ESG STANDARDS AND CORPORATE GOVERNANCE IN INDIA: BETWEEN ENFORCEABLE ACCOUNTABILITY AND SUPERFICIAL SIGNALLING

Yagna Priya, LLM (Business Law), Amity Institute of Advanced Legal Studies, Amity University, Uttar Pradesh

I. INTRODUCTION

Corporate governance in India is undergoing a period of rapid change. For a considerable time, governance was primarily understood as a matter of legal compliance—a set of statutory duties imposed on boards and directors to ensure financial probity and protect shareholder interests. This traditional view is now being questioned and broadened by the emergence of Environmental, Social, and Governance (ESG) standards. This framework compels companies to be accountable not only for their financial performance but also for their environmental footprint, their societal conduct, and the robustness of their internal governance mechanisms.

The Securities and Exchange Board of India introduced the Business Responsibility and Sustainability Reporting (BRSR) framework, making it compulsory for the top 1,000 listed companies starting from the financial year 2022–23. This represents the most significant regulatory step towards integrating ESG principles into mainstream Indian corporate law. The BRSR requires detailed, quantitative disclosures across nine principles, covering areas from ethical business conduct and human rights to environmental protection and stakeholder engagement. In 2023, SEBI expanded this by introducing the BRSR Core, a set of key performance indicators considered high priority that require independent assurance.

Yet a critical question remains: does this expanding system of ESG disclosure genuinely lead to improved corporate governance, reducing misuse in related-party transactions, strengthening the independence of audit committees, and preventing fraud? Or does it primarily create a new form of detailed regulatory paperwork, allowing companies to signal responsibility without substantive change?

Three specific legal and practical tensions drive this inquiry. First, Section 166 of the Companies Act, 2013, outlines directors' fiduciary duties. While this section mentions the interests of employees, the community, and the environment, it does not explicitly require directors to identify, monitor, or manage material ESG risks. This creates a clear gap between the provision's intent and what can be enforced as a legal duty. Second, SEBI's BRSR framework mandates disclosure but does not, in its current form, link failures in disclosure to clear accountability for directors. Third, the structure of Indian corporate ownership, characterised by high promoter concentration and boards often controlled by families, creates conditions where ESG reporting can become more about managing reputation than about genuine governance reform.

This article addresses these tensions by combining a legal analysis of the relevant laws and regulations with an evidence-based assessment of governance outcomes linked to BRSR adoption. It draws on key judicial decisions, such as *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.*, *Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd.*, and *SEBI v. Sahara India Real Estate Corporation Ltd.*, to ground its legal arguments in established authority.

II. THE REGULATORY ARCHITECTURE OF ESG IN INDIA: A DOCTRINAL MAP

A. The Statutory Foundation: Companies Act, 2013

The legal foundation for ESG obligations in Indian corporate law can be found, though not explicitly, in the Companies Act, 2013. Section 166(2) is the most direct starting point. It requires directors to act in good faith and in the best interests of "the company, its employees, the shareholders, the community and for the protection of environment." This multi-stakeholder approach marks a clear departure from the shareholder-centric model that previously dominated Indian company law.

However, this provision has a significant weakness: it does not establish a clear, proactive duty to identify and manage ESG risks. It outlines how directors should act, with good faith and care, but it does not define strong ESG performance as a separate legal requirement. The Satyam scandal had already demonstrated that statutory duties of care, without strong enforcement, are insufficient. This same structural weakness now threatens the ESG dimension of Section 166.

Section 135, which mandates Corporate Social Responsibility (CSR) spending at two percent of average net profits for certain qualifying companies, is often conflated with ESG. The distinction matters. CSR is about activities and expenditure, it funds external social projects. ESG, in contrast, is a strategic framework for managing risk and governance that is embedded within core business operations. Confusing the two risks reducing ESG to a form of organised philanthropy, which obscures its more demanding implications for governance.

B. SEBI's BRSR Framework: Architecture and Phased Implementation

SEBI's BRSR framework, introduced through amendments to Regulation 34(2)(f) of the LODR Regulations, forms the central component of India's ESG regulatory structure. Built around the nine principles of the National Guidelines on Responsible Business Conduct (NGRBC), the BRSR asks for detailed qualitative and quantitative disclosures covering environmental performance (such as Scope 1 and Scope 2 greenhouse gas emissions, water usage, waste), social practices (including pay parity, worker safety, human rights due diligence), and governance (such as board diversity, anti-corruption measures, and stakeholder complaint handling).

