BEYOND BRSR: CHARTING INDIA'S PATH TO ESG LEADERSHIP

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ABSTRACT

ESG Reporting in India: Balancing Profit, People, and Planet: Upon exploring the available literature on ESG reporting in India, we observe that the Saraf and Partners article titled as "ESG Reporting in India: Balancing Profit, People, and Planet," gives a comprehensive and informative account of the development of Environmental, Social and Governance regulations and their implications. It successfully differentiates Environmental, Social and Governance from Corporate Social Responsibility, highlighting the increased regulatory focus on sustainability disclosures. While its work is mostly theoretical in nature, there is scant involvement of empirical analysis or sector-specific case studies. Taking that as a basis and using case studies of Indian firms that are actually practicing Environmental, Social and Governance frameworks adds strength to the literature. This contribution provides practical information on the challenges and consequences of such compliance, thus filling the gap between regulatory framework and corporate implementation.

Value Chain Reporting in the BRSR: A Critique: The article titled "Value Chain Reporting in the BRSR: A Critique" from IndiaCorpLaw analyses the Securities and Exchange Board of India's modifications to the Business Responsibility and Sustainability Report, which now includes value chain disclosures. The modifications are intended to present a broader picture of a company's Environmental, Social and Governance performance by broadening the reporting requirements to upstream and downstream partners. This piece brings to light the difficulties for industries like FMCG, technology, chemicals, and industrial machinery, where value chain partners could be numerous. The actual implementation of these disclosures poses great difficulties, especially for corporates with lengthy and complicated supply chains. This

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article seeks to offer that as important as adding value chain disclosure to the BRSR is as a progressive move toward overall ESG reporting, it will be important to think through what this means on the ground level for the companies.

I. INTRODUCTION

"ESG disclosure is essential for driving innovation and creating a sustainable future. By being transparent about their sustainability practices, companies can attract investors, talent, and customers who are committed to a better world."

These words by Elon Musk, CEO of SpaceX, on Environmental, Social and Governance (ESG) disclosures indicate the changing mindset of conglomerates towards ESG disclosures as well as highlight the growing need for them. Australia's parliament has recently approved a law that will require large companies to disclose the potential risks of climate change to their businesses. This new regulation, which will take effect in 2025, aims to increase transparency and accountability in corporate climate reporting.

While Securities and Exchange Board of India (SEBI) is proactively working to implement the Business Responsibility and Sustainability Reporting (BRSR) concept for ESG reporting in India, the path of execution is filled with challenges. This is so as companies contend of increased scrutiny being against the idea of ease of doing business. To thrive in an era where businesses are expected to be accountable and environmentally friendly, ESG initiatives are not only a moral duty but also a strategic necessity. The term ESG, which has been the focal point of policymaking, has 3 dimensions that offer a comprehensive framework to evaluate a company's non-financial performance and its commitment to sustainability. Environmental factors address a company's interaction with the natural world, including its carbon emissions, resource utilisation, and waste management practices. Social factors encompass factors like labour practices, treatment of employees, ensuring human rights, diversity, equity, and community impact. Governance aspects focus on a company's leadership structures, executive compensation, transparency in decision making, and internal risk management capabilities.

In addition to the principles outlined in the Indian Constitution and the numerous sector-specific laws, rules, and regulations, the Indian ESG reporting framework includes legally binding regulations and voluntary governance standards. SEBI bolstered the drive for greater ESG transparency by introducing BRSR Lite and BRSR Core versions in phases which further streamlined the reporting process. The BRSR Core guidelines are of considerable importance as they integrate the idea of ESG disclosures with the value chain of a business. A value chain accurately represents the outcomes of a company's activities, hence many countries throughout the world have either passed or are now in the process of passing guidelines requiring value chain disclosures. This gradual and calibrated approach signifies India's commitment to strengthening ESG reporting practices and aligning with the evolving demands of a socially and environmentally conscious global marketplace.

In recent years, ESG considerations have rapidly gained significance for both companies and investors, and this heightened focus stems from several factors. By assessing the severity, extent, probability, and permanence of ESG impacts, companies can identify the key players in their value chain that significantly affect their overall ESG performance. Investors are increasingly seeking out companies with robust ESG practices, as these firms are often perceived as more resilient to long-term risks and better positioned for sustained growth in a changing business landscape. The rapid growth of the ESG investment market can be premeditated with institutional investments projected to reach $33.9 trillion by 2026. While the investments are projected to reach at an all-time high, the current investments also indicate the same. India's ESG investments have scaled up from $ 330 million in 2019 to $1.3 billion in 2023. Moreover, consumers and stakeholders are holding companies accountable for their social and environmental impact, creating reputational incentives for strong ESG performance. India's efforts for bolstering the ESG framework have been streamlined by the introduction of sustainable bonds. Amongst these, Green Bonds have taken a central stage to act as a catalyst for reaching the ESG targets for India. Green bonds are financial instruments issued to raise capital for environmentally beneficial projects, supporting sustainability, climate change mitigation, and the transition to a low-carbon economy. Recently, the Indore's municipal corporation's issuance of green bonds was oversubscribed by 5.90 times to raise an amount of 720 crores for the installation of solar plants. These efforts underline the commitment of the government as well as the investors for sustainable measures for the future.

