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ESG REGULATIONS: CORPORATE INDIA'S EXPEDITION TOWARDS A SUSTAINABLE FUTURE

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I. ABSTRACT

The *Covid-19 pandemic* is the first demonstration of sustainability that can be considered definite. The expeditious growth of regulation relating to 'Environmental, Social and Governance' **(hereinafter referred to as "ESG")** regulations post-the pandemic demonstrates that environmental, social, and governance investing is not only cost-neutral but also has the potential to safeguard capital and even increase profits while contributing to a more desirable future for the companies. These requirements have also received immense support from the investors on the basis that in the future companies would look towards taking measures to protect the longer-term interests of the shareholders.[2] These regulations have become even more significant in recent times due to their emphasis on tackling climate change by Indian corporations.

Keeping this as the backdrop, one of the primary objectives of the paper would be to assess the role of frameworks such as the Business Responsibility and Sustainability Report (BRSR) in driving ESG adoption, including its limitations and impact on corporate governance. The paper will also attempt to identify key challenges, such as greenwashing and regulatory gaps, and propose recommendations for enhancing ESG implementation in India.

The present paper begins with a brief introduction to the concept of ESG along with its importance to Indian corporate entities. The journey from implementing 'CSR', which was 'corporate social responsibility' to ESG' by Indian companies is also briefly tracked to highlight the significance of these guidelines. The paper then delves into

[1] Pursuing LL.M. from Gujarat National Law University, Gandhinagar.
[2] Umakanth Varottil, The Legal and Regulatory Impetus towards ESG in India: Developments and Challenges, NUS LAW (Jan. 2023), https://law.nus.edu.sg/wp-content/uploads/2023/01/03_UmakanthVarottil.pdf.

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the implementation and compliance of these guidelines by the companies and provides a detailed overview and analysis of the measures being taken by these companies to achieve the objectives laid out. The preceding analysis will be utilized to dissect the existing issues and challenges facing Indian corporations in achieving these objectives of ESG, and the suggested remedial steps which need to be taken. The paper ends with the way forward for India and a brief conclusion.

II. KEYWORDS

ESG, Green-washing, Financial Stability, Transparency, Triple bottom-line approach.

III. INTRODUCTION

Under the larger category of the non-financial criterion of company performance analysis, 'ESG elements' constitute a sub-category. When the governance policies of publicly listed companies are concerned, it is essential that certain criteria are met to protect the interests of the shareholders. They are aware that systems that are socially, ecologically, economically, and politically stable and have good governance are necessary to achieve long-term, sustainable revenues.

ESG investment is a kind of sustainable investing that evaluates the *moral contribution* made by a company to all of the essential stakeholders.[3] The *pandemic is the first demonstration of sustainability* that can be considered definitive. India, being a fast-expanding market, it becomes crucial that companies take the issues and concerns related to ESG seriously and on priority. ESG investing is not only *cost-neutral*, but it also has the potential to safeguard capital and even increase profits while contributing to a more desirable future.[4] In light of this, more and more companies are turning

[3] Legal, *ESG: General Considerations for Investing Practices,* SAMISTI LEGAL (Dec 27, 2022), https://samistilegal.in/esg-general-considerations-of-investing-practices/#:~:text=Environmental%20Social%20Governance%20is%20a,beliefs%20is%20seen%20fastest%20growth.

[4] Witold Henisz, Tim Koller & Robin Nuttall, *Five ways that ESG creates value,* MCKINSEY QUARTERLY (Nov. 2019), https://www.mckinsey.com/~/media/McKinsey/Business%20Functions/Strategy%20and%20Corporate%20Finance/Our%20Insights/Five%20ways%20that%20ESG%20creates%20value/Five-ways-that-ESG-creates-value.ashx.

towards *'Socially Responsible Investment'* in order to meet the objectives of ESG issues confronting their organizations.[5]

As investors and analysts become more interested in such kind of transparency related to ESG to select some paramount shares for inclusion in their portfolios, there has recently been a sharp surge in public attention on ESG operations of the corporations. In order to do so, the advancement of ESG policies by the companies has been made compulsory through regular incentivization.[6]

