
INVISIBLE WORKERS IN VISIBLE REPORTS: A CRITICAL REVIEW OF ESG AND LABOUR RIGHTS IN INDIA'S REAL ESTATE SECTOR

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ABSTRACT

In recent years, Environmental, Social and Governance (ESG) frameworks have reshaped the cast of corporate responsibility. One such field where their incorporation is still patchy is labour law, especially among the real estate sector of India. Out of the E-S-G framework environmental and governance frameworks have been incorporated properly but the social component especially the labour frameworks have faced several implementation challenges. The article critically analyses how the Real estate sector and its companies in India who are highly dependent on unorganised sector of labour follow these ESG Compliances in respect to these labours. The paper discusses that how even after robust regulations Such as the SEBI's Business Responsibility and Sustainability Report (BRSR), the labour conditions remain unwarranted, unchecked and unaudited.

By taking into reference and citing National and International statutes such as The labour codes 2019, companies act 2013, Germany's Supply chain act and France Duty of Vigilance law, the article tries to ascertain the regulatory flaw because of which the labour rights are neither assured nor are protected on a legal regulation. Secondary Sources such as the statutes, judicial precedents, and ESG reports have been cited to examine the disconnection between the compliance reporting and ground realities.

The article concludes that real estate sector companies are not taking into consideration substantive reform rather practising reputational compliances. The article recommends reforms like quantitative labour metrics, SEBI and Labour department working together, and imposition of due diligence on contracts for taking migrant workers. Unless such structural reforms are undertaken, ESG in the property industry runs the risk of being performative, without achieving justice for the very workers whose toil propels the sector. The article finally calls for an integrated model of regulation that harmonizes labour protection with ESG requirements, thus making corporate accountability better and human dignity in one of India's most precarious workforces more a reality.

Keywords: ESG Compliance, Real Estate Sector, Labour law

Introduction

In the last decades, growing attention to Environmental, Social, and Governance (ESG) compliance has reshaped corporate duty frameworks across jurisdictions, with a clear trend toward non-monetary disclosures by both public and private firms. Among the three ESG pillars, the "Social" dimension namely labour standards is the least underemphasized, typically being overshadowed by climate information and governance updates. This disparity is particularly acute in the real estate industry, one of the world's most labour-intensive sectors but which gets little attention in corporate ESG stories.

Real estate companies infrastructure developers to residential and commercial property managers often do business through long subcontracting chains. The chains tend to obscure labour practices, especially in countries such as India, where migrant and informal labour constitutes the majority of construction and allied services. There has been a presence of integrated labour codes such as Code on Wages 2019, Occupational Safety, Health and Working Conditions Code, 2020 and others but still the enforcement is uneven and contrasting in nature¹. In opposite, ESG compliance has taken growth as a mandatory requirement for the largest 1000 listed companies through mechanisms such as the Business Responsibility and Sustainability Report (BRSR), by the Securities and Exchange Board of India (SEBI)². However, labour related disclosure in these reports is sparse, non-verifiable, and absent third-party audit, making ESG reporting on labour standards largely per formative.

This issue is particularly severe in real estate companies, which should be following ESG standards but are still not under much scrutiny for the way they treat their workforce, particularly when much of the actual workforce is not directly employed but works through third party contractors. Real estate companies tend to tout their green initiatives ecologically-friendly buildings, sustainable materials, lower emissions but say nothing about workplace hazards, child labour, and unregistered migrant workers on building sites. Workers' rights, while theoretically part of ESG, tend to get lost in the practical reporting and compliance

¹ Code on Wages, No. 29 of 2019, India Code (Ministry of Law & Justice), <https://www.indiacode.nic.in/handle/123456789/15793>; see also Occupational Safety, Health and Working Conditions Code, No. 37 of 2020, DGFASLI, https://dgfasli.gov.in/public/Admin/Cms/AllPdf/OSH_Gazette.pdf

² Securities & Exch. Board of India, Business Responsibility and Sustainability Reporting (BRSR) by Listed Entities, SEBI/HO/CFD/CMD-2/P/CIR/2021/562 (May 10, 2021), https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html

frameworks that these companies embrace. This article challenges the intersection between ESG compliance and labour law in the legal architecture underpinning real estate companies.

Methodology

The paper is descriptive in nature. Secondary Sources have been utilized to collect data for the proposed research. Researcher has utilized secondary sources such Journals, Newspapers, Reports and other research sources to gather information and data for the research purpose.

In addition to the secondary sources, the researcher has also relied on various national statutes such as Labour Codes, 2019 or the Companies act 2013, websites. The researcher has also used international statutes wherever necessary to draw a parallel between the laws in India and the world. The researcher has taken inspiration from these International statutes and perspectives to suggest recommendations.