This piece endeavours to explore the ramifications of the BRSR disclosures mandated by SEBI while also analyzing the impact of incorporating value chain analysis and varied disclosures within the BRSR framework. It further aims to elucidate potential transformations within India's corporate governance landscape due to these integrated disclosures. Furthermore, it seeks to identify and dissect the impediments that might hinder the successful implementation of these guidelines by drawing upon best practices observed in international ESG models, and in the end, it strives to propose possible solutions to overcome these challenges and assess the developments as an opportunity within the Indian context.

II. THE FRAMEWORK OF SEBI BRSR DISCLOSURES AND ITS POTENTIAL IMPLICATIONS

India has already experimented with ESG reporting and regulatory frameworks prior to BRSR. The Ministry of Corporate Affairs (MCA) developed the initial Business Responsibility Reporting (BRR) guidelines in 2009.[1] BRR provided the foundation for the development of an ESG reporting framework with a much wider scope, and it also launched BRSR, which took almost a decade to expand and improve in order to satisfy the intricate ESG disclosure regulations as well as the international quality standards and requirements. BRR was applicable to listed entities, but it became obsolete as it was not able to meet the global standards of reporting and paved way for BRSR.[2] In May 2021, SEBI implemented the BRSR Lite version which required the inclusion of the BRSR in annual reports filed by the top 1,000 listed companies from the 2022-23 fiscal year.[3] This move was termed as historic in itself and acted as a precursor to a bigger development, and subsequently in June 2023 an amendment in LODR Regulations was introduced in which reasonable assurance on specific BRSR Core attributes

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[1] 'BRSR reporting and the evolving ESG landscape in India' (*EY India*, 21 April 2023) <https://www.ey.com/en_in/insights/climate-change-sustainability-services/brsr-reporting-and-the-evolving-esg-landscape-in-india> accessed 29 August 2024.

[2] 'Business Responsibility Reporting: An analysis of top 100 BSE and NSE listed companies' (*KPMG*, July 2017) <https://assets.kpmg.com/content/dam/kpmg/in/pdf/2017/07/Business-Responsibility-Reporting.pdf> accessed14 January 2025.

[3] Abhishek Saraf and Payal Agarwal, 'BRSR Reporting: Actions and Disclosures required for business sustainability' (*Vinod Kothari Consultants,* 8 June 2021) <https://vinodkothari.com/2021/06/brsr-reporting-actions-and-disclosures-required-for-business-sustainability/> accessed 3 May 2024.

and value chain disclosures were inserted. Finally, in July 2023, SEBI came up with a circular outlining the value chain framework, which states the *"value chain shall encompass the top upstream and downstream partners of a listed entity, cumulatively comprising 75% of its purchases/sales (by value) respectively"*.[4] This framework includes additional Key Performance Indicators (KPIs) across nine ESG areas, inter alia, Greenhouse gas footprint, Water footprint, Energy footprint, Enabling Gender Diversity in Business, and others, and mandates listed companies to disclose them.[5]

The disclosures have been generally classified under 3 heads, namely, General, Management Process and Principle with each head serving a unique purpose. General disclosures focus on foundational company information such as locations, products and services, exchange listings, reporting scope, and basic employee demographics.[6] Management and process disclosures require companies to demonstrate adherence to the National Guidelines on Responsible Business Conduct (NGRBC), introduced by MCA in the year 2019.[7] These disclosures emphasise the existence and implementation of ESG-related policies, board oversight, and alignment with time-bound company goals. Finally, Principle-wise performance disclosures centre on quantitative data linked to the nine principles of the NGRBC.[8] Companies must provide tangible evidence of how these principles are integrated into business

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[4] 'BRSR Core - Framework for Assurance and ESG Disclosures for Value Chain' (*SEBI Circular*, 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 29 August 2024.

[5] Aditya Jalan and Ankitesh Ojha, 'Driving Sustainable Business Practices: The SEBI's BRSR Core Framework and Internationally Evolving ESG Disclosures' (*AZB & Partners*, 18 March 2024) <https://www.azbpartners.com/bank/driving-sustainable-business-practices-the-sebis-brsr-core-framework-and-internationally-evolving-esg-disclosures/> accessed 29 August 2024.

[6] Ibid.

[7] Abhishek Saraf (n 17).

[8] Abhishek Saraf (n 17).

processes, measuring impact through Key Performance Indicators **(KPIs)** and disclosing percentages of Research & Development **(R&D)** and capital expenditure investments directed towards ESG initiatives. The phased implementation of reasonable assurance requirements will initially apply to the top 150 listed entities (by market capitalisation) in the 2023–24 fiscal year, expanding to the top 1,000 by 2026–27.[9] Additionally, the top 250 listed entities must address BRSR Core disclosures for their value chains, encompassing key upstream and downstream partners, on a comply-or-explain basis beginning in the 2024–25 fiscal year.[10] SEBI's circular of July 2023 initiated a structured trajectory for integrating value chain partners within sustainability reporting practices.[11]

As per the latest development, SEBI through its latest consultation paper released in May 2024 seeks to revise value chain partners, which defines that *"the upstream and downstream partners of a listed entity, individually comprising 2% or more of the listed entity's purchases/sales (by value) respectively, and cumulatively comprising at least 75% of the listed entity's purchases/sales (by value), respectively."*[12] At the very least, the recommendation about BRSR disclosures for the value chain concerning each value chain partner separately constituting two percent or more of the relevant value chain activity is an encouraging step. This is due to the fact that sustainability reporting is now obligated to include value chain partners that are financially significant. Such a move, in one sense, encourages a more cooperative attitude between these listed firms and their distributors and

[9] SEBI (n 18).
[10] SEBI (n 18).
[11] Nehal Daga, 'Navigating ESG Compliance in India: Evaluating SEBI's BRSR Core Framework and Value Chain Disclosures' (*Solomon & Co,* 21 November 2023)< https://solomonco.in/sebis-brsr-core-framework-and-value-chain-disclosures/> accessed 29 August 2024.
[12] SEBI (n 18).

important supply chain partners, which will ultimately have a ripple effect along the entire value chain, and it will also eliminate the scrutiny on relatively small partners who don't have resources to meet BRSR disclosures. This approach necessitates a holistic assessment of a business's benefits, opportunities, and risks, extending beyond internal actions to encompass the practices of both upstream and downstream entities.

