

CORPORATE GOVERNANCE AND CLIMATE RISK DISCLOSURE IN INDIA'S CONSTRUCTION SECTOR

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Abstract : India's construction sector stands at a critical intersection of economic development and environmental accountability. As one of the largest contributors to carbon emissions, land degradation and ecological disruption in the country, construction companies bear heightened obligations under an expanding matrix of statutory frameworks. This paper examines role of independent directors in ensuring robust climate risk disclosure within Indian construction firms, drawing on the Companies Act, 2013, Securities and Exchange Board of India (SEBI) Regulations, and environmental statutes including Environmental (Protection) Act, 1986, the Environmental Impact Assessment Notification, 2006 and the National Green Tribunal Act, 2010. The paper argues that independent directors constitute the primary institutional safeguards at the board level for ensuring that environmental risks that ranges from regulatory non-compliance to climate-related financial exposures that are identified, monitored and disclosed in a transparent manner. Through analysis of statutory provisions, SEBI's Business Responsibility and Sustainability Reporting (BRSR) framework and National Green Tribunal (NGT) jurisprudence. This paper demonstrates that strengthening board-level environmental accountability in the construction sector is both a legal imperative and a governance necessity.

Keywords: environmental, accountability, SEBI, Corporate, responsibility

INTRODUCTION

Climate risk has emerged as one of the defining governance challenges of the twenty-first century. In India, the intersection of rapid urbanisation, infrastructure development and environmental vulnerability has placed the construction sector at the epicentre of debates around environmental compliance and corporate sustainability. Construction companies are major contributors to carbon emissions through energy-intensive manufacturing of materials such as steel, cement and glass, through direct greenhouse gas emissions from construction machinery and through long-term emissions embedded in the built environment.[1] The sector also generates enormous quantities of construction and demolition waste, consumes vast quantities of water and frequently disrupts fragile ecosystems during the land acquisition and site preparation phases.

Against this backdrop, the legal frameworks governing corporate governance and environmental compliance in India have undergone significant evolution. The Companies Act, 2013 introduced a comprehensive regime for independent directors, audit committees and mandatory corporate social responsibility expenditures that bears directly upon environmental governance.[2] Simultaneously, SEBI has progressively enhanced disclosure obligations for listed companies, culminating in the SEBI's Business Responsibility and Sustainability Reporting (BRSR) framework mandated for the top one thousand listed companies by market capitalisation from the financial year 2022-23 onwards.[3] These disclosure obligations are layered upon a pre-existing architecture of environmental law that includes the Environment (Protection) Act, 1986 (EPA), the Environmental Impact Assessment (EIA) Notification, 2006, and the National Green Tribunal Act, 2010.[4]

Despite this robust statutory framework, enforcement gaps persist. Construction companies among the most frequently litigated entities before the NGT, with complaints ranging from failure to obtain or comply with environmental clearances to illegal sand mining, groundwater extraction and violations of air and noise pollution norms.[5] The persistence of non-compliance raises fundamental questions about the adequacy of board-level governance mechanisms and specifically about whether independent directors are discharging their oversight obligations in relation to environmental risk.

II. INDIA'S CONSTRUCTION SECTOR: AN ENVIRONMENTAL PROFILE

2.1.1 Carbon Emission and Climate Impact

The construction sector in India is one of the most carbon-intensive industries in the economy. The production of cement alone accounts for approximately six to seven percent of India's total annual CO emissions, making it one of the single largest industrial sources of greenhouse gases.[6] When combined with the emissions from steel manufacturing, transportation of materials, operation of construction equipment and the energy consumption embedded in finished structures, the sector's aggregate climate footprint is substantially larger. According to estimates by the Bureau of Energy Efficiency, the building construction sector, broadly construed, is responsible for approximately thirty-three percent of India's total electricity consumption and a commensurate share of emissions.[7]

The challenge is compounded by the pace of India's urbanisation. The National Urban Housing and Habitat Policy envisage the construction of tens of millions of new housing units over the next two decades, alongside extensive commercial and infrastructure development.[8] This trajectory unless accompanied by a robust shift toward green construction technologies, energy-efficient design and sustainable materials, will result in a substantial escalation of the sector's carbon footprint. The implications for India's Nationally Determined Contributions under the Paris Agreement are significant.[9]

