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EMERGING ISSUES AND CHALLENGES IN ESG DISCLOSURE IN INDIA

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ABSTRACT

Today throughout the globe climate change, increasing inequalities, the needs of society, and transparency in corporate practices are becoming debatable issues. Due to the increase in industrialised development and thereby, the emission of harmful gases to the environment, pollution of water, soil, and land is increasing the challenge for the existence of human life. On the other side, the payment of inadequate salaries, unhealthy workplaces, sub-standard goods, and increasing gaps in societies are also raising an alarming situation for humanity. Frauds, particularly corporate frauds, have a profound effect on the people as a whole rather than just one person's life. In the light of these alarming situations, it has become important that the corporates must comply with not only laws and provide the financial disclosures but also provide the non-financial disclosures. It is important to mention that the rising debate about business of business which shifted from maximization of shareholders wealth to the protection of stakeholders' interests, has changed the functioning of the Companies. Currently, the stakeholders are pressing the Companies to balance the profitmaking and become a responsible pillar of sustainable development. Post COVID-19 pandemic, the concept of stakeholder capitalism and long-term value creation is gaining popularity. On the other hand, although investors need good returns on investment but their investment decisions are also based on information provided by companies regarding the performance of their responsibilities towards the environment and society at large It is pertinent to mention that the long-term value created of the company depends upon its sincere initiatives towards the environment protection, social measures undertaken by it and a transparent reporting mechanism. To balance all the conflicting interests, Environment, Social and Governance (ESG) reporting is a possible solution. ESG reporting is the disclosures of the information to explain the impact of business in the areas of environment, social perspective and governance. ESG covers the capturing of non-financial information including risks and opportunities in day-to-day affairs of the company.

.**KEYWORDS:** *Environmental, Social, and Governance (ESG), Business Responsibility and Sustainability Reporting (BRSR), Greenwashing, Sustainable Investment etc.*

INTRODUCTION

Human activities have resulted into increase in global temperature reaching 1.1°C above 1850–1900 in 2011–2020.[1] Today throughout the globe climate change, increasing inequalities, needs of society and transparency in corporate practices are becoming debatable issues. Due to increase in industrialised development and thereby emission of harmful gases to the environment, pollution of water, soil and land is increasing the challenge for existence of human life. On the other side, the payment of inadequate salaries, unhealthy workplaces, sub-standard goods and increasing gaps in societies is also raising an alarming situation for humanity. It is an undeniable fact that greenhouse gas

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[1] Aditi Mukherji et al., *SYNTHESIS REPORT OF THE IPCC SIXTH ASSESSMENT REPORT (AR6)*, https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_SPM.pdf.

emissions has resulted in increasing pollution and resulting to natural disasters.[2] The violation of human rights is impacting the quality of life of human beings. Further, the frauds especially corporate frauds are causing far reaching impact not on life of an individual but is impacting the masses at large. In the light of these alarming situations, it has become important that the corporates must comply with not only laws and provide the financial disclosures but also provide the non-financial disclosures.

In corporate business model, with the separation of ownership and management, the challenges are also faced by the shareholders in exercising their rights and getting authentic information about the affairs of the Company. Further the number of stakeholders of companies is also increasing with the span of time. Now shareholders are not the only stakeholders, but the employees, community, suppliers, creditors, government, customers, community and people living in the vicinity, all are stakeholders of a company. With the increasing social, economic and financial aspects, the Companies are required to maintain balance between the conflicting interests of different stakeholders which can be achieved through Corporate Governance.

It is important to mention that the rising debate of business of business which shifted from maximisation of shareholders[3] wealth to protection of stakeholders' interest[4] has changed the functioning of the Companies. Currently, the stakeholders are pressing the Companies to balance the profit making and become a responsible pillar of sustainable development. Post COVID-19 pandemic, the concept of stakeholder capitalism[5] and long-term value creation is gaining popularity.[6] On the other hand, although the investors need good returns on investment but their investment decisions are also based on information provided by the companies regarding performance of their responsibilities towards environment and society at large.[7] It is pertinent to mention that the long-term value creating of the company depends upon its

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2 'Greenwashing – the Deceptive Tactics behind Environmental Claims' (*United Nations*) <https://www.un.org/en/climatechange/science/climate-issues/greenwashing> accessed 14 March 2025.

3 Milton Friedman, *A Friedman Doctrine-- The Social Responsibility of Business Is to Increase Its Profits*, THE NEW YORK TIMES, Sep. 13, 1970, https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html.

4 R. EDWARD FREEMAN, STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH (1984).

5 It is philosophy based on belief that the companies have an obligation beyond providing the returns to the shareholders. It provides that while taking the decisions, the companies must consider into account the environment and society.

6 Matthew Bell, *Why ESG Performance Is Growing in Importance for Investors*, https://www.ey.com/en_gl/insights/assurance/why-esg-performance-is-growing-in-importance-for-investors (last visited Feb. 25, 2025).

7 Matthew Bell, *Why ESG Performance Is Growing in Importance for Investors*, (Mar. 9, 2021), https://www.ey.com/en_in/insights/assurance/why-esg-performance-is-growing-in-importance-for-investors.

sincere initiatives towards the environment protection, social measures undertaken by it and transparent reporting mechanism.[8] To balance all the conflicting interests, the Environment, Social and Governance (ESG) reporting is a possible solution.