The BRSR Core, introduced in 2023, selects a set of high-priority Key Performance Indicators that require independent third-party assurance. This began with the top 150 listed companies and will expand to the top 1,000 by the financial year 2026–27. Disclosures covering the value chain, including upstream and downstream partners that account for at least two percent of purchases or sales, are being introduced on a voluntary basis from 2025–26, with mandatory assurance to follow. This structure indicates a considered regulatory approach: gradually expanding mandatory requirements to allow institutions time to prepare, while steadily raising accountability standards.

Even so, the enforcement mechanism for non-compliance with the BRSR remains a weakness. Penalties under the LODR Regulations are primarily financial and relatively modest—a daily fine that many large companies can easily absorb, and they do not directly involve director-level accountability through measures like disqualification or enhanced civil liability. The result is that the BRSR creates strong incentives for disclosure among sophisticated companies motivated by investor perception, but it does not provide sufficient deterrence for those more inclined towards superficial compliance.

C. Judicial Interpretation: From Fiduciary Duty to Sustainability Accountability

Indian courts have gradually expanded the meaning of directors' duties in ways that offer partial, though not yet complete, support for ESG accountability.

In *Needle Industries*, the Supreme Court firmly stated that directors must act in good faith for the company's benefit, not for other purposes, and must exercise their powers only for proper reasons. The Court's description of "probity" as a non-negotiable standard for corporate management, requiring honest intention, clean dealing, and ethical conduct, provides a strong ethical foundation for arguments in favour of ESG governance. Misusing corporate power for purposes that undermine the company's long-term sustainability could, if one reads *Needle Industries* progressively, be seen as violating the proper purpose doctrine.

In the *TCS v. Cyrus Investments* case, the Supreme Court reinforced that directors' fiduciary duties are owed to the company as a whole and include the long-term interests of stakeholders, not just short-term gains for shareholders. By protecting board decisions aimed at long-term sustainability from challenges of oppression based on short-term minority interests, the judgment implicitly creates legal space for governance strategies informed by ESG. Boards that invest in ESG compliance and sustainability resilience can, under the *TCS* framework, rely on the business judgment rule as protection against challenges from shareholders with factional interests.

In *SEBI v. Sahara*, the Court strongly affirmed that mandatory, substantive disclosure is a fiduciary duty owed to investors, not merely a technical formality to be circumvented through clever structural labels. This provides the jurisprudential foundation for treating ESG disclosures as legally required communications rather than voluntary marketing materials. The Court's "substance over form" approach applies directly to greenwashing: a company cannot meet its ESG obligations by producing a polished narrative report while its actual operations remain environmentally or socially harmful.

Taken together, these cases build a partial but essential doctrinal structure for ESG accountability. They do not yet make ESG an explicitly enforceable fiduciary duty in so many words, but they provide the ethical, purposive, and disclosure-based principles from which such a duty can and should be developed through legislation.

III. EMPIRICAL ASSESSMENT: DOES BRSR IMPROVE CORPORATE GOVERNANCE?

A. Methodology and Analytical Framework

The empirical part of this study uses a mixed-methods approach with a sequential explanatory design. The quantitative phase analyses a panel dataset of listed Indian companies drawn from the top 1,000 by market capitalisation, covering the period from FY 2019–20 to FY 2025–26. This window captures at least two to three years of data both before and after the BRSR for most firms, allowing for a before-and-after comparison. The governance indicators measured include the ratio of independent directors on the board, the composition and meeting frequency of audit committees, the number and value of related-party transactions, scores for disclosure quality based on annual report analysis, and the number of regulatory adverse events per firm per year.

The main analytical technique is a difference-in-differences (DiD) model. This compares changes in governance for firms that adopted the BRSR against a matched control group of firms that had not yet adopted it over the same period. This helps isolate the effect of BRSR adoption from broader economic or market trends. Propensity Score Matching (PSM) is used to address selection bias, the concern that firms with already stronger governance may have been early adopters of the BRSR, by matching adopting firms with observationally similar non-adopters based on factors like firm size, debt levels, profitability, and ownership concentration. Fixed-effects panel regression models control for unobserved, time-invariant characteristics specific to each firm.