Research Question

How effectively do real estate companies embed labour standards in their ESG compliance frameworks, and what are the legal remedies for effective enforcement?

Research Objectives

The research aims at:

1. Examining the legal standards prescribed by business laws for ESG.
2. Debating the way labour law is positioned within the context of ESG disclosures.
3. Assessing the enforcement gap in the laws with reference to international statutes.
4. Proposing regulatory reforms to further labour protection through ESG channels.

Research Hypothesis

The central hypothesis driving the research is that real estate firms undertake ESG compliance initially as a formalistic disclosure requirement, and consequently there is lip service adherence to labour standards with minimal on the ground substantive effects.

ESG: Regulatory and Legal Challenges

Environmental, Social, and Governance (ESG) requirements have transformed from voluntary international standards to mandatory legal compliances across multiple jurisdictions. There has been a significant increase in the realization that corporate sustainability is the core foundation for a long term financial well-being and welfare of a company. This has encouraged regulators, specially the securities commission and corporate law bodies, to enshrine or mandate ESG guidelines through mandatory obligations related to disclosures, compliance rules, and risk management. While ESG initially was a market-led idea influenced by investor opinion, it has been engulfed by conventional business law regimes, profoundly reshaping the legal expectation imposed on businesses, including real estate firms.

In India, the Securities and Exchange Board of India (SEBI), the regulatory body has led the institutionalization of ESG disclosures through its mandatory Business Responsibility and Sustainability Reporting (BRSR) policy. The policy was launched in 2021 for the top 1,000 listed companies by market capitalization, BRSR replaced the previous Business Responsibility Report (BRR) and considerably enhanced reporting requirements³. With BRSR, firms have been required to report information on employee well-being initiatives, occupational health and safety, compliance with labour laws, and social impact metrics. Most importantly, the BRSR also calls for third-party employees and contractors' data a notable addition given the large numbers of outsourced workers in construction and real estate sectors.

Internationally, ESG standards are also changing from soft law tools to binding legal requirements. The European Union's Corporate Sustainability Reporting Directive (CSRD) approved in 2022 mandates some 50,000 EU companies to make periodic reports about their social and environmental footprint in terms of standardized metrics⁴. The directive is based on the EU Non-Financial Reporting Directive (NFRD) and imposes disclosures on staff composition, labour relations, and due diligence along value chains. Similarly, the United States Securities and Exchange Commission (SEC) issued proposed rules in 2022 to improve and consolidate climate-related disclosures to investors and are increasingly examining ESG-related statements for potential investor fraud or deception⁵. While the U.S. has not required

³ *Ibid*

⁴ Council Directive 2022/2464, 2022 O.J. (L 322) 15 (EU) [Corporate Sustainability Reporting Directive]

⁵ U.S. Sec. & Exch. Comm'n, The Enhancement and Standardization of Climate-Related Disclosures for Investors, SEC Release No. 33-11042 (Mar. 21, 2022), <https://www.sec.gov/rules-regulations/2024/03/s7-10-22>

ESG disclosure about labour per se, discussions regarding human capital reporting suggest that this could change soon.

Another significant achievement in Corporate law with respect to business law involvement is the emergence of mandatory human rights and environmental due diligence (mHREDD) legislation in multiple jurisdictions. One such instance, is the German's Supply Chain Due Diligence Act (2021) which requires large businesses to minimize and as far as possible avoid negative human rights, labour exploitation and minimize environmental effects due to their supply chain or poor working condition in a third party labour contract for a construction project. These statutes and legislations mandate the Multinational property and infrastructure companies to pay more attention to labour conditions beyond their national boundaries.

India's corporate law and securities regulation, however, continues to be primarily disclosure-based and not obligation based. The Companies Act, 2013 mandates some companies to incur a minimum of 2% of their mean net profit on Corporate Social Responsibility (CSR) initiatives⁶, but labour welfare is not specifically enumerated as an area of priority. Moreover, the CSR system is expense-based instead of rights-based, all the more separating it from ESG's logic of accountability⁷. Thus, in India, compliance with ESG is still vulnerable to tokenistic disclosure instead of radical reform especially in the real estate industry where subcontracted workers hide corporate accountability.

Although BRSR is an improvement in the incorporation of ESG into business legislation, its enforcement has some drawbacks. *First*, the BRSR applies only to the top 1,000 listed companies, thus excluding numerous large but not listed real estate developers. *Second*, qualitative metrics can be reported in highly flexible forms with minimal external audit or regulatory follow up. *Third*, enforcement is de-centralized SEBI can punish non-disclosure, but there is no coordination with labour law agencies such as the Ministry of Labour and Employment or state-level labour commissioners.