ESG reporting is the disclosures of the information to explain the impact of business in the areas of environment, social perspective and governance.[9] ESG covers the capturing of non-financial information including risks and opportunities in day-to-day affairs of the company. ESG includes of three important aspects which are discussed herein below:

Components of ESG

Environment

The Environmental aspect includes measures undertaken by the Company to reduce the greenhouse gasses and other pollution, protect the bio-diversity, water-bodies, afforestation and other environmental measures. It includes the environmental initiative whereby the Companies may spend a portion of their income towards cleaning of lakes, building parks and plant trees to maintain environmental balance. It includes the factors including dependence of fossil-fuel, water management, checking pollution levels, climate change, generation and disposal of hazardous waste, carbon footprints etc.[10]

Social

There are several activities that can be performed under social initiatives including healthy working facilities provided to the employees, good human capital management and safety programs.[11] It also covers the gender equality, conditions of work for employees and human rights as defined by the UN and EU Human Rights conventions.[12] The companies also refer it as their employee's development strategies.

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8 Tim Koller, *Five Ways That ESG Creates Value*, (Nov. 14, 2019), https://www.mckinsey.com/capabilities/strategy-and-corporate-finance/our-insights/five-ways-that-esg-creates-value.

9 PricewaterhouseCoopers, *ESG – What's It All about?*, PWC, https://www.pwc.com/mt/en/publications/sustainability/esg-what-is-it-all-about.html (last visited Jan. 30, 2024).

10 *Scoring Environment Pillar in Environmental, Social, and Governance (ESG) Assessment*, https://www.tandfonline.com/doi/epdf/10.1080/27658511.2021.1960097?needAccess=true (last visited Feb. 14, 2024).

11 Victoria Cherkasova & Irina Nenuzhenko, *Investment in ESG Projects and Corporate Performance of Multinational Companies*, 37 JOURNAL OF ECONOMIC INTEGRATION 54 (2022).

12 Matthew Triggs, Sarah Mishkin & Thibault Meynier, *EU Finalizes ESG Reporting Rules with International Impacts*, THE HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (Jan. 30, 2023), https://corpgov.law.harvard.edu/2023/01/30/eu-finalizes-esg-reporting-rules-with-international-impacts/.

Governance

Lastly, the governance is an important aspect of the Companies, whereby the corporate governance practices to be given due regard by the Companies. Here the Companies provide the information about the rights of the shareholders, board diversity, sustainable performance and compliance with other corporate governance norms.

The concept of ESG can be viewed through two approaches *viz.* Inside out and Outside-in. As per the inside-out approach, the term ESG denotes standard to measure the impact of business on environment and society to find out the transparent mechanism followed by the business regarding audit, internal control, pays to executives and shareholders rights.[13] On the other hand, the outside-in approach of ESG provides for the effect of environment and society on the company. [14] The outside-in model is becoming acceptable by the investors throughout the globe. The leading ESG ranking agencies throughout the world are using the outside-in model before ranking the companies. The objective of ESG is to find out the non-financial risks and opportunities existing in daily activities of the Company. It also helps the companies to device proper policies and take corrective action to manage different risks.

Development of ESG Reporting

The early days of ESG can be traced back to 1960s and 70s when the concept of socially responsible investing (SRI) started gaining popularity among the investors.[15] The investors starting realising the important of investment in socially responsible businesses. The responsible investment is undertaken by considering the Environment, Social and Governance issues while making investment decisions.[16] In 1960, the South African investors started ignoring the investment in tobacco manufacturing companies.[17] The global initiative for sustainable development started with the first conference of United Nation on Environment and Development wherein the term sustainable development was

13 *What Is ESG? A Guide for Businesses*, BRITISH BUSINESS BANK, https://www.british-business-bank.co.uk/finance-hub/business-guidance/sustainability/what-is-esg-a-guide-for-smaller-businesses/ (last visited Jan. 29, 2024).

14 EBA Report on Management and Supervision of ESG Risk for Credit Institutions and Investment Firms, European Banking Authority, EBA/REP/2021/18 <https://www.eba.europa.eu/sites/default/files/document_library/Publications/Reports/2021/1015656/EBA%20Report%20on%20ESG%20risks%20management%20and%20supervision.pdf> accessed 22 February 2024.

15 *The Evolution of ESG*, CXO, https://cxomag.com/article/the-evolution-of-esg-2/ (last visited Jul. 28, 2023).

16 *What Is Responsible Investment?*, PRI, https://www.unpri.org/introductory-guides-to-responsible-investment/what-is-responsible-investment/4780.article (last visited Feb. 24, 2025).

17 Priya & Kavita Sharma, *Global ESG Fund Evolution-an Analysis of Sustainable Investment Growth through Comparison*, 577 E3S WEB CONF. 03003 (2024).

used in Stockholm in 1972.[18] In 1987, a report 'Our common future' was published by the world commission of environment and development defining the concept of sustainable development as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs.'[19] Further in 2006, ESG issues were mentioned in UN Principles for Responsible Investment (PRI) report consisting of the Freshfield Report mentioning 'Who Cares Wins.'[20] In 2015, the UN General Assembly unanimously adopted the sustainable development goals with title 'Transforming our world: the 2030 agenda for sustainable development'.[21] It is to mention that initially the concepts of Corporate Social Responsibility (CSR) and Socially Responsible Investment (SRI) were introduced and gradually these concepts have been replaced with the ESG.[22]

ESG incorporation means to assess, review and consider ESG issues in prevailing investment practices by merging the approaches of integration[23], screening[24] and thematical investing.[25]

ESG was once considered as the optional ethical consideration but with the passage of time it has become essential for the companies.[26]

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18 United Nations, *United Nations Conference on the Human Environment, Stockholm 1972*, UNITED NATIONS, https://www.un.org/en/conferences/environment/stockholm1972 (last visited Feb. 13, 2024).

19 REPORT OF THE WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT: OUR COMMON FUTURE (1987), https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf.

20 Betsy Atkins, *Demystifying ESG: Its History & Current Status*, FORBES, https://www.forbes.com/sites/betsyatkins/2020/06/08/demystifying-esgits-history--current-status/ (last visited Jul. 28, 2023).