The conventional disclosures reported in financial statements are no longer the only considerations in security selection nowadays.[7] Internationally, significant concern has been drawn by governments and organizations to execute a shift to a sustainable economy and to alleviate the negatives of climate change to some extent.[8]

This further highlights the importance of ESG regulations because they provide ways through which stakeholders and investors can make informed choices while looking at the sustainable practices of the companies.[9] Significantly, in recent times Indian companies have slowly shifted their focus from CSR[10] to ESG. The introduction of the 'Companies Act in 2013' **(hereinafter referred to as "CA, 2013")** has aided in codifying the *'stakeholder model of governance'* and mandated companies to think beyond their

[5] Pippa Stevens, *Your complete guide to investing with a conscience, a $30 trillion market just getting started,* CNBC (Dec. 14, 2019), https://www.cnbc.com/2019/12/14/your-complete-guide-to-socially-responsible-investing.html.
[6] Boodoo, Muhammad Umar, *Does Mandatory CSR Reporting Regulation Lead to Improved Corporate Social Performance? Evidence from India*, Warwick Business School (August 15, 2016). https://ssrn.com/abstract=2823956.
[7] Srijan Mitra Das, *ESG reports, unlike financial statements, are evolving rapidly to reflect a changing world: Ethan C. Rouen,* THE ECONOMIC TIMES (Jan. 20, 2023), https://economictimes.indiatimes.com/news/et-evoke/esg-reports-unlike-financial-statements-are-evolving-rapidly-to-reflect-a-changing-world-ethan-c-rouen/articleshow/97147600.cms?from=mdr.
[8] George Atalla, Meghan Mills & Julie McQueen, Six ways that governments can drive the green transition, ERNST & YOUNG (May 13, 2022), https://www.ey.com/en_gl/government-public-sector/six-ways-that-governments-can-drive-the-green-transition.
[9] Neetika Ahuja, Vasudha Luniya, India: Introduction To Environmental, Social, And Governance (ESG) Disclosures In India With An Overview Of The Global Standards On ESG, MONDAQ (Nov 14, 2022), https://www.mondaq.com/india/diversity-equity--inclusion/1250572/introduction-to-environmental-social-and-governance-esg-disclosures-in-india-with-an-overview-of-the-global-standards-on-esg.
[10] Companies Act 2013, § 135 cl. 1

shareholders by addressing the concerns of the larger group of stakeholders, including the general public.[11]

Keeping this as the backdrop, the present article seeks to cover and analyze the implementation of ESG regulations in India, its significance, the role of the BRSR framework, the implementation of ESG regulatory framework, compliance with these regulations, the suggestions that can be implemented for realizing such a framework and it finally concludes with the way forward for India.

IV. ESG REGULATIONS AND ITS SIGNIFICANCE

In recent times, there has been a direct shift away from the financial-centric models towards ESG-related disclosure to nudge companies to look beyond the traditional models of corporate governance. These disclosures have become highly consequential for investors both from a profit-maximization and sustainability viewpoint. Investors are looking towards these disclosures to determine the social and environmental impact of a company's functioning and to include climate-related considerations in their asset valuation processes.[12]

The growth of these ESG requirements in India started with the introduction of '*Section 134(m) of the CA 2013'* [13] Which stipulated companies include a report by the 'Board of Directors' **(hereinafter referred to as "BoD")** on the aspects of 'conservation of energy' The primary themes of '*transparency and accountability*', which till now had been the hallmarks of corporate governance, have slowly given way to 'achieving the goals of ESG', a trend which has been exacerbated by the post-pandemic scenario.[14]

Taking into account all of this, a number of strategies are being seriously undertaken by several companies to meet their ESG requirements. Some of these strategies include the utilization of *renewable energy, making voluntary disclosures to the regulatory authorities, and making ESG a part of their 'Key Result Areas'* **(hereinafter referred to as**

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[11] Arjun Goswami, *An introduction of ESG disclosures in Indian Regulatory Space – Part 2,* CONVENTUS LAW (Dec. 6, 2021), https://conventuslaw.com/report/an-introduction-of-esg-disclosures-in-indian/ .
[12] *Id.*
[13] The Companies Act, 2013, § 134(3), No. 18, Acts of Parliament, 2013 (India).
[14] Chaitanya Kalia, Shailesh Tyagi & Saunak Saha, *How ESG megatrends and opportunities are shaping our future,* ERNST & YOUNG (Jun. 27, 2022), https://www.ey.com/en_in/climate-change-sustainability-services/how-esg-megatrends-and-opportunities-are-shaping-our-future.

