability Reporting Directive” (CSRD) to evaluate the robustness of the Indian framework. By synthesizing legislative intent with practical corporate disclosures, the methodology aims to highlight the legal “voids” that allow the Compliance Trap to persist.

2. HOW CORPORATE ENVIRONMENTAL RESPONSIBILITY CHANGED IN INDIA

2.1 Philanthropy becomes a liability: The Companies Act, 2013

With the enactment of the Companies Act, 2013, India's corporate jurisprudence underwent a transformative shift, moving from a shareholder-primacy model to a stakeholder-centric one. This change is most prominently reflected in Sections 135 (Corporate Social Responsibility) and 166(2) (directors' duties). Section 135 required companies that have net worth of ₹500 crore, turnover of ₹1,000 crore or net profit of ₹5 crore, to spend at least 2% of their average net profit of the last 3 years on Corporate Social Responsibility (CSR). Although this made India the first country in the world to make CSR compulsory, many criticisms have been leveled at Section 135 for it reduces environmental responsibility into a compliance checklist. Legal scholars argue that Section 135 siloed the environment into philanthropy, such as planting trees, providing water and sanitation projects rather than embedding sustainable practices into the core operations of the company. The “comply or explain” approach meant companies initially regarded environmental governance as an external action, rather than an internally embedded systemic requirement.

However, in Section 166(2), a much deeper, quieter revolution happened. That section explicitly declares a director “shall act in good faith... for the protection of the environment”. Section 166(2) is a fiduciary duty as opposed to a mere spending obligation (Section 135). The effect of this amendment is to elevate environmental protection from a choice of charity to an obligation of law. The scope of this duty was significantly extended by the Supreme Court of India in *Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd.* (2021). The Court held that corporate governance has changed from a “regime of familial” management to that of “social accountability.” The directors are fiduciaries of not only the company and shareholders but to the stakeholders, including the environment.

Most recently, the Supreme Court of India reinforced this obligation with its 2024 ruling in *M.K. Ranjitsinh & Ors. v. Union of India*, which pertained to the protection of the critically endangered Great Indian Bustard. In its ruling, the Court recognized the “right to be free from the adverse effects of climate change” as a fundamental right protected under Articles 14 and 21 of the Constitution. This effectively bridges the gap between constitutional environmental rights and corporate duties, suggesting that a director's failure to consider the risks of climate change could be seen as a violation of their duty to act under Section 166(2). Yet, even with these developments, critics argue that enforcement remains largely reactive, occurring only after environmental harm has already occurred, rather than functioning as a proactive.

2.2 The Rise of ESG and Non-Financial Reporting: NVGs to NGRBC

The shift from voluntary philanthropic initiatives to structured corporate responsibility was initiated by the Ministry of Corporate Affairs (MCA). In 2011, the MCA introduced the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (NVGs), which outlined nine core principles of responsible business conduct in India, with Principle 6 focusing on respect for the environment.

Despite being pioneering, the NVGs lacked regulatory teeth and enforceability. With growing international focus on the UN Guiding Principles on Business and Human Rights (UNGPs) and the Sustainable Development Goals (SDGs), India was prompted to reassess and revise its national guidelines.

Consequently, in 2019, the NVGs were updated and became the National Guidelines on Responsible Business Conduct (NGRBC). Although the name change was subtle, it signaled a shift from voluntary commitment to expected responsible business conduct. The NGRBC aligned the nine principles of the NVGs with the UN's SDGs, emphasizing the need for businesses to design resource-efficient products with minimal environmental impact. This marked the shift from CSR (how companies spend their profits) to ESG (how companies generate those profits).

2.3 The BRSR Framework: Quantifying Sustainability

To implement the principles of the NGRBC, the Securities and Exchange Board of India (SEBI) mandated the Business Responsibility Report (BRR) for the top 100 companies in 2012, later expanding to the top 1,000 by 2019. However, the BRR was flawed as it relied on qualitative descriptions of a company's environmental actions rather than quantitative data.

In response to growing concerns over greenwashing, SEBI introduced the Business Responsibility and Sustainability Report (BRSR) in May 2021. The BRSR represented a fundamental shift from qualitative descriptions of a company's environmental actions to quantitative measurement of their environmental impact.

