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ENVIRONMENTAL, SOCIAL, AND GOVERNANCE FRAMEWORK AND ITS INTERACTION WITH CLIMATE LAWS IN INDIA

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Abstract:

The evolution of Environmental, Social, and Governance (ESG) disclosures in India reflects the growing importance of sustainable and responsible business practices that transcend traditional corporate social responsibility practices. These practices have been driven by regulatory changes, voluntary initiatives, and the emphasis on ESG factors in corporate decision-making. The ongoing attempts to strengthen the effectiveness of ESG disclosures in India reflect a gradual but determined progression towards several stakeholders working together to factor ESG considerations into corporate practices and reporting effectively. India's ESG framework can potentially contribute to a legislative framework tackling climate change. Through this paper, the authors analyse the interaction between ESG and climate regulations in India with a focus on Sustainable Development Goals. This interaction between regimes in India is growing and can be traced to India's international commitments and national regulations. The authors demonstrate that the ESG framework currently interacts with both climate mitigation and climate adaptation, operating as a potential tool to conciliate corporate climate action. Further, it can strengthen corporate governance and corporate responsibility in addressing climate change.

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1.0 INTRODUCTION

With the rise of anthropogenic emissions, corporations and their stakeholders are becoming increasingly dependent on the Environmental, Social, and Corporate Governance (ESG) framework to understand "climate-related risks" and act on them to reduce contributing factors to climate change.[1] Generally, ESG disclosures represent the voluntary or mandatory communication of a corporation's performance and endeavours related to ESG considerations.[2] The information communicates to a diverse array of stakeholders, including investors, employees, customers, and the general public, about a corporation's commitment to ESG.[3] In the US, for example, in February 2021, when President Biden issued an executive order[4] mandating "assessment, disclosure, and mitigation of climate pollution and climate-related risks" in all the sectors of the US economy, it led to the creation of a "Climate and ESG Task Force".[5]

Trautman argues that climate change laws and regulations, both national and international, guide and define the ESG frameworks in the US[6], can be triggered by climate change-related adverse effects, depend on climate legislation like the Inflation Reduction Act of 2022[7], and are a direct consequence of the financial impacts of climate change.[8]

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[1] Minor Ryan, 'The Enhancement And Standardization Of Climate-Related Financial Disclosures And Recommendations For The Improvement Of Environmental, Social, And Corporate Governance (ESG) Disclosures' (2022) UC San Diego: Climate Science and Policy < https://escholarship.org/uc/item/2084x4pf> accessed 11 October 2024, 4-10.

[2] Albert Tsang, Tracie Frost and Huijuan Cao, 'Environmental, Social, And Governance (ESG) Disclosure: A Literature Review' (2023) 55(1) The British Accounting Review <https://doi.org/10.1016/j.bar.2022.101149> accessed 11 October 2024.

[3] Minor Ryan (n 1).

[4] Executive Order on Climate-Related Financial Risk (White House) 2021, DCPD-202100425-Executive Order 14030.

[5] David M. Silk and Carmen X. W. Lu (eds), *Practical Cross-Border Insights into ESG Law: Environmental, Social & Governance Law* (2nd Edn, International Comparative Legal Guides 2022), 221-223.

[6] Lawrence J. Trautman and Neal Newman, 'The ESG Debate Emerges from the Soil of Climate Denial' (2021) 53 University of Memphis Law Review, 67 (2022); Texas A&M University School of Law Legal Studies Research Paper No. 22-38 <https://dx.doi.org/10.2139/ssrn.3939898> accessed 11 October 2024.

[7] Ibid.

[8] Virginia Harper Ho, 'Modernizing ESG Disclosure' (2022) University of Illinois Law Review 281-288 <https://illinoislawreview.org/print/vol-2022-no-1/modernizing-esg-disclosure/> accessed 14 October 2024.

Similarly, there are European Union regulations concerning ESG[9] that aim to integrate the EU's climate and environmental objectives with economic developmental activities.[10] During the 26th meeting of the conference of the parties (CoP26), there were discussions about climate-related disclosures by the corporations.[11] The G20 Nations[12] and the World Economic Forum[13] have also developed agendas, commitments, guidelines and frameworks for ESG reporting in the context of climate change. After the United Nations launched Principles for Responsible Investment[14] and the Global Reporting Initiative[15], the focus on ESG increased globally[16]. Since the early 2000s, the ESG standards have evolved from voluntary disclosure guidelines for some companies

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[9] Directive (EU) 2022.2464 of the European Parliament and the Council of 14 December 2022 amending regulation (EU) No. 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting [2022] Official Journal of the European Union L322/15.

see also: Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088; Commission Delegated Regulation (EU) 2020/1818 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmark; Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021; Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014, among others.

[10] Andreas Fillmann and Hannah Kendrick, 'Update: ESG Laws Across the World' (Squire Patton Boggs, October 2023) <https:// www.squirepattonboggs.com/en/insights/publications/2023 /07/esg-laws-across-the-world> accessed 11 October 2024, 1-5.

[11] United Nations Climate Change Global Innovation Hub, *CoP26 Event Report* (2022) <https://unfccc.int/sites/default/files/resource/UGIH_COP26_Report.pdf> accessed 11 October 2024.

[12] G20 Sustainable Finance Working Group, *G20 Sustainable Finance Working Group Presidency and co-chairs note on agenda priorities* (2024) <https://g20sfwg.org/wp-content/uploads/2024/02/2024-G20-SFWG-NAP.pdf> accessed 11 October 2024.

[13] World Economic Forum in collaboration with Deloitte, EY, KPMG and PwC, *Toward Common Metrics and Consistent Reporting of Sustainable Value Creation* (2020).

[14] 'Secretary-General Launches 'Principles for Responsible Investment' Backed by World's Largest Investors' (United Nations, 27 April 2006) <https:// press.un.org/en/2006/sg2111.doc.htm > accessed 11 October 2024.

[15] Global Reporting Initiative, *Sustainability Reporting Guidelines on Economic, Environmental, and Social Performance* https://www.saiplatform.org/uploads/Modules/Library/GRI-sustainability-reporting-guidelines.pdf accessed 11 October 2024.

[16] Jeremy Galbreath, 'ESG in focus: The Australian Evidence' (2012) 118(3) Journal of Business Ethics <https://doi.org/10.1007/s10551-012-1607-9> accessed 11 October 2024, 529-533.

into a form of *de facto* law.[17] These regulatory forcings are shaping the law in a way that the corporations are now compelled to be regulated by them[18] and are simultaneously developing a legal framework at the intersection of climate law and ESG. It is, therefore, only fair to say that the interaction between ESG and climate change in the corporate world is significant but needs stronger regulations.[19]

The core principles of ESG globally are similar to those applied in India, where Indian firms sideline environmental concerns within the ESG.[20] Generally, companies are assessed on their environmental practices, social responsibility towards employees and communities, and overall corporate governance principles.[21]

In the next section, the authors analyse the paradigm of ESG within Corporate Social Responsibility (CSR). This analysis is followed by a discussion in the third part about the stakeholders who are interested in or affected by climate-risk disclosures. The fourth part of the paper traces the development of ESG frameworks in India, along with India's international and national commitments to ESG, CSR and climate action. This part of the paper also discusses the ESG and environmental disclosure framework for climate mitigation, adaptation and financing in India. The final part of the paper concludes the analysis wherein the authors also analyse the point of interaction between the two regimes, branching out as climate law for corporations.

2.0 FROM CSR TO ESG

In India, ESG practices and CSR are often viewed as two sides of the same coin; both are aimed at improving the accountability of business while they promote the welfare of society. CSR is focused on direct corporate contributions to societal causes, which range from philanthropy to sustainable development initiatives, and ESG is often tied to the long-term strategy of the company. However, both share the same goal of enhancing corporate reputation and fostering positive change in society.

While ESG is integrated into the company's operational and strategic decision-making processes, CSR frequently stays apart from the core business activities and is occasionally perceived as a charitable or philanthropic endeavour. Therefore, CSR is essential for promoting short-term community benefits, and on the other hand, ESG offers a longer-term and a bit more comprehensive framework for sustainable company

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[17] Ibid.

[18] Ibid.

[19] Andreas Fillmann (n 12).

[20] Santi Gopal Maji and Prachi Lohia, 'Environmental, Social And Governance (ESG) Performance And Firm Performance In India' (2023) 18(1) Society and Business Review < DOI:10.1108/SBR-06-2022-0162 > accessed 11 October 2024.