Therefore, the regulatory development of ESG in business law both advances and falls short. Although there are now legal tools to mandate social and labour disclosures, the lack of strong enforcement, particularly in the informal and outsourced labour environment of real estate,

⁶ Companies Act, No. 18 of 2013, § 135, India Code (Ministry of Law & Justice), <https://www.indiacode.nic.in/bitstream/123456789/2114/5/A2013-18.pdf>

⁷ *Ibid*

undermines the change-making potential of such reforms. As the following sections demonstrate, labour standards are regularly marginalized within ESG reports, casting basic questions about the legality of existing frameworks for safeguarding workers as well as promoting ethical governance in one of the most labour intensive sectors.

Labour Law and ESG: Institutional and Regulatory Overlaps

Labour law and ESG systems cross at the heart of corporate responsibility to human capital. As much as ESG originated from financial and corporate governance models, its social pillar tends to mirror traditional labour rights norms just wages, non-discrimination, occupational health and safety, and freedom of association. For instance, the ILO Core Conventions and the ESG metrics alike give importance to eradication of child and forced labour, safe work, and association freedom. The BRSR for India mandates disclosure under such themes as "Workforce Well-being" and "Employee Welfare." However, these are voluntary disclosures and not legally enforceable rights in contrast to the legally binding nature of labour legislation⁸.

While ESG reporting is regulated by capital markets regulators like SEBI, labour laws are administered by state and central labour departments under the Ministry of Labour and Employment. This institutional lacuna leads to a vacuum no one agency enforces labour compliance in ESG reports. The Labour Codes, such as the Code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020, provide strong frameworks for protection of workers⁹, but are seldom cross-cut with corporate ESG examinations. Labour inspectors are neither required nor trained to check ESG disclosures, diluting implementation even further. Such fragmentation allows regulatory arbitrage. Firms could disclose publicly obligations to employee safety and then subcontract work to companies that break those very rules. For instance, according to the Contract Labour (Regulation and Abolition) Act, 1970, principal employers are responsible for contract labourers' working conditions¹⁰, but most firms report directly employed staff only in ESG reports. This transperability diminishes the value of labour rights and ESG Credibility.

⁸ Securities & Exch. Bd. of India, Business Responsibility and Sustainability Reporting by Listed Entities, SEBI/HO/CFD/CMD-2/P/CIR/2021/562 (May 10, 2021), https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html

⁹ Code on Social Security, No. 36 of 2020, India Code, <https://www.indiacode.nic.in/handle/123456789/16823>

¹⁰ Contract Labour (Regulation and Abolition) Act, No. 37 of 1970, India Code, <https://www.indiacode.nic.in/handle/123456789/1467>

More Frequently, Indian judges have begun resolving intersections between labour protections and corporate social responsibility. In *National Campaign Committee for Central Legislation on Construction Labour v. Union of India*, the Supreme Court highlighted the State's responsibility to provide decent working conditions in construction¹¹, incidentally bolstering ESG's social pillar. But the judiciary has not yet fashioned a uniform jurisprudence incorporating the ESG duties into enforceable labour rights. Across the world, mandatory human rights and environmental due diligence (mHREDD) regulations like France's Duty of Vigilance Law oblige companies to actively identify and avoid labour rights abuses in their supply chains¹². These regulatory innovations point towards a model where labour rights are not merely ethical issues but legal standards under ESG regimes. India's ESG-labour nexus continues to be regulatory in character instead of rights-based.

Real Estate Sector: ESG and Labour Law in Practice

This regulatory uncertainty comes into even sharper relief in the real estate industry, which presents a specially formidable test case for ESG frameworks as it is extremely labour intensive and subcontracting-intensive. The industry depends seriously on precarious labourers, with a very rough estimate that over 90% of its labourers do not have formal contracts¹³. Migrant workers are in the majority, often labouring in climates of exploitation with weak regulation. Labour law exists on paper but gets diluted down lines of subcontracting, and accountability becomes more slippery. While high-quality listed property firms release BRSR reports, labour standards disclosures are typically vague and limited to headline pledges like "worker safety" or "zero tolerance against discrimination." They rarely incorporate third-party labour, accident history, or wage compliance information in their reports. ESG agency ratings from MSCI or Sustain analytics also put more weight on the environmental with fewer labour-oriented metrics. Construction work is generally subcontracted by developers to bureaus that circumvent compulsory requirement under labour codes.