2.1.2 Land Acquisition, Displacement and Ecological Disruption

Construction projects, particularly those involving large-scale residential developments, industrial townships and infrastructure corridors, frequently involve the acquisition of land from private owners, including agricultural land and forest land. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 governs the procedural framework for such acquisitions, requiring social impact assessments, consent of affected families in specified categories of acquisition and mandatory rehabilitation and resettlement of displaced persons.[10] Beyond the social dimensions of land acquisition, construction activities at the project site frequently involve land use change that has direct and often severe ecological consequences. Deforestation, destruction of wetlands, encroachment upon coastal regulation zones and disruption of local drainage patterns are among the environmental harms most frequently documented in NGT proceedings involving construction companies.[11] These harms generate both legal liability and reputational risk for companies and their boards, underscoring the corporate governance dimensions of environmental compliance in this sector.

2.1.3 Environmental Impact Assessment Compliance

The EIA Notification, 2006, issued under the EPA, requires that construction projects above specified thresholds obtain prior environmental clearance (EC) from the competent authority either the Ministry of Environment, Forest and Climate Change at the central level or the State Environment Impact Assessment Authority (SEIAA) at the state level-before commencing construction.[12] The process involves scoping, preparation of an EIA report, public consultation, appraisal by an Expert Appraisal Committee (EAC) or State Level Expert Appraisal Committee (SEAC) and the grant or refusal of clearance.[13]

Construction projects falling under Category A (typically projects with a built-up area exceeding one lakh fifty thousand square metres) require central clearance, while Category B projects are assessed at the state level.[14] Despite the comprehensiveness of this framework, compliance remains a persistent challenge. Companies routinely commence construction prior to obtaining EC, fail to comply with conditions attached to granted clearances or obtain clearances through the post-facto regularisation process that has been the subject of severe judicial and quasi-judicial criticism.[15]

In *Alembic Pharmaceuticals Ltd. v Rohit Prajapati*,[16] the Supreme Court of India unequivocally held that post-facto environmental clearances are illegal and antithetical to the foundational principles of environmental law. While this judgment arose in the context of industrial projects, its principles are directly applicable to construction projects that have been developed without prior EC or in violation of EC conditions. The legal and financial consequences of such non-compliance including the risk of project demolition orders, stop-work orders and imposition of remediation costs constitute material environmental risks that the boards of construction companies are obligated to assess and disclose.

2.1.4 Construction Companies Before the National Green Tribunal

The NGT, established under the National Green Tribunal Act, 2010 has original jurisdiction over all civil cases relating to the enforcement of any legal right relating to the environment and cases relating to substantial questions relating to the environment, including enforcement of environmental clearance conditions.[17] The Tribunal has emerged as the primary forum for environmental litigation involving construction companies and its jurisprudence reveals a consistent pattern of non-compliance by major players in the sector. Issues litigated before the NGT involving construction companies includes, illegal sand mining and extraction of riverbed materials; violation of Coastal Regulation Zone (CRZ) norms; construction without or contrary to environmental clearances, failure to manage construction and demolition waste in accordance with the Construction and Demolition Waste Management Rules, 2016, contamination of groundwater through improper disposal of hazardous materials and encroachment upon forest and ecologically sensitive areas.[18] The NGT has imposed substantial penalties on construction companies in several of these cases and has in multiple instances directed company directors to personally appear before the Tribunal and explain non-compliance.[19]

III. INDEPENDENT DIRECTORS UNDER THE COMPANIES ACT, 2013: GOVERNANCE ARCHITECTURE

3.1.1 Statutory Definition and Eligibility Criteria

Section 149(6) of the Companies Act, 2013 defines an independent director as a director who, in the opinion of the board is a person of integrity and possesses relevant expertise and experience and is not a promoter of the company or its holding, subsidiary or associate company, has no pecuniary relationship with the company or its directors during the two immediately preceding financial years or the current financial year and meets a range of other criteria designed to ensure genuine independence from management.[20] The requirement that at least one-third of the total number of directors of a listed public company shall be independent directors reflects a deliberate legislative policy to embed independent oversight at the board level as a structural governance mechanism.