"KRAs"). [15] The downside of not complying with ESG regulations is that *companies run the risk of losing their hard-built reputation, and their profit-making capability, and they become vulnerable to future exigencies*.[16]

As an incentive, companies are being given *ESG ratings*, which have been categorized into the following two types:-

- **Impact rating**- It deals with the impact that a corporate entity has on issues related to ESG. For instance, **ITC Limited**, a major company, has been recognized for its focus on initiatives taken for sustainability.
- **Risk rating**- It deals with the risks caused by ESG which the corporations are continuously exposed to.[17] For instance, **Tata Steel** has been recognized for its ability to manage ESG-related risks, which include mitigating carbon emissions.

However, all in all, Indian companies have a long way to go. Measures such as boosting energy efficiency, utilizing renewable energy, effectively recycling old materials, etc. should be taken on an urgent priority by the companies and implemented effectively at the ground level.[18]

V. ROLE OF BRSR FRAMEWORK IN ACHIEVING ESG: TRACING THE JOURNEY

The reporting of ESG can be classified into two types:

- General 'materiality' related disclosures and
- Business Responsibility and Sustainability Reports (hereinafter referred to as "BRSR"). [19]

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[15] *ESG prioritization and measures taken by companies in India*, INDIA CSR (Dec. 31, 2022), https://indiacsr.in/esg-prioritization-and-measures-taken-by-companies-in-india/.

[16] Mukund Rajan, *Responsible companies and ESG*, GERSON LEHRMAN GROUP (Jul 2022), https://glginsights.com/articles/responsible-companies-and-esg/.

[17] Paridhi Jain, *ESG rating providers: Analyzing India's proposed regulatory framework*, INDIACORPLAW (Mar. 10, 2022), https://indiacorplaw.in/2022/03/esg-rating-providers-analyzing-indias-proposed-regulatory-framework.html.

[18] Ajit R Sanghvi, *Top performing ESG Companies in India & how are their stocks faring*, THE ECONOMIC TIMES (Dec. 24, 2020), https://economictimes.indiatimes.com/markets/stocks/news/top-performing-esg-companies-in-india-how-are-their-stocks-faring/articleshow/79935953.cms.

[19] VAROTTIL, *supra* note 1.

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The second prong of this reporting mandates that the '*top 1000 companies'* have to compulsorily submit this report**.**[20] These standards for the top companies in India were made mandatory by the '**Securities and Exchange Board of India**' **(hereinafter referred to as "SEBI")** from the FY 2022-23 in order to ensure that the corporate entities are effectively taking steps towards achieving the goals of ESG.

It has been made compulsory by the BRSR to transparently disclose how companies are adhering to the nine sustainability criteria given under the 'National Guidelines on Responsible Business Conduct'. [21] These principles emphasize areas such as ethical governance, product responsibility, employee well-being, and environmental stewardship, among others. For example, Principle 6 highlights the need for businesses to respect and restore the environment, while Principle 8 focuses on inclusive growth and equitable development. The intention is to establish quantitative and standardized disclosures on ESG variables in order to make it easier to compare results across companies, industries, and periods of time.