[21] Umakanth Varottil, 'The Legal and Regulatory Impetus towards ESG in India: Developments and Challenges' (2023) NUS Law Working Paper No 2023/003 <https://law.nus.edu.sg/wp-content/uploads/2023/01/03_UmakanthVarottil.pdf> accessed 11 October 2024.

operations. Therefore, both CSR and ESG work in consonance with each other to fulfil the social objectives of a corporate entity. For example, Section 134(m) of the Indian Companies Act of 2013 mandates that companies include a report by their board of directors on the conservation of energy in the annual financial statement as part of the CSR.[22] This may be seen as a climate risk disclosure by investors, customers and other stakeholders. In the realm of environmental and climate-related considerations (E), ESG disclosures accentuate a company's ecological impact.[23] Maji and Lohia confirm that the Indian firms do not pay attention to the "E" in the ESG.[24] This can include but is not limited to, the operational practices and performance metrics, particularly in the areas of carbon emissions, energy consumption, water usage, waste management, and biodiversity and conservation initiatives that are of interest to the stakeholders of the corporation.[25] From a climate mitigation perspective, carbon emissions disclosure delineates emissions across scope 1 (direct emissions from company-owned sources), scope 2 (indirect emissions from purchased electricity), and scope 3 (indirect emissions along the company's value chain).[26] From a climate adaptation perspective, reporting extends to energy consumption, water utilization and management, waste generation and disposal, and actions taken to safeguard biodiversity and disaster management.[27]

Conversely, the social dimension "S" of ESG disclosures concentrates on a company's impact on its workforce, communities, and broader society.[28] Integral aspects of social disclosures include information on labour practices, encompassing employee working conditions, labour rights, and diversity and inclusion efforts.[29] In addition, attention is given to employee health and safety, human rights policies, community engagement initiatives, and product safety and quality control measures.[30]

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[22] The Companies Act, 2013, Act No. 18 of 2013.

[23] Zhichao Yu, Umar Farooq, Mohammad Mahtab Alam and Jiapeng Dai, 'How Does Environmental, Social, And Governance (ESG) Performance Determine Investment Mix? New Empirical Evidence From BRICS' (2024) 24(3) Borsa Istanbul Review <https: //doi.org/10.1016 /j.bir.2024.02.007.> accessed 11 October 2024.

[24] Santi Gopal Maji (n 22).

[25] Marco Tavanti, 'EESG Organizational Sustainability Management' *in Developing Sustainability in Organizations: A Values-Based Approach* (Palgrave Macmillan 2023), 171-218.

[26] Jonne Malmberg, 'Comparative Analyses of Science Based Targets Scope 3 Emissions in Corporate Sustainability Policies' (Master's thesis, Aalto University 2023).

[27] Ibid.

[28] Leonardo Becchetti, Emanuele Bobbio, Federico Prizia and Lorenzo Semplici, 'Going Deeper into the S of ESG: A Relational Approach to the Definition of Social Responsibility' (2022) 14(15) Sustainability <https://doi.org/10.3390/su14159668> accessed 11 October 2024.

[29] Ibid.

[30] Ibid.

Within the governance facet "G" of ESG disclosures, emphasis is placed on a company's internal management, control mechanisms, and corporate governance practices.[31] This encompasses the disclosure of information related to board composition, executive compensation practices, shareholder rights, ethics and compliance policies, and risk management processes.[32] However, the scope of this paper is limited to the environmental and climate-related aspects, in other words, the (E) of ESG in the Indian context.

It is noteworthy that ESG disclosures manifest in diverse formats, including standalone reports, integrated reports that amalgamate financial and non-financial information, sustainability reports, and segments within annual reports, which constitute part of the CSR Reporting,[33] allowing the investors and other stakeholders to learn about the corporation's climate-risks and sustainability action plans.[34]

Generally, disclosure of any "material information" can be regarded as a risk to the financial or non-financial standing of a business. For example, in Australia, businesses are required to disclose information that can impact the prices of a product in the market.[35] This also implies that disclosure or non-disclosure of information impacts financial stakeholders like banks who invested money in the business[36] and non-financial stakeholders like customers who depend on the business or corporation for certain products or services. If the climate risks materialise, the business will not be able to provide returns of investment to the financial stakeholders, causing economic losses to them.[37] According to Monasterolo *et al.*, three shocks are relevant to determining

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[31] Tianxing Zhang, Jun Zhang and Siyuan Tu, 'An Empirical Study on Corporate ESG Behavior and Employee Satisfaction: A Moderating Mediation model' (2024) 14(4) Behavioral Sciences <https://doi.org/10.3390/bs14040274> accessed 11 October 2024.

[32] Ibid.

[33] Rosa Prencipe, *The G in ESG: an analysis of the impact of Corporate Governance indicators on firm performance* (Master's thesis, Ca Foscari University of Venice 2024).

[34] Task Force on Climate-Related Financial Disclosures (TCRFD), *Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures* (2017) <https:// assets.bbhub.io/ company/sites/60/2020/10/FINAL-2017-TCFD-Report-11052018.pdf> accessed 11 October 2024.

[35] Daniel Murphy and Dianne McGrath, 'ESG reporting – class actions, deterrence, and avoidance' (2013) 4(2) Sustainability Accounting, Management and Policy Journal <https://doi.org/10.1108/SAMPJ-Apr-2012-0016> accessed 11 October 2024.

[36] Emanuele Campiglio, Louis Daumas, Pierre Monnin and Adrain Von Jagow, 'Climate-Related Risks In Financial Assets' (2022) *37*(3) Journal of Economic Surveys <https:// onlinelibrary.wiley.com/doi/pdfdirect/10.1111/joes.12525> accessed 11 October 2024.

[37] Ibid.

climate risks today: technological, policy, and scientific discovery shock.[38] Shocks can be derived from the reports of corporations, including voluntary reports and CSR reports. Within these three broad shocks are various climate risks, which include physical damages due to climate disasters, the introduction of climate mitigation laws, loss of GDP to climatic events, etc.[39] The market, however, remains ill-equipped to fully understand and anticipate the climate risks, exposures, and adverse effects of it.[40] Therefore, disclosing climate-related risks is important to allow investors to develop certainties and uncertainties related to climatic risks.

3.0 FOR WHOM ARE CLIMATE-RISK DISCLOSURES IMPORTANT?

There are various stakeholders interested in climate-risk disclosures, including investors, shareholders, insurers and customers.[41] Climate-related risks are becoming increasingly important for investors when making investment decisions in corporations.[42] Climate change poses unprecedented challenges for businesses, necessitating adaptation and mitigation strategies. ESG disclosures enable companies to identify and assess transition risks, adapt to a changing climate, and seize opportunities for innovation and sustainable growth.[43] Neglecting these disclosures can result in not only financial instability[44] but also reputational damage.[45] ESG disclosures also serve as a tangible demonstration of a company's commitment to responsible business practices and environmental stewardship, aligning with the broader stakeholder model of governance.

Consumers, in this climate crisis, are also increasingly conscious of the environmental impact of their choices. ESG disclosures empower consumers to identify businesses that

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[38] Irene Monasterolo, Stefano Battiston, Anthony C. Janetos and Zoey Zheng, 'Vulnerable Yet Relevant: The Two Dimensions Of Climate-Related Financial Disclosure' (2017) 145 Climatic Change <https://doi.org/10.1007/s10584-017-2095-9> accessed 11 October 2024.

[39] Ibid.
[40] Ibid.
[41] TCRFD (n 36).
[42] OECD, *ESG Investing and Climate Transition: Market Practices, Issues and Policy Considerations* (OECD Publishing, 10 April 2022) <https:// doi.org/10.1787/a2fc6c39-en.> accessed 11 October 2024.
[43] Jixun Liu, Stephen Lau, Shenyi Shirley Liu and Yingde Hu, Y, 'How Firm's Commitment to ESG Drives Green and Low-Carbon Transition: A Longitudinal Case Study from Hang Lung Properties' (2024) *16*(2) Sustainability <https://doi.org/10.3390/su16020711> accessed 11 October 2024.

[44] Ibid.
[45] Pina Murè, Marco Spallone, Fabiomassimo Mango, Stefano Marzioni and Lucilla Bittucci, 'ESG and reputation: The case of sanctioned Italian banks' (2020) 28(1) Corporate Social Responsibility and Environmental Management < https://doi.org/10.1002/csr.2047> accessed 11 October 2024.

prioritize sustainability over profit maximization.[46] Informed consumers can drive market demand towards ethical and sustainable practices, forcing businesses to align with their values.[47] As consumers seek products and services from responsible companies, businesses can leverage their ESG disclosures as a compelling part of their marketing strategy to attract these ethically-minded consumers.[48] In today's consumer landscape, ethical considerations are increasingly influencing purchasing decisions. This presents a unique opportunity for businesses to leverage their ESG disclosures as a potent marketing tool. By transparently showcasing their commitment to sustainability, social responsibility, and ethical governance, companies can attract a growing segment of ethically-minded consumers who prioritize responsible buying choices.