The Companies (Appointment and Qualification of Directors) Rules, 2014 supplement the statutory provisions and require that every independent director, at the first meeting of the board in which they participate after their appointment, give a declaration that they meet the criteria of independence.[21] The duty to re-evaluate and re-confirm independence annually is also imposed. This framework is designed to ensure that independence is not merely notional but is a substantive and ongoing condition of directorship.

3.1.2 Duties and Responsibilities of Independent Directors

Schedule IV of the Companies Act, 2013, which sets out the Code for Independent Directors, identifies the core functions of an independent director with particularity. These include the upholding ethical standards of integrity and probity, acting objectively and constructively while exercising duties, exercising due, independent judgment and declining to act on matters where they have a conflict of interest, devoting sufficient time and attention to professional obligations, reporting concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct and performing duties as enumerated in the Act including participation in audit committee functions. Direct relevance to environmental compliance is the independent director's function to safeguard the interests of all stakeholders, particularly minority shareholders and to balance conflicting interests of stakeholder's Environmental harm caused by a construction company's non-compliance with environmental laws creates both direct legal liability for the company and indirect harm to shareholders, local communities and the broader public. The independent director's duty to ensure balanced protection of stakeholder interests therefore encompasses a duty to monitor and respond to material environmental risks.

3.1.3 Audit Committee and Its Environmental Compliance Rules

Section 177 of the Companies Act, 2013 mandates the constitution of an audit committee for prescribed companies, with a majority of members including the chairperson being independent directors. The audit committee's mandate, as elaborated in Section 177(4), includes oversight of financial reporting, internal controls and compliance with legal requirements. The phrase "evaluation of internal financial controls and risk management systems" is broad enough to encompass compliance with environmental laws and regulations, particularly where such compliance has material financial implications for the company.

In the context of construction companies, the audit committee's role in environmental compliance monitoring is of particular significance. Environmental non-compliance gives rise to material contingent liabilities in the form of regulatory penalties, NGT-imposed remediation costs and project-specific risks such as revocation of environmental clearances. The audit committee's oversight of financial reporting necessarily requires engagement with these contingent liabilities, which in turn requires engagement with the underlying facts of environmental compliance. Independent directors serving on the audit committee are accordingly positioned as a critical institutional safeguard against the risk that material environmental liabilities are concealed or under-disclosed in the company's financial statements.

IV. SEBI DISCLOSURE ARCHITECTURE AND CLIMATE RISK REPORTING

4.1.1 Listing Obligation and Disclosure Requirement Regulation, 2015

The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) constitute the primary regulatory instrument governing the continuous disclosure obligations of listed companies in India. Regulation 34 requires the submission of an annual report that includes, inter alia, a Management Discussion and Analysis (MDA) report and for the top one thousand listed companies, a Business Responsibility and Sustainability Report (BRSR). The LODR Regulations also require that the annual report contain a report on corporate governance that includes a detailed section on the composition and functioning of board committees.

Regulation 17 of the LODR Regulations, as amended in 2018 and 2021, sets out specific requirements for the board of directors of listed companies, including requirements that the board approve the company's risk management framework. Risk management,

in the regulatory vocabulary of SEBI, now explicitly encompasses environmental and climate-related risks following the amendments introduced pursuant to SEBI's circular on Environmental, Social and Governance (ESG) disclosures.[22]

4.1.2 Business Responsibility and Sustainability Reporting Framework

The BRSR framework, mandated by SEBI Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562 dated May 10, 2021, replaced the earlier Business Responsibility Report (BRR) format and introduced a substantially more rigorous and structured approach to sustainability disclosure. The BRSR is structured around the nine principles of the National Guidelines on Responsible Business Conduct (NGRBC) issued by the Ministry of Corporate Affairs in 2019. Principle 6 of the NGRBC specifically addresses the environment, requiring businesses to respect and make efforts to protect and restore the environment.