Specifically, the BRSR required companies to report on their Scope 1 and Scope 2 Greenhouse Gas emissions, total energy consumption, and water withdrawal intensities, thereby requiring companies to disclose their actual environmental footprint. As noted by SEBI, the intent was to bring sustainability reporting "at par with financial reporting."

In 2023 the launch of "BRSR Core" saw the introduction of audit requirements for key ESG metrics which in turn put an end to company selectivity in what data to present. By the requirement that the top 1,000 listed companies report this info, SEBI has in fact turned environmental responsibility from a soft law issue into a hard data market issue which in turn sees capital flow going to climate performance.

3. "BOX-TICKING" PARADOX: A CRITIQUE OF THE CURRENT REGIME

3.1 Architecture of Compliance: Measurement without Mitigation

Although the shift from the Business Responsibility Report (BRR) to the Business Responsibility and Sustainability Report (BRSR) was aimed at replacing philosophical declarations with hard data, a critical analysis of the BRSR highlights that it is still structurally flawed. This is because, in this framework, it is assumed that reporting equals reduction. The structure rewards complex data aggregation while ignoring actual reductions in environmental impact. This results in what scholars have termed "performative compliance" - a situation in which the effort put into measuring carbon footprints outstrips that which is put into reducing them.

The design of the BRSR required by the Securities and Exchange Board of India (SEBI) requires listed

companies to disclose “energy intensity” (turnover or unit based) which is economically efficient for benchmarking purposes, yet at the same time hides absolute environmental impact. For instance, a conglomerate, through efficiency upgrades, can reduce energy intensity per unit of production by 10 per cent, yet, if that conglomerate also happens to increase total production by 20 per cent, the result is an overall rise in absolute emissions whilst its BRSR report might show a “greener” intensity ratio. This is the Jevons Paradox where technology reduces consumption instead of increasing it.

The “comply or explain” concept, which sounded so flexible, has changed into “disclose and dismiss”. The authorities expect transparency regarding “Scope 3” emissions (value chain emissions) but they do not demand any reductions. The regime serves merely as a mirror to the damage, not a shield to prevent it. Data points like waste generated, water used, and GHGs emitted become lines in a ledger, devoid of any real environmental significance. As has been observed in critiques of disclosure regimes, just forcing a company to disclose that it is polluting does not compel it, under the law, to desist, as long as it stays within the limits of its environmental licenses.

3.2 Regulatory Bottlenecks and the Greenwashing Loophole

A major structural obstacle for the Indian ESG framework is the absence of a legally binding definition of sustainable or green investment. This ambiguity creates the perfect landscape for firms to indulge in regulatory arbitrage, by rebranding routine operational efficiency as pioneering climate leadership.

The Greenwashing Loophole, as the author terms this dynamic, is exacerbated by the absence of a pervasive taxonomy. Unlike the European Union’s Taxonomy Regulation, which provides a rigid classification system for environmentally sustainable economic activities, India’s framework remains fragmented. Without a unified taxonomy, a cement company might label the installation of a waste heat recovery system (a cost-saving measure) as a climate resilience initiative. While technically true, such framing allows firms to capitalize on the green premium in financial markets without fundamentally altering their carbon-intensive business models.

The regulatory bottleneck experiences more pressure because of the audit gap. Before the present time, individuals observed that most ESG data was provided by the corporations themselves without external examination. Although SEBI established BRSR Core in 2023 so that the top 150 listed entities must obtain reasonable assurance, this regulation permits the larger portion of the corporate sector to evaluate their own performance. Information asymmetry arises when third-party verification remains absent for the general market. It is often claimed by experts that investors and stakeholders are compelled to trust the truthfulness of what the management presents to them.

Regarding the protection of consumers, the Advertising Standards Council of India (ASCI) recently produced the Guidelines for Prevention of Greenwashing (2024), which forbid the use of unclear words such as eco-friendly or planet positive if evidence is not provided. Nevertheless, these instructions are utilized mainly for advertisements that individuals in the public see. The corporate reporting under BRSR is not subjected to the same detailed inspection concerning unclear adjectives used within the narrative portions of the document. Many people believe that this disconnect enables an organization to maintain legal compliance with SEBI by submitting a BRSR that contains correct numerical figures but utilizes a deceptive narrative strategy. This specific behavior is identified by researchers as symbolic management because the words do not match the true impact

3.3 The Missing “Corporate Conscience”: Form over Substance

Many scholars believe that the most significant criticism regarding the existing legal system is how this framework promotes “reactive adherence” instead of “proactive stewardship.” Because the judicial

instruments are designed to monitor the technical appearance of the document, the actual essence of the plan is often ignored. A situation is created where the mechanical filing is prioritized over the true intention of the strategy.

