ESG REGULATIONS: IS THE CORPORATE IN INDIA REALLY DOING ITS PART?

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ABSTRACT

In order to understand the applicability and impact of Environmental, Social, and Governance (ESG) regulations in India, we need to understand the legal framework around ESG globally and nationally. The laws which are covering the ESG Regulations along with Corporate Social Responsibility (CSR) of companies and organizations and their nexus through which a drive for change is being proposed and imposed by the regulators and the government. The strict and loose implementation of ESG Regulations is to be studied by examining the current guidelines and legal framework. It also includes India's commitment to certain global community goals such as climate change goals as well as it is a framework to address and implement ESG at par with international standards or international format.

Indian companies or International Companies and organizations which are part of ESG and CSR compliances in India have to abide by the framework provided by the Securities and Exchange Board of India (SEBI) under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Companies Act, 2013 and National Guidelines on Responsible Business Conduct by Ministry of Corporate Affairs (MCA). However, companies that do not fall under compulsory compliance also rely on different international frameworks such as Global Reporting Initiative (GRI), the Sustainability Account Standards Boards (SASB), and Task Force on Climate-related Financial Disclosures (TCFD). It is to be studied whether companies that are under the obligation of ESG are successfully fulfilling the objectives of ESG in terms of each component i.e., Environmental, Social, and Governance.

WHAT IS ESG?

ESG stands for three major parameters that are Environment, Social, and Governance. These parameters define the overall contribution of a company or organization as their output. It is a form of data that is relied on by the investors for analyzing the risk in material terms that the organization is taking based on the output it is generating. Such data is made and compiled following a particular format or framework such as Global Reporting Initiative (GRI) the Sustainability Account Standards Boards (SASB), and Task Force on Climate-related Financial Disclosures (TCFD) which is later used and relied on by the investors to assess the risk impact

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before investing or measuring the return on investment for short term and long-term investment goals. Such data can also be used within the organization for building strategies and for the purpose of management. Another aspect of it can be used by organizations to attract investors. ESG data may be used beyond assessing material risks such as evaluating the enterprise value by designing models based on speculations with respect to all organizational stakeholders leading to higher long-term risk-adjusted returns.[1] Especially after the advent of the COVID-19 pandemic, rising global temperature, financial instability, and sinking economies, countries and financial institutions have pushed for sustainable development action plans such as ESG to make a comprehensive and sustainable framework that will help in the development of human society. ESG is like an investment philosophy that aims for the long-term growth of value and is of comprehensive nature, concrete, and down-to-earth governance method[2]. Organizational stakeholders are not limited to customers, leadership, employees, suppliers, and the environment. The ESG framework is elaborative as follows (international frameworks)[3]:

Dimensions	**Factors**	**Definition**
Environmental (E)	• GHG Emissions • Energy Consumption • Air Pollutants • Water Usage and recycling • Waste Production and management (Water, solid, hazardous)	Environmental matters that may have a positive or negative impact on the financial performance or solvency of an entity, sovereign or individual.

[1] Neetika Ahuja and Vasudha Luniya, 'India: Introduction to Environmental, Social, And Governance (ESG) Disclosures in India With An Overview Of The Global Standards On ESG' (Mondaq, 14 November 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> accessed on 18 April 2023

[2] Ting-Ting Li, Kai Wang, Toshiyuki Sueyoshi and Derek D. Wang, 'ESG: Research Progress and Future Prospects' (2021) *Sustainability* **2021**, *13*(21), 11663 <https://www.mdpi.com/2071-1050/13/21/11663> accessed 18 April 2023

[3] European Banking Authority, 'EBA Report On Management and Supervision of ESG Risks for Credit Institutions and Investment Firms' (2018): https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Reports/2021/1015656/EBA%20Report%20on%20ESG%20risks%20management%20and%20supervision.pdf accessed on 19 April 2023.