Similarly, the insurance industry is also likely to be impacted by climate risks, particularly because the (E) factor is becoming increasingly important for investors and can be used by insurers to determine the value of insurance by including the climate-risk assessment in their studies.[49] Insurers around the globe have started supporting the use of ESG reporting and climate-risk assessments, especially in the European Union.[50] There are similar reports from the Indonesian insurance industry that include ESG profiles when assessing risk concerning insurance.[51]

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[46] Vinay Kandpal, Anshuman Jaswal, Ernesto D.R. Santibanez Gonzalez and Naveen Agarwal (eds), 'Corporate social responsibility (CSR) and ESG reporting: redefining business in the twenty-first century' in *Sustainable Energy Transition: Circular Economy and Sustainable Financing for Environmental, Social and Governance (ESG) Practices* (Springer 2024).

[47] Mengfeng Gong, Yuan Gao, Lenny Koh, Charles Sutcliffe and John Cullen, 'The Role Of Customer Awareness In Promoting Firm Sustainability And Sustainable Supply Chain Management' (2019) 217 International Journal of Production Economics <https: //doi.org/10.1016 /j. ijpe.2019.01.033> accessed 11 October 2024.

[48] Muhammad Tanveer, Abdul Rahim Ahmad, Haider Mahmood and Ikram Ul Haq, 'Role of ethical marketing in driving consumer brand relationships and brand loyalty: A sustainable marketing approach' (2021) 13(12) Sustainability <https://doi.org/10.3390/su13126839> accessed 11 October 2024.

[49] Caterina Di Tommaso and Maria Mazzuca, 'The stock price of European insurance companies: What is the role of ESG factors?' (2023) 56 Finance Research Letters <https://doi.org/10.1016/j.frl.2023.104071> accessed 11 October 2024.

[50] Galina Stoyanova, G, 'ESG Standards and the new challenges for security and sustainability in insurance' in *Conference Proceedings: 6th International Conference on Governance and Strategic Management (ICGSM) "ESG Standards and Securing Strategic Industries* (Burgas Free University and Universiti Teknologi Mara 2023).

[51] Istiana Maftuchah, 'Corporate ESG Profile on Performance: Evidence from Indonesian Insurance Industry' (2018) Otoritas Jasa Keuangan <https://repository.crmsindonesia.org/ bitstream/123456789/216/1/Corporate%20ESG%20Profile%20on%20Performance.pdf > accessed 12 October 2024.

4.0 CLIMATE-RISK DISCLOSURES IN INDIA: TRENDS AND TRANSCENDENCE

Generally, traditional ESG reporting seems to have been caught up with recent trends in social and corporate systems.[52] Socially, in India, a large portion of the population grapples with poverty,[53] a burgeoning middle class is emerging,[54] and within this segment, environmental and social consciousness is gaining traction. Young, educated consumers are increasingly seeking brands that align with their values, demanding transparency and accountability on ESG issues. To meet these social demands, the traditional CSR regime is also transcending and advancing to integrate with ESG practices, evolving itself together to adjust corporations to global challenges like climate change.[55] Leveraging effective ESG disclosure to address climate change allows businesses to resonate with this segment, building trust and loyalty. However, the effectiveness of ESG disclosures as a marketing tool needs nuanced consideration.[56] Affordability remains a crucial factor for a significant portion of the Indian population, and for many, price and accessibility may eclipse sustainability concerns[57]

Amidst these social dimensions of development and consumerism in India, the Indian government is encouraging ESG and CSR for corporate governance, especially in the context of climate change, allowing corporations to evolve their internal policies using CSR and ESG. Based on the background, this section has the following parts: (a) CSR trends from India's international obligations and (b) Domestic CSR trends.

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[52] Ioannis Passas, 'The Evolution of ESG: From CSR to ESG 2.0' (2024) 4(4) Encyclopedia, 1711-1720 < https://www.mdpi.com/2673-8392/4/4/112> accessed 30 January 2025.

[53] Karan Bhasin and Surjit Bhalla, 'Poverty in India over the last decade' (2024) 59(28) Economic and Political Weekly <https://dx.doi.org/10.2139/ssrn.4867131> accessed 12 October 2024.

[54] Nitin Kumar Bharti, Lucas Chancel, Thomas Piketty and Anmol Somanchi, A, 'Income and Wealth Inequality in India, 1922-2023: The Rise of the Billionaire Raj' (2024).

[55] Passas, (n 54).

[56] Francesco Paolone, Nicola Cucari, Jintao Wu and Riccardo Tiscini, 'How do ESG pillars impact firms' marketing performance? A configurational analysis in the pharmaceutical sector' (2022) 37(8) Journal of Business & Industrial Marketing <https://doi.org/10.1108/JBIM-07-2020-0356> accessed 12 October 2024.

[57] John Blair and others, *Affordability and Sustainability Outcomes: A Triple Bottom Line Assessment of Traditional Development and Master Planned Communities – Volume 1* (AHURI Final Report No. 63, 2004) https://hekyll.services.adelaide.edu.au/dspace/bitstream/2440/40577/1/hdl_40577.pdf accessed 12 October 2024.

4.1 CSR trends from international obligations of India

For corporations in India, specific Bilateral Investment treaties and other International Investment Agreements may provide protective rules for investors and corporations, which also impact ESG reporting. Additionally, there are other soft law instruments like the ILP Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, the OECD Guidelines on Multinational Enterprises, and the UN Code on Transnational Corporations.[58] These are majorly soft law obligations in international law, which do not bind a State.

In the context of climate change, the international obligations of a state can flow from the Nationally Determined Contributions (NDC) of each State.[59] However, the "NDC Law" is only "climate law" within India's domestic legal framework.[60] India's efforts to combat climate change are intertwined with a unique thrust towards leveraging CSR for environmental action, expanding into the climate consciousness by integrating corporations. This approach, prominently reflected in both the Intended Nationally Determined Contributions (INDC) and NDC, represents an international declaration of a strategic alignment of national climate goals with private-sector engagement. The 2021 CoP26 conference, held amidst escalating climate change impacts, including devastating floods, prolonged droughts, catastrophic hurricanes, soaring temperatures, and other climate-related crises, underscored the world's urgent imperative to combat climate change while safeguarding critical facets of society like employment, food security, and living standards.[61] This urgency is especially pronounced in India, which faces increasingly severe climate-related threats. India's commitment at CoP26 to achieve net-zero emissions by 2070 aligns with its resolute push towards decarbonization.[62]

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[58] Peter Muchlinski, 'International Corporate Social Responsibility and International Law' (Conference Paper) < https://www.biicl.org/files/4367_biicl_conference_paper.pdf> accessed 30 January 2025.

[59] Benoit Mayer, *International Law Obligations on Climate Change Mitigation* (1st Edn, Oxford University Press 2022), 3–4, 32–34.

[60] Alexander Zahar, 'The nature of climate law' (2023) 35(2) Journal of Environmental Law <https://doi.org/10.1093/jel/eqad015> accessed 12 October 2024.

[61] Sharfaa Hussain, Ejaz Hussain, Pallavi Saxena, Ashish Sharma, Pooja Thathola and Saurabh Sonwani, 'Navigating the impact of climate change in India: a perspective on climate action (SDG13) and sustainable cities and communities (SDG11)' (2024) 5 Frontiers in Sustainable Cities <https://doi.org/10.3389/frsc.2023.1308684> accessed 12 October 2024.

[62] Ministry of Environment, Forest and Climate Change, 'India's stand at COP-26' (*Press Information Bureau*, 3 February, 2022) < https: // pib.gov.in/PressReleasePage.aspx?PRID=1795071> accessed 12 October 2024.

INDC and NDC aim to link CSR with climate change. The INDC, submitted in 2015,[63] envisioned that a significant portion of the estimated INR 220 billion (USD 3.5 billion) in annual CSR funds would be directed towards environmental initiatives.[64] This ambitious target signalled a bold intent to harness the potential of the private sector as a key driver of climate action. This vision further evolved in the updated NDC submitted in 2022, which set an ambitious long-term goal of achieving net-zero emissions by 2070.[65] This renewed commitment, in the wake of the Intergovernmental Panel on Climate Change's (IPCC) stark assessment of the risks posed by climate change to India, underscored the urgency of collective action.