Weak implementation of Section 166(2) of the Companies Act, 2013 causes this specific failure to persist. Although the regulation requires that every executive professional works for the preservation of the natural surroundings, a total absence of legal precedents exists where a leader faced personal accountability only for neglecting ecological duties when a massive industrial tragedy did not occur. The legislation is operated through a punishment-centered structure for failing to submit documents, which is a procedural error, instead of using a responsibility-centered structure for environmental carelessness. It has been observed that the legal system treats the absence of a report as more serious than the absence of actual protection for the earth.

A specific entitlement to exist without the negative impacts of global warming was acknowledged by the Supreme Court's recent decision in *M.K. Ranjitsinh & Ors. v. Union of India (2024)* under Article 21. Even though this constitutional entitlement should guide how the fiduciary obligations of a medical professional or a corporate executive under Section 166(2) are understood, the reality remains different. Managing groups in a commercial organization treat BRSR submissions as a protection against government penalties. These filings are not utilized as a guide to meet this constitutional debt. While the technical staff focuses on completing every requirement to escape the investigation of SEBI, the question of whether the commercial strategy fits a world restricted to 1.5°C is never asked.

Environmental justice is separated from organizational management because of this checklist-oriented mindset. A "Corporate Conscience" that is entirely clerical is produced, which survives only during the moments when the data is recorded, submitted, and then ignored. Experts claim that environmental obligation will stay as a separate administrative department that is kept away from the primary financial choices of the boardroom. This situation will continue unless the fiduciary duty to the natural world is separated from the business judgment rule and given a more rigorous examination by the courts. Because these two concepts are tied together, the protection of the earth is often forgotten during the distribution of capital.

4. COMPARATIVE PERSPECTIVES: GLOBAL LESSONS FOR INDIAN GOVERNANCE

4.1 The European Union's "Double Materiality": Beyond Financial Risk

The world is witnessing two distinct approaches to corporate environmental responsibility: single materiality, which focuses on how climate change impacts a firm, and double materiality, which considers how a firm impacts the planet. The European Union has adopted the second approach, with the Corporate Sustainability Reporting Directive (CSRD) coming into effect in January 2023.

The CSRD requires companies to report on both the financial impacts on their firm and their impacts on the planet. This requires directors to report on how their firm impacts the environment and biodiversity, in addition to reporting on the financial risks to their firm from climate change.

India's Business Responsibility and Sustainability Report (BRSR) framework follows the single materiality or financial materiality approach to environmental disclosures. Even though the BRSR requires firms to disclose their environmental impacts, such as their Scope 1 and 2 emissions, the environmental impacts of their firms are not treated as independent obligations of the firm to the planet. According to some legal scholars, the lack of a legal requirement for firms to adopt a double materiality approach allows them to ignore the planet's environmental impacts as long as they do not adversely impact the firm's financial performance.

4.2 The UK and US Approaches: Enlightened Shareholder Value vs. Investor Protection

To understand India's approach to environmental regulations, it is useful to compare it to the approaches of the United Kingdom and the United States. In the United Kingdom, Section 172 of the Companies Act 2006 requires that directors act to benefit the shareholders of the firm but that they must also consider the impacts that the firm has on the environment and the community in which the firm operates. This requirement was revolutionary when it was first introduced, but critics argue that the requirement for directors to "have regard to" environmental impacts allows them to prioritize the interests of shareholders over the environment.

In the United States, the approach to environmental regulations is even more focused on investor protection. In March 2024, the United States Securities and Exchange Commission (SEC) adopted a rule that mandates firms to disclose their climate-related risks that could have a financial impact on the firm. The SEC's rule does not require firms to disclose their Scope 3 emissions, which relate to their supply chains. This indicates that the US approach to environmental regulations is primarily focused on protecting the financial interests of investors rather than protecting the environment.