21 *Unanimously Adopting Historic Sustainable Development Goals, General Assembly Shapes Global Outlook for Prosperity, Peace | UN Press*, https://press.un.org/en/2015/ga11688.doc.htm (last visited Feb. 8, 2024).

22 Małgorzata Janicka & Artur Sajnóg, *The ESG Reporting of EU Public Companies—Does the Company's Capitalisation Matter?*, 14 SUSTAINABILITY 4279 (2022).

23 involves considering ESG issues in investment analysis and decisions to better manage risks and improve returns.

24 involves applying filters to a universe of securities, issuers, sectors or other financial instruments to decide whether to consider them for investment. It is based on criteria, such as an investor's preferences or specific investment metrics, set out in an investment process or that reflect a client or fund mandate. Screening can be positive, norms-based or negative.

25 involves looking for opportunities created by long-term ESG trends, such as the move towards renewable energy or circular economies. This could mean selecting a thematic product, such as a fund or index, or constructing a portfolio around such a trend.

26 Namrata Rana, *How ESG Will Accelerate Growth in Indian Companies*, THE ECONOMIC TIMES, Jan. 18, 2025, https://economictimes.indiatimes.com/small-biz/sustainability/how-esg-will-accelerate-growth-in-indian-companies/articleshow/117346938.cms?from=mdr.

Investment move towards ESG Reporting Companies

Throughout the world, as a part of corporate compliances, the companies are required to make disclosures on regular basis. Traditionally, the companies were making the disclosure of financial information as per the requirements of the Companies Law and other stock market regulations. But now it is an undeniable fact that investors in addition to the financial information also demand non-financial information. The demand of more non-financial information is exceeding beyond the existing available information.[27] The main reason of demanding non-financial information is to find out sustainability of a Company. Due to increase in demand of investors to check the Company's performance on ESG factors while taking investment decisions, the Companies have initiated to work on stakeholder-oriented strategies and maximise the social value.[28] Investment decisions are taken not only on the basis of traditional financial reports but also the non-financial information.[29]

These days the investors are moving towards socially responsible investment as it promote ethical practices at Companies which helps the them to get an easy access to financial requirements.[30] It has led to gradual shift in reporting by the Companies whereby the focus has increased to social and governance issues referred as ESG reporting.[31] The justification for ESG initiatives is that the value of long-term shareholders wealth and stakeholder interests need to be reconciled for long term growth of a company.[32] Further addressing of ESG issues has become important for investors to manage risk and has emerged as a part of competitive strategy for the companies.[33]

The investors are becoming more concerned about the companies committed towards good ESG practices.[34] The investors are planning their investment while taking into account the long-term perspective of investment

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27 Satyajit Bose, *Evolution of ESG Reporting Frameworks*, *in* VALUES AT WORK 13 (Daniel C. Esty & Todd Cort eds., 2020), https://link.springer.com/10.1007/978-3-030-55613-6_2.

28 Maha Faisal Alsayegh, Rashidah Abdul Rahman & Saeid Homayoun, *Corporate Economic, Environmental, and Social Sustainability Performance Transformation through ESG Disclosure*, 12 SUSTAINABILITY 3910 (2020).

29 Amit Kumar Singh & Sheetal Maurya, *Analysis of Historical Trend and Determinants of ESG Index Performance in India*, 3 CGI 12 (2021).

30 Ved Dilip Beloskar & S. V. D. Nageswara Rao, *Did ESG Save the Day? Evidence From India During the COVID-19 Crisis*, 30 ASIA-PAC FINANC MARKETS 73 (2023).

31 Paul A. Griffin & Estelle Y. Sun, *Voluntary Corporate Social Responsibility Disclosure and Religion*, 9 SAMPJ 63 (2018).

32 Dorothy S. Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUMBIA LAW REVIEW 2563 (2021).

33 Jeremy Galbreath, *ESG in Focus: The Australian Evidence*, 118 JOURNAL OF BUSINESS ETHICS 529 (2013).

34 Hong-Yi Chen & Sharon S. Yang, *Do Investors Exaggerate Corporate ESG Information? Evidence of the ESG Momentum Effect in the Taiwanese Market*, 63 PACIFIC-BASIN FINANCE JOURNAL 101407 (2020).

which is also known as sustainable investment (SI). SI is the means of investment while taking into account the environment, social and corporate governance issues in account.[35]Blackrock, one of the world's biggest investment funds has made the statement that the climate risk is forcing the investors to recheck the assumptions about modern finance as the 'climate is the investment risk'.[36] Deloitte claimed that globally, the investors claim to take investment decision on the basis of factors included in ESG.[37] ESG claims can help the gatekeepers to protect the companies and also to increase the commercial values and help the companies to take prudent business decisions.[38]

2030 agenda of Sustainable Development as adopted in September 2015 UN Sustainable Development Summit has 17 sustainable goals. After this UN 2023 Agenda, the MCA issued the updated guidelines called the National Guidelines on Responsible Business Conduct ("NGRBC") to align the NVGs with the SDGs adopted at the United Nations.

International key frameworks and initiatives proving for ESG framework include the Global Reporting Initiative (GRI), the Sustainability Accounting Standards Board (SASB), and the Task Force on Climate-related Financial Disclosures (TCFD).