There are potential judicial remedies available to public interest litigants in India to seek domestic implementation of these international commitments under human rights-based litigation. However, this is not discussed in detail in this article. Regardless, to translate these national ambitions into tangible outcomes, the Indian regulators are building frameworks beyond traditional CSR models, encouraging a holistic approach that prioritizes environmental sustainability alongside stakeholder engagement and ethical governance practices. Indian regulations, such as the Securities and Exchange Board of India’s (SEBI) landmark circular in 2023,[66] now demand that companies actively integrate ESG principles into their operations, including CSR activities. These documents establish robust regulations for ESG rating agencies and mandate ESG disclosures for the entire value chain of listed entities. Notably, the circular introduces the requirement for "reasonable assurance" on ESG metrics by auditors for the top 150 listed companies. This stipulation signifies a crucial step towards ensuring accurate and transparent reporting on ESG performance, thereby fostering greater accountability and investor confidence.

4.2 Other International Soft Law: Sustainable Development Goals

Both the Sustainable Development Goals (SDGs) 2015 and the Paris Agreement 2015 mark a crucial shift in international policy, emphasizing the interconnectedness of global issues and the need for collaborative action across nations, sectors, and

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[63] Government of India, ‘India’s updated first nationally determined contribution under Paris Agreement (2021-2030): Submission to UNFCCC’ (August 2022) < https://unfccc.int/sites/default/files/NDC/2022-> accessed 12 October 2024.

[64] Ibid.

[65] Ibid.

[66] Securities and Exchange Board of India, *BRSR Core - Framework for assurance and ESG disclosures for value chain* (Circular: SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122, 12 July, 2023) <https://www.sebi.gov.in/legal/circulars/jul-2023/brsr-core-framework-for-assurance-and-esg-disclosures-for-value-chain_73854.html> accessed 12 October 2024.

stakeholders.[67] The SDGs comprise 17 goals and 169 targets, covering a broad spectrum of sustainable development issues and came into force on 1 January 2016 under the 2030 Agenda for Sustainable Development.[68] A key aspect of the SDGs is their emphasis on the role of the private sector in achieving sustainable development. This approach builds on earlier initiatives, such as the International Chamber of Commerce's Business Charter for Sustainable Development (1990)[69] and Stephen Schmidheiny's "Changing Course"[70], highlighting the economic rationale for sustainable business practices. Wilburn and Wilburn highlight that corporations are actively using SDGs and their indicators in ESG reporting because the SDG system helps corporations define "the global and local nature of their strategic goals".[71] The measurement system allows corporations to measure social and environmental goals that were considered immeasurable for a long period of time, allowing a "measurement of specific goals, performance measures and results" as a measure of commitment.[72]

The implementation of the SDGs involves a wide range of stakeholders, officially categorized as "Major Groups" by the United Nations. These include various sectors of society, from women and youth to indigenous peoples, NGOs, local authorities, workers and trade unions, business and industry, the scientific and technological community, and farmers. This multi-stakeholder approach underscores the recognition that achieving the SDGs requires concerted efforts across all segments of society.[73]

However, it is important to note that the SDGs operate within a framework of 'soft' governance. Unlike traditional international legal instruments, there are no formal sanctions for non-compliance with the SDGs. Instead, the framework relies on targets, indicators, institutions, and norms to guide and motivate action. This approach

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[67] UNDP, 'Sustainable Development Goals: Background on the Goals' <https://www.undp.org/sdg-accelerator/background-goals> accessed 12 October 2024.

[68] Ibid.

[69] ICC Business Charter for Sustainable Development, 'Principles for Environmental Management'<https://training.itcilo.org/actrav_cdrom1/english/global/guide/ iccch.htm> accessed 12 October 2024.

[70] 1992: Valuing the Earth and 1993: Critical Condition (*The MIT Press*, 18 November, 2012) <https://mitpress.mit.edu/1992-valuing-the-earth-and-1993-critical-condition/> accessed 12 October 2024.

[71] Kathleen Wilburn and Ralph Wilburn, 'ESG Reporting Using UN Sustainable Development Goals' (2020) 15(2) Journal of Strategic Innovation and Sustainability < http://www.na-businesspress.com/JSIS/JSIS15-2/7_WilburnFinal.pdf> accessed 12 October 2024.

[72] Ibid.

[73] UN Sustainable Development Goals, 'United Nations Sustainable Development Agenda'<https://www.un.org/sustainabledevelopment/development-agenda-retired/> accessed 12 October 2024.

emphasizes accountability through answerability, whereby governments are expected to be responsive to the needs and concerns of their citizens in implementing the SDGs.[74]

For businesses, aligning with the SDGs presents both opportunities and challenges. While the adoption of sustainability frameworks can enhance corporate reputation, improve access to capital, and boost employee engagement, companies must navigate the complexities of integrating multiple sustainability initiatives. This includes balancing short-term financial performance with long-term sustainability objectives and reconciling potentially conflicting demands from different frameworks.

4.3 Domestic CSR trends on climate risk disclosures in India

This section is divided into the following: (a) Domestic trends on climate and "duty to inform" through litigation; (b) Domestic trends on "duty to inform" of corporations in legislations, rules and regulations.

a. Domestic trends on climate and "duty to inform" through litigation.

It is more acceptable that the NDCs and other soft law obligations for both climate change and ESG reporting are currently more solidified at the domestic level than at the international level. This implies that it might be easier to remedy the issue of corporate responsibility or governance in the context of climate change at the domestic level (judicial and non-judicial forums) than at the international level. This is also because of increasing domestic laws in India on both climate change and ESG. In *M.K. Ranjithsinh v. Union of India*[75], the Supreme Court of India held that the people in India have a fundamental right to be free from the adverse effects of climate change.[76] The decision came out after a years-long battle to save the Great Indian Bustard from extinction due to unsustainable practices adopted by electric power transmission companies in India.[77] The decision indirectly impacts the activities of corporations engaged in the renewable energy sector in India. However, the decision also confirms that in the wake of climate change and the age of humans, biodiversity protection will continue to receive the least attention as a climate risk while balancing security with the safety of humans from the various adversities arising from climate change.

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[74] Graham Long, Jecel Censoro and Katharina Rietig, 'The sustainable development goals: governing by goals, targets and indicators' (2023) 23(2) International Environmental Agreements Politics Law and Economics <https://doi.org/10.1007/s10784-023-09604-y> accessed 12 October 2023.

[75] [2024] Supreme Court of India, Writ Petition (Civil) No. 838 of 2019 with Civil Appeal No. 3570 of 2022.

[76] Ibid 17.

[77] Ibid 47.

In the absence of any climate legislation in India, Ranjithsinh's case has laid the foundations for several principles that can now govern domestic climate change law in India, which includes both adaptation and mitigation efforts.[78] More broadly, it consists of a duty to transition to renewable energy, adapt to climate change, and protect the human rights of all those affected adversely due to climate change.[79]

For its CSR reporting, the case of *S. Cyril Alexander v. Union of India*[80] is crucial, as the decision lays down that companies cannot contravene the provisions of other laws while undertaking CSR activities. In this case, the tobacco companies' CSR was found contravening the provisions of the Cigarettes and Tobacco Products Act (COTPA), 2003. This case is relevant for this paper because it is based on the rule of "duty to inform" or "duty to report" the harmful health effects of tobacco when advertising or displaying tobacco smoking. The petitioner claimed that "when such smoking scenes are shown in the film, the Rule that the anti-tobacco health warning scroll should be displayed legibly and readably in black coloured font on white background containing the warning… has not been complied with as the health spot warnings were shown in without white background defeating the very purpose of the requirement made under the Rules…. Not only the said specification is violated, the warning scroll is displayed in too a tiny font that one cannot actually read it, defeating the very purpose of the warning scroll as mandatory."[81] This particular provision in the existing legal framework in India mandates reporting and information display about products and also provides specific procedures for it. The reading of Ranjhith Sinh's case and Cyril Alexander's case, together, highlights the legal duty of corporations to publicly disclose harmful health effects of their products, which can also be translated and applied in similar corporate activities. The case is also an example of the potential to develop CSR and ESG reporting frameworks to hold corporations responsible who fail to report activities causing harmful climate change or failing to disclose climate risks.