The stance of India appears to be of a mixed nature. Even though the Companies Act, 2013 (Section 166) places a fiduciary obligation upon individuals that resembles Section 172 of the UK, the detailed reporting necessities of the BRSR align more with the transparency objectives found in the EU. A lack of enforcement power compared to the EU is observed in India, alongside a missing culture of shareholder litigation that defines the US. Because the legal framework remains developing, experts claim that the regulatory environment functions with distinct characteristics. The strength of the legal oversight is weakened when the domestic systems are compared to those of international counterparts.

4.3 Where India Lags: The Impunity of "Bad Performance"

The significant deficiency within the corporate environmental governance of India exists because punitive consequences for inferior environmental performance are absent. The existing system imposes penalties for the failure to disclose information, rather than for the actual commission of environmental harms.

Within the current SEBI framework, a business organization is permitted to submit a BRSR report that acknowledges the rise of carbon emissions, the expansion of gender wage disparities, and the production of immense quantities of hazardous waste. Provided that the information is precise and the documentation is submitted according to the schedule, the business organization remains in complete accordance with the legislation. It has been observed that no statutory mechanism exists inside corporate law to punish a governing board when that board fails to achieve its specific climate objectives. This situation produces a "compliance shield" because transparency is used as a replacement for true responsibility.

This reality differs greatly from developing patterns in territories such as France, where the Duty of Vigilance Law permits affected individuals to initiate legal action against business organizations that fail to stop environmental damage within their supply chains. In a similar manner, the CSRD of the EU is supported by a mandatory audit necessity that will eventually raise sustainability information to the same degree of certainty as financial information. While the top 150 listed entities saw the introduction of reasonable assurance through "BRSR Core" in 2023, the greater portion of sustainability declarations continue to be unaudited and verified by the companies themselves. Experts claim that the lack of external verification weakens the reliability of these environmental claims.

The structure of penalties in India is disconnected. Because environmental infractions are managed by Pollution Control Boards under distinct environmental laws, the small financial penalties are often regarded by business organizations as a simple working position expense. Meanwhile, the Ministry of

Corporate Affairs manages the governance aspects. A system where frequent environmental crimes result in the disqualification of directors under corporate law has not been established. Until the nation connects this divide by shifting from the act of penalizing missing reports to the act of penalizing poor results, the governance structure will continue to be a complex method for recording destruction instead of a mechanism for a sustainable transition.

Comparative Analysis between India, the EU, the UK, and the US

Parameter	India	European Union (EU)	United Kingdom (UK)	United States (US)
Primary Framework	Companies Act, 2013 (Sec 135/166) & SEBI BRSR	Corporate Sustainability Reporting Directive (CSRD)	Companies Act, 2006 (Sec 172)	SEC Climate-Related Disclosure Rules (2024)
Core Philosophy	Hybrid / Stakeholder-Centric : Theoretical duty to environment (Sec 166) vs. practical focus on compliance checklists.	Double Materiality: Mandates reporting on both financial risk <i>and</i> environmental impact (Inside-Out & Outside-In).	Enlightened Shareholder Value (ESV): Directors must promote shareholder success while "having regard" for the environment.	Market Primacy / Financial Materiality: Focuses strictly on climate risks that materially affect financial returns (investor protection).
Reporting Scope	Top 1,000 Listed Entities: Quantitative metrics on energy, water, waste (BRSR). "Comply or Explain" legacy.	Broad Coverage: Applies to large EU and non-EU companies; extensive disclosure on biodiversity, pollution, and workforce.	Strategic Report: Requires statement on how directors fulfilled Sec 172 duties; often qualitative.	Publicly Traded Companies: Disclosure of material climate risks; Scope 3 (supply chain) emissions largely excluded.
Assurance (Audit)	Limited / Emerging: "BRSR Core" mandates reasonable assurance for Top 150 listed entities (as of 2023-24).	Mandatory: Progressive shift from limited to reasonable assurance (audit) for sustainability data.	Voluntary / Mixed: Financial data is audited; ESG statements in strategic reports often lack rigorous external audit.	Rigorous on Financials: High scrutiny on financial statements; climate disclosures face high litigation risk if misleading.
Enforcement Focus	Procedural Compliance: Penalties focus on <i>non-filing</i> or	Substantive Accountability: Growing liability for failure to	Procedural Compliance: Liability arises if the <i>process</i> of	Fraud / Misrepresentation: Enforcement targets "greenwashing"