In the meantime, the Ministry of Environment, Forests, and Climate Change has included a key new leadership indicator for the BRSR that tracks the creation of Green Credits in accordance with the Green Credit Rules, 2023.[13] This indicator includes the actions taken by the business and its value chain partners in support of their afforestation initiatives, and it offers a methodology to calculate the Green Credits as well. In 2024, the Reserve Bank of India (RBI) issued a draft disclosure framework for Indian financial institutions to report on the financial risks and possibilities associated with climate change.[14] All Indian financial institutions, including some of the biggest Non-Banking Financial Companies (NBFC), are required to comply with the framework and information on targets, strategy, governance, and risk management will all be disclosed by them. Therefore, it can be construed that the ESG journey of India has been an ever-evolving aspect wherein new chapters are being added with each passing day to achieve India's goal of carbon neutrality by 2070.

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[13] 'Notification Issued for Green Credit Program (GCP) and Ecomark Scheme Under LiFE Initiative to Promote Sustainable Lifestyle and Environmental Conservation' (*PIB Press Release,* 13 October 2023) https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1967476 accessed 29 August 2024.

[14] RBI, 'Draft Disclosure Framework on Climate-Related Financial Risks, 2024' (28 February 2024) <https://rbidocs.rbi.org.in/rdocs/content/pdfs/draftdisclosureclimaterelatedfinancialrisks20249fbe3a566e7f487ebf9974642e6ccdb1.pdf> accessed 29 August 2024.

III. NAVIGATING THE INTRICACIES OF VALUE CHAIN AND ITS RIPPLE EFFECT

The value chain can be identified as a strategic analysis model used to examine the sequence of activities a business undertakes to transform inputs into valuable outputs for customers.[15] The listed companies' operations in the modern day consist of increasingly interconnected and vertically integrated global value chains. These involve several nations, a sizable number of distinct businesses, a vast transportation network, and a sizable labour force.[16] As per the CDB Global Supply Chain report of 2020 *"Supply chain emissions are on average 11.4 times higher than operational emissions",*[17] this calls for an increased scrutiny on the overall activities of a business.

The value chain encompasses primary activities directly responsible for creating and delivering value, as well as the indirect activities that underpin the primary functions.[18] The concept has been divided among the upstream and downstream activities of a business, which can be elucidated by an example of a company engaged in the business of specialty coffee roasters. This company's operations extend beyond its roasting facilities. Upstream, the value chain encompasses ethical sourcing partnerships with coffee bean farmers, environmentally conscious transportation of those beans, and

[15] Tim Stobierski, 'What is a Value Chain Analysis- 3 Steps' (*Harvard Business School Online,* 3 December 2020) <https://online.hbs.edu/blog/post/what-is-value-chain-analysis> accessed 29 August 2024.

[16] Michael E. Porter, 'From Competitive Advantage to Corporate Strategy' (*Harvard Business Review,* May 1987) <https://hbr.org/1987/05/from-competitive-advantage-to-corporate-strategy> accessed 29 August 2024.

[17] CDP*, Transparency to transformation: a chain reaction CDP global supply chain report 2020* (CDP Report, February 2021) <https://cdn.cdp.net/cdp-production/cms/reports/documents/000/005/554/original/CDP_SC_Report_2020.pdf?1614160765> accessed 29 August 2024.

[18] Jean-Christoper Amado & Peter Adams, 'Value Chain Climate Resilience: A guide to managing climate impacts in companies and communities' (*BSR*) <https://www.bsr.org/reports/PREP-Value-Chain-Climate-Resilience_copy.pdf> accessed 29 August 2024.

sustainable packaging suppliers. On the downstream end, it shall include relationships with cafes and retail stores that offer ethically produced coffee to consumers, ultimately influencing waste disposal practices and the overall lifecycle impact of the product. This interconnected network demonstrates how a business's commitment to sustainability can resonate through its entire value chain, influencing the social and environmental practices of numerous stakeholders present in the chain.

The BRSR's transition from voluntary to compulsory ESG reporting can become essential for improving non-financial information disclosure, compliance, and standardisation throughout the Indian Corporate Regime. Conglomerates will find themselves compelled to use their influence and interact with their distributors, suppliers, and other value chain partners due to the obligation for listed entities to report on their value chain.[19] The other value chain partners will also keep their activities under check and share their relevant data with listed entities to meet their disclosure requirements. Thus, it is implied that the BRSR disclosures will have a snowball effect, and it will undoubtedly obligate the unlisted value chain partners to improve their ESG performance. A 2023 PwC study[20] analysing the top 100 NIFTY-listed companies suggests significant developments in this domain. Notably, the study found that over 60% of the companies had undertaken initiatives to educate their partners on key ESG issues and 62% of the companies provided training on key ESG issues to their training partners. While these findings offer a positive outlook on the BRSR's impact on value chain transparency,

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[19] 'Value Chain Implementation Guidance' (*EFRAG*, December 2023) <https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FSiteAssets%2FDraft%2520EFRAG%2520IG%25202%2520VCIG%2520231222.pdf&AspxAutoDetectCookieSupport=1> accessed 29 August 2024.