For construction companies, the BRSR framework imposes disclosure obligations across multiple dimensions of environmental performance. These include, energy consumption (both from renewable and non-renewable sources); water withdrawal and consumption; air pollutant emissions; greenhouse gas emissions; waste generated and its management and biodiversity impacts of operations. The BRSR also requires companies to disclose whether they have set environmental targets, what progress has been made against those targets and what governance mechanisms exist at the board level to monitor environmental performance.[23]

4.1.3 Climate Risk Disclosure and the Transition to TCFD aligned Reporting

SEBI has progressively moved toward aligning India's corporate disclosure framework with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). The TCFD recommendations, structured around four thematic areas i.e. governance, strategy, risk management and metrics and targets which provide a globally recognised framework for climate risk disclosure that is directly applicable to construction companies with material climate exposures.[24]

The governance pillar of the TCFD framework requires disclosure of board-level oversight of climate-related risks and opportunities and management's role in assessing and managing climate-related risks and opportunities. Applied to construction companies, this requires disclosure of which board committee is responsible for climate risk oversight, how frequently climate risk is reviewed at the board level, whether climate-related risks are integrated into the company's enterprise risk management framework and what qualifications or expertise board members responsible for climate oversight possess. SEBI's BRSR Core framework, introduced in 2023, mandates limited assurance on key sustainability disclosures for the top one hundred and fifty listed companies, signalling a trajectory toward greater accountability for the accuracy of environmental disclosures.[25]

4.1.4 Independent Director's and the Risk Management Committee

SEBI's amendments to the LODR Regulations introduced in 2021 require listed companies in the top one thousand by market capitalisation to constitute a Risk Management Committee (RMC) with at least one independent director as a member.[26] The RMC's terms of reference must include the oversight of the company's risk management framework, including environmental and climate-related risks. The involvement of an independent director in the RMC creates a direct institutional link between board-level governance and the management of environmental risk in construction companies. However, the effectiveness of this mechanism depends critically on the independence, expertise and engagement of the independent director in question.

V. RECENT JUDICIAL DEVELOPMENTS

India's construction sector has witnessed a decisive shift in judicial temperaments with the Supreme Court of India, the National Green Tribunal and allied adjudicatory bodies collectively signalling that environmental non-compliance by construction firms will attract consequences calibrated to the scale of the offending enterprise rather than reduced to token penalties. Taken together, these rulings fundamentally reshape the legal risk landscape for construction company boards and their independent directors.

The most structurally significant ruling of this period is the Supreme Court's decision in *Vanashakti v. Union of India*(2025) [27] delivered on May 16, 2025, The Court struck down the Ministry of Environment, Forest and Climate Change's 2017 Notification and 2021 Office Memorandum, which had institutionalised a regularisation window permitting construction projects to obtain environmental clearance retrospectively, effectively formalising what the bench characterised as 'gross illegality'. The Court held that the Environmental Impact Assessment process is intrinsically prospective, designed to prevent harm before it materialises, and that ex post facto clearances are fundamentally incompatible with Articles 14, 21 and 51A(g) of the Constitution of India (*Vanashakti v. Union of India*, 2025 INSC 718). However, the legal position was subsequently complicated when a Review Bench headed by former Chief Justice B.R. Gavai, in *Confederation of Real Estate Developers of India v. Vanashakti* (2025),[28] effectively overturned the May judgment on the ground that the original bench had not considered coordinate bench precedents, thereby restoring a partial pathway for post-commencement regularisation. This judicial oscillation is itself a material governance signal, the volatility of the environmental clearance framework constitutes a category of transition risk requiring explicit disclosure in a company's risk register and annual sustainability reporting.

On the question of environmental compensation, the Supreme Court's ruling in *M/s. Rhythm County v. Satish Sanjay Hegde* (2026), [29] decided on January 30, 2026, by Justices Dipankar Datta and Vijay Bishnoi, introduced a proportionality principle into the computation of penalties that has direct implications for financial disclosure. The Court held that the NGT is empowered to calibrate

environmental compensation to the scale and project cost of the offending enterprise, affirming that larger projects generating greater resource consumption and emissions must bear commensurately greater environmental liability under the polluter pays doctrine. The Pune-based developer M/s. Rhythm County, which had commenced construction without a Consent-to-Establish under the Water (Prevention and Control of Pollution) Act, 1974 and continued construction notwithstanding a stop-work direction, was held liable for compensation assessed at approximately 1.49% of its ₹335 crore project cost. The Court's observation that "bigger players need to play by greener rules" encapsulates a principle with far-reaching implications, for a ₹500 crore project in non-compliance, contingent environmental liability now runs to several crores, a figure that cannot be treated as immaterial in financial reporting. Hence, The Rhythm County (2026) case established that the bigger your project, the bigger your fine. Penalties are now calculated as a percentage of total project cost and not a flat fine.