	<i>misreporting</i> , not on actual environmental damage or poor targets.	prevent harm (e.g., CSDDD - Due Diligence Directive).	decision-making ignores the environment, not necessarily the <i>outcome</i> .	that misleads investors about financial value.
Key Gap	Disconnect between Duty & Data: Directors have a fiduciary duty to the environment (Sec 166), but reporting (BRSR) is treated as a separate compliance task.	Implementation Costs: High regulatory burden for smaller firms in the supply chain.	“Box-Ticking” Risk: Sec 172 statements often become boilerplate defenses rather than strategic drivers.	Narrow Scope: Ignores externalities; a company can be profitable but ecologically destructive without violating SEC rules.

5. BRIDGING THE GAP: FROM DISCLOSURE TO LIABILITY

5.1 Redefining Fiduciary Duties: A Shift to Personal Liability

The central theory of this analysis has been that India’s corporate environmental regime suffers from a “compliance paradox”: as reporting standards become more sophisticated, the actual accountability for environmental degradation remains stagnant. To bridge this gap, the interpretation of Section 166(2) of the Companies Act, 2013, must evolve from a “soft law” aspiration to a “hard law” liability standard.

Currently, Section 166(2) mandates that a director “*shall act in good faith... for the protection of the environment.*” However, this duty is often treated as subsidiary to the primary duty of maximizing shareholder value. To operationalize this provision, Indian courts must adopt a stricter standard of review, akin to the *Caremark* standard in the United States, where directors can be held personally liable for a sustained or systematic failure to exercise oversight in this case, over environmental risks.

Legal scholars argue that the current penalty structure under Section 166(7), a fine ranging from ₹1 lakh to ₹5 lakh is insufficient to deter environmental negligence by large conglomerates. It functions as a mere “*cost of doing business.*” A reformed approach would interpret “protection of the environment” as a distinct, non-derogable duty. If a company is found to be a habitual environmental offender (e.g., repeatedly violating pollution norms), the directors should face disqualification or personal liability for breach of fiduciary duty, independent of the penalties levied on the company by pollution control boards.

This interpretation finds support in the Supreme Court’s evolving jurisprudence. In *M.K. Ranjitsinh & Ors. v. Union of India* (2024), the Court recognized a fundamental right to be free from the adverse effects of climate change. By logical extension, a director who steers a company toward activities that exacerbate climate change without adequate mitigation is arguably facilitating the violation of a constitutional right. This “*constitutionalization*” of corporate law could serve as the legal hook to hold directors personally accountable, moving the needle from “*did you file the report?*” to “*did you prevent the harm?*”

5.2 Incentivizing “Tangible Climate Action”: Green Credit and Tax Reform

While liability acts as a stick, the transition to a sustainable economy requires an equally potent carrot. The current financial ecosystem does not sufficiently distinguish between a company that merely *reports* its

emissions and one that actively *reduces* them. To fix this, India must integrate "tangible climate action" into its fiscal and credit policies.

The government's recent launch of the *Green Credit Programme (GCP)* in October 2023 is a step in the right direction. It aims to incentivize voluntary environmental actions across diverse sectors. However, for the corporate sector, this needs to be tied directly to the Business Responsibility and Sustainability Report (BRSR) performance.

A proposed mechanism is a "tiered tax incentive" structure. Companies that demonstrate a verified year-on-year reduction in Scope 1 and Scope 2 emissions (audited under BRSR Core) could be eligible for a lower corporate tax rate or accelerated depreciation on green assets. Research indicates that fiscal incentives are significantly more effective than mandates in driving technology adoption. For instance, linking the Corporate Social Responsibility (CSR) obligations under Section 135 to specific, measurable climate outcomes—rather than just spending amounts could unlock billions of rupees for genuine decarbonization.

Furthermore, the Reserve Bank of India (RBI) should consider issuing guidelines for "*Green Differential Lending*." Banks could be mandated to offer lower interest rates to firms with high ESG ratings based on their BRSR Core scores. This would lower the cost of capital for sustainable firms, creating a direct financial imperative for boards to prioritize environmental performance over "greenwashing."