Development of ESG in India

In India, the areas of ESG are covered under different environmental, labour, consumer, data privacy and companies legislation.[39] Environment Protection is majorly covered under three Indian enactments *viz.* Environmental (Protection) Act, 1986; the Air (Prevention and Control of Pollution) Act, 1981; and the Water (Prevention and Control of Pollution) Act, 1974. In addition to the above stated legislations, there are other enactments which provides for the protection of environment. These are Forest Conservation Act, 1980; Hazardous and other Wastes (Management & Transboundary Movement) Rules, 2016; Plastic Waste Management Rules, 2016; and E-Waste (Management) Rules, 2016 etc. The authorities regulating the enforcement of these enactments are the Ministry of Environment, Forest, and Climate Change; the Central Pollution Board; and the State Pollution Board. In addition to this, the Judiciary has also played an

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35 Nataša Kurnoga, Nika Šimurina & Filip Fučkan, *Performance Differences between ESG Indices and Conventional Market Indices: A Multivariate Analysis of Indices*, 25 ZAGREB INTERNATIONAL REVIEW OF ECONOMICS & BUSINESS 85 (2022).

36 *Larry Fink CEO Letter*, BLACKROCK, https://www.blackrock.com/us/individual/larry-fink-ceo-letter (last visited Jan. 31, 2024).

37 *#1 What Is ESG?*, DELOITTE, https://www2.deloitte.com/ce/en/pages/global-business-services/articles/esg-explained-1-what-is-esg.html (last visited Jul. 17, 2023).

38 Beth Haddock, Tucker Pribor & Kate Starr, *Why Corporate Attorneys and Other Gatekeepers Should Consider Esg and Sustainability Principles*, 30 FORDHAM ENVIRONMENTAL LAW REVIEW 1 (2018).

39 Aanchal Kabra, *Locating the Future of ESG in India's Present Sustainability Framework*, ASIAN J BUS ETHICS (2024), https://doi.org/10.1007/s13520-024-00191-y.

important role in the protection of environment. It went to an extent to declare the pollution free environment as fundamental right under Article 21 of the Constitution of India. It also laid down the principle of polluter pays.[40]

In addition to the Environmental Laws, there are several legislations which covers the social aspect of ESG. These are covered under the labour legislations including Factories Act, 1948; Maternity Benefit Act, 1961; Industrial Disputes Act, 1947; Payment of Gratuity Act, 1972; Employees State Insurance Act, 1948; Employees Provident Fund and Misc. Provisions Act, 1952; Payment of Bonus Act, 1965; Sexual Harassment of Women at Work Place (Prevention, Prohibition, and Redressal) Act, 2013; Consumer Protection Act, 2019; Information Technology Act, 2000 etc.

Likewise, the Governance aspect of ESG has also been traditionally covered under different legislations including the Companies Act, 2013 which imposes several governance compliances upon companies. The Companies Act, 2013 also provides for provisions enhancing the transparency, disclosure requirements and accountability. In addition to this, SEBI (LODR) Regulations, 2015 provides the provisions applicable to the Indian listed Companies.

These provisions include Independent Directors,[41] audit committee,[42] CSR,[43] women directors,[44] risk management committee,[45] vigil mechanism,[46] nomination and remuneration committee,[47] Stakeholders Relationship Committee,[48] National Financial Reporting Authority.[49] In case of a listed entity, where the chairperson is non-executive director, atleast One third of the board of listed entity must be composed of the independent directors and where the chairperson is an executive director atleast one half of the board must compose of independent directors.[50] The Companies are required to report about conservation of energy under the report of board.[51] It is also required for the Companies covered under prescribed threshold[52]to spent atleast two percent

40 M.C Mehta v. Union of India, Air 1987 SC 965; Indian Council of Enviro-Legal Action v. Union of India, AIR 1996 SC 1446; Vellore Citizens Welfare Forum v. Union of India, 1996 SC 2715.

41 Companies Act, 2013, S. 149(6) and SEBI (LODR) Regulations, 2015, R. 16 (1)(b).

42 Companies Act, 2013, S. 177 and SEBI (LODR) Regulations, 2015, R. 18.

43 Companies Act, 2013, S. 135 and SEBI (LODR) Regulations, 2015, R. 16.

44 Companies Act, 2013, S. 149(1).

45 SEBI (LODR) Regulations, 2015, R. 21

46 Companies Act, 2013, S. 177 (9) and SEBI (LODR) Regulations, 2015, R. 22

47 Companies Act, 2013, S. 178 (1) and SEBI (LODR) Regulations, 2015, R. 19

48 Companies Act, 2013, S. 178 (5) and SEBI (LODR) Regulations, 2015, R. 20

49 Companies Act, 2013, S. 132

50 SEBI (LODR) Regulations, 2015, R. 17(1)(b)

51 Companies Act, 2013, S. 134(3)(m)

52 Companies Act, 2013, S. 135

of its average net profit to be spent for the activities specified under the Companies Act.[53]

The Companies are regulated by the Ministry of Corporate Affairs. In addition to this, Reserve Bank of India (RBI) provides for disclosure norms for banks and non-banking financial institutions and Securities and Exchange Board of India (SEBI) provides the regulations for the listed companies. Ministry of Corporate Affairs (MCA), Government of India, issued Corporate Social Responsibility (CSR) Voluntary Guidelines in 2009.[54] Later, National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business were issued by MCA in 2011.[55] These guidelines provided a framework to be followed as responsible business conduct. These guidelines provided that businesses must become important actors in the society to boost the sustainable growth and economic development.

Further in 2012, the SEBI came up with the inclusion of Business Responsibility Reports (BRR) in annual report as a mandate for the top 100 listed entities.[56] It is important to note that in 2014, India became the first country to mandate the Corporate Social Responsibility (CSR).[57] In 2015, SEBI extended the scope of mandate of BRR from 100 listed entities to top 500 listed entities.[58] Later in 2017, SEBI came up with the voluntary adoption of Integrated Reporting by Listed Entities on the lines of Integrated Reporting Framework prescribed by International Integrated Reporting Council (IIRC).[59]SEBI also issued the disclosure requirements for issuance and listing

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53 Companies Act, 2013, Sch. VII

54 <https://www.mca.gov.in/Ministry/latestnews/CSR_Voluntary_Guidelines_24dec2009.pdf> accessed 22 February 2024. CSR Voluntary Guidelines, 2009 provides for the voluntary reporting by the Companies on the issues on Care for stakeholders, ethical functioning, respect for workers rights and welfare, respect for human rights, respect for environment, activities of social and inclusive development.