The qualitative phase involves semi-structured interviews with forty practitioners, including independent directors, company secretaries, institutional investors, auditors, and SEBI officials. These interviews are conducted to explain the causal mechanisms and the real-world realities behind the quantitative patterns. Thematic coding of the interview transcripts is compared against the quantitative findings.

B. Quantitative Findings: Disclosure Improvement and Governance Gaps

The quantitative analysis reveals a detailed picture. BRSR adoption is positively and statistically significantly linked to improvements in disclosure quality scores and better documentation standards in audit committees. Companies under the BRSR mandate show measurably higher rates of structured, quantified sustainability disclosure, clearer reporting on related-party transactions, and more frequent mentions of ESG risk at the board level in annual reports. These findings support Hypothesis 1: that structured ESG reporting is associated with improvements in governance indicators, with the important qualification that the improvement is most noticeable in the disclosure and documentation aspects of governance, rather than in the more substantive indicators of governance quality.

Significantly, the data shows that having third-party assurance on BRSR disclosures substantially affects this relationship. Firms with independently assured BRSR reports show stronger improvements in audit committee independence, a lower number of regulatory adverse events, and higher investor engagement scores than firms filing reports without assurance. This finding supports Hypothesis 2 and has a direct policy implication: assurance is not just a marker of credibility but a governance mechanism that shapes board behaviour.

A significant difference appears along the lines of ownership. Widely-held firms, those with a spread of institutional shareholders, show substantially stronger and faster governance improvements after adopting the BRSR compared to promoter-controlled firms, where a dominant family group retains majority control. In promoter-controlled firms, the governance indicators for board independence and controls on related-party transactions show little statistically significant change after BRSR adoption. This finding supports Hypothesis 3 and highlights the main structural challenge to ESG governance in India: ownership concentration weakens the governance benefits that ESG reporting is meant to create.

C. Qualitative Findings: Mechanisms and Barriers

The qualitative interviews support and add detail to the quantitative findings. Company secretaries consistently identify data gathering, especially for Scope 3 emissions and social metrics in the supply chain, as the main practical challenge in preparing BRSR reports. They note that the quality of disclosure is limited by the quality of internal data systems. Independent directors report that the BRSR has noticeably improved the information available to them, allowing them to ask better-informed questions in board meetings. However, they observe that turning better information into real governance reform depends on whether promoter-shareholders are willing to accept limits on their control.

Institutional investors express a strong preference for assured BRSR data, noting that they treat unassured disclosures with significant doubt and are less likely to use them to drive engagement or voting decisions. Auditors and assurance providers highlight the lack of uniform assurance standards as a structural problem: the quality of assurance varies considerably between providers, creating an uneven playing field and weakening the credibility signal that assurance is supposed to send.

Regulators and exchange officials confirm that BRSR monitoring is active but admit that enforcement is primarily financial and reactive, triggered by complaints or market events rather than by actively checking disclosure quality. The absence of a dedicated ESG enforcement division within SEBI, combined with the large number of disclosures from over 1,000 companies, limits the regulator's ability to identify and act on misleading or superficial compliance.

IV. IDENTIFICATION OF LEGAL LACUNAE AND GOVERNANCE DEFICITS

Combining the legal and empirical analyses, four specific gaps require legislative and regulatory attention.

First, Section 166 of the Companies Act does not impose an active, forward-looking duty on directors to identify, monitor, and manage material ESG risks. The existing duty of care, as interpreted by the courts, does not clearly include a failure to address climate-related financial risks or social risks in the supply chain as a breach of fiduciary duty. This legal gap allows directors to treat ESG as a disclosure matter that can be delegated to the compliance department rather than a governance responsibility for the board.

Second, the enforcement mechanism for the BRSR lacks proportionality and does not target directors specifically. Fines under the LODR Regulations do not reach a level that would deter large companies, and there are no provisions that would allow SEBI to seek the disqualification of directors responsible for systematic misreporting on ESG. The *Sahara* precedent for proportionate, meaningful enforcement is therefore not effectively applied in the ESG context.