Before discussing the larger role of ESG in the context of climate change and environmental law, it is important to mention the case of *Jam et al.* v. *IFC*[82], wherein the International Finance Corporation's (IFC) Performance Standards on Environmental and Social Sustainability were discussed at length.[83] This case is important for the Indian context because it is the only case where an Indian company

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[78] Ibid 31.
[79] Ibid.
[80] [2016] High Court of Judicature, Madras, Contempt Petition No. 2535 of 2015.
[81] S. Cyril Alexander v. Union of India (2021) High Court of Judicature Madras, Writ Petition no. 24355 of 2014
[82] [2019] 586 U. S. ____ (Slip Opinion of the Supreme Court of the United States) < https://www.supremecourt.gov/opinions/18pdf/17-1011_new_d1o2.pdf> accessed 13 October 2024.

[83] Ibid 5.

was found violating its environmental and social sustainability commitments.[84] When financing a corporation for developmental projects, the IFC includes the environmental and social standards in its contract with a process to enforce the standards through an internal process.[85] This particular case was not filed against the project proponent but against the IFC because, under its internal processes, IFC found and reported that the environmental and social standards were not adequately met by the corporations.[86] Even with its internal finding, the IFC continued to fund the corporation and did not revoke it. The Court, in this case, opined that international organizations like the IFC should be aware of their "moral (if not legal) obligations to prevent harm to others and to compensate individuals when they do cause harm".[87] This case has implications for Indian, the US, and international legal frameworks governing ESG frameworks in the context of climate change and environmental factors and can be used to model institutional responsibility in the context of ESG (non)adherence.

b. Domestic trends on "duty to inform" of corporations in legislations, rules and regulations

In the climate context, ESG disclosures play a pivotal role, serving as a linchpin for various stakeholders. For example, investors are covered under the ESG disclosure regime, which provides them with vital information to assess how climate-related factors affect a company's financial stability, making it a significant determinant in investment decisions.[88] After the ESG Fund was launched in India, the use of ESG disclosures and ratings by investors has been trending.[89] One of the objectives of the ESG regulatory framework in India today is to "mitigate the potential risk of green-washing and mis-selling".[90] Apart from the investments, the ESG performance indicators also focus on "fairness in engaging with customers and suppliers" to ensure that media statements do not lead to mis-selling and greenwashing.[91] With this background, this section analyses existing laws under which corporations are required to make environmental disclosures: (i) Environmental disclosures as "duty to inform" under the Environmental Protection Act, 1986; (ii) Environmental disclosures, ESG

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[84] Ibid.
[85] Ibid.
[86] Ibid.
[87] Ibid 14.

[88] Zhongfei Chen and Guanxia Xie, 'ESG disclosure and financial performance: Moderating role of ESG investors' (2022) 83(C) International Review of Financial Analysis <https://doi.org/10.1016/j.irfa.2022.102291> accessed 13 October 2024.
[89] 'Balanced framework for ESG disclosures, ratings and investing' (*Securities and Exchange Board of India*) < https://www.sebi.gov.in/sebi_data/meetingfiles/apr-2023/1681703013916_1.pdf > accessed 13 October 2024.

[90] Ibid 1.
[91] Ibid 4.

and advertisements in India; (iii) Environmental disclosure under ESG and other corporate guidelines in India; and (iv) ESG and environmental disclosure framework for climate mitigation in India; (v) ESG and environmental disclosures for adaptation in India.

(i) Environmental disclosures as "duty to inform" under the Environmental Protection Act, 1986

A set of good practices in the form of voluntary guidelines in India for corporations were introduced in 2009, prior to which, there were fragmented regulations governing general disclosures by companies for environmental issues and challenges.[92] For example, section 9 of the Environmental Protection Act 1986 sets forth provisions concerning the "furnishing of information to authorities and agencies in certain cases".[93] This requires the person responsible for the "discharge of any environmental pollutant over the prescribed standards" will also be responsible to "prevent or mitigate the environmental pollution caused".[94] The recent advisory opinion on climate change[95] is the first international judicial opinion that confirms that under law, greenhouse gas emissions are pollutants under the general meaning of pollution. This international standard now states that GHG emissions are generally pollutants. However, in India, in *Indian Council for Enviro-Legal Action v. MOEFCC*[96], the National Green Tribunal in India stated that HFC-23 is not a pollutant or a toxic gas that is harmful to human health, and it is just one of the greenhouse gases identified under the UNFCCC'. The standards on whether all the GHGs in India are pollutants or not need more enunciation through either legislative or judicial action.

Yadav *et al.* analyse the HFC-23 case situation to argue that overall greenhouse gas emissions are not pollutants in India.[97] After the ITLOS's advisory opinion combined with the previous analysis of the judicial decisions in India about what can qualify as

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[92] Umakanth Varottil, 'India's Corporate Governance Voluntary Guidelines 2009: Rhetoric or Reality' (2010) 22(2) National Law School of India Review <https:// repository.nls.ac.in/nlsir /vol22/iss2/1> accessed 13 October 2024.

[93] The Environment (Protection), Act No.29 of 1986, s.9.

[94] Ibid.

[95] *Advisory Opinion on the Request for An Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law* [2024] International Tribunal for the Law of the Sea (ITLOS), Case No. 31, issued on 21 May 2024.

[96] *National Green Tribunal* [2015] Original Application No 170 of 2014, para 8.

[97] Shashi Kant Yadav, Noreen O'Meara and Rosalind Malcolm, 'Conceptualizing Climate Law in India' (2024) 14(2) Climate Law < https://doi.org/10.1163/18786561-bja10054 > accessed 13 October 2024.

pollutants, it would be incorrect to continue to assert that GHG emissions are not pollutants in the Indian context.[98] Under the Environmental Protection Act, 1986, "environmental pollutant" means any solid, liquid, or gaseous substance present in such concentration as may be, or tend to be, injurious to the environment.[99] ITLOS, in its advisory opinion, confirms, with high-value scientific evidence, that GHG emissions are "deleterious" globally and their adverse or injurious effects on the environment are currently irreversible.[100] Therefore, while GHG is a pollutant today, its emissions are also a polluting activity that is irreversible in nature and is consequently governed under section 9 of the Environmental Protection Act, 1986, in India.

(ii) Environmental disclosures, ESG and advertisements in India

The consumer protection laws in India are mindful of the disclosures that can occur during the advertisement and marketing processes.[101] In the words of Girimaji, "advertising is used to inform, persuade, and remind consumers about the products or services…. the purpose of advertising is to create awareness of the advertised product and provide information that will assist the consumer to make informed-purchase decision".[102] In the context of climate-related risk disclosures, SEBI's Guidelines on Disclosure and Investor Protection 2000 are relevant. Guideline 9 states that an advertisement shall be considered to be misleading if it contains statements that may give an exaggerated picture of the activities of a company, than what it really is.[103] These are important parts of ESG disclosures for the investors. In January 2024, the Advertising Standards Council of India issued "Guidelines for Advertisements Making Environmental/Green Claims".[104] These guidelines state that claim tags such as "environmentally friendly, eco-friendly, sustainable, planet-friendly that imply that the entire product advertised has no impact or only a positive impact or reduces impact must be capable of being substantiated by robust data".[105] This implies that in case of a false claim concerning climate change, sustainability or environmental impacts of a product, the consumers can approach the consumer forums against false marketing, false advertising and false disclosure of information.

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[98] Ibid.
[99] The Environment (Protection) Act (n 95), s. 2(b).
[100] Advisory opinion (n 97).
[101] Pushpa Girimaji, *Misleading advertisements and consumer* (Consumer Education Monograph Series, 2, Centre for Consumer Studies Indian Institute of Public Administration 2013).

[102] Ibid.
[103] Ibid 22,23.
[104] 'Greenwashing No More: ASCI Introduces Guidelines to ensure honest Environmental claims in Advertisements' (The Advertising Standards Council of India,18 January, 2024) < https: //www.ascionline.in/wp-content/uploads/2024/01/PR-Guidelines-for-Enviormental-Green-Claims-Final-2.pdf > accessed 13 October 2024.

[105] Ibid.