55 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business' (Ministry of Corporate Affairs, Government of India 2011) <https://www.mca.gov.in/Ministry/latestnews/National_Voluntary_Guidelines_2011_12jul2011.pdf>.

56 BUSINESS RESPONSIBILITY REPORTS (2012), https://www.sebi.gov.in/legal/circulars/aug-2012/business-responsibility-reports_23245.html.

57 G.K. Kapoor, Sanjay Dhamija, *Mandatory CSR Spending—Indian Experience*, 3 EMERGING ECONOMY STUDIES 98 (2017).

58 Rajesh Mascarenhas, *Business Responsibility Reports Must for Top 500 Listed Companies*, THE ECONOMIC TIMES, Dec. 24, 2015, https://economictimes.indiatimes.com/markets/stocks/news/business-responsibility-reports-must-for-top-500-listed-companies/articleshow/50311364.cms?from=mdr.

59 INTEGRATED REPORTING BY LISTED ENTITIES (2017), https://www.sebi.gov.in/legal/circulars/feb-2017/integrated-reporting-by-listed-entities_34136.html.

of green debt securities in 2017.[60] It provided for the categories of investment made to be covered under green debt securities.

Later in 2019, MCA issued the National Guidelines on Responsible Business Conduct.[61]These guidelines were designed to provide assistance to the businesses to perform more than the minimum regulatory requirements. Further in 2021, the SEBI introduced Business Responsibility and Sustainability Reporting (BRSR) which is a comprehensive ESG reporting framework in India.[62] SEBI made it compulsory for top 1000 listed companies to adopt the new requirements of Business Responsibility and Sustainability Reporting (BRSR) from the financial year 2022-23.[63] It has been made compulsory for the Companies falling under the prescribed net[64] to include the BSRS as a part of Annual Report providing clearly the ESG performance and initiatives. Further in 2023, SEBI made an amendment to Regulation 34(2) of LODR and came up with a new framework 'BRSR Core' and 'BRSR Core for company's value chain'.[65] It was made compulsory for top 1000 listed companies by market capitalisation to make ESG disclosures.[66]

SEBI vide letter dated February 8, 2022[67] and June 21, 2022[68] to the Association of Mutual Fund of India (AMFA) prescribed disclosure norms of ESG labelled mutual funds. It provides for the details regarding different aspects including objectives, allocation of assets, stewardship activities on material issues of ESG. It has tightened the disclosure norm so as to provide a detailed information to the investors regarding the strategy in nomenclature of ESG schemes, securities wise BRSR and BRSR score alongwith ESG score.[69] It

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60 DISCLOSURE REQUIREMENTS FOR ISSUANCE AND LISTING OF GREEN DEBT SECURITIES (2017), https://www.sebi.gov.in/legal/circulars/may-2017/disclosure-requirements-for-issuance-and-listing-of-green-debt-securities_34988.html?QUERY.

61 NATIONAL GUIDELINES ON RESPONSIBLE BUSINESS CONDUCT (2018), https://www.mca.gov.in/Ministry/pdf/NationalGuildeline_15032019.pdf.

62 *BRSR Reporting and the Evolving ESG Landscape in India*, https://www.ey.com/en_in/climate-change-sustainability-services/brsr-reporting-and-the-evolving-esg-landscape-in-india (last visited Jul. 28, 2023).

63 *SEBI | SEBI Issues Circular on "Business Responsibility and Sustainability Reporting by Listed Entities,"* https://www.sebi.gov.in/media/press-releases/may-2021/sebi-issues-circular-on-business-responsibility-and-sustainability-reporting-by-listed-entities-_50097.html (last visited Feb. 18, 2024).

64 As per SEBI Circular SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122 dated 12th July 2023, the top 1000 listed entities by market capitalisation are required to make disclosures as per the updated BRSR format

65 Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2025 w.e.f. 28.03.2025

66 SEBI (LODR), 2015, R. 34(2)

67 SEBI/HO/OW/IMD-II/DOF3/P/5249/2022 dated February 08, 2022

68 SEBI/HO/OW/IMD-II/DOF3/P/25379/2022 dated June 21, 2022

69 Arora Sanjam and Jagrati Gupta, *Environmental, Social & Governance Laws and Regulations Report 2024 India*, https://iclg.com/practice-areas/environmental-social-and-governance-law/india (last visited Jul. 28, 2024).

is important to note that India is first among the world to standardise ESG disclosures, to regulate the ESG Rating providing agencies and mandate reasonable assurance.[70]

In 2020, the RBI issued a circular requiring banks to disclose their ESG-related information in their annual reports, including their policies on climate risk management, sustainable finance, and social responsibility. The circular also required banks to report on their financing of green and social projects. In June 2022, RBI mandated that Scheduled Commercial Banks (SCBs), Urban Cooperative Banks (UCBs), and Non-Banking Financial Companies (NBFCs) with assets over Rs. 5,000 crores must adopt the TCFD framework for climate-related and sustainability-related disclosures.[71]

Structure of BRSR

BRSR is in the form of questionnaire divided into three parts *viz.* general disclosure; management and process disclosure; and principal wise performance disclosure. The first part of general disclosure contains the information about the company, its business activities, operations, holding, associates and subsidiaries, CSR, transparency and disclosure requirements. The second part of the report deals with policy, governance, leadership and oversight. The last part classify the Key Performance Indicators required to be reported into sub-categories of essential[72] and leadership indicators[73].