[20] 'Navigating India's transition to sustainability reporting' (*PwC*) <https://www.pwc.in/assets/pdfs/navigating-indias-transition-to-sustainability-reporting.pdf> accessed 29 August 2024.

further research is necessary to comprehensively understand the long-term trajectory and potential areas for improvement within the framework. Additionally, smaller businesses and Micro, Small, and Medium Enterprises (MSMEs), should take into account the possibilities and challenges associated with ESG, especially if they are looking for financing from private equity or venture capitalist groups. MSMEs usually operate with a restrictive pool of resources and informal structures. The pressure upon them to provide detailed and standardized ESG data can be an uphill task. They might lack the technical and financial capacity and expertise to collate and provide such data. This can lead to heightened operational costs for MSMEs, which can hamper the pious purpose of value chain disclosures.

It is to be noted that banks and a number of private lenders will soon include ESG issues in their credit evaluations.[21] According to reports, the Reserve Bank of India, the country's banking regulator, is thinking about implementing ESG-based lending standards, which can be introduced in furtherance of the Disclosure Framework on Climate-Related Financial Risks.[22]

Additionally, the ICAI released *"Standard on Sustainability Assurance Engagements 3000,"* and its most recent rules can enhance their ESG compliances by utilising specific KPIs from the BRSR (instead of the full BRSR). Also, taking into account KPIs from other more specialised reporting frameworks, such as Impact Reporting and Investment Standards (IRIS),[23]

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[21] Daniel Heller *et al.* 'ESG data governance: A growing imperative for banks' (*Mckinsey,* 8 February 2023) <https://www.mckinsey.com/capabilities/mckinsey-digital/our-insights/tech-forward/esg-data-governance-a-growing-imperative-for-banks> accessed 29 August 2024.

[22] Observer Research Foundation, 'RBI sets the tone in climate finance thinking with its "Green India" report' (*ORF*, 29 May 2023) <https://www.orfonline.org/expert-speak/rbi-sets-the-tone-in-climate-finance-thinking> accessed 29 August 2024.

[23] 'The GIIN - Global Impact Investing Network' (*IRIS*) <https://iris.thegiin.org/> accessed 29 August 2024.

Future-Fit Business Benchmark (FBB),[24] and Business Impact Assessment (BIA), and thinking about adopting the ISO 26000 standard,[25] which offers guidance on social responsibility. IRIS relates more to environmental and social performance factors and can align with major components of BRSR core disclosures. FBB provides Break-Even Goals (minimum threshold) for achieving targets and Positive Pursuit Actions. It specifically addresses the carbon emission goals along with promoting inclusivity.[26] Seeking advice from ESG specialists and making use of ESG reporting software can be termed recent developments, which are the result of BRSR guidelines. It is critical to incorporate sustainability issues into the compliance ecosystem, regardless of the company's size—small or large. Every company should be concerned about responsibility towards people and the environment, not just purely focusing on financial gains.

IV. INTERNATIONAL POSITION & CROSS JURISDICTIONAL ANALYSIS

The staggering improvements in frameworks for ESG disclosures around the world show that nations are dealing with sustainability and corporate responsibility in a proactively. It is vital to examine the best global practices in this field, as they provide a holistic understanding of such mechanisms and aid in the smoother and more efficient implementation of ESG disclosure framework in India. For such purposes, an analysis of the United States of America's (USA) framework has been taken into consideration which is the home of the biggest conglomerates as well as one of the most developed

[24] 'A Free Methodology to Help Businesses Build a Better World' (*Future-Fit Business*) <https://futurefitbusiness.org/benchmark/> accessed 29 August 2024.

[25] 'ISO 26000: International Guidance Standard on Social Responsibility' (*International Organization for Standardization*, 2004) <https://www.iso.org/iso-26000-social-responsibility.html> accessed 29 August 2024.

[26] Futurefitbusiness (n 41).

securities markets in the world. Emphasis has been given to European Union's (EU) practices, as they provide a unique and contemporary outlook of incorporating human rights violations within the ESG framework.[27] Australia's ESG information disclosure mechanism has been taken into consideration as well due to the introduction of landmark climate disclosure legislation.

A. USA

In March 2024, the Security and Exchange Commission (SEC) of the USA finally announced New Climate Disclosure Rules which also includes Scope 3 disclosures.[28] It is necessary to differentiate between Scope 1, 2 and 3 emissions, Scope 1 covers the emissions from direct operations, while Scope 2 includes the emissions resulting from the use of purchased energy.[29] All additional indirect emissions that happen throughout the value chain and are not under the direct control of the organisation are included in Scope 3 emissions.[30] The Scope 3 emissions are being looked at with a keen eye, as they are the disclosures mandated to gain transparency for the greenhouse gas emissions under the value chain systems. According to the Carbon Disclosure Project (CDP), on an average Scope 3 emissions account for 75% of an organization's total emissions. Even, Scope 3 emissions might account for as much as 100% of a company's emissions, depending on the industry (for

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[27] Commission Europa 'Corporate sustainability due diligence' <https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en> accessed 29 August 2024.

[28] Amanda Carter, 'Corporate Climate Disclosure Has Passed a Tipping Point: Companies Need to Catch Up' (*World Resources Institute,* 6 May 2024) <https://www.wri.org/insights/tipping-point-for-corporate-climate-disclosure> accessed 29 August 2024.