The NGT's ongoing supervisory role over construction sector compliance is illustrated by its December 2024 order in *Chander Prakash Gambhir v. MVN Infrastructure Projects LLP* [30], wherein the Tribunal constituted a joint committee to investigate allegations that MVN Infrastructure, a Gurugram real estate firm had commenced construction of a project with a proposed built-up area exceeding 1,43,350 square metres without securing environmental clearance from the Haryana State Environment Impact Assessment Authority, despite having applied for such clearance. The case reflects the Tribunal's continued willingness to intervene at the project-commencement stage and to hold construction companies accountable for the gap between regulatory application and regulatory approval. Separately, in *Confederation of Real Estate Developers' Association of India v. Union of India*, [31] the Supreme Court upheld an NGT direction that building projects located within five kilometres of protected areas, eco-sensitive zones or critically polluted areas shall be mandatorily classified as Category A projects requiring central-level environmental appraisal, substantially increasing the regulatory burden on urban-fringe construction.

Cumulatively, these decisions establish that judicial oversight of the construction sector has matured from reactive, case to case enforcement to a systemic recalibration of environmental liability norms. Boards of construction companies and particularly independent directors discharging their oversight functions under the Companies Act, 2013, can no longer treat environmental clearance compliance as a site-management concern peripheral to corporate governance. The financial quantum of potential liability, the constitutional underpinnings of environmental clearance law and the volatility of the regulatory framework as revealed by the Vanashakti proceedings collectively demand active, documented and rigorous board-level engagement.

VI. CONCLUSION AND RECOMMENDATIONS

This paper has examined the legal framework governing the role of independent directors in climate risk disclosure and environmental compliance monitoring in India's construction sector. The analysis demonstrates that independent directors occupy a pivotal institutional role in the governance of environmental risk in construction companies, by virtue of their statutory duties under the Companies Act, 2013, their functions on the audit committee and risk management committee and their responsibilities under SEBI's BRSR framework. At the same time, the persistent pattern of environmental non-compliance in the construction sector as evidenced by NGT litigation and the frequency of adverse environmental clearance decisions which suggests that these governance mechanisms are not yet operating at full effectiveness.

Several reforms and governance enhancements emerge from this analysis. First, SEBI should consider making it mandatory for construction companies in the top five hundred by market capitalisation to have at least one independent director with demonstrable expertise in environmental law, climate science or sustainability on their board. The current framework leaves the composition of boards to the discretion of the NRC, subject only to general competency criteria. Mandating environmental expertise at the board level for environmentally intensive sectors would strengthen the quality of oversight available to these boards.

Second, the audit committee's terms of reference for construction companies should be amended through SEBI's LODR Regulations to explicitly require quarterly review of environmental compliance reports, including status of all pending environmental clearances, compliance with EC conditions and status of NGT proceedings. This would operationalise the audit committee's existing mandate to oversee legal compliance in a manner specifically responsive to the environmental risk profile of the construction sector.

Third, the BRSR framework should be expanded to require construction companies to disclose, on a project-by-project basis, the status of environmental clearances, compliance with EC conditions and any adverse regulatory orders received during the year. The current BRSR format requires aggregate disclosures at the company level; project-level disclosures would provide stakeholders with more granular and actionable information about the company's environmental compliance performance.

Fourth, the NGT should develop guidelines specifically addressing the standard of care expected of independent directors in the context of environmental compliance oversight, drawing on the existing body of case law on director liability. Such guidelines would provide clarity to directors about the governance practices that are expected of them and would create a framework within which the NGT can assess director conduct in cases of corporate environmental non-compliance.

In conclusion, the role of independent directors in ensuring climate risk disclosure and environmental compliance in India's construction sector is both a pressing governance need and a statutory obligation that existing frameworks impose in significant measure but do not yet fully operationalise. Strengthening the legal framework in the manner proposed in this paper and ensuring that companies and their boards internalise the environmental dimensions of their governance responsibilities, will be essential to aligning the construction sector's trajectory with India's climate commitments and the imperatives of sustainable development.

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