On the flip side, however, several critics of this framework have raised concerns regarding the fact that the present BRSR framework contains several questions that have only the option of answering either yes/no, without giving any explanation.[22] For instance, an example of this type of question can be, *'whether the entity have mechanisms in place in order to adverse environmental impacts?'* For this question, even if the entity answers no, no explanation needs to be given. This has led to several instances of companies circumventing and taking advantage of this binary nature of questions to give a more positive outlook on their business model. In addition to that, the report contains several questions that require information that is available only to the top executives of a company, thus resultantly leading to a situation wherein there is no third-party confirmation of the compliances made by a company.[23]

[20] India CSR, *SEBI makes BRSR applicable to the top 1000 listed companies,* INDIA CSR (Mar. 25, 2021), https://indiacsr.in/sebi-makes-brsr-applicable-to-the-top-1000-listed-companies/.
[21] S&R Associates, *Indian legal regime for ESG,* Legal 500 (Jun. 14, 2022), https://www.legal500.com/developments/thought-leadership/indian-legal-regime-for-esg/.
[22] Aanchal Kabra, *India's changing landscape of ESG disclosures* INDIACORPLAW (Oct. 27, 2022), https://indiacorplaw.in/2022/10/indias-changing-landscape-of-esg-disclosures.html.
[23] *Id.*

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However, on the whole, the BRSR framework on reporting on ESG criteria is a major step in the right direction as it has encouraged corporate entities to evaluate the consequences of their actions both from a social and environmental perspective, in addition to facilitating more in-depth stakeholder involvement.

VI. IMPLEMENTING ESG REGULATORY FRAMEWORK– TRENDS AND EVIDENCE FROM CORPORATE INDIA

The attempt made by Indian companies in recent times towards the creation of an ecosystem for complying with ESG disclosures and norms has been laudable. The earlier 'Corporate Social Responsibility' requirement which was *ensconced in the idea of voluntarism* wherein the companies were required to pay heed to the interests of the people who were impacted by the activities of the company has given way to a much broader sustainability concerns focussing more on ESG factors. More interestingly, there has been a gradual decrease in the CSR expenditure in India, and at the same time, there has been a spike in the ESG funds in India. Simultaneously, it is critical to note that for meeting the objectives of the ESG, there is *no one-size-fits-all* governance mechanism for the corporations to follow.[24]

The primary objectives of the top Indian corporations in recent times have been to provide avenues for integrating ESG factors into their day-to-day operations.[25] This framework is closely intertwined with corporate and public policy. With the financial stability and performance of a company nowadays being closely interlinked with its ESG standards and the prospect of attracting significant foreign investment, more and more companies are looking at ways to improve their organizational development by increasing revenue via resource efficiency and thus facilitating the raising of capital at reduced prices.[26] The risk profile of a company is expected to be increasingly related

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[24] Sanjam Arora & Jagrati Gupta, *Environmental, social, & governance laws and regulations report 2023,* INDIA INTERNATIONAL COMPARATIVE LEGAL GUIDES INTERNATIONAL BUSINESS REPORTS (Jan. 26, 2023), https://iclg.com/practice-areas/environmental-social-and-governance-law/india.

[25] Shantanu Srivastava, *India: How companies can incorporate an ESG strategy*, INSTITUTE FOR ENERGY ECONOMICS AND FINANCIAL ANALYSIS (Apr. 7, 2022), https://ieefa.org/resources/india-how-companies-can-incorporate-esg-strategy.

[26] Naoko Nemoto & Lian Liu, *Measuring the Effect of Environmental, Social and Governance on Sovereign Funding Costs* (ADBI Working Paper No. 1088, 2020), https://www.adb.org/sites/default/files/publication/571746/adbi-wp1088.pdf.

to its performance on the ESG index, as a result of which companies are now looking towards having members who are environmentally conscious and socially responsible.[27]

That is, the performance of a company on the aspect of ESG would potentially affect its valuation and investor confidence in the sustainability of its model.[28] In this regard, various corporate entities have set up *'dedicated board committees for ESG'* and *'external advisor councils'* in order to help the Board with suggestions on ESG. [29] While the advisor councils provide guidance on specialized topics in order to enhance decision-making inside an organization, *'dedicated ESG committees'* are internal committees that have been introduced for organizations to prioritize responsible and sustainable practices in their day-to-day operations.

Thus, after going through a swift review of the above analytical framework of ESG compliances and disclosures by Indian companies, it becomes obvious that the initiatives relating to the sustainability of companies could be arranged into ***three primary areas*** of concentration.

First, many organizations have developed sustainability plans, which are basically forward-looking vision statements for adopting a diverse set of sustainability goals.