	• Impact and Dependence on Biodiversity • Impact and Dependence on Ecosystems • Innovation in environmentally friendly products and services	
Social (S)	• Workforce freedom of association • Child Labour • Forced and compulsory labor • Workplace health and safety • Customer Health and safety • Discrimination, diversity, and equal opportunity • Poverty and community impact • Supply chain management • Training and Education • Customer Privacy • Community impacts	Social matters that may have a positive or negative impact on the financial performance or solvency of an entity, sovereign, or individual.

Governance (G)	• Codes of Conduct and business principles • Accountability • Transparency and disclosure • Executive Pay • Board diversity and structure • Bribery and Corruption • Stakeholder engagement • Shareholder rights	Governance matters that may have a positive or negative impact on the financial performance or solvency of an entity, sovereign, or individual.

The concept of the ESG principle was brought into the picture in 2004 and since then it has actively participated in Europe, America, and other developed countries. There have been active efforts to overlaying Sustainable Development Goals (SDGs) with ESG data which is based on work by the United Nations.

CORPORATE SOCIAL RESPONSIBILITY (CSR) AND ESG

While understanding the concept of ESG, often a similar term is witnessed called Corporate Social Responsibility. Any industry or company has to comply with both of these compliances and their directives vary from country-to-country domestic laws. It is pertinent to note that both the compliances reflect different dimensions of the company. In India, ESG compliance disclosure is regulated by the Securities and Exchange Board of India (SEBI), where in top thousand listed companies have to comply with the Business Responsibility and Sustainability Report (BRSR) introduced by SEBI.[4] On the other hand, CSR is the internal framework or commitment of the company which is voluntary in nature.

[4] SEBI, 'Business Responsibility and Sustainability Reporting Format' (2021), https://www.sebi.gov.in/sebi_data/commondocs/may-2021/Business%20responsibility%20and%20sustainability%20reporting%20by%20listed%20entitiesAnnexure1_p.PDF accessed on 19 April 2023

CORPORATE SOCIAL RESPONSIBILITY

In a global context, CSR basically reflects sustainability inside the corporate world and emphasizes corporate volunteering, reducing carbon footprints, and other social contributions. It has become a marketing strategy for companies to promote CSR because there is a wide shift that can be seen among consumers, wherein they are more willing to pay more for products that are sustainable in nature and contribute to the environment. Generally, CSR practices are voluntarily self-regulated in nature and vary from company to company.

In India, it is a form of compliance by the company which has been made mandatory by the Government of India under the Companies Act, 2013[5]. As per section 135 of the Indian Companies Act, 2013, it has been made compulsory to constitute a Corporate Social Responsibility Committee and the company has to spend at least two percent of the average profit of the company immediately preceding three financial years on CSR activities.[6] But this provision only applies to those companies having:

- A net worth of rupees five hundred crores or more,
- Turnover of rupees one thousand crores or more,
- Net profit of rupees five crores or more

Such a committee has to design a policy for CSR which has to be indicative of the activities to be undertaken by the company in the area or subject specified in Schedule VII of the Companies Act, 2013.[7] This has to be read with the Companies (Corporate Social Responsibility) Rules, 2014 which have made it mandatory for companies to comply with CSR Rules.[8] In other words, it constitutes all the laws dealing with the CSR legal regime in India.

ESG

When it comes to ESG, it portrays more of a quantitative measure of Economic, Social, and Governance factors and helps in increasing the valuation of the company's business. There are several indexes and formats nationally and internationally that help in reflecting the ESG compliances of the company or organization. As mentioned above that it is a reliable source for investors before investing and calculating the risk. It reflects the investors about how dedicated the company is in terms of sustainability. It is mainly for the external world to show

[5] The Companies Act, 2013
[6] The Companies Act, 2013, s 135
[7] The Companies Act, 2013, Schedule VII
[8] Companies (Corporate Social Responsibility Policy) Rules, 2014

the contribution and goals of the company covering all three factors widely and portraying their long-term vision and opportunities for investors and stakeholders.