The key employer thus disavows accountability even as there is economic benefit. This loophole points to the relevance of compulsorily mandating disclosures along the value chain,

¹¹ Nat'l Campaign Comm. for Cent. Legislation on Constr. Labour v. Union of India, (2018) 5 SCC 607

¹² Loi n°2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre [Law on the Duty of Vigilance], Journal Officiel De La République Française [J.O.] [Official Gazette of France], Mar. 28, 2017

¹³ Ministry of Labour and Employment, Government of India, Annual Report (2022-23), <https://labour.gov.in/annual-reports>

as in the case of the automotive supply chain law in Germany. Its effectiveness is hampered by under-funded inspectorates and jurisdictional duplication by the central and state governments. SEBI, the regulator of ESG disclosures, possesses restricted enforcement authority for ensuring the accuracy of labour-related assertions. There is no systemic cross-verification system between defaults under labour law and ESG non-conformity. As per the British Safety Council India, more than 38 workplace fatalities in India take place in construction¹⁴, but these are hardly ever caught in ESG reports. The study confirms that even after 38 fatalities taking place every day, a large number of fatalities still remain unregistered, keeping us away from the actual picture.

Real estate developers report "zero fatalities" on a consistent basis despite being involved in judicial proceedings or media due to accidents. This disconnect raises serious question marks over the authenticity and enforceability of ESG disclosures, pointing towards regulatory overhaul bridging the gap between ESG models and labour law requirements in letter and spirit.

Comparative Jurisprudence and Global Frameworks

A global convergence towards binding ESG systems offers lessons in how to fill the regulatory void that bedevils India, particularly at the nexus of labour and real estate industries. The transition has been led by the *European Union* through the proposed *Corporate Sustainability Due Diligence Directive (CSDDD)*, which mandates firms to identify, prevent, and mitigate the negative human rights and environmental impacts along their value chains¹⁵. This encompasses explicit due diligence requirements on workers' rights like occupational safety, child labour, and freedom of association. The real estate industry, with its intricate subcontracting chains, would fall directly under the directive.

France's 2017 Duty of Vigilance Law is also a notable piece of legislation. It makes major French companies produce and disclose a vigilance plan with steps to detect risks and avoid grave human rights and fundamental freedoms violations, including labour exploitation, caused

¹⁴ Orchie Bandyopadhyay, *Construction in India: a Dangerous Business*, British Safety Council India (Oct. 7, 2022),

<https://www.britsafe.in/safety-management/news/2022/construction-in-india-a-dangerous-business>

¹⁵ European Commission, Proposal for a Directive on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937, COM/2022/71 final (Feb. 23, 2022), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52022PC0071>

by their own activities or by their subsidiaries and subcontractors¹⁶. The legislation was used in proceedings against Total S.A. for suspected forced labour in Uganda and against Lafarge for complicity in human rights violations during the Syrian war, showing its applicability in practice¹⁷.

Germany's *Lieferkettensorgfaltspflichtengesetz* (*Supply Chain Due Diligence Act*) also requires companies with over 3,000 employees to take preventive measures against violations of labour rights in the supply chain and publish annual reports on measures taken¹⁸. Although new, the law puts labour due diligence at the forefront of ESG compliance, with real estate syndicates among its targets. In the United States, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 1502 requires firms to disclose the sourcing of conflict minerals from the Democratic Republic of the Congo and surrounding nations, as a secondary means of addressing issues of forced labour in the mining industry¹⁹. Although aimed not at real estate, the strategy is an example of how labour responsibility was incorporated into securities regulation.

All of these global models have one thing in common that they turn the soft law attempt of ESG into an enforceable mandate. Indian regulators have yet to introduce a similar mechanism. SEBI's BRSR initiative is a starting point but is non-enforceable, does not have clear standards of labour conditions, and does not involve legal recourse in the event of violation.

Policy Recommendations and Legal Reform

To make ESG Expectations and enforcement of labour laws co-exist with each other, there has to be various drastic legislative, procedural, regulatory, institutional reforms which need to be taken in the real estate sector. These reforms include:

1. Quantitative ESG Indicators on Labour Conditions:

The BRSR system of SEBI needs to be almost entirely amended to require exhaustive and

¹⁶ Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre [Duty of Vigilance Law], Journal Officiel De La République Française, Mar. 28, 2017

¹⁷ Elsa Savourey & Stephane Brabant, The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since its Adoption, 6 Business & Human Rights Journal, 141, 142–45 (2021)

¹⁸ Lieferkettensorgfaltspflichtengesetz [German Supply Chain Due Diligence Act], Jul. 16, 2021, BGBl I at 2959 (Ger.)