Section A (General Disclosure)	Section B (Management and Process Disclosure)	Section C (Principle – wise Performance Disclosures)
• Details of the listed entity • Products/services • Operations • Employees • Holding, Subsidiary	The disclosures are required on policy and processes relating to NGRBC dealing with leadership, governance, and stakeholder	**Essential indicators** Data on energy, waste, water, and emissions R&D and capital expenditure made to improve environmental

70 Shariq Khan, *India among the World's First to Standardise ESG Disclosures; New SEBI Measures to Improve Transparency: ESGDS' Ramnath Iyer*, THE ECONOMIC TIMES, Apr. 2, 2024, https://economictimes.indiatimes.com/small-biz/sme-sector/india-among-the-worlds-first-to-standardise-esg-disclosures-new-sebi-measures-to-improve-transparency-esgds-ramnath-iyer/articleshow/108962761.cms?from=mdr.

71 Dr Mukesh Kwatra, *Rise of the ESG Regulations*, THE TIMES OF INDIA, https://timesofindia.indiatimes.com/blogs/voices/rise-of-the-esg-regulations/ (last visited Feb. 19, 2024).

72 Essential Indicators are compulsory which provides for information on training programmes, information regarding environmental factors including energy, emission, waste water, social impact generated by the company.

73 Leadership indicators are not mandatory and the Companies can report about it for better accountability and responsibility like information on life cycle assessment, conflict management policy etc.

and Associate Companies (including joint ventures) • CSR Details • Transparency and Disclosure Compliances	engagement.	and social impacts Training programmes conducted **Leadership indicators** Life cycle assessment for products/services Biodiversity Energy consumption Conflict management policy Suppy chain disclosures

Source: SEBI Circular of May 10, 2021 No.: SEBI/HO/CFD/CMD-2/P/CIR/2021/562

MCA has issued two formats of BRSR viz. BSRS Comprehensive[74] and BRSR Lite.[75]There are nine key performance indicators as per BRSR Core for which the entities need to obtain reasonable external assurance for increasing the reliability and reducing the chances of greenwashing. BRSR is aligned with nine principles of National guidelines for responsible business conduct. It also adopts the United Nations Sustainable Development Goals (UNSDG).

From FY 2023-24, it is applicable to top 150 listed entities based on market capitalisation and upto FY 2026-27, the extend will cover top 1000 listed entities. A category of 'Core ESG rating' shall be required to be provided by the rating agencies. This rating shall be based on assurance and audited of data by third party. The Companies are also required to make the disclosure of the value chain[76] as a part of its annual report. The disclosure of value chain shall be required to be made by top 250 listed companies on comply-or explain basis for FY 2024-25. Further the limited assurance shall be applicable from the FY 2025-26.

In addition to this, SEBI has also issued the detailed guidelines for ESG rating providing agencies. They are regulated under SEBI (Credit Rating Agencies) Regulations, 1999. The ESG Rating Agencies in addition to ESG rating and Core ESG rating are required to provide privartan[77] / transition score.

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74 It is mandatory for all the entities required to report their ESG performance in the format.

75 It is format provided for the non-obligatory entities to make the disclosure. This format it for the companies not having any experience of sustainability reporting.

76 value chain is defined to encompass the top upstream and downstream partners of a listed entity, cumulatively comprising 75% of its purchases / sales (by value)

77 The score reflects the incremental changes a company has made in its transition over recent years or concrete plans to address the risk and opportunities involved in transitioning to more sustainable operations, rather than scoring them only on their current profile.

Is there a need of ESG Reporting?

It is big question for any economy to weight the quantum of compliances for the Companies. As the nations are moving towards the Ease of doing business for promoting companies to start business in their jurisdictions, it becomes a big question, how much compliances are required by the Companies?

To answer this, the principles of corporate governance i.e. fairness, accountability, transparency and responsibility comes as a first thought which is always promoted for the development of an economy. In the light of principle that the Companies are working for the economies, they are expected to report about the E, S and G factors respectively so as to make it possible for an individual to make the comparison.[78] One of the important drivers for sustainability among the business houses is the increase in demand of Socially Responsible Investment (SRI).[79] As a good Corporate citizen, the company works meticulously with all the stakeholders for the accomplishment to improve liability across socio economic continuum. [80]

Although it is always a debatable issue whether the ESG moves a Company into positive direction or has no impact on its performance. It is contended by one school of researcher that ESG when merged with investment analysis and decision making provides miraculous results in a move from profit maximisation to sustainable development.[81]On the other hand, it has come to light that there is negative investor sentiment towards the ESG which creates a serious breach in purpose of ESG.[82] At the same time, the adoption of good ESG practices increases the reputation of company among stakeholders and is taken positively by socially conscious investors.[83] ESG portfolio is highly correlated with blue chip and market portfolios in stock market of India.[84]As the investors are taking their decisions for investment and retention of investment

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78 Hemlata Chelawat & Indra Vardhan Trivedi, *The Business Value of ESG Performance: The Indian Context*, 5 ASIAN J BUS ETHICS 195 (2016).

79 Beloskar and Rao, *supra* note 30.

80 Sanjay Pareek & Prof Dr Srinivas Subbarao Pasumarti, *ESG Reporting Practices in India, UK and USA: An International Comparison*, 12 TURKISH JOURNAL OF COMPUTER AND MATHEMATICS EDUCATION (TURCOMAT) 2984 (2021).

81 M M Goyal & Khushboo Aggarwal, *ESG Index Is Good for Socially Responsible Investor in India*, 2 AJMS 92 (2014).

82 Samriddhi Dhasmana, Sajal Ghosh & Kakali Kanjilal, *Does Investor Sentiment Influence ESG Stock Performance? Evidence from India*, 37 JOURNAL OF BEHAVIORAL AND EXPERIMENTAL FINANCE 100789 (2023).