LAWS REGULATING ESG IN INDIA

In India, codification of consolidated laws which specifically govern with ESG does not exist. There are numerous laws that cover the ESG factors to be complied with by the companies. The number of corporate entities that are covered under the obligation of ESG compliance is also limited by laws, e.g. As per the Companies Act, 2013, it is determined on the criteria of paid-up share capital, annual profit, etc. have to spend at least two percent of the average net profit. The reporting of ESG compliances began way back in 2009 when the Ministry of Corporate Affairs (MCA) issued the Voluntary Guidelines on Corporate Social Responsibility.[9]

The following is the timeline about how the laws and regulations evolved[10]:

- 2007 – Adoption of Inclusive Growth-11th Five-Year Plan
- 2009 – Voluntary Guidelines on Corporate Social Responsibility, 2009
- 2010 – Parliamentary Standing Committee on Finance-21st Report on Companies Bill, 2009
- 2011 – National Voluntary Guidelines (NVG's) on Social Environmental and Economic Responsibilities of Business, 2011
- 2012 – Business Responsibilities Reporting (BRR)
- 2014 – Mandatory Provisions of CSR under section 135 of the Companies Act, 2013 (coming into effect from 01.04.2014)
- 2018 – National Guidelines on Responsible Business Conduct (NGRBC)

The very recent being introduced in 2021 by the Securities and Exchange Board of India (SEBI) called Business Responsibility and Sustainability Report (BRSR).[11] In the report, listed companies have to disclose their performance as per the 'National Guidelines on Responsible Business Conduct (NGBRC's) nine principles. The reporting under each principle has been

[9] Ministry of Corporate Affairs, Government of India (2009) https://www.mca.gov.in/Ministry/latestnews/CSR_Voluntary_Guidelines_24dec2009.pdf accessed on 19 April 2023
[10] Ministry of Corporate Affairs, Government of India, 'History' (2019) https://www.csr.gov.in/content/csr/global/master/home/aboutcsr/history.html accessed on 19 April 2023
[11] SEBI, 'Business Responsibility and Sustainability Reporting by Listed Companies' (2021) https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html accessed on 20 April 2023

divided into two categories i.e., essential indicators and leadership indicators. The indicators which are essential have to be reported mandatorily and indicators of leadership have to be reported on a voluntary basis. BRSR has replaced BRR and is applicable to the top thousand listed companies. It was introduced with the intent of qualitative and comparative disclosures, to make choices easier for the investors and stakeholders. In order to keep it at par with international standards, responsible corporate governance, and commitment to climate change, BRSR has been made comprehensive and covered a large number of companies under its umbrella.

On the other hand, the bank's consortium called the Indian Banks Association (IBA) released their own guidelines called "Voluntary Guidelines for Responsible Financing" with the objective of 'integrating ESG risk management into the Financial Institution's business strategy, decision making and operations in 2016.[12] Such voluntary guidelines are a welcome step towards fulfilling ESG obligations even by the entities which do not fall under the mandatory umbrella of governmental institutions. It reflects the strong picture of willingness to contribute towards society by such entities.

COMPARISON BETWEEN E, S, AND G

In order to study the comparison between Economic, Social, and Governance factors, it is imperative to have a clear picture of each factor in their individual sense. Each factor plays a crucial role and is reflective of a corporate entity's outputs. These factors can have various dimensions on their own and hence, these are just umbrella terms that cater to more sub-factors that are reflected in a comprehensive amalgamated ESG report.

Environmental (E): This is the far most debating factor for corporate entities in the 21st century due to sudden climate change and rising global temperatures. Companies and organizations are running towards reducing their carbon footprint and emissions. Regardless of the nature of the company and the products or services they are offering trying to assess their part in climate change globally or nationally and hence working on policies to reduce them. By doing so, they are trying to make an impact on society through their efforts which are to be done by smart marketing strategy, consequently can make their products and services on the top of the market. Therefore, the less emission through their product or services, the more sustainable their products become, and multiplied by marketing, they showcase their product