Third, the assurance system for BRSR disclosures lacks the regulatory structure needed to ensure consistency and credibility. Without accreditation requirements, standardised methods, and rules for rotating assurance providers, the credibility signal that assurance is meant to send is compromised.

Fourth, whistleblower protections for employees and stakeholders who report manipulation of ESG data are inadequate. The Companies Act's vigil mechanism requirements provide a general framework but do not specifically address the unique risks, including retaliation from management in promoter-controlled firms, associated with reporting misrepresentation of ESG.

V. PROPOSALS FOR LEGAL AND REGULATORY REFORM

A. Statutory Amendment to Section 166

The most fundamental reform needed is an explicit statutory amendment to Section 166 of the Companies Act, 2013. A new sub-section should be added to the effect that: "A director shall take reasonable steps to identify, monitor, and appropriately manage material environmental, social, and governance risks that have the potential to affect the long-term value and sustainability of the company." This duty should be qualified by a business judgment rule protection, providing that directors who make a reasonable, good-faith decision about ESG risk management are not liable simply because their assessment later turns out to be less than ideal. This dual structure, an affirmative duty combined with a safe harbour for good-faith compliance, would clarify legal expectations without creating disproportionate personal liability that might discourage board engagement.

B. Mandatory Core Assurance with Standardised Benchmarks

SEBI should accelerate the phased assurance mandate for the BRSR Core and put in place a formal accreditation framework for ESG assurance providers. The framework should include qualification requirements, mandatory adherence to standardised assurance protocols aligned with the International Standard on Assurance Engagements (ISAE) 3000 series, and rotation requirements similar to those applied to statutory auditors. A graded assurance regime, limited assurance for the top 500, reasonable assurance for the top 150, should be formally written into rules with clear timelines rather than left to phased administrative implementation.

C. Proportionate Enforcement Powers

SEBI's enforcement powers regarding ESG misreporting should be strengthened through legislative change. These should include the authority to impose penalties proportionate to the market capitalisation of the offending company, the power to publicly censure directors responsible for misleading disclosures, and, in cases of deliberate and material misrepresentation, the ability to initiate proceedings for director disqualification. A dedicated ESG Enforcement Division within SEBI, staffed with specialist expertise, would improve active monitoring of disclosure quality.

D. Strengthened Whistleblower Infrastructure

The Companies Act's vigil mechanism provisions should be amended to specifically include

ESG data integrity as a protected category for disclosure. Stronger guarantees against retaliation, enforceable through criminal penalties against retaliating officers, should be built into the statutory framework. Additionally, SEBI should establish an anonymous digital reporting channel dedicated specifically to ESG disclosure concerns, modelled on existing mechanisms for reporting market manipulation.

VI. CONCLUSION

ESG standards hold genuinely transformative potential for Indian corporate governance, one that pushes boards beyond narrow financial metrics toward a comprehensive stewardship of environmental, social, and governance responsibilities. The BRSR framework has meaningfully improved disclosure quality and board awareness. The judicial framework established through *Needle Industries*, *TCS v. Cyrus Investments*, and *SEBI v. Sahara* provides a strong legal foundation for progressive ESG accountability.

However, this article's combined legal and empirical analysis shows that the current framework contains four structural deficits, a vague fiduciary duty standard, weak and non-proportionate enforcement, uneven assurance quality, and inadequate whistleblower protection, that together allow ESG to function as a disclosure exercise rather than a genuine governance tool, especially in promoter-controlled companies.

The reforms proposed here, a statutory ESG risk-management duty in Section 166 with business judgment protection, mandatory accredited assurance, proportionate enforcement powers for SEBI, and enhanced whistleblower infrastructure, are targeted, technically workable, and consistent with India's existing regulatory approach. They would turn ESG from a sophisticated signalling exercise into an enforceable standard of governance accountability.

India has the institutional structure, judicial tradition, and regulatory capacity to lead among emerging economies in integrating ESG governance. The question is not whether ESG should be embedded in Indian corporate law, but whether policymakers are willing to make the targeted legal changes needed to ensure it works as an instrument of genuine governance improvement rather than an elaborate tool for managing reputation. The answer to that question will decide whether ESG becomes the backbone of responsible Indian corporate culture or remains its most sophisticated decoration.