(iii) Environmental disclosure under ESG and other corporate guidelines in India

In 2009, the Ministry of Corporate Affairs (MCA) took a proactive stance on promoting responsible business practices by issuing the National Voluntary Guidelines (NGVs) on CSR.[106] These guidelines also explicitly state that environmental issues include "climate change".[107] The NGVs served as a framework for businesses to incorporate considerations of environmental, social, and governance aspects into their operational strategies.[108] One aspect of these guidelines for business included provision to "advertise their products in ways that do not mislead or confuse the consumers or violate any of the principles in these guidelines".[109] Other provisions included guidance to be competitive and socially responsible while continuing a healthy relationship with society and investors at large.[110]

Subsequently, in 2012, the SEBI played a pivotal role in advancing the corporate disclosure landscape by mandating a Business Responsibility Report (BRR) for the top 100 listed companies based on market capitalization.[111] Aligned with the NGVs, the BRR required these companies to provide comprehensive insights into their CSR activities and their broader impact on society and the environment, including climate change.[112] This regulatory intervention not only compelled companies to divulge their responsible business practices but also contributed to heightened transparency and accountability within the corporate sector.[113]

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[106] 'National Voluntary Guidelines on Social, Environmental and Economical Responsibilities of Business' (Ministry of Corporate Affairs supported by Indian Institute of Corporate Affairs, 2011) < https:/ /www.mca.gov.in/Ministry/latestnews /National_Voluntary_Guidelines_2011_12jul2011.pdf > accessed 13 October 2024.

[107] Ibid 19.

[108] 'Corporate Social Responsibility Voluntary Guidelines 2009' (*Ministry of Corporate Affairs*, 2009) <https: //www.mca.gov.in/Ministry/latestnews/CSR_Voluntary_ Guidelines_24dec2009.pdf > accessed 13 October 2024

[109] Ibid 26.

[110] Ibid 6.

[111] 'Annexure II: Guidance Note for Business Responsibilities and Sustainability Reporting Format' (*Securities and Exchange Board of India*) <https://www.sebi.gov.in/sebi_data/ commondocs/may2021/Business% 20responsibility%20and%20sustainability%20reporting%20by%20listed%20entitiesAnnexure2 _p.PDF> accessed 13 October 2024.

[112] Ibid 7.

[113] Securities and Exchange Board of India, *Business Responsibility* Reports (Circular: CIR/CFD/DIL/8/2012 13 August 2012) <https: //www.sebi.gov.in/sebi_data/attachdocs/ 1344915990072.pdf> accessed 13 October 2024.

Further reinforcing the impetus for CSR, the year 2014 witnessed a significant development with the incorporation of CSR obligations in the Companies Act, 2013. Section 134 (m) of this law mandated companies to include a report prepared by their Board of Directors on energy conservation in conjunction with their annual financial statement. This obligation was further delineated in Rule 8(3)(A) of the Companies (Accounts) Rules, 2014,[114] explicitly directing boards to furnish information pertaining to energy conservation. This legislative mandate underscored the legislative commitment to incorporating environmental, social, and governance considerations into corporate reporting, solidifying the trajectory toward a more responsible and sustainable business ecosystem.[115]

In 2015, the SEBI extended the BRR requirement, initially applicable to the top 100 listed companies, to encompass the top 500 listed companies[116] based on market capitalization. This regulatory expansion, stipulated under Regulation 34(3) of the SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015 (LODR Regulations), broadened the scope of ESG disclosures. While the LODR Regulations mandated companies to disclose information related to opportunities, threats, risks, and concerns in their annual reports, it did not specifically prescribe details about the metrics and processes employed by companies for identification, nor did it compel reporting on progress over time. The extension of the BRR requirement aimed to address these gaps, fostering increased disclosure of responsible business practices and endeavours to address environmental and social issues across a larger segment of companies.

In 2017, SEBI advocated for the voluntary adoption of Integrated Reporting (IR) by companies from the financial year 2017-18.[117] IR represents a comprehensive reporting framework that encourages the integrated disclosure of both financial and non-financial performance, taking into account ESG factors. While not mandatory, the voluntary adoption of IR further encouraged companies to disclose relevant ESG information, promoting a more holistic approach to corporate reporting. Additionally, in the same year, SEBI issued a circular addressing the 'Disclosure Requirements for Issuance and Listing of Green Debt Securities'.[118] This circular aimed to establish a regulatory

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[114] The Companies (Accounts) Rules, 2014, Ministry of Corporate Affairs Notification, New Delhi, 31 March 2014, Rule 8 (3)(A).

[115] Companies (Corporate Social Responsibility Policy) Rules 2014, Ministry of Corporate Affairs Notification, New Delhi, 27 February 2014.

[116] *Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations 2016*, 8 July 2016.

[117] Securities and Exchange Board of India, *Integrated Reporting by Listed Entities* (Circular: SEBI/HO/CFD/CMD/CIR/P/2017/10, 6 February 2017) < https: // www.sebi.gov.in/legal/circulars/feb-2017/integrated-reporting-by-listed-entities_34136.html > accessed 13 October 2024.

[118] Securities and Exchange Board of India, *Disclosure requirements for issuance and listing of Green Debt Securities* (Circular: CIR/IMD/DF/51/2017, 30 May 2017)

framework for green debt securities in India, enhancing investor confidence in environmentally sustainable projects. Complementary to the SEBI (Issue and Listing of Debt Securities) Regulation, 2008, the circular outlined specific disclosure criteria for issuers both before and after commencing a project funded through green debt.[119] These criteria were designed to attract financing for projects aligned with ESG principles, spanning areas such as renewable and sustainable energy, clean transportation, sustainable water management, climate change adaptation, energy efficiency, sustainable waste management, sustainable land use, and biodiversity conservation.[120] This initiative underscored SEBI's commitment to fostering responsible and sustainable financing practices within the Indian financial landscape.

The Indian government was also influenced by the specific climate-related disclosure governance in other countries.[121] Taking inspiration from the global developments in the field, in 2019, the MCA advanced the regulatory landscape concerning responsible business conduct by releasing the National Guidelines for Responsible Business Conduct (NGBRC).[122] These guidelines recommended the Business Responsibility and Sustainability Report (BRSR) standard, which laid "considerable emphasis on quantifiable metrics, which allows for easy measurement and comparability across companies, sectors and time periods".[123] Continuing its trajectory of regulatory interventions, in the same year, the SEBI extended the BRR requirement to the top 1000 listed companies by market capitalization.[124] This extension, emphasizing SEBI's dedication to transparency and sustainability, broadened the ambit of ESG disclosures, applying it to a more extensive array of companies. The move signified a concerted effort to encourage responsible business practices among a larger segment of Indian businesses.

<https://www.sebi.gov.in/legal/circulars/may-2017/disclosure-requirements-for-issuance-and-listing-of-green-debt-securities_34988.html > accessed 13 October 2024. (This circular was suspended by a SEBI circular dated 10 August 2021).

[119] Ibid.
[120] Ibid.
[121] 'Business Responsibility and Sustainability Reporting by listed entities' (*Securities and Exchange Board of India*) <https:// www.sebi.gov.in/sebi_data/meetingfiles/apr-2021/ 1619067265752_1.pdf> accessed 13 October 2024.
[122] 'National Guidelines on Responsible Business Conduct' (*Ministry of Corporate Affairs technical support by Indian Institute of Corporate Affairs*, 2018) < https://www.mca. gov.in/Ministry/pdf/ NationalGuildeline_15032019.pdf> accessed 13 October 2024.

[123] 'Business Responsibility (n 123), para 4.1.
[124] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2019, Securities and Exchange Board of India Notification, Mumbai, 26 December 2019.

A pivotal development occurred in 2021 when SEBI introduced the BRSR framework in May.[125] This framework, replacing the erstwhile BRR, aligned with nine principles articulated in the NGBRC. Unlike its predecessor, the BRSR framework mandated the annual disclosure of ESG-related information for the top 1,000 listed companies, commencing from the financial year 2022-23. This regulatory evolution marked a significant stride in the realm of ESG disclosures in India, underlining SEBI's commitment to sustainable practices and the promotion of responsible business conduct. The BRSR framework represented a systematic and obligatory approach towards enhancing transparency and accountability, reflecting the regulator's proactive role in steering Indian businesses towards sustainable and responsible practices.

The BRSR framework, introduced in 2021 by the SEBI, represents a significant regulatory development in the realm of ESG disclosures.[126] A core feature of the BRSR framework is the mandate for companies to disclose their policies and mechanisms ensuring ESG compliance. Notably, the emphasis is placed on quantifiable metrics, facilitating standardized and comparable reporting across sectors, companies, and time periods. This requirement enhances transparency and enables stakeholders to make informed assessments of companies' ESG practices. Acknowledging the escalating significance of climate and social issues, the BRSR framework places a particular emphasis on enhanced disclosures in these areas.[127] Companies are compelled to report on their strategies for addressing climate change, their social impact, and initiatives aimed at promoting social welfare.[128] This reflects a proactive stance towards integrating emerging global concerns into corporate reporting practices.