[12] Indian Bank's Association, 'National Voluntary Guidelines for Responsible Financing' (2012) https://www.cafral.org.in/sfControl/content/LearningTakeaWays/1213201764617PMNationalVoluntaryGuidelinesforResponsibleFinancing.pdf accessed on 20 April 2023

and service as environmentally friendly or green products. Corporate entities are rushing towards such trends and it is visible throughout the market. For e.g. Apple has committed itself to be carbon neutral by 2030, on the other hand, Microsoft has announced itself to be carbon negative by 2030.[13] Nestle India released it is commitment to transform it is business into a sustainable environment business by reducing energy consumption by 47% and water usage by 55%.[14] Recently, a court in Tennessee passed an injunction against Jack Daniels's construction of a new barrel warehouse because of the 'whisky fungus' it was releasing into the atmosphere, therefore in the era of environmental complaints, companies must take steps to reduce their burden which has a negative impact on the environment.[15] There are many other examples of multinational companies making such commitments when it comes to the "environmental" factor. Also, in a country like India corporate entities have to abide by the provisions of environmental legislation also such as the Environment Protection Act, of 1986[16] and the Water (Prevention and Control of Pollution) Act, of 1974.[17]

Social (S): When it comes to "social," it immediately turns one mind to labor laws or something akin to that. But the social factors are much wider than that and they are most evolving in nature. By the time of changing society, the dimensions and understanding of social factors are subject to change and redefinition. Social factors include many other sub-factors such as customer well-being, non-discriminatory policies, impact on the community, the company's internal management, etc. Such factors have a large-scale impact which can be in negative or positive terms. Social factors cater to the most number of sub-factors and are detrimental to a corporate entity's performance and overall output. Therefore, it becomes a necessity for a corporate entity to be cautious with social factors.

Governance (G): It is one of the very specific factors and majorly covers the factors which deal with legal compliances of corporate entities. It deals with factors such as working hours of employees, minimum wages, paternity, and maternity benefit, health insurance of the

[13] Tim Bansal, 'How Microsoft is Leading The Response To The Climate Crisis' (Forbes 22 June 2022) https://www.forbes.com/sites/timabansal/2022/06/22/how-microsoft-is-leading-the-response-to-the-climate-crisis/?sh=38cab20650a1 accessed on 20 April 2023
[14] Nestle, 'Nestle India reinforces it is commitment towards environmental sustainability (Nestle, 4 June 2016) https://www.nestle.in/media/pressreleases/nestle-india-reinforces-it is-commitment-towards-environmental-sustainability accessed on 21 April 2023
[15] Alind Chauhan, 'Whiskey fungus due to Jack Daniel's barrels covers US county in a black, sooty deposit: what is this microorganism?' (Indian Express, 6 March 2023) <https://indianexpress.com/article/explained/explained-sci-tech/whiskey-fungus-jack-daniels-case-usa-meaning-8480456/> accessed on 21 April 2023
[16] Environment Protection Act, of 1986
[17] Water (Prevention and Control of Pollution) Act, 1974.

employees, shareholders, and stakeholders' rights, honest disclosures, compliance with rules and orders of other legal entities, etc. It also includes disclosure of ESG reports by the eligible companies under a prescribed format. Those companies which do not fall under the mandatory ESG disclosure follow international formats for the confidence of investors and stakeholders.