[29] Justine McClymont, 'What's the Difference? Scope 1, 2 and 3 Corporate Emissions' (*WorkForClimate*, 16 November 2021) <https://www.workforclimate.org/post/whats-the-difference-scope-1-2-and-3-corporate-emissions> accessed 29 August 2024.

[30] Ibid.

example, the average Scope 3 emissions for financial services companies was 99.98%).[31] This framework shares similarities with the SEBI's BRSR disclosures, while both of the frameworks are often credited to be alike, it is imperative to understand that the Scope 3 emissions singularly deal with the greenhouse gas emissions whilst the BRSR disclosures incorporate the social as well as governance factors. The scope of the BRSR disclosures has the intent of an all-encompassing framework to act as a singular beam of focus for reference to ESG disclosures. What makes them similar is the scope of an assurance provider. Both frameworks provide the need for an assurance provider in order to implement the said frameworks.

The USA framework does not provide the utmost clarity on who can be an assurance provider. SEBI gives a reference point in its Frequently Asked Questions' **(**FAQ) concerning the assurance provider in which it highlighted that the internal auditors of a company cannot be an assurance provider.[32] Since the internal auditors are disqualified from being the assurance provider[33], the independent directors should not act as one. However, the independent directors can act as a guiding light for the appointment of a qualified assurance provider from a pool of qualified experts best suited to a company. In this way, a sense of both the regulator and the regulated come into a middle ground and can work harmoniously for effective ESG disclosures and implementation with special emphasis on governance. Recently, the SEC introduced amendments to Investment Company Act, 1940 which focuses on the curbing instances of investors getting mislead on the

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[31] CDP, 'CDP Technical Note: Relevance of Scope 3 Categories by Sector' (*CDP*, 2022) <https://cdn.cdp.net/cdp-production/cms/guidance_docs/pdfs/000/003/504/original/CDP-technical-note-scope-3-relevance-by-sector.pdf?1649687608> accessed 29 August 2024.
[32] 'Frequently Asked Questions (FAQs) on the Business Responsibility and Sustainability Report (BRSR) Core' (*SEBI FAQ*) <https://www.sebi.gov.in/sebi_data/faqfiles/aug-2023/1691500854553.pdf> accessed 29 August 2024.
[33] Ibid.

names of funds.[34] The amendment prioritizes that the name of the fund should characterize its usage. The *name rule* indicates that 80% of the assets should be utilized in a manner as the name of the fund suggests.[35] Funds with names that incorporate words such as "growth", "value" would have to focus more on the ESG metrics so as to not mislead the investors. India can adopt such measures with the scaling use of funds so as to protect the investors as well as to achieve specific ESG targets.

B. European Union

The European Parliament's approval of the Corporate Sustainability Due Diligence Directive (CSDDD) in April 2024 marks a significant evolution in the realm of corporate accountability in Europe.[36] The CSDDD aims to impose legal mandates on large corporations (those exceeding 1,000 employees and €450 million annual revenue) to proactively identify and mitigate human rights and environmental risks throughout their upstream and downstream supply chains.[37] This emphasis on proactive risk management represents a departure from traditional reactive approaches. Earlier, there were deliberations over bringing "mid-cap" companies within the ambit of CSDDD, nonetheless in the finally adopted text there was no mention of such

[34] Davis Polk, 'SEC Adopts Amendments to Investment Company Act "Names Rule"' (*Davis Polk*, 21 September 2023) <https://www.davispolk.com/insights/client-update/sec-adopts-amendments-investment-company-act-names-rule> accessed 14 January 2025.
[35] Ibid.
[36] Human Rights Watch, 'EU Parliament Approves Supply Chain Law' (*HRW*, 24 April 2024) <https://www.hrw.org/news/2024/04/24/eu-parliament-approves-supply-chain-law> accessed 29 August 2024.
[37] EurLex, 'Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859' <https://eur-lex.europa.eu/eli/dir/2024/1760/oj> accessed 29 August 2024.

provision and the threshold for the large corporations was also increased in the eleventh hour.[38]

Advocates of CSDDD view it as a vital mechanism for safeguarding vulnerable populations and ecosystems impacted by global value chains. The inclusion of civil liability provisions offers the potential for increased legal redress when violation occurs.[39] However, concerns persist regarding the directive's practical implications. It is projected that the Directive will impose obligations on 5,500 enterprises, or .05% of all companies in the European Union.[40] This is around 70% less than the approximate 17,000 companies that the December 2023 threshold would have covered.[41] Some critics fear that the broad scope of due diligence, coupled with extensive documentation requirements, could impose substantial burdens on companies, particularly those navigating ongoing economic challenges related to the pandemic.[42] Additionally, industry voices anticipate potential competitive disadvantages for EU businesses operating within a more heavily regulated environment. This raises the possibility that companies might relocate to jurisdictions with less stringent oversight, undermining the CSDDD's intended goals. Striking a balance between driving ethical practices and ensuring a viable business

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[38] S Ciacchi, 'The Newly-Adopted Corporate Sustainability Due Diligence Directive: An Overview of the Lawmaking Process and Analysis of the Final Text' (2024) 25 ERA FORUM 29–48 <https://doi.org/10.1007/s12027-024-00791-y> accessed 29 August 2024.