The BRSR framework introduces a segregation of disclosures into essential and leadership indicators.[129] While essential indicators cover key ESG aspects and are mandatory, leadership indicators encourage companies to go beyond the basics, disclosing information related to their value chain[130] and sustainability initiatives.[131] This nuanced approach aims to capture a more comprehensive picture of companies' environmental, social, and governance commitments. Furthermore, the BRSR framework exhibits flexibility by allowing companies that already publish sustainability reports under other internationally recognized frameworks to integrate

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[125] Securities and Exchange Board of India, *Business responsibility and sustainability reporting by listed entities* (Circular: SEBI/HO/CFD/CMD-2/P/CIR/2021/562, 10 May 2021) <https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html> accessed 13 October 2024.

[126] 'Ministry of Corporate Affairs, 'IICA and UNICEF jointly organize workshop on Business Responsibility and Sustainability Reporting (BRSR)' (*Press Information Bureau, 12 September*, 2023) < https: //pib.gov.in/PressReleasePage.aspx?PRID=1956690> accessed 13 October 2024.

[127] Annexure II (n 113), 7.

[128] Ibid.

[129] Ibid 10.

[130] Ibid 6.

[131] Ibid 6,7.

those disclosures with BRSR reporting. This flexibility promotes harmonization with global reporting standards and facilitates international comparability.

With a view to align the extant framework for green debt securities with the updated green bond principles, SEBI has revised the disclosure requirements for the issuance and listing of green debt securities.[132] This includes a disclosure requirement, such as a statement on environmental sustainability objectives of green debt securities.

In another major development in 2023,[133] SEBI issued a circular mandating ESG disclosures and assurance requirements for value chains. This circular introduced the BRSR Core, a subset of the comprehensive BRSR, with specific key performance indicators (KPIs) tailored to the Indian/emerging market context. Compliance with BRSR Core is stipulated based on market capitalization, with the top 150 listed entities mandated to comply in the financial year 2023-24, followed by subsequent years for the top 250, 500, and 1000 listed entities. The circular also consists of disclosures concerning climate change.

In the global context, sustainability reporting efforts have been evolving with various frameworks such as Global Reporting Initiative, Sustainability Accounting Standards Board, the United Nations Global Compact, and the Climate Disclosure Project outlining specific performance indicators and principles.[134] Notably, on June 26, 2023, the International Sustainability Standards Board (ISSB) released its inaugural standards,

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[132] Securities and Exchange Board of India, *Revised disclosure requirements for issuance and listing of green Debt Securities* (Circular No.: SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/023, 6 February 2023) < https:/ /www.sebi.gov.in/legal/circulars/feb-2023/revised-disclosure-requirements-for-issuance-and-listing-of-green-debt-securities_67837.html > accessed 13 October 2024.

[133] Securities and Exchange Board of India, *Master circular for compliance with the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 by listed entities* (Master Circular: SEBI/HO/CFD/PoD2/CIR/P/2023/120, 11 July 2023) <https: //www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-\compliance-with-the-provisions-of-the-securities-and-exchange-board-of-india-listing-obligations-and-disclosure requirements-regulations-2015-by-listed-entities_73795.html> accessed 13 October 2024.

[134] Global Reporting Initiative and Sustainable Accounting Standards Board in support from PwC, The Impact Management Project, and ClimateWorks Foundation, *A Practical Guide to Sustainability Reporting using GRI and SASB Standards* (2021) < https://www.globalreporting.org/media/mlkjpn1i/gri-sasb-joint-publication-april-2021.pdf > accessed 13 October 2024.

IFRS (International Financial Reporting Standards) S1 and IFRS S2, providing a universal language for disclosing climate-related risks and opportunities.[135]

Another positive aspect lies in the incorporation of the "BRSR Core" within the reporting framework. This inclusion serves as a practical measure to alleviate the reporting burden, particularly for small listed entities. The "BRSR Core" introduces preliminary parameters, streamlining reporting requirements and making them more accessible for smaller entities. This approach aligns with the Ministry of Corporate Affairs' recommendation for the implementation of a "BRSR Lite"[136] for unlisted and small-listed entities. By introducing a more simplified reporting structure, the regulatory framework seeks to familiarize these entities with sustainable reporting standards, promoting a gradual and inclusive transition towards comprehensive ESG reporting practices.

(iv) ESG and Environmental Disclosure Framework for climate mitigation in India

In the evolving tapestry of global business, ESG, and environmental regulations have emerged as foundational pillars, dictating the contours of sustainable and responsible corporate conduct. These regulations, rather than being mere compliance checkboxes, function as robust mitigation laws, reshaping corporate strategies and recalibrating priorities to align with global sustainability imperatives. A granular examination of India's dynamic corporate sector provides a compelling narrative of how ESG frameworks have catalysed profound transformations, steering businesses towards a more sustainable and inclusive trajectory. While India currently lacks comprehensive climate change legislation, the evolving ESG regulatory landscape has inadvertently taken on the mantle of *de facto* climate mitigation laws. Despite their broader ESG focus, these regulations are demonstrably influencing corporate behaviour in ways that significantly contribute to climate change mitigation goals. To substantiate this claim, we need to analyse the trajectory of ESG regulations in India, their indirect impact on climate change, and the potential limitations hindering their full effectiveness.

The ESG Reporting has incentivized companies to invest in renewable energy sources, leading to mitigation. The seeds of this green shift were sown in 2012 with the introduction of the BRR. Initially focused on the disclosure of environmental practices by the top 100 companies, it set the stage for transparency and accountability. This seemingly innocuous step ignited a ripple effect, attracting the attention of investors,

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[135] 'General Sustainability-related Disclosures' *(the International Financial Reporting Standards (IFRS) Foundation*) < https:// www.ifrs.org/projects/completed-projects/2023/general-sustainability-related-disclosures/#> accessed 13 October 2024.

[136] Ministry Of Corporate Affairs, *Report of the Committee on Business Responsibility Reporting* (2020) <https://www.mca.gov.in/Ministry/pdf/BRR_11082020.pdf> accessed 13 October 2024.

increasingly mindful of sustainability considerations. This market pressure incentivized companies to invest in renewable energy sources, amongst other things. With the adoption of renewable energy targets, Indian companies like Tata Power[137] and Adani Green Energy[138] are witnessing significant growth in their renewable energy portfolios. This trajectory demonstrates how regulations are linked with corporate behaviour towards greener practices. Delving deeper into the Indian context, the proactive initiatives, undertaken by corporate titans such as the Tata Group and Reliance Industries, illuminate the transformative potential of ESG-driven mandates. The Tata Group's expansive 'Project Aalingana' is focused on sustainability and includes detailed energy transition plans.[139] ESG Reporting has incentivized companies to adopt cleaner production technologies, leading to mitigation. These practices also include resource utilisation by using less energy. For example, Tata Power has committed itself to increasing the use of recycled or reused input materials to increase production life-cycle sustainability.[140] The Oil and Natural Gas India Limited is using water recycling technology for its cleaner production technologies, which is leading to mitigation.[141] The environmental and social reporting aspect of these companies is largely derived from their CSR reports, which have also transcended into ESG reporting.

The ESG Reporting has incentivised the companies to include science concerning carbon footprint. The evolution continued with the 2023 BRSR Core, now demanding detailed metrics across nine ESG parameters, including carbon footprint, energy consumption, and water resource management. The recent expansion to encompass value chain reporting further deepens the green footprint by prompting companies to assess the environmental impact of their suppliers and customers. This progressive tightening of the regulatory net compels companies to move beyond disclosure and take concrete action towards environmental sustainability.

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[137] Vibhuti Garg, 'View: Private sector driving renewable energy wave in India' *The Economic Times* (Online, 9 April, 2022) <https: //economictimes.indiatimes.com/industry/renewables/view-private-sector-driving-renewable-energy-wave-in-india/articleshow/90724802.cms?from=mdr> accessed 13 October 2024.

[138] A Ksheerasagar, 'Adani Green Energy Q3FY24 Results: Net profit jumps 148.5% YoY to ₹256 crore, revenue improves 40% YoY' *Mint* (Online, 29 January 2024) <https://www.livemint.com/market/stock-market-news/adani-green-energy-q3fy24-results-net-profit-jumps-148-5-yoy-to-rs-256-crore-revenue-improves-40-yoy-11706516338147.html> accessed 13 October 2024.

[139] 'Sustainability: Project Aalingana' (*TATA Group*) <https://www.tata.com/about-us/sustainability> accessed 13 October 2024.

[140] TATA Power, *Business Responsibility and Sustainability Report* (Integrated Annual Report 2022-23) <https://www.tatapower.com/content/dam/tatapoweraemsitesprogram/tatapower/pdfroot/sustainability/businessresponsibility-report/BRSR_FY23.pdf> accessed 13 October 2024.