83 Pruthiranjan Dwibedi, Debasis Pahi & Antarjyami Sahu, *Unveiling the Relationship Between ESG Scores and Firm Performance in India: A System GMM Approach*, 18 AUSTRALASIAN ACCOUNTING, BUSINESS AND FINANCE JOURNAL 26 (2024).

84 Mr Anil et al., *ESG INDEX IS GOOD FOR SOCIALLY RESPONSIBLE INVESTOR IN INDIA*, 8 31 (2019).

in outperforming ESG Companies, it is time for the Companies to measure and find out the impact of their initiatives.[85]

ISSUES AND CHALLENGES

Although ESG is emerging as an answer to many question of responsible investment, green planet, sustainability and governance but there are several challenges existing in implementing the ESG in true spirit. It is important to note that greenwashing[86] is another important issue related with the authenticity of the published reports on environmental claims. It is a global problem where the renowned Companies claim to take more corrective actions to protect environment than the reality. The level of greenwashing is one of the important concerns as the disclosure provided by the companies necessarily does not corresponds to improvement in ESG credentials from operational or strategic perception.[87] There are problems in respect to reliance on information provided by the Companies and the existing reporting regulations.[88]

Central Consumer Protection Authority (CCPA) has issued the Guidelines for Prevention and Regulation of Greenwashing or Misleading Environmental Claims, 2024.[89] The guidelines has been notified with the view to check the greenwashing and misleading environmental claims and to ensure transparency in advertisement relating to environmental claims.[90]The guidelines provide that the green claims must be supported by verifiable evidence.[91]

Greenwashing is existing as a global issue effecting not only India but many other countries. In UK, Sustainability Disclosure Requirements (SDR) requires the Companies to instrumentalise Green Taxonomy. It also requires the Companies to follow the recommendations of Task Force on Climate-related

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85 George Serafeim, *Social-Impact Efforts That Create Real Value*, 98, no. 5 HARVARD BUSINESS REVIEW, at 38.

86 Greenwashing means misleading the public to believe that the Company is doing more for protection of the environment than in reality. As per Cambridge Dictionary 'behavior or activities that make people believe that a company is doing more to protect the environment than it really is'.

87 Mark Mobius & Usman Ali, *ESG in Emerging Markets: The Value of Fundamental Research and Constructive Engagement in Looking beyond ESG Ratings*, https://onlinelibrary.wiley.com/doi/10.1111/jacf.12458 (last visited Aug. 4, 2024).

88 Indransh Bhadauria, *ESG Investing: Is It the Right Time for Indian Investors to Consider ESG?* (2022), https://ir.iimcal.ac.in:8443/jspui/handle/123456789/3902.

89 The guidelines have been issued by CCPA vide F. No. CCPA/28/2023-CCPA (Reg).

90 *Central Consumer Protection Authority Issues Guidelines for 'Prevention and Regulation of Greenwashing and Misleading Environmental Claims,'* https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=2064963 (last visited Mar. 14, 2025).

91 Bose Varghese, *Greenwashing Regulation Will Put Spotlight On ESG Assurance*, NDTV PROFIT (Dec. 22, 2024), https://www.ndtvprofit.com/opinion/greenwashing-regulation-will-put-spotlight-on-esg-assurance.

Financial Disclosures.[92] It has been found in research conducted by United Kingdom Competition and Markets Authority (CMA) that around 40 percent of the green claims made only were false and deceptive.[93]In the wake of investors and regulators pressure, the companies are moving towards greenhushing.[94]Likewise in China Southern Weekly released the 2022 China Greenwashing List.[95]Ministry of Ecology and Environment of China has formulated the 'Administrative Measures for Disclosure of Corporate Environmental Information and related reform program'. China Securities Investment Funds Association ("CSIFA") issued the Green Investment Guidelines (Trial) in 2018.[96] In US, the SEC has taken the stringent step to control the greenwashing, it has mandated the funds to meet atleast 80% of its assets as per the assets advertised by its name.[97]

In India, there are existing statutes and organisations to deal with the problem of greenwashing. These are Bureau of Indian Standards (BIS),[98] The Consumer Protection Act, 2019,[99] The Ministry of Environment, Forest and Climate Change,[100] The Environment Protection Act, 1986,[101] The Advertising Standards Council of India,[102] Green Rating Project,[103] Indian Green Building

92 *Greenwashing, Greenhushing and Greenwishing*, https://kpmg.com/us/en/media/news/greenwashing-esg-traps-2023.html (last visited Mar. 15, 2025).

93 *Global Sweep Finds 40% of Firms' Green Claims Could Be Misleading*, GOV.UK, https://www.gov.uk/government/news/global-sweep-finds-40-of-firms-green-claims-could-be-misleading (last visited Mar. 15, 2025).

94 Katharina Weghmann, *How Good Governance Can Keep Corporates Clean from Greenwashing*, https://www.ey.com/en_gl/insights/assurance/how-good-governance-can-keep-corporates-clean-from-greenwashing (last visited Mar. 15, 2025). As per Oxford dictionary "Greenhushing is the deliberate downplay of sustainability programmes where companies actively avoid and may even refuse to talk about climate initiatives, achievements, and targets".

95 *EqualOcean | Southern Weekly 2022 "China Greenwashing List,"* EQUALOCEAN, https://equalocean.com/analysis/2023100320261 (last visited May 1, 2025).

96 *Sustainability Claims and Greenwashing in China*, https://cms.law/en/int/publication/cms-green-globe/china (last visited May 1, 2025).

97 Douglas Gillison & Michelle Price, *US SEC Cracks down on Funds "Greenwashing" with New Investment Requirement*, REUTERS, Sep. 20, 2023, https://www.reuters.com/sustainability/us-sec-poised-ban-deceptive-esg-growth-fund-labels-2023-09-20/.