Second, the majority of them are members of a variety of business coalitions at the national and international levels, which is evidence of their commitment to advancing sustainable development via the operations of their businesses and the policies they implement.

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[27] Colin Coulson-Thomas, *Critical thinking and responsible board leadership,* INDIA CSR (Sep. 15, 2022), https://indiacsr.in/critical-thinking-and-responsible-board-leadership/.

[28] Igor Heinzer & Andrea Mezzanzanica, *Does a company's ESG score have a measurable impact on its market value?,* DELOITTE (Jul. 19, 2022), https://www2.deloitte.com/ch/en/pages/financial-advisory/articles/does-a-company-ESG-score-have-a-measurable-impact-on-its-market-value.html (last visited Feb 12, 2023).

[29] Sharad Abhyankar & Saranya Mishra, *Revolutionising the board governance of environmental, social and corporate governance: Voluntary Constitution of ESG Committees by Indian Listed Companies,* INTERNATIONAL BAR ASSOCIATION (Dec. 21, 2022), https://www.ibanet.org/revolutionising-the-board-governance-of-environmental-social-governance.

Third, these companies have developed future plans for sustainability that are closely tied to significant sustainability objectives and goals based on key sustainability measures.

Gauging the significance of the environmental challenges before us, several top companies including *TCS, Reliance Industries, Flipkart,* etc. have decided to go carbon-neutral in the next few decades.[30] Another consumer goods company, *Marico*, has made ESG a part of its KRAs in a historic move in order to determine compensation. Moreover, there has been increased interest by investors in supporting new-age start-ups that are serious about their ESG goals and objectives.[31]

A new trend of creating ESG rating ecosystems, attracting investment based on such disclosures, transitioning to clean technologies without loss of jobs, and measures taken in pursuance of commitments to de-carbonization has been witnessed. However, at the same time, this trend has been limited only to some of the top few companies in India, and we still have miles to go before our corporate landscape becomes truly sustainable on ESG requirements.

VII. COMPLIANCE WITH ESG REGULATIONS – A ROOM FULL OF OPPORTUNITIES

Private equity and venture capital investors are becoming more interested in the ESG risks and opportunities presented by smaller businesses. This is the case despite the fact that the majority of ESG reporting is still carried out by publicly traded companies. In this regard, the 'Reserve Bank of India', which serves as the nation's primary financial regulator, is mulling over the possibility of implementing **ESG-based lending laws** in India.[32] Thus, it has become imperative for smaller business entities to update their compliance processes given the large number of ESG-related regulations which are applicable to their operations.

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[30] ARORA & GUPTA, *supra* note 30.
[31] *Id.*
[32] MC Govardhana Rangan, *Why RBI should be careful while framing ESG lending rules,* THE ECONOMIC TIMES (Dec. 08, 2021), https://economictimes.indiatimes.com/opinion/et-commentary/why-rbi-should-be-careful-while-framing-esg-lending-rules/articleshow/88172446.cms.

The setting up of the *'Sustainable Finance Group'* by the RBI, the release of a consultation paper last year by SEBI titled **'ESG Rating Providers for Securities Markets',** which proposed a framework to regulate ESG rating providers in India, and the recognition of the importance of 'green finance' in India by the RBI, makes it amply clear that the Indian regulatory authorities are becoming extremely attentive to the global ESG trends which are taking place in developed countries.[33] A key measurement of whether a company is following ESG-related requirements can be gauged through the *"Dow Jones Sustainability Index"*,[34] Which depicts the companies following the best ESG practices.[35]

In light of the importance of mandating transparent ESG compliances by companies, **CRISIL** (*Credit Rating Information Services of India Limited*), a leading firm established in 1987 to give assessments of creditworthiness of companies and fostering trust in financial markets, had undertaken a survey on the ESG risk assessment in 2021 and found that most of the corporations performed better as compared with the previous year, It was primarily put down to the fact that more disclosures were made and improved performance was seen.[36] A good ESG performance is important both from an investor's and a consumer's perspective.