[39] Alessio M Pacess, 'Civil Liability in the EU Corporate Sustainability Due Diligence Directive Proposal' (*Faculty of Law Oxford, 22* September 2023) <https://blogs.law.ox.ac.uk/oblb/blog-post/2023/09/civil-liability-eu-corporate-sustainability-due-diligence-directive-proposal> accessed 29 August 2024.

[40] Ropes & Gray LLP, 'EU Corporate Sustainability Due Diligence Directive Effective Date Set: A Deep-Dive and Baker's Dozen of Takeaways for US-Based Multinationals' (*Lexology*, 8 July 2024) <https://www.lexology.com/library/detail.aspx?g=08816344-7f81-42fd-ac88-71827bb742c3> accessed 29 August 2024.

[41] Ibid.

[42] EOS editorial team, 'EU Corporate Sustainability Due Diligence Directive (CSDDD) Obliges Companies to Operate in a Fair and Sustainable Manner' (*EOS,* 7 May 2024) <https://www.eqs.com/compliance-blog/eu-supply-chain-law/> accessed 29 August 2024.

environment will be crucial to the directive's long-term success. Long-term success can be achieved through various means and mechanisms. Tax Benefits, grants, and other financial means provided by the government can act as a catalyst for proactive adoption by the companies. Targeted support for SMEs and platforms for corporations and suppliers for increased collaboration can strengthen the CSDDD initiative.

Additionally, CSDDD and BRSR align on the fact that both the frameworks provide the metric of implementation on the basis of companies' size. However, the CSDDD makes a specific categorisation of the minimum number of employees in a company to be eligible for reporting. This is an evident difference with the Indian approach, which only envisages market capitalisation as a criterion. While there are diverging point of views of whose approach is better, it is essential to recognise that both of the approaches have their own unique requirements as per the socio-economic build of the nations. India with its ambition has only kept market capitalisation as its sole criteria till now because it eliminates the other requirements which may lead to further filtering out of companies. Instead this simple criteria has been opted for its simplicity yet its effectiveness in the initial point of introduction of the disclosure scheme. The emphasis provided for the human rights violations under the European framework forces the policymakers around the world to ponder over bringing stricter penalties against such violations due to irreparable damage caused by such ESG violations.

C. Australia

Recently in Australia, a draft bill was passed by the Parliament concerning ESG disclosure named as, Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill, 2024. The bill mandates that large Australian companies produce sustainability reports that include climate-related information, such as a climate strategy, climate risk and opportunity assessments, and Scope 1, 2, and 3 emissions data. The framework plans to capture at least 6,000 entities within its ambit by 2030 and also enhance the disclosures in a phased manner.[43] One of the unique facts about the passed bill is that "*the new regulations are not limited to corporate entities. Investors, particularly asset owners with more than $5 billion under management, will also be required to report their climate risks by 2027*."[44] What sets this legislation apart from other best practices is that, this aspect has been missing in all the other nations' disclosures regulations and this law supports the optimistic view that combating climate change requires a synergistic approach, with corporations, investors, and other parties working in tandem. Australia is the latest nation adopting a legislative approach to Task Force on Climate-related Financial Disclosures (TCFD) aligned reporting requirements, such as UK, Germany, France, Italy, New Zealand, Japan, Canada, EU, Thailand, US (California), Switzerland, Spain, India, Nigeria, China, South Korea and Brazil.[45] Such implementation in India would be a historic leap in ESG reporting; however, its practical challenges are aplenty. Primarily, India's investor pool ecosystems lack the necessary expertise required to incorporate such disclosure mechanisms. India in the near future can adopt a phased implementation approach focusing on addressing the

[43] Michelle Seagart, 'Australia's mandatory climate reporting regime: Practical implications everyone needs to know' (*Dentons, 4* June 2024) <https://www.dentons.com/en/insights/articles/2024/june/4/australias-mandatory-climate-reporting-regime-practical-implications-everyone-needs-to-know> accessed 29 August 2024.
[44] 'Australia Passes Landmark Bill Mandating Climate Risk Disclosures for Companies, Enhancing Transparency and Global Alignment' (*ESG News*, 23 August 2024) <https://esgnews.com/australia-passes-landmark-bill-mandating-climate-risk-disclosures-for-companies-enhancing-transparency-and-global-alignment/> accessed 29 August 2024.
[45] Timothy Stutt *et al.*, 'Australian climate reporting: proposed legislation introduced into Parliament' (*Herbert Smith Freehills,* 27 March 2024) <https://www.herbertsmithfreehills.com/insights/2024-03/australian-climate-reporting-proposed-legislation-introduced-into-parliament> accessed 29 August 2024.

inclusion of big institutional investors in the disclosure's ambit. The government may also target certain sects of investors by increasing awareness. Furthermore, with the advent of scaling usage of AI, India can explore the usage of AI-driven emission tracking tools to make an efficient reporting ecosystem. This approach would fortify India’s ESG reporting sphere while addressing challenges.