INDIA'S COMMITMENT TO CLIMATE CHANGE AND ESG

India has made several commitments when it comes to climate change and rising global temperatures. India aims to incorporate those commitments into their ESG regulations in order to contribute towards a more sustainable and green future. The announcement by the Government of India regarding the cabinet approval of 2030 climate commitments was welcomed globally which also includes a pledge to bring down emissions by 45% and transformation to 50% electric energy from non-fossil sources of energy.[18] In 2015, under the Paris Agreement, India jotted down it is Nationally Determined Contribution (NDC) but in August 2022, India happen to update it is NDC goals which were enhanced and later approved by the cabinet. India targets to achieve Net-zero by the year 2070. In the 26th session of the Conference of the Parties (COP 26) during the United Nations Framework Convention on Climate Change (UNFCCC) India addressed the concerns of developing countries and presented five nectar elements, "Panchamrit" to deal with climate change. India hosted the ESG summit in 2022 which was themed around India's environmental challenges, India's commitment to climate change, and the COP 26 agenda to facilitate the Central Public Sector and corporate sector with an aim to achieve goals in the ESG framework and to encourage the adoption of ESG measures across the industry. India has laid the roadmap for COP 27 to achieve their NDC goals and also considering India's presidency for the coming G20 summit, India is attempting to showcase it is committed to fulfilling those goals and taking active steps across the range of sectors which includes environment, infrastructure, digital economy, manufacturing industries, etc.[19] Therefore, the purpose of such a summit is to bring together all the stakeholders, corporate entities, and experts from various fields to re-evaluate the risks posed by global climate change which is changing the dynamics of doing business. Such corporate entities may want to rethink their business models and investing strategies for which the concept of amalgamated Environmental, Social, and Governance is introduced to keep such

[18] Emanuela Kerencheva, 'India Commit is to 45% Emissions Intensity Reduction by 2030' (ESGToday, 4 August 2023) https://www.esgtoday.com/india-commit is-to-45-emissions-intensity-reduction-by-2030/ accessed on 21 April 2023

[19] PIB, 'ESG conference for Industry Transformation-ESG for Atmanirbhar Bharat to be held in Mumbai' (Ministry of Commerce and Industry, 28 November 2022) https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1879560 accessed on 22 April 2023

entities alive and working and at the same time complying with all possible social, environmental, and governance regulatory risks. Therefore, it reflects India's commitment to it is climate change and it is efforts to collaborate with the ESG framework for quality output in the context of responsible corporate governance and climate change. That is one of the major reasons behind the disclosure of climate and social-related issues by corporate entities under their ESG disclosure reports.

PICTURE SO FAR

A country like India is trying hard to get into the picture of ESG regulations by making it mandatory for top companies of India and expanding it is scope to other corporate entities as well. For now, the ESG regulatory body which is SEBI in India does not cover Small and Medium Enterprises (SMEs) and is hence limited to the top thousand listed companies of India, SMEs also have a larger role to play in the ESG arena.[20] Although such corporate entities who are not covered under mandatory disclosure are trying to comply with ESG regulations on their own by adopting international ESG frameworks such as Global Reporting Initiative (GRI)[21], the Sustainability Account Standards Boards (SASB)[22], and Task Force on Climate-related Financial Disclosures (TCFD)[23]. It would be too soon to come to a conclusion about the true impact of mandatory ESG disclosure by the regulators but the picture looks promising due to India's commitment to international climate change conferences and to the international community and incorporating them into their domestic policies, which is reflective in their ESG framework. Analysis of NIFTY 50 on India ESG Report has also reflected that lack of disclosure is leading to distorting ESG scores by the companies[24] and there is a long way to go to reach that stage where we have correct figures in order to analyze the true picture of the impact of ESG regulation.

[20] Livemint, '92% of Indian SMEs focused on adopting ESG Measures: Survey' (Livemint, 14 November 2022) https://www.livemint.com/money/personal-finance/92-of-indian-smes-focused-on-adopting-esg-measures-survey-11668408896767.html accessed on 23 April 2023

[21] GRI, 'GRI Standards by language' <https://www.globalreporting.org/standards/download-the-standards/> accessed on 23 April 2023

[22] SASB Standards https://www.sasb.org/ accessed on 23 April 2023

[23] Task Force on Climate-related Financial Disclosures, https://www.fsb-tcfd.org/ accessed on 23 April 2023

[24] Nifty 50 Analysis, 'India ESG Report' (DART, 2022) https://images.assettype.com/bloombergquint/2022-03/9d1e5379-2ca3-41d8-9735-2fcd9cdd593e/Dolat_Capital_India_ESG_Report_10_March_2022.pdf accessed on 23 April 2023