VIII. ANALYSIS: ISSUES AND CHALLENGES FACING THE CURRENT ESG FRAMEWORK

Even though there has been significant progress in the business sector as a whole, many Indian enterprises are still having difficulty in the area of ESG compliance**. Only 14 out of 586 Indian firms** assessed by CRISIL for ESG risk based on the 2021 fiscal data were deemed to be **'leaders'**, and around **108 businesses** were considered to be

[33] Arpita Garg, Prachi Goel, Shreshth Singh Tomar, & Samali Verma, *Indian legal regime for ESG*, S&R ASSOCIATES (Jun. 09, 2022), https://www.snrlaw.in/indian-legal-regime-for-esg/.

[34] *Down Jones Sustainability Index*, DJSI, https://www.spglobal.com/esg/performance/indices/djsi-index-family.

[35] Dean Emerick, *What is the Dow Jones sustainability index?*, ESG THE REPORT (2023), https://www.esgthereport.com/what-is-esg/sri/what-is-the-dow-jones-sustainability-index/.

[36] CRISIL, India Inc improving ESG disclosures gradually, CRISIL (May 19, 2022), https://www.crisil.com/en/home/newsroom/press-releases/2022/05/india-inc-improving-esg-disclosures-gradually.html.

"strong."[37] The rest of the companies were falling in the categories of 'below average' and 'weak categories'. The primary reasons for this were put down to the fact that these companies had *'inadequate ESG risk-management practices'* and *'poor disclosures'*.[38]

The immediate need is to show more urgency and flexibility in implementing them. Most of the companies are being extremely rigid and inflexible in implementing these standards. Also, India has set itself ambitious climate change targets by 2030 via the Intended Nationally Determined Contributions **("INDCs").**[39] A staggering USD 2.5 trillion dollars would be required for this, and any laxity shown by the companies in effectively implementing the mandate of ESG could drive the costs even further.

The deceitful practice of ***'greenwashing and mislabelling'*** owing to the lack of standardized reporting and regulatory know-how, has led to investors being misguided.[40] Green-washing in simple terms refers to the dishonest practices used by companies to distort claims about the positive impact made by their businesses on the environment. [41] With the rise in public and investor interest in the sustainability of businesses, several companies are restoring to *mislabelling*, that is the false application of green and socially conscious labels to their products and services, to capitalize on the growing demand for environmentally friendly practices.

The much-publicized case of **'BNY Mellon'** in the US has brought to public attention the menace of green-washing and ESG mislabels which is quite prevalent amongst several companies.[42] Even though there was no admission from the company's end, they were forced to pay a hefty penalty, a censure, and subjected to a *cease-and-desist order*.[43]

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[37] *Id.*
[38] Jyotsna Singh & Rakesh Kamal, *India announces its INDC, pledges to cut emission intensity of its GDP by 33-35 per cent by 2030,* DOWN TO EARTH (Sep. 15, 2015), https://www.downtoearth.org.in/coverage/climate-change/climate-change-package-51338.
[39] *Id.*
[40] Quantum Advisors India, *Greenwashing in India - the darker side of ESG investing*, QUANTUM ADVISORS (Sep. 30, 2021), https://www.qasl.com/post/greenwashing-the-darker-side-of-esg-in-india.
[41] *The International Handbook of Social Enterprise Law,* SPRINGER (2023), https://link.springer.com/book/10.1007/978-3-031-14216-1.
[42] Press Release, U.S Securities and Exchange Commission, SEC Charges BNY Mellon Investment Adviser for Misstatements and Omissions Concerning ESG Considerations (May 23, 2022), https://www.sec.gov/news/press-release/2022-86 .
[43] *Id.*

In the year 2015, one of the biggest MNCs in the world, Volkswagen was involved in a major controversy after it emerged that it had given false information on its emission data for diesel vehicles, thereby misleading consumers and regulations about eh environmental impact. In addition, Total, which is an energy company in France faced accusations of deliberately overstating its commitment to reduction of carbon emissions. It led to legal challenges against the company. These two examples highlight the seriousness of green-washing as a global issue.