V. CHALLENGES & ITS POTENTIAL SOLUTIONS

ESG, once championed as a force for responsible investing, is often criticized as a concept riddled with contradictions, measuring everything yet signifying nothing. Many experts have criticized ESG in essence as a concept but India has adopted it envisions herself as a future leader in this regard. While questions can be raised upon the nature of ESG, bigger questions await in implementation of ESG mechanisms in India. International best practices offer valuable insights into India's ESG framework, yet the proliferation of ESG-related violations in contemporary financial markets presents a significant regulatory hurdle. India's BRSR framework demonstrates a positive step towards integrating diverse ESG considerations into disclosures yet its effectiveness remains hampered by several aspects. Primarily, a report suggests that less than 30% of the targeted companies are ready to adopt the BRSR measures[46], which poses a great concern for the effective implementation of the concept. This concern is exacerbated due to the objective nature of many ESG-related metrics as it is often difficult to ascertain the credibility of information provided by the companies. The current mechanism is overly quantitative, neglecting the importance of

[46] Mark Segel, ‘Less Than 30% of Companies are Ready for Upcoming ESG Assurance Requirements: KPMG Survey’ (*Esg Today,* 13 June 2024) <https://www.esgtoday.com/less-than-30-of-companies-are-ready-for-upcoming-esg-assurance-requirements-kpmg-survey/> accessed 29 August 2024.

qualitative data. One of the questions in BRSR reads as, *"Do the employees/ worker of the entity have access to non-occupational medical and healthcare services? (Yes/ No"*.[47] In a situation wherein the company provides information as *"Yes"* it still does not disclose what is the extent of such services provided to the employees nor does it provides clarity as to what is the quality of such medical and healthcare facilities.

A qualitative approach to information disclosure is essential to overcome this issue. Investors often hold companies accountable for effective redressal mechanisms for stakeholder concerns like community impact, labour practices, and compliance. Through qualitative disclosures, companies may be compelled to disclose how they engage with stakeholders, resolve issues, and incorporate feedback, highlighting their commitment to sustainability and responsible practices beyond basic regulatory requirements. For instance, a mining company might describe how it consulted with villagers before starting a project, addressed their concerns about water usage, and adjusted its plans to protect local resources. This situation is aggravated by the fact that the latest consultation paper of SEBI proposes to replace *comply or explain* approach with a *voluntary* disclosures approach.[48] The earlier approach of comply or explain basis was considered to be helpful in extracting out the information pertaining to the efforts undertaken by the company for the sustainability measures. However, the voluntary mechanism of information disclosure leaves a lot of room for greenwashing as the companies can opt out of certain

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[47] SEBI, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023.

[48] 'Consultation Paper on the Recommendations of the Expert Committee for Facilitating Ease of Doing Business with Respect to Business Responsibility and Sustainability Report (BRSR)' (*SEBI Consultation Paper*, 22 May 2024) <https://www.sebi.gov.in/reports-and-statistics/reports/may-2024/consultation-paper-on-the-recommendations-of-the-expert-committee-for-facilitating-ease-of-doing-business-with-respect-to-business-responsibility-and-sustainability-report-brsr-_83551.html> accessed 29 August 2024.

vital information disclosures under the garb of ease of doing business, as reasoned by SEBI's consultation paper for relaxing the value chain information disclosures.[49] One such instance has been the infamous Volkswagen *defeat device* scandal.[50] Herein Volkswagen was accused of deliberately installing defeat device in their cars to improve performance when there were being tested. These devices could detect when they were tested and could modify their performance according to the tests so as to pass the emission tests. Thus, the regulator has to keenly observe every data provided by the companies in order to avoid such instances in India.

Furthermore, the current BRSR framework is based on metrics which are common to all types and varieties of industries. This one-size-fits-all approach of SEBI with regard to disclosure metrics hinders the identification of industry-specific material information. This standardized framework is akin attempting to force a mismatched approach into a given context; it fails to capture the unique nuances of diverse sectors, potentially limiting the usefulness of disclosed data for investors. In contrast, the EU's approach to regulation of AI-specific businesses offers valuable insights, such as its risk-based classification system focusing on high-risk AI applications, imposing stricter obligations on developers, users, and distributors within these domains.[51] This targeted approach ensures proportionate regulation aligned with the potential societal and environmental consequences of AI systems. A sector-based approach to ESG disclosures can engender a more comprehensive structure by tailoring information metrics to the unique

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[49] Ibid.

[50] Russel Hotten, 'What is Volkswagen accused of?' (*BBC News*, 10 December 2015) <https://www.bbc.com/news/business-34324772> accessed 29 August 2024.

[51] Vivien Peaden, 'EU AI Regulation Ripples Through Tech Value Chains, US Business' (*Bloomberg Law,* 21 March 2024) <https://news.bloomberglaw.com/us-law-week/eu-ai-regulation-ripples-through-tech-value-chains-us-business> accessed 29 August 2024.

caused by non-compliance with sustainability standards may impact operational continuity and financial performance.

To bolster the impact of the BRSR, SEBI can contemplate offering expanded Materiality Guidance, which would encourage consistent and meaningful reporting and offer more logical guidance on materiality determination.[54] For important disclosures, an independent verification method or process is crucial as it would improve data integrity and deter greenwashing. Encouraging projections and risk assessments would help investors make more informed decisions. Developing tailored metrics for different industries/sectors can be another way through which consistency can be achieved for ESG performance. In the end, to enhance the BRSR's effectiveness, SEBI can draw inspiration from globally recognized frameworks like the Global Reporting Initiative (GRI), the Sustainability Accounting Standards Board (SASB), and the Task Force on Climate-related Financial Disclosures (TCFD). The best practices around the globe must be taken into consideration vis-à-vis India’s shortcomings to develop a robust corporate governance structure while also taking good care of the environment and sustainability.