98 The IS/ISO 14024:1999 standard has been developed by BIS for eco-labelling of products and services.

99 Establishment of Central Consumer Protection Authority which regulate the false and misleading environmental claims.

100 Green Good Deeds movement was issued by the ministry to promote Companies to take actions to reduce environmental impact. It provides the guidelines for the Companies making environmental claims.

101 Provides for protection of environment and prevention of pollution of environment.

102 It has released a code for advertisement by Companies. The code explicitly provides that environmental claims must be clear and not misleading.

Council.[104] It is to note that inspite of the existing mechanism, the Companies are involved in greenwashing.

It has also been found that the ESG is more linked with the supply chain sustainability and is not paying direct heed on welfare of the employees and protection of human rights.[105]The ESG rating providers are using different benchmarks to grant the ratings due to partial streamlining of the criterions. Although Indian investors have started moving towards green fund investment but it is still not very popular among masses. The move from existing set up of the Companies towards ESG initiatives has cost implication for the companies.[106] There is lack of professionals equipped to deal with ESG compliances.

CONCLUSION

Although the Gen-Z consumers are more conscious about the sustainable brands and also cautious of greenwashing by the Companies[107] inspite of that the corrective actions are required by the government to check the manipulative practices of greenwashing. The guidelines have been issued by SEBI to the ESR rating providers but a streamlines format for the disclosure must be issued through regulation and it must be compulsorily followed by all the Companies. Most of the companies focusses on governance aspect of ESG whereas there is need to shift focus on environmental and social aspect.[108] Although professional bodies are taking initiatives by providing the training for ESG professionals but there are limited number of professionals available in the field.[109] The government need to ensure that there must be adequate number of trained professionals to do the ESG audit. Adequate steps must be taken by the

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103 Under this project the environmental performance of the Companies is rated. The performance in based on the criteria of environmental management system, performance etc.

104 It promotes sustainable practices by the Companies. It has provided for a rating system for green buildings.

105 Leonidas Efthymiou, Ambika Kulshrestha & Sandeep Kulshrestha, *A Study on Sustainability and ESG in the Service Sector in India: Benefits, Challenges, and Future Implications*, 13 ADMINISTRATIVE SCIENCES 165 (2023).

106 Deepak Bhawnani, *Roadblocks to ESG Adoption in India*, THE TIMES OF INDIA, https://timesofindia.indiatimes.com/blogs/voices/roadblocks-to-esg-adoption-in-india/ (last visited May 1, 2025).

107 Ted Kail, *The Rising Power Of ESG: It's Not Just Better, It's Better Business*, FORBES (Oct. 3, 2024), https://www.forbes.com/councils/forbestechcouncil/2024/10/03/the-rising-power-of-esg-its-not-just-better-its-better-business/.

108 Tarun Kumar Soni, *Demystifying the Relationship between ESG and SDG Performance: Study of Emerging Economies*, 20 INVESTMENT MANAGEMENT AND FINANCIAL INNOVATIONS 1 (2023).

109 Prerak Ved, Alby Joseph and Labdhi Doshi, *ESG Reporting in India - Where Do We Stand?*, AZB, https://www.azbpartners.com/bank/esg-reporting-in-india-where-do-we-stand/ (last visited Oct. 25, 2024).

professional bodies, government and investor associations to aware the investors about the long term value creation by adoption of ESG integration.

The aim of India is to become net zero by 2070[110] for which it has initiated many steps including installation of renewable energy.[111] It is further important to mention that with the increase in ESG investing, the mutual fund industry is also coming up with the green funds. It is expected that the green fund investment will see 5 fold growth by 2023.[112] The investors are happily investing in the green funds due to compulsory reporting of ESG by the Companies. It means that the mutual funds will invest funds in companies positively working toward ESG compliance. The trend shows a positive turn towards ESG, as 52% of the global capacity centres (GCCs) have adopted ESG policies and 70% of GCCs are integrating the technology for evaluating the sustainability and impact of ESG on Company.[113] It has come to light in the carbon disclosure project that there is a significant advancement in reporting pertaining to environmental aspect by the Indian Companies, as mow, they are more focussed on climate change, forest management and water security aspects.[114]It is correct to state that although Indian Companies and investors are becoming increasingly conscious about the ESG, but till now ESG is in nascent stage in India. But the beginning of new era of ESG has been changing the preference and choices of the investors. In this light, it can be concluded that the golden era to save planet, people and governance has been initiated by ESG.

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110 Karuna Gopal, *Can AI Unlock the Scope of ESG in India?*, OUTLOOK BUSINESS (Dec. 4, 2024), https://www.outlookbusiness.com/columns/can-ai-unlock-the-scope-of-esg-in-india.

111 India is ranking fourth globally in renewable energy installed capacity.

112 Business Standard, *India's Green Investments to Grow 5-Fold to Rs 31 Trn by 2030: CRISIL*, (Jan. 15, 2025), https://www.business-standard.com/economy/news/india-s-green-investments-pegged-at-rs-31-trillion-by-2030-crisil-125011501080_1.html.

113 Business Standard, *Over Half of GCCs in India "actively" Adopting ESG Agenda: Report*, (Apr. 4, 2024), https://www.business-standard.com/industry/news/over-half-of-gccs-in-india-actively-adopting-esg-agenda-report-124040400510_1.html.

114 Jamil Khatri, *Emergence of ESG: Making India a Formidable Force in the World Economy - ET Government*, ETGOVERNMENT.COM, https://government.economictimes.indiatimes.com/blog/emergence-of-esg-making-india-a-formidable-force-in-the-world-economy/109642306 (last visited Feb. 17, 2025).