The primary challenge to the effective implementation of the ESG framework is majorly due to the fact that ***there is no specific ESG regulation in India yet*** and the lack of investor consensus. Along with that, the differing needs and demands of companies and the perennial conflict between choosing value maximization or complying with ESG regulations have meant that the challenges facing Indian corporations are varied. [44]

Moreover, the energy demand in India is expected to rise rapidly over the course of the next few years.[45] The most important thing for the Indian stakeholders would be to ensure that ESG standards on disclosure move towards international standards and adopt best practices being prevalent in other countries. Pro-active steps are needed in order to ensure that more investments and focus in being put on achieving the ESG targets. In light of this, it has become imperative that companies adopt a more sincere and transparent approach towards achieving their environmental targets.

Another major grey area facing us is that in the case of *non-listed companies,* there is no law that provides for the compulsory subjection to ESG disclosures or reporting requirements.[46] Tackling all these challenges in an efficient manner has become

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[44] Freddie Fuller, *ESG and shareholder value,* RBD GLOBAL ASSET MANAGEMENT (Jun. 2022), https://global.rbcgam.com/sitefiles/live/documents/pdf/whitepapers/eue_esg-and-shareholder-value.pdf.

[45] Snigdhendhu Bhattacharya, *Report At COP27: India Records Highest Emission Increase Among Top Global Contributors,* OUTLOOK (Nov. 11, 2022), https://www.outlookindia.com/international/report-at-cop27-india-records-highest-emission-increase-among-top-global-contributors-news-236452.

[46] Indus Law, *ESG reporting and its framework in India,* LEGAL 500 (2022), https://www.legal500.com/developments/thought-leadership/esg-reporting-and-its-framework-in-india/.

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extremely crucial and it is not just the corporations but also the general public which needs to become a part of the solution.

IX. SUGGESTIONS AND RECOMMENDATIONS

With companies becoming increasingly conscious about their ESG duties and obligations, it has become essential that the following steps be undertaken in order to fully achieve the objectives of the ESG framework:

- The current disclosure requirements under the "BRSR framework" are generic and minimal when compared to international frameworks.[47] For instance, the 'European Union introduced the concept of ***'double materiality'*** in the case of ESG disclosures. In furtherance of this, companies are required to disclose not only how sustainability issues will affect them in the future, but also how their actions and activities will impact the environment and society.[48] In addition to that, the '*Task Force for Climate-Related Financial Disclosures, an advisory body set up by the G-20 in 2015'* has aided companies in providing climate-related financial disclosures. It is thus recommended, that the Government conduct an impact study on the disclosure made by the top 1,000 companies and update the BRSR framework accordingly taking into consideration the practices followed by other countries.
- Another important lesson can be taken from France, wherein companies having a turnover of over $100 million and employees above 500 are mandatorily required to conduct **ESG audits** and present them in their annual reports. The main objective behind this it make large companies report on the risks to the environment which includes climate-related disclosures. Moreover, this mandatory ESG audit also has to include the supply chain risks that might have an impact.
- It is also suggested that SEBI follow the **'comply or explain'** model, as observed in Singapore, and mandate companies to give bonafide reasons for

[47] GOSWAMI, DAS & JAIN, *supra* note 12.
[48] Aanchal Kabra, *Double Materiality in Indian ESG Disclosures,* INDIA CORP LAW (Oct. 27, 2022), https://indiacorplaw.in/2022/10/double-materiality-in-indian-esg-disclosures.html.

not adopting or complying with ESG requirements.[49] As the term indicates, companies are required to either follow and comply with the guidelines issued or be prepared to give adequate reasons for not doing so. Basically, in simpler terms this method provides the company with two options, that is, either to comply with specific disclosure requirements related to ESG or give a bona-fide reason for non-compliance. The main benefit of this mechanism is that it ensures transparency while at the same time at the same time ensuring that a general sense of trust is maintained between the investors and stakeholders since the companies have to ensure that they align their operations with the standards of ESG. This mechanism is a key cornerstone of corporate governance.