VI. WINDOW FOR LEGAL LANDSCAPE IN BRSR FRAMEWORK

SEBI’s initiative of BRSR represents a meaningful step in advancing ESG disclosures; however, to enhance its impact, it necessitates some targeted refinements supported by clear legal provisions and intervention by the courts of the nation. A crucial area for improvement lies in materiality determination. By incorporating SASB-aligned principles of industry specificity and

[54] ‘Business Responsibility and Sustainability Reporting: the new dimension of ESG reporting’ (*KPMG*) <https://assets.kpmg.com/content/dam/kpmg/in/pdf/2021/10/pov-business-responsibility-sustainability-reporting-new-dimension-esg-reporting.pdf> accessed 29 August 2024.

emphasis on financially material ESG factors, SEBI can provide effective guidelines for reporting. Germany's climate disclosure laws require different industries to meet specific emission targets, monitored by an environmental agency that regulates conglomerates. India could implement a similar strategy, setting industry-specific emission targets that account for the distinct characteristics of each sector, thereby promoting a sustainable ESG framework.[55] Currently, more clarity on disclosures can be found in Section 134(3) of the Companies Act, 2013,[56] which provides for attachments by the directors before a general meeting, and its clause (n) of the provision may include the scope for environmental disclosures. Additionally, by virtue of Section 132 of the Companies Act, 2013 which provides scope for the establishment of the National Financial Reporting Authority (NFRA),[57] drawing on external assurance for BRSR disclosures would bolster data reliability and mitigate greenwashing concerns. The authenticity of statements and disclosures made before such authority under Section 132 would carry the potential of being true as a power of appeal, and a civil court would impact the sanctity of disclosures within the scope of deterrence. SEBI can also leverage Regulation 34 of the LODR Regulations[58] in further ways to promote forward-looking ESG disclosures that encompass companies' risk mitigation and opportunity capture strategies.

Furthermore, the courts on several occasions reiterated that they would interfere to the least in the corporate affairs of a company.[59] However, it has

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[55] OECD, 'Germany's annual sectoral emissions targets' (*OECD*, 7 November 2022) <https://www.oecd.org/en/publications/ipac-policies-in-practice_22632907-en/germany-s-annual-sectoral-emissions-targets_2148cd0e-en.html> accessed 29 August 2024.

[56] The Companies Act, 2013, s 134(3).

[57] The Companies Act, 2013, s 132.

[58] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, reg 34.

[59] *Rajahmundry Electric Supply Corp v. A Nageswara Rao and Others* (1955) 2 SCR 1066 (SC).

also cautioned that *"the need to strike a balance between allowing directors the space to take business decisions as per their commercial wisdom and intervening when their conduct is not bona fide."*[60] Over the last two decades, the judiciary has shown great activism in the environmental and climate-related risks attributed to companies. The *Great Indian Bustard case*[61] underlined that a balance has to be made between safeguarding an endangered species and advancing solar power generation. The court decided to safeguard endangered species and uphold the right to a healthy environment. The inclusion of *the public trust doctrine,*[62] *polluter pays,*[63]and *precautionary principle*[64] in the corporate regime further acts as a foundation for value chain addition in ESG reporting. Furthermore, these principles can act as a compass in future disputes in array of subject matters. These refinements would position the BRSR framework as a powerful catalyst for responsible business practices.

VII. CONCLUSION

In 2022, the National Green Tribunal, while taking suo-motu action on a news article titled *"CPCB to rank industrial units on pollution levels,"* gave great emphasis to how ESG reporting is an essential aspect of a green economy.[65] The usage of the term 'green economy' signifies that these disclosure-related guidelines do not have an impact just on the environment; they holistically affect the decision-making of an investor and even the working of raw material procurers. On the same line, SEBI, with the introduction of the BRSR Core framework, has further bolstered its

[60] *Nanalal Zaver and Another v Bombay Life Assurance Co Ltd* (1950) AIR 1950 SC 172.
[61] *MK Ranjitsinh & Ors. v. Union of India & Ors.* (2021) AIR Online 2021 SC 172 (SC).
[62] *M.C. Mehta v. Kamal Nath & Ors* (1996) AIR Online 1996 SC 711 (SC).
[63] *Indian Council of Enviro-Legal Action v. Union of India* (1996) SCC (3) 212 (SC).
[64] *A.P. Pollution Control Board v. Prof.M.V.Nayudu (Retd.),* (1999) (2) SCC 718 (SC).
[65] *Asian Age* (2019) SCC OnLine NGT 2551 (NGT)

commitment towards a green economy and has laid stepping stones by firstly earmarking the big players of the Market. The companies have also responded gracefully with a multitude of corporations, including Larsen & Toubro, Wipro, Infosys, and Tata Consultancy Services have pledged to support the implementation of the BRSR Core framework.[66] To engage local talent, Infosys, for example, has created a new development unit in India focusing on cloud and AI technology. The unit includes thousands of workers' accommodations and adherence to green construction standards, these steps exemplify Infosys's ESG initiatives.[67]

Every coin has two sides, and on the other side of BRSR disclosure, there are multiple challenges pertaining to authentic and credible reporting on ESG initiatives. Since the framework will be applicable in a phased manner, ensuring consistency with effective outputs will be a benchmark of success. The role of SEBI and courts is very crucial as they will shape the future regime of laws and ensure effective compliance in the system. The introduction of similar frameworks all over the world signifies that there will be more revisions and amendments in the upcoming times, and these guidelines are there to remain for a long period of time.

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[66] Abhishek Saraf (n17).

[67] 'Infosys Collaborates with AEEE and IIHS to Decarbonize India's Commercial Building Sector' (*Infosys*, 9 May 2024) <https://www.infosys.com/newsroom/press-releases/2024/accelerating-sustainable-super-efficient-real-estate.html> accessed 29 August 2024.