5.3 Integrating Education into Governance: The Boardroom Conscience

Finally, the most sophisticated regulations will fail if the individuals charged with enforcing them lack the necessary literacy. A 2023 survey revealed that only a small fraction of Indian corporate directors feel competent to address climate risks. This "competence gap" creates a scenario where boards sign off on sustainability reports they do not fully understand.

To address the "transforming minds" aspect of governance, the Ministry of Corporate Affairs should mandate "ESG Competency" as a requisite for board appointments, particularly for the top 1,000 listed entities. This could mirror the requirement for "financial literacy" in Audit Committees. Specifically, the *Companies (Appointment and Qualification of Directors) Rules, 2014* could be amended to require that at least one independent director on the board possesses certified expertise in sustainability or environmental science.

Additionally, mandatory annual training modules for all directors on climate governance, circular economy principles, and the evolving legal landscape of ESG are essential. This moves the needle from "*reactive adherence*" where directors rely entirely on consultants to "*proactive stewardship*," where the board itself drives the sustainability agenda. As noted by legal academics, true corporate conscience is not legislated; it is cultivated through the continuous education of the decision-makers who hold the reins of capital.

By combining strict liability (Stick), fiscal incentives (Carrot), and mandatory education (Sermon), India can bridge the gap between the "form" of disclosure and the "substance" of sustainability, positioning itself as a global leader in responsible corporate governance.

6. CONCLUSION

6.1 Summary of Findings: The Compliance Paradox

The trajectory of corporate environmental responsibility in India, as traversed in this paper, reveals a distinct "compliance paradox." On paper, India possesses one of the most sophisticated reporting architectures in the Global South. The transition from the voluntary National Voluntary Guidelines (NVGs) to the mandatory Business Responsibility and Sustainability Report (BRSR) represents a quantum leap in

regulatory ambition. Yet, the central finding of this analysis is that while the *skeleton* of the law is robust, its *soul* remains elusive.

The current regime creates a “market for virtue” where companies trade in disclosures rather than decarbonization. As demonstrated in Chapter 3, the BRSR framework, despite its granularity, largely functions as a “mirror” that reflects environmental damage without legally compelling its mitigation. The data indicates that mere transparency does not automatically translate into accountability. Without the “*double materiality*” standard which mandates acting on the company's impact on the planet, corporate environmentalism remains trapped in the “business case” logic, where ecology is protected only when it is profitable to do so.

Furthermore, the legal bifurcation between “reporting” (governed by corporate law) and “polluting” (governed by environmental law) has created a governance vacuum. Directors can effectively discharge their duties under Section 166(2) of the Companies Act by filing a perfect sustainability report, even while their operations push planetary boundaries. This “box-ticking” culture satisfies the letter of the law while violating its spirit, leaving the “Corporate Conscience” as an administrative fiction rather than a strategic imperative.

6.2 Final Argument: From Object to Subject

For ESG to transcend its current status as a sophisticated compliance industry and truly “transform the earth,” the legal status of the environment must be fundamentally reimagined. The law must cease treating the environment as a passive checklist item, an object to be managed and start treating it as a stakeholder with distinct legal rights and a subject to be respected.

This shift is not merely theoretical but jurisprudentially necessary. The Supreme Court of India, in *M.K. Ranjitsinh & Ors. v. Union of India* (2024), has already laid the constitutional groundwork by recognizing the “*right to be free from the adverse effects of climate change*” as a fundamental right. The logical corollary to this right is a corporate duty that goes beyond disclosure. If citizens have a right to a stable climate, corporations as the primary agents of economic activity must have a corresponding fiduciary duty to ensure their operations do not violate this right.

Therefore, the future of Indian corporate governance lies in adopting an “*Eco-centric Stakeholder Theory*.” This framework would legally recognize nature as a silent stakeholder in the boardroom, represented by directors with specific environmental fiduciary duties. We must move from a regime that asks, “Did you report the damage?” to one that asks, “Did you prevent it?” Only when the cost of ecological destruction exceeds the cost of compliance will the boardrooms of India truly pivot from “managing optics” to “stewarding the future.”

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