¹⁹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1502, 124 Stat. 1376 (2010)

auditable information pertaining to the welfare of workers. These might include census-level data concerning contractual workers, occupational injury rates, reports of incidents, health benefits, payment of wages, compliance to gender-disaggregated data, etc. Like ILO Conventions Nos. 155 and 187²⁰, the disclosures have to be compulsory and auditable.

2. Institutional Synergy between Labour Regulators and ESG:

A co-regulatory system must be established between SEBI and the Ministry of Labour. ESG labour disclosures must be inspected by labour inspectors. This entails periodic check-ups through making digital databases such as Shram Suvidha Portal intersect with BRSR filings. For instance, non-filing of labour returns or tardiness should trigger ESG warning signals.

3. Principal Employer Liability in Supply Chains:

The Contract Labour (Regulation and Abolition) Act, 1970, needs to be amended so that the principal employers are held liable for ESG compliance requirements in cases of subcontracted labour²¹. The change would be patterned after EU and German due diligence where developers are held accountable for conditions along the supply chain in the case of construction.

4. Mandatory Human Rights and Labour Due Diligence (mHRDD):

India needs to pass a national Labour Due Diligence and Human Rights Law that requires companies to identify, prevent and mitigate labour rights abuses. The law should include civil liability for damages incurred on account of non-compliance and a grievance redressal scheme for the impacted workers, as in France.

5. Building Capacity of the Judiciary and Regulators:

There is an equally felt need to build ESG capacity within judicial systems, regulators, and corporate compliance officers via training modules building on the UN Guiding Principles on Business and Human Rights²² and EU jurisprudence case law. Sector-Specific Guidelines for

²⁰ Int'l Lab. Org., Occupational Safety and Health Convention, No. 155, June 22, 2006, 1981; Promotional Framework for Occupational Safety and Health Convention, No. 187, June 15, 2006

²¹ Contract Labour (Regulation and Abolition) Act, No. 37 of 1970, § 2(1)(g), India Code, <https://www.indiacode.nic.in/handle/123456789/1467>

²² Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights, U.N. Doc. HR/PUB/11/04 (2011), https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf

Real Estate: The Ministry of Housing and Urban Affairs must publish ESG-labour compliance guidelines, with the input of SEBI and labour regulators, especially for the real estate industry. These must take into account the industry's high-risk character and decentralised pattern of employment. If such reforms are not undertaken, then ESG is going to be a public relations exercise and not a methodology of real change in the labour conditions, especially in industries with informality and transparency.

6. Real Estate Sector Specific Guidelines:

The ministry of Labour and Housing and Urban Affairs should issue dedicated guidelines for the convergence of ESG-Labour compliance for the real estate sector. These guidelines to be issued after consulting all the relevant authorities including SEBI, Labour board etc. The guidelines should aim to regulate high risk profile matters and employment structure fragments.

Conclusion

In India the real estate industry in particular labour law and ESG are converging, creating an urgent need for alignment and accountability. In this framework, it is worth noting that ESG frameworks (particularly the BRSR which has been established by SEBI) are shaping corporate disclosures, and while this is impactful, the frameworks are still largely aspirational in their ability to deal with labour issues. Concurrently, India's labour laws while comprehensive are largely disconnected from ESG regimes, and are poorly enforced, especially in sectors such as real estate that rely on informal, contingent and relieved labour markets.

The real estate sector provides an absolute example of this disconnect. To be sure, developers document their ESG commitments on worker safety and welfare as per the BRSR; however, they often provide no measurable data, exclude contract labour, and fail to reflect on-the-ground conditions including wage violations, workplace accidents, and labour code compliance lapses. Regulatory fragmentation between ESG reporting bodies and labour law enforcement institutions also allows for companies to engage in reputational gain while escaping legal accountability for harmful systemic violations. India must shift towards a rights based approach which aligns with the interest of ESG compliance with statutory obligations of the country.

As compared to these domestic legal constructs, globally, some helpful frameworks exist such as France's Duty of Vigilance Law, or Germany's Supply Chain Due Diligence Act, which

creates enforceable obligations on corporations to identify, avert, and remedy violations of labour rights (and other issues) in their supply chains.

To do this, it will be necessary to merely mandate that certain, auditable employment measures be incorporated into ESG reporting; in order to guarantee compliance and interoperability, labour departments must coordinate with financial regulators. India will be able to transition from voluntary public disclosure of corporate responsibility to an enforceable obligation to defend workers' justice and dignity and the legitimacy of India's sustainable economic agenda by including labour rights into the ESG framework.