- Thirdly, adopting *'Key Performance Indicators'* from the BRSR by smaller companies would go a long way in ensuring that more companies come under the ambit of complying with ESG regulations. Developing a designated 'ESG committee' by these companies is desirable.
- The major concern related to malpractices such as green-washing and mislabelling can only be stopped or restricted to a large extent if ESG-specific legislation is made and implemented in India. At present, there is no legislation that defines 'ESG compliance' and it has been left free to different interpretations.
- Though *'inter-operability of data'* is permitted within the BRSR, however even under similar disclosure headings, it may ask for different information as compared to international standards. This puts a high burden on the Indian exporters and the MNCs. Herein, it is recommended that the *'inter-operability of data'* by companies should be done in such a manner that they can prepare reports on the basis of their international framework to cross-reference the disclosure sought under the BRSRS with the disclosure made under these

[49] Teck Wee Tiong & Fi Ling Quak, Singapore: Environmental, Social and Governance Regulation Comparative Guide, MONDAQ (Oct. 14, 2022), https://www.mondaq.com/environment/1216792/environmental-social-and-governance-regulation-comparative-guide.

frameworks.[50] This will help in ensuring that there is greater uniformity for the international investors and thereby reduce their burden.

X. THE WAY FORWARD- FINDING THE RIGHT BALANCE

The changes caused by the pandemic have forced the Indian regulators to change their perspective toward environmental and social concerns. It has also incentivized companies to attract investment based on their ESG performance. Access to sustainable technologies and the commitment to achieving the goals of *climate change* have to be followed in principle by Indian companies.

Globally, it is expected that the assets related to ESG will rise to an astounding $53 trillion by 2025, thereby reshaping nearly $140.5 trillion of assets under management based on a report prepared by *'Bloomberg Intelligence'*.[51] India's ESG assets have multiplied more than ***five times*** in four years and have constituted over *12,447 crore rupees as of March 2022*. Moreover, an increasing number of ESG funds have been launched. A study conducted by 'Refinitiv' shows that in the year 2023, 53.6% of S&P 500 companies included environmental metrics in their executive incentive plans, which is a significant percentage, though there is still some way to go.

From an investor's standpoint view, a business if it does not remain sustainable runs the risk of legal and regulatory changes and challenges in the future. Resultantly, it might lead to a drastic reduction in the sale of their business products. These disclosures also aid in the early identification of assessing future viability and potential transition risks, by taking the necessary steps to adapt toward the needs of the consumers in the future.

There are still a number of obstacles that must be dealt with before full and successful ESG integration can take place as the ESG framework in India is still budding. In this context, it is important to note that only when all the companies come together and all the stakeholders including the regulators, investors, corporates and the general public

[50] *Id.*

[51] Bloomberg Intelligence, *ESG assets may hit $53 trillion by 2025, a third of global AUM*, BLOOMBERG (Feb. 23, 2021), https://www.bloomberg.com/professional/blog/esg-assets-may-hit-53-trillion-by-2025-a-third-of-global-aum/.

join hands together that corporate performance would improve drastically and rapidly. Reforming disclosure regulations to prioritize all ESG concerns and growth that is focussed both on profit maximization and sustainability would remain crucial.

XI. CONCLUSION

Since it is expected that investors and civil society as a whole will continue to be interested in ESG-related concerns, regulators, and authorities will probably keep pressuring companies to make their ESG claims and disclosures more transparent. It, therefore, puts an onus on the companies to ensure that their ESG compliance is less superficial and more goal-oriented.

In order to effectively manage their ESG goals, both the Indian regulators and companies need to focus on strengthening laws that provide for transparent and uniform disclosures. It includes minimizing risks such as green-washing. In addition, global best practices, such as 'double materiality' can be taken as an approach for enhancing accountability amongst the big MNCs.

It has also been rightly said that in today's changing landscape it has become significant for the companies to adopt **a 'triple-bottom-line' approach,** which means concern for the company, the community as well as the environment. That is, the concerns of all the relevant stakeholders are taken into account before a company makes any decision or direction. It is upon the 'Board of Directors to take a proactive stance and ensure that the company is putting efforts towards achieving the ESG rules.

The approach adopted by the directors would determine the future sustainability of their company. Increased regulatory efforts to handle increasingly complex environmental issues, such as unintentional "greenwashing," would continue to pose a challenge to the regulators. India, on its part, is required to adopt the best practices being followed by countries across the world and align their goals locally. Only a resilient and sustainable approach towards ESG would ensure that Indian corporations would survive and thrive in the future.

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