[141] 'Business Responsibility & Sustainability Report' (*Oil and Natural Gas Corporation (ONGC) Limited*, Integrated Annual Report 2022-23) <https://ongcindia.com/documents/77751/2660534/BusinessresponsibilityReport-FY23.pdf> accessed 13 October 2024.

At the forefront of this paradigm shift are India's major oil and gas conglomerates, a sector traditionally characterized by its carbon-intensive operations. Entities such as Oil and Natural Gas Corporation, Indian Oil Corporation, Bharat Petroleum Corporation Limited, and Hindustan Petroleum Corporation Limited, despite their inherent carbon-centric mandate, have committed an unprecedented ₹5.4 Lakh Crore (approx. USD 65 billion) towards carbon footprint reduction initiatives.[142] This monumental commitment underscores the transformative influence of ESG framework, compelling even the most entrenched sectors to introspect, innovate, and transition towards sustainable alternatives. The revelations from the Deloitte India survey further accentuate this narrative.[143] While there is a palpable surge in the intent to embrace ESG principles, the survey also highlights a discernible gap in preparedness and actionable strategies. This dissonance between aspiration and implementation underscores the vital role of stringent regulatory frameworks, which not only advocate for sustainability but also for rigorous compliance mechanisms to ensure that corporate intent translates into tangible action. Reliance Industries has doubled its recycling capacity and is establishing a renewable energy ecosystem.[144] Therefore, adopting global ESG standards.

The World Bank's Sustainable Finance and ESG Advisory Services provided technical assistance to the Indian government in incorporating green bonds into its climate finance strategy.[145] The Greenko Group in India is funding renewable projects in several Indian states with its green bond proceeds.[146] The global landscape offers further validation of the mitigation essence of ESG regulations. A leading projection on this issue[147] indicates a prospective surge in ESG-compliant assets under management, which are projected to reach an astonishing $33.9 trillion by 2026. Beyond the numerical metrics, the intricate relationship between ESG compliance and economic resilience becomes unmistakably clear. The insights from the Infosys Knowledge

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[142] P. B. Jayakumar, 'Sustainability Takes ESG Path' *Fortune India* (Online, 5 July 2023) <https://www.fortuneindia.com/long-reads/sustainability-takes-esg-path/113255> accessed 13 October 2024.

[143] 'ESG Preparedness Survey Report' (*Deloitte*, May 2023) <https://www2.deloitte.com/content/dam/Deloitte/in/Documents/about-deloitte/in-Deloitte-India-ESG-Preparedness-Survey-Report_noexp.pdf> accessed 13 October 2024.

[144] 'Energizing India Sustainably: Moving to a Greener Economy' (*Reliance*) <https://www.ril.com/businesses/new-energy-materials> accessed 13 October 2024.

[145] Farah Imrana Hussain and Helena Dill, 'India incorporates green bonds into its climate finance strategy' (*World Bank Blogs*, 12 June 2023) < https: //blogs.worldbank.org/en/climatechange/ india-incorporates-green-bonds-its-climate-finance-strategy > accessed 13 October 2024.

[146] Ibid.

[147] 'Asset and Wealth management Revolution 2022: Exponential expectations for ESG' (*PwC*,2022) <https: //www.pwc.com/gx/en/financial-services/assets/pdf/pwc-awm-revolution-2022.pdf> accessed 13 October 2024.

Institute, correlating incremental ESG expenditures with accelerated profit growth, underscore the symbiotic relationship between regulatory adherence and economic vitality.[148]

While India's ESG framework may not explicitly bear the label of climate mitigation laws, their impact on corporate environmental behaviour is undeniable. The evolving framework, demanding transparency, incentivizing sustainable practices, and expanding its scope, effectively nudges companies towards climate-friendly choices. Although limitations exist and dedicated climate legislation remains necessary, the trajectory of India's ESG regulations holds immense promise. They are, in essence, a *de facto* climate mitigation strategy in the making, paving the way for a greener future driven by responsible corporate behaviour.

These ambitious transition strategies exemplify how regulatory imperatives can galvanize innovation, drive investment in sustainable technologies, and foster cross-sectoral collaborations. These initiatives, spanning diverse sectors from energy to technology, underscore the holistic and multifaceted impact of ESG regulations, transcending sectoral boundaries and catalysing a comprehensive sustainability ecosystem.

The trajectory of India's corporate renaissance, underpinned by the imperatives of the ESG framework, offers a compelling testament to the transformative power of regulatory frameworks. Beyond shaping sustainability paradigms, these regulations serve as catalysts for economic growth, corporate accountability, and societal well-being. As businesses navigate the intricate confluence of profitability and responsibility in an increasingly interconnected world, ESG regulations emerge as indispensable navigational guides, steering the global corporate landscape toward a harmonious, resilient, and prosperous future.[149]

(v) ESG and Environmental Disclosures for Adaptation in India

The CSR and ESG reporting by the companies are not focused much on adaptation-related efforts. However, some companies have also been showing active efforts in adaptation efforts reporting. For example, the Reliance Corporation in India reported that it actively engaged in disaster management and reduction measures, which led to saving thousands of animals from flood-related morbidities and several hundred thousand people from adverse effects of disasters.[150] Most corporations in India that engage in sustainability reporting also report on Disaster Risks- management and

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[148] P. B. Jayakumar (n 144).

[149] Ibid.

[150] 'Corporate Social Responsibility Report 2022-2023: We Care for a connected, prosperous and shared future' (*Reliance Industries Limited,* 2023) < https://www.ril.com/sites/default/files/2023-08/CSR202223.pdf > accessed 13 October 2024, 38.

reduction.[151] Even fossil fuel companies like Shell India commit to environmental sustainability in India by documenting an intent to "support the affected people during natural disasters".[152] These commitments are not as robust and detailed as mitigation commitments or reports on mitigation measures by corporations. However, the linkages between ESG disclosures and climate law (both mitigation and adaptation) are undeniable.

5.0 CONCLUSION

The evolution of ESG regulations in India is not just a chronological progression of mandates but signifies a transformative journey towards responsible corporate conduct and sustainable practices. The regulatory landscape has evolved from voluntary guidelines to stringent frameworks, reflecting a growing awareness of the need for businesses to consider environmental, social, and governance aspects in their operations. In the context of climate change, environmental disclosures can be seen as mandated (under the Environmental Protection Act, 1986) and voluntary requirements under other laws. Regardless, some forms of misreporting or under-reporting can be grounds for holding corporations responsible in India.

The introduction of the BRSR framework in 2021 and subsequent circulars in 2023 represent a paradigm shift in how ESG disclosures are perceived and implemented in India. These regulations go beyond mere compliance, emphasizing the integration of ethical, sustainable, and responsible business practices into companies' core operations. These regulations catalyse change, encouraging companies to adopt a more holistic approach to corporate governance, transparency, and accountability. The BRSR framework, with its focus on specific key performance indicators in the BRSR Core, provides a nuanced understanding of the Indian business context, aligning ESG reporting with broader SDGs. However, the true impact of these regulations will be realized through their effective implementation and the proactive engagement of businesses. The challenges and criticisms highlighted in the paper, such as the potential exclusion of key partners in value chain disclosures and the need for sector-specific guidance, underscore the complexities that must be navigated for a robust ESG reporting framework.

As India navigates this landscape, there is a need for continuous collaboration between regulators, businesses, investors, and other stakeholders. The suggestions for improvement, including the use of specialised formats and digital tools, underscore the importance of leveraging technology and innovation to enhance the efficiency and accuracy of ESG reporting. Moreover, the emphasis on the "reasonable assurance"

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[151] ONGC (n 143).

[152] 'Corporate Social Responsibility (CSR) policy' (*Shell India Markets Pvt. Ltd.*) <https://www.shell.in/sustainability/shell-india-csr-policy.html> accessed 13 October 2024.

requirement for ESG metrics, along with rules for ESG rating providers, signals a commitment to combating greenwashing and ensuring the reliability of ESG disclosures. This approach aligns with global trends and standards, emphasizing the importance of accurate and transparent reporting for building investor confidence and fostering sustainable business practices.

In essence, the evolution of the ESG framework in India is a call for businesses to embrace a new era of responsible, sustainable, and transparent corporate conduct. The success of these regulations will be measured not only by the quantity of disclosures but by the tangible impact they have on fostering a corporate landscape that prioritizes the well-being of society, the environment, and long-term sustainable growth. As businesses align with these principles, India is poised to become a global exemplar in the pursuit of responsible and